

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Petition for Declaratory Ruling of the)	
Cellular Telecommunications &)	
Internet Association)	
)	

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP

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Summary

In its *Petition*, CTIA primarily suggests FCC action that would benefit large, nationwide CMRS carriers to the detriment of rural carriers, and accordingly, RTG opposes most of CTIA's suggested actions. Notably, RTG opposes CTIA's suggestion that interconnection agreements between rural carriers and requesting CMRS carriers are not necessary in order to implement local number portability. In order for a requesting and donor carrier to implement local number portability, a requesting carrier must implement some method to allow calls from non-ported numbers to ported numbers to be rated and routed as local calls. Specifically, prior to requesting the implementation of local number portability, a carrier must have a local point of presence, local numbering resources, and local interconnection. Absent such preconditions, local number portability will lead to massive consumer confusion and discrimination against small and rural carriers, and a request to implement number portability is not a *bona fide* request. In general, the Commission must ensure that the implementation of wireless number portability ("WNP") does not discriminate against rural and small carriers by sanctioning one-way porting obligations, or allowing large wireless carriers to utilize anti-competitive techniques.

The Commission should decline to impose additional WNP obligations on rural wireless carriers to support roaming. Rural carriers are already complying with the mandate that roamers with ported or pooled numbers be able to make and receive calls. Other issues related to "support" for roaming are a matter for contractual negotiations between carriers.

The Commission also should decline to adopt a nationwide porting interval for inter-modal and intra-modal wireless ports. Adopting the two and half hour interval proposed by CTIA would unduly burden rural carriers and would require further notice and comment in a formal rulemaking. Finally, the Commission should clarify that areas within FCC-defined RSAs and areas within FCC-defined small MSAs are, by definition, not part of the top 100 MSAs.

Table of Contents

SUMMARY.....ii

TABLE OF CONTENTS.....iii

I. STATEMENT OF INTEREST.....2

II. ARGUMENT.....2

A. Local Interconnection Arrangements Are a Prerequisite for the Implementation of Number Portability.....2

B. Rating an NXX Code to a Rate Center Without Negotiating a Local Interconnection Arrangement or Establishing a Local POP Will Not Allow For the Implementation of Number Portability.....7

C. The Commission Must Ensure that the Implementation of Number Portability Does Not Give Large Wireless Carriers an Unfair Competitive Advantage Over Small and Rural Carriers.....8

D. The Commission Should Not Impose Additional Number Portability Obligations on Rural Wireless Carriers for the Support of Nationwide Roaming.....10

E. Porting of Type 1 Wireless Numbers Necessarily Involves More Complex Interconnection and Porting Arrangements.....11

F. The Commission Should Not Compel Rural Carriers to Implement a Porting Interval Designed for the Large Nationwide CMRS Carriers.....12

G. The Commission Should Clarify that RSAs and FCC-Defined Small MSAs are Not Part of the Largest 100 MSAs.....12

III. CONCLUSION.....13

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To: The Commission

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP

The Rural Telecommunications Group (“RTG”), in response to the Federal Communications Commission (“FCC” or “Commission”) *Public Notice*,¹ hereby comments on the Petition for Declaratory Ruling (“*Petition*”) of the Cellular Telecommunications & Internet Association (“CTIA”) filed May 13, 2003.

In its *Petition*, CTIA primarily suggests FCC action that would benefit large, nationwide Commercial Mobile Radio Services (“CMRS”) carriers to the detriment of rural carriers, and accordingly, RTG opposes most of CTIA’s suggested actions. Notably, RTG opposes CTIA’s suggestion that interconnection agreements between rural carriers and requesting CMRS carriers are not necessary in order to implement local number portability. As discussed below, in order for a requesting and donor carrier to implement local number portability, a requesting carrier must implement some method to allow calls from non-ported numbers to ported numbers to be rated and routed as local calls. Absent such mechanisms, local number portability will lead to massive consumer confusion that would far outweigh any competitive benefit. In addition,

¹ *In re Comment Sought on CTIA Petition for Declaratory Ruling on Local Number Portability Implementation Issues*, CC Docket No. 95-116, DA 03-1753 (May 22, 2003) (“*Public Notice*”).

whatever action the Commission may take on the *Petition* and the January 23, 2003 *Rate Center Petition*,² the Commission must ensure that the implementation of wireless number portability (“WNP”) does not discriminate against rural and small wireless carriers by sanctioning one-way porting obligations or allowing large carriers to utilize anti-competitive tactics, thereby providing large wireless carriers with an unfair competitive advantage.³

I. STATEMENT OF INTEREST

RTG is an organized group of rural telecommunications providers who have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members provide wireless telecommunications services such as cellular telephone service and Personal Communications Services (“PCS”) to their subscribers. RTG’s members are affiliated with rural telephone companies or are small businesses serving or seeking to serve secondary, tertiary, and rural markets.

II. ARGUMENT

A. Local Interconnection Arrangements Are a Prerequisite for the Implementation of Number Portability

In its *Petition*, as in its *Rate Center Petition*, CTIA argues that number portability should be achieved without requiring interconnection negotiations as currently advocated by some local

² *Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association* filed January 23, 2003 in CC Docket No. 95-116 (“*Rate Center Petition*”).

³ *See* Comments of the Rural Telecommunications Group in CC Docket No. 95-116 (Feb. 26, 2003) (“*Rate Center Comments*”); *see also* Reply Comments of Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular in CC Docket No. 95-116 (March 13, 2003) (“*Mid-Mo Reply Comments*”) (Removing the common rate center requirement is tantamount to mandating one-way porting from the rural carrier to the large nationwide carrier.).

exchange carriers (“LECs”).⁴ Instead, CTIA supports the use of Service Level Porting Agreements (“SLAs”). CTIA’s objection to interconnection negotiations is primarily jurisdictional. That is, CTIA argues that LEC-CMRS porting should be implemented by the FCC pursuant to Section 332 of the Communications Act of 1934, (the “Act”) and should not be subject to state commission jurisdiction pursuant to Section 252 of the Act.⁵ CTIA’s jurisdictional argument, however, ignores the technical realities of actually implementing number portability, particularly in rural areas.

As RTG explained in its *Rate Center Comments*, most large CMRS carriers have not established a point of presence (“POP”) in rural rate centers, do not have existing numbering resources, do not have any existing interconnection agreement with either rural wireless or landline carriers in such rate centers, and have no local interconnection facilities or arrangements with such carriers. Traffic originated by customers of such rural wireless providers and rural telephone companies bound for a nationwide CMRS carrier typically must be routed on the toll network via an interexchange carrier (“IXC”).

Some of the nationwide CMRS carriers, however, have requested that rural wireless carriers and rural telephone companies implement number portability even though these requesting CMRS carriers have no interconnecting facilities and no interconnection agreement with the rural carrier from which portability is requested and no local POP or NXX code in the area served by the rural carrier. In issuing these so-called “requests” for number portability, the large carriers have not correspondingly requested interconnection, indicated any willingness to

⁴ See *Petition* p.17-23. CTIA argues that “the LEC position amounts to a dispute over numbering administration masquerading as an interconnection issue.” *Id.* p. 17. As discussed below, however, the reverse is true. CTIA’s position amounts to an interconnection dispute masquerading as a numbering issue.

⁵ See *id.* p. 17-23.

establish a local POP or evidenced any intent to actually compete in the local market with the rural carriers.

In order for a rural carrier to port a customer's number to such nationwide CMRS carrier under these circumstances, the rural telephone company or rural CMRS carrier would have to route calls from customers with non-ported numbers to the customer with the ported number via an IXC over the toll network. This could lead to massive customer confusion as customers originating such calls would have no warning that they were about to incur toll charges for making what had previously been a local call. Alternatively, the donor carrier may be forced to deliver "local" traffic outside of its licensed or franchised service area and incur transport charges that were not factored into its rate design. This would, in effect, subsidize the construction of the large carrier's network because the large carrier would have avoided the cost of constructing or leasing facilities to compete locally.

In order to prevent massive customer confusion and an inequitable alteration of intercarrier compensation, the Commission should clarify that in order for carriers to implement number portability, there must be some method to allow calls from customers with non-ported numbers in a given rate center to customers with ported numbers to be rated and routed as local calls. Specifically, prior to requesting the implementation of number portability, a carrier must establish a POP and numbering resources in the rate center and some form of local interconnection with carriers in the rate center.⁶ Absent such local presence and interconnection, a rural carrier cannot implement number portability and a request to do so is not a *bona fide* request.

⁶ RTG notes that by mutual agreement, the carriers could transit traffic through a third-party carrier. The transiting costs, however, should be borne by the requesting carrier who has otherwise avoided the cost of building local facilities to the rural area.

RTG notes that the need to establish interconnection in order to implement number portability is not unique to incumbent providers. The limitations apply equally to competitive local exchange carriers (“CLECs”). In the absence of a local POP and interconnection, CLECs also will be forced to route “local” calls from non-ported numbers to ported numbers on the toll network with the resulting massive customer confusion.

The interconnection problem also would not be resolved were the Commission to limit landline-to-wireless porting to areas with rate center overlap⁷ while requiring wireless-to-wireless porting even in the absence of a local POP and interconnection. For example, when a rural CMRS carrier (“Rural Wireless Co”) establishes a local NXX code, it also establishes a POP and local interconnection with the LEC(s) in the rate center (“Rural Telco”). If the Rural Wireless Co were required to port numbers to a nationwide CMRS carrier (“NatCo”) that has not established a POP and interconnection in the rural rate center at issue, then calls from Rural Telco’s customers to wireless customers with numbers ported to NatCo would appear to be local to Rural Telco’s customers until the customers received their bills and then learned that the calls were in fact toll calls routed via an IXC. This result would obviously lead to massive customer confusion that will far outweigh the benefits of number portability.

The only way to avoid this negative result is to maintain the current rule limiting number portability to areas with rate center overlap and to require that the requesting carrier establish a local POP and some form of local interconnection. RTG would anticipate that the establishment of local facilities would be accomplished through the interconnection negotiation process.

⁷ That is, limiting LEC number portability to areas where the wireless carrier has a POP, local numbers, and local interconnection facilities.

CTIA acknowledges that “as a practical matter, some sort of agreement must be reached to govern the terms under which carriers will test and port numbers to one another.”⁸ Rather than having carriers engaging in an interconnection negotiation and resulting interconnection agreement, however, CTIA argues that only an SLA is necessary. CTIA argues that CMRS-LEC number portability (like CMRS-LEC interconnection) is governed by a completely different regime than LEC-LEC number portability and is subject to the Commission’s unique jurisdiction over CMRS. CTIA argues, “Subjecting CMRS-LEC number portability to section 251 and 252 would considerably undermine the regulatory scheme of section 332.”⁹

RTG agrees with CTIA that the Commission has plenary authority over CMRS-LEC interconnection pursuant to Section 332. RTG also agrees that if the FCC wants to undertake the role of arbitrating LEC-CMRS interconnection agreements to implement number portability, then it may do so. RTG notes, however, that while the FCC has jurisdiction to implement CMRS-LEC interconnection under Section 332 without state Commission involvement, CMRS-LEC interconnection currently is implemented through the Section 251, 252-process. CTIA downplays the fact that “[m]any carriers already have interconnection agreements, and it is likely that some of these agreements will be amended to address number portability...”¹⁰ At the end of the day, whether carriers implement number portability by interconnecting under FCC jurisdiction pursuant to Section 332 or under state commission jurisdiction under Sections 251 and 252,¹¹ carriers must still be able to exchange local traffic pursuant to some form of local interconnection arrangement, and requesting carriers must still establish a local POP.

⁸ *Petition* p.16.

⁹ *Id.* p. 19.

¹⁰ *Id.* note 54.

¹¹ CTIA’s position regarding the exclusive use of an SLA may allow for anti-competitive behavior, and is arguably inconsistent with the obligations of LECs to file interconnection

B. Rating an NXX Code to a Rate Center Without Negotiating a Local Interconnection Arrangement or Establishing a Local POP Will Not Allow For the Implementation of Number Portability

In the *Petition*, CTIA requests that the Commission resolve the pending dispute between Sprint and BellSouth regarding the rating and routing of numbering resources. The Commission has consolidated Sprint's request for relief on this issue into the *Unified Inter-carrier Compensation* proceeding,¹² and RTG has filed Reply Comments addressing the issues raised in that dispute.¹³ RTG will not repeat its arguments here except to note its position that all carriers have a duty to establish interconnection arrangements for the exchange of local traffic.¹⁴

Because CTIA has raised the Sprint-BellSouth dispute in the context of number portability, however, RTG notes that merely obtaining numbers in a given rate center, without establishing some form of local interconnection—whether it be direct or indirect via a common tandem—does not resolve the local interconnection or rating and routing concerns discussed above. That is, it is not sufficient for a CMRS carrier merely to rate a code to a given rate center in order to request that a rural carrier implement number portability. Such requesting CMRS

agreements with the relevant state commission. As explained above, the implementation of number portability requires some form of local interconnection. Accordingly, a so-called SLA implementing number porting may really amount to a secret interconnection agreement that is not filed with a state commission. *See, e.g., in re Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Order Adopting ALJ's Report and Establishing Comment Period Regarding Remedies, Minnesota Public Utilities Commission, Docket No. P-421/C-02-197 (November 1, 2002) (subsequent history omitted). This would allow incumbent LECs to give affiliated wireless carriers sweetheart deals not subject to the anti-discrimination protections of Section 252(i) of the Act. This provision allows any requesting carrier to opt-in to the terms of any interconnection arrangement that is approved by a state commission thereby discouraging affiliated carriers from entering into anti-competitive arrangements. *See* 47 U.S.C. § 252(i); 47 C.F.R. § 51.809(a).

¹² *See In re Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, 16 FCC Rcd 9610, *Notice of Proposed Rulemaking* (2001) (“*Unified Inter-carrier Compensation NPRM*”).

¹³ Reply Comments of the Rural Telecommunications Group filed in CC Docket No. 01-92 (Aug. 19, 2002) (“*RTG Rating Reply Comments*”).

¹⁴ *See id.* p. 4.

carrier—through the negotiation process—also must establish a local POP and some method of local interconnection to allow the donor carrier and other carriers in the rate center to deliver calls from non-ported numbers to ported numbers as locally rated and routed calls.

In addition, while RTG concurs that the Commission should resolve the rating and routing issues raised in the Sprint-BellSouth dispute as quickly as possible, the issues involve fundamental questions of interconnection and intercarrier compensation. In its effort to push forward with the implementation of number portability, the Commission should not prejudice its decision on the critical intercarrier issues before it. It would be extremely unwise for the Commission to attempt to resolve these issues by Labor Day as CTIA has requested. Number portability should not become an accidental shortcut around critical intercarrier compensation issues currently pending before the Commission.

C. The Commission Must Ensure that the Implementation of Number Portability Does Not Give Large Wireless Carriers an Unfair Competitive Advantage Over Small and Rural Carriers

Whatever action the Commission takes with respect to the *Petition* and the *Rate Center Petition*, the Commission must ensure that the implementation of WNP does not discriminate against rural and small carriers. Specifically, the Commission must ensure that wireless number portability obligations are reciprocal for large as well as small and rural carriers. As RTG explained in its *Rate Center Comments*, CTIA's position regarding rate centers and interconnection discriminates against rural carriers.¹⁵ Specifically, CTIA's position would require rural carriers to port out numbers to nationwide wireless carriers without any corresponding obligation on the part of the nationwide carriers to port numbers to rural carriers. This would occur because a large carrier's "service area" may overlap the rate center of a small

¹⁵ See *Rate Center Comments* at 5-6. See also *Mid-Mo Reply Comments*.

rural wireless carrier, while the rural wireless carrier's service area would never overlap the urban rate centers of the large wireless carrier. If the FCC expands the scope of the current mandate to include location porting in the absence of rate center overlap and the establishment of local POPs and interconnection—an action that would require notice and comment in a further rulemaking—then the Commission must also ensure that its rules do not unfairly discriminate against small and rural carriers.

The Commission should also prohibit large carriers from engaging in anti-competitive behavior such as “locking” handsets to prevent customers from porting their mobile phones as well as their mobile phone numbers to other compatible TDMA systems. Mid-Missouri Cellular previously brought this issue to the Commission's attention, but it has not been addressed.¹⁶ If the Commission fails to ensure an equal playing field for both large and small carriers then consumers will have lost the potential benefits of competition, and WNP will become nothing more than another anti-competitive tool for large carriers to use against small and rural carriers.

Finally, if a large carrier seeks to avoid the cost of constructing local facilities by interconnecting indirectly with a rural carrier in order to receive ported traffic, the recipient carrier should pay all costs associated with the delivery of ported traffic outside the licensed or franchised service area of the rural carrier, including any transiting fees. Rural carriers should not be forced to, in effect, subsidize the construction of the large nationwide carriers' networks.

¹⁶ See Comments of Mid-Missouri Cellular in CC Docket Nos. 99-200, 96-98, and 95-116, pp. 6-8 (May 6, 2002).

D. The Commission Should Not Impose Additional Number Portability Obligations on Rural Wireless Carriers for the Support of Nationwide Roaming

In the *Petition*, CTIA argues that the Commission needs to clarify when the requirement to support nationwide roaming goes into effect for rural and small carriers.¹⁷ CTIA argues that because there is no formal mandate to implement wireless number portability standards, it is unclear whether rural carriers will undertake the expense of modifying their networks to support nationwide roaming.¹⁸ CTIA goes so far as to suggest, “the stability of the nationwide roaming system is at risk.”¹⁹ CTIA’s argument is pure hyperbole as no such threat to roaming exists.²⁰

The Commission has mandated that all carriers support roamers with ported or pooled numbers, and rural carriers are complying with that mandate. The ability of small and rural carriers to support roaming is not tied to their implementation of WNP. As CTIA itself acknowledges in its *Petition*, the FCC requirement to support roaming means that a subscriber with a ported or pooled number that roams into another carrier’s area must be able to make and receive calls. The Commission, however, has never mandated—nor should it—the particular standards that rural and small carriers must use to provide this support.²¹ The implementation of roaming beyond the ability of a roamer to make and receive calls is a matter for contractual arrangements between carriers. Such issues include billing matters and features available to

¹⁷ *Petition* p. 31.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ The only threat to the nationwide roaming system is the increasing anti-competitive tactics of the large carriers designed to eliminate their rural counterparts.

²¹ CTIA’s request appears to be a back-door approach to asking the Commission to mandate MIN/MDN separation, something the Commission has never done, as such separation is not necessary to support roamers with ported or pooled numbers. See *Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, WT Docket No. 01-184, and *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order, 17 FCC Rcd 14972 ¶ 31 (2002).

roamers. The nationwide carriers already exercise tremendous leverage in dictating the terms of their roaming agreements with their small and rural roaming partners. CTIA's argument is an attempt by the large carriers to gain even greater advantage in contracting with their rural roaming partners. The Commission should decline CTIA's request.

E. Porting of Type 1 Wireless Numbers Necessarily Involves More Complex Interconnection and Porting Arrangements

CTIA also requests that the Commission address the porting of Type 1 numbers. CTIA argues that the impediments to the implementation of number portability for Type 1 numbers are "procedural issues" not "technical barriers."²² As CTIA correctly explains, all traffic terminating to Type 1 numbers necessarily routes to the LEC end office in which the numbers reside, and the host LEC will always be involved in porting Type 1 numbers even if the port is from one CMRS carrier to another.²³ The implementation of WNP for Type 1 numbers, however, also necessarily involves the resolution of interconnection and intercarrier compensation issues. Specifically, the recipient carrier must establish some form of local interconnection with the LEC hosting the Type 1 numbers in order to allow calls from non-ported numbers to ported numbers to continue to be rated and routed as local calls. In addition, the implementation of WNP will alter the compensation arrangement between the donor carrier and the host LEC since calls from non-ported numbers to ported numbers will by definition, now be transited calls subject to an entirely different compensation scheme. Accordingly, the porting of Type 1 numbers is necessarily more complex and may require additional technical as well as procedural consideration.

²² *Petition* p. 27.

²³ *See id.* p. 26.

F. The Commission Should Not Compel Rural Carriers to Implement a Porting Interval Designed for the Large Nationwide CMRS Carriers

In the *Petition*, CTIA requests that the FCC establish the porting interval for intermodal and intramodal wireless ports. CTIA argues that a two and one half hour porting interval is pro-competitive. RTG opposes the suggestion that the Commission mandate a porting interval to be applied to all carriers. The porting interval is a matter that can be addressed by contract between the donor and recipient carriers based on the requirements of a particular market.

In addition, adopting a two and half hour interval would be unduly burdensome to rural carriers who lack the resources, both human and technical, to implement such a “New York-style” interval. The two and half hour porting interval also does not reflect the realities of doing business in rural America where an 8:00-5:00 business day is still the norm. Finally, the relief CTIA seeks also would require fundamental changes in wireline number portability, changes that are not necessary to implement WNP and changes that would require further notice and comment in a formal rulemaking. Accordingly, the Commission should decline to mandate a porting interval for all carriers across the country.

G. The Commission Should Clarify that RSAs and FCC-Defined Small MSAs are Not Part of the Largest 100 MSAs

RTG agrees with CTIA that the FCC should clarify its definition of the Top 100 Metropolitan Statistical Areas (“MSAs”) for the purpose of determining the relevant number portability deadlines. In so doing, the Commission should clarify that areas within FCC-defined Rural Service Areas (“RSAs”) and areas within FCC-defined small MSAs are, by definition, not

part of the top 100 MSAs. RTG supports and adopts the arguments set forth in the comments filed by Cellular Mobile Systems of St. Cloud, LLC on this issue.²⁴

III. CONCLUSION

Many of the positions advocated by CTIA, if adopted, will lead to massive consumer confusion that would far outweigh any competitive benefit and would provide large wireless carriers with an unfair competitive advantage over small and rural wireless carriers. In order to avoid such result, and for the reasons discussed above, RTG respectfully requests that the Commission clarify that a requesting carrier must establish a POP and local numbering resources in rural areas in which it intends to compete by porting numbers, and must implement some form of local interconnection as a prerequisite to requiring a rural carrier to implement number portability. Even if, as CTIA argues, the implementation of WNP is governed by the Commission's unique authority over CMRS, there must still be some method for the exchange of ported, local traffic. The Commission also should ensure that the ultimate implementation of WNP does not discriminate against rural carriers by sanctioning one-way porting obligations or

²⁴ See Comments of Cellular Mobile Systems of St. Cloud, LLC and Alternative Request for Limited Waiver in CC Docket Nos. 99-200 and 95-116 (April 3, 2003).

allowing large carriers to use anti-competitive tactics. RTG also respectfully requests that the FCC take such other action as requested herein.

Respectfully submitted,

/s/

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