

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Telephone Number Portability

Petition For Declaratory Ruling of the
Cellular Telecommunications & Internet
Association

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CC Docket No. 95-116

COMMENTS OF THE INDEPENDENT ALLIANCE

The Independent Alliance (“Alliance”) hereby responds to the Commission’s invitation to comment on the Cellular Telecommunications & Internet Association (“CTIA”) petition seeking resolution of certain matters relating to the implementation of local number portability.¹

In response to CTIA’s earlier petition for declaratory ruling regarding number portability,² the Independent Alliance demonstrated that CTIA seeks to impose on wireline carriers “location portability,” an obligation which is not required by statute or Commission Rules.³ The Rate

¹ *Comment Sought on CTIA Petition for Declaratory Ruling on Local Number Portability Implementation Issues: Public Notice*, CC Docket No. 95-116, DA 03-1753 (rel. May 22, 2003); *see Telephone Number Portability*, CC Docket No. 95-116, Petition for Declaratory Ruling of the Cellular Telecommunications & Industry Association, filed May 13, 2003 (“Second Petition”).

² CTIA’s first petition for declaratory ruling urged the Commission to expand existing wireline carrier obligations by imposing a requirement to port numbers to wireless carriers where their respective service areas overlap. *See Telephone Number Portability*, CC Docket No. 95-116, Petition for Declaratory Ruling of the Cellular Telecommunications & Industry Association, filed January 23, 2003 (“Rate Center Petition”).

³ *See Comments of the Independent Alliance in CC Docket No. 95-116*, filed February 26, 2003 (“Independent Alliance’s Comments”) at 4-5. Unless otherwise indicated, citations

Center Petition seeks to require wireline carriers to port wireline numbers, which have a fixed geographical identity within a rate center area, to wireless carriers that could utilize the numbers well beyond the service areas with which the numbers are associated. This type of porting clearly qualifies as “location portability” and not as “service provider portability” which is required by statute and Commission Rules.⁴ The Commission has specifically determined not to require location portability.⁵ The Rate Center Petition purports to seek a declaratory ruling, “terminating a controversy or removing uncertainty.”⁶ In fact, CTIA’s previous petition seeks new rules, or changes in existing rules and policies,⁷ and is, therefore procedurally defective. The additional rule changes now sought by CTIA in its Second Petition further demonstrate the need for this Commission to initiate a rulemaking proceeding to address all the outstanding issues, rather than entertain changes to its number portability rules in the context of one or a series of declaratory rulings.

herein are to comments filed in response to CTIA’s Rate Center Petition.

⁴ See 47 U.S.C. § 153(30) (Act defining “number portability” as the ability for customers to retain, “at the same location” their existing numbers when switching carriers; 47 C.F.R. § 52.21(p) (FCC defining “service provider portability” in accordance with the Act’s definition of “number portability”); 47 C.F.R. § 52.21(i) (defining “location portability” as the ability of telecommunication service users to retain their numbers “when moving from one physical location to another”).

⁵ See Independent Alliance’s Comments at 4-5.

⁶ 47 C.F.R. §1.2.

⁷ CTIA’s arguments in the Rate Center Petition are flawed. See Independent Alliance’s Comments at 5-6, n.16. The petition improperly places a North American Numbering Council (“NANC”) recommendation regarding location portability in the context of service provider portability. *Id.* The CTIA Rate Center Petition improperly cites discussion about “location number portability” that would be applicable only if location portability were required and implemented.

In its Second Petition, CTIA sets forth the same arguments made in its Rate Center Petition.⁸ Contrary to existing rules, CTIA attempts to impose new requirements in the absence of proper rulemaking procedures.⁹ In comments submitted in response to the Rate Center Petition, the Independent Alliance demonstrated that the Act and Commission Rules do not require carriers to engage in “location portability” and that CTIA has failed to prove how the proposal set forth in its declaratory ruling request would confine a number to the same locale, as the statutory definition requires.¹⁰ “[T]he Petition is an attempt to port numbers from an ILEC’s rate center to any location within a CMRS provider’s [service area] . . . [which] could quite possibly be in a new LATA or state.”¹¹ Another commenter further noted, “it is clear that CTIA’s proposal would disassociate numbers from the rate center and that current rules tie wireline number portability to the rate center.”¹²

⁸ See, e.g., Second Petition at 2 (“It is clear then, in addition to clarifying the porting obligations raised in the Rate Center Petition, these additional matters must be clarified . . .”).

⁹ See, e.g., Independent Alliance’s Comments at 4-5 (citing *In the Matter of Telephone Number Portability: First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, 8447 (1996)); Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) at 4.

¹⁰ Independent Alliance’s Comments at 4-5.

¹¹ Comments of OPASTCO at 4.

¹² Comments of CenturyTel at 3; see Comments of the United States Telecom Association at 5 (“The differences between wireline and wireless carriers calling areas has resulted in ‘disparity’ because the geographic scope of Service Provider number portability was limited by the FCC to the wireline rate centers”).

The “other outstanding matters” raised in the Second Petition¹³ further demonstrate that a formal rulemaking proceeding is required before the Commission may act on any of the issues raised by CTIA. For example, in both petitions, CTIA seeks a ruling that wireless carriers are not required to enter into interconnection negotiations for number portability with wireline carriers.¹⁴ As demonstrated by SBC Communications in comments opposing the Rate Center Petition, CTIA’s proposal “seeks nothing less than an abrogation of Congressional will as codified in sections 251 and 252.”¹⁵ Additionally, the Second Petition seeks, in the context of a declaratory ruling, resolution of several issues currently being considered in on-going rulemaking

¹³ Second Petition at i.

¹⁴ *Id.* at 16.

¹⁵ Comments of SBC Communications (“SBC’s Comments”) at 8. The Telecommunications Act of 1996 provides that the process for interconnection shall initiate with a request for interconnection services, followed by the negotiation of terms, leading to an agreement between the parties which sets forth the terms under which carriers will fulfill their obligations under Section 251. See SBC’s Comments at 8 citing *Qwest Communications International, Inc., Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Agreements under Section 252* (a)(1), 17 FCC Rcd 19337, 19341 (2002) (“*Qwest Order*”) (“In last year’s *Qwest Order*, this Commission ruled that, ‘[b]ased on these statutory provisions [sections 251 and 252] . . . an agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1)’”) (emphasis in original).

proceedings.¹⁶ As demonstrated by several commenters in this proceeding, however, a “hasty decision in a declaratory ruling” is not the proper resolution of these major issues.¹⁷

Respectfully submitted,

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¹⁶ For example, CTIA seeks resolution of the intercarrier dispute between BellSouth and Sprint, and issues pending in the Commission’s numbering resource optimization proceeding. *See* Second Petition at 23-31. *See also* Comments of the Alliance of Incumbent Rural Independent Telephone Companies and the Independent Alliance in CC Docket No. 01-92, filed August 8, 2003 (Independent Alliance commenting on Sprint petition for declaratory ruling to resolve issues raised in the intercarrier dispute between BellSouth and Sprint).

¹⁷ Reply Comments of Valor Telecommunications Enterprises in CC Docket No. 95-116, filed March 13, 2003 at 7; *see* Joint Comments of the National Exchange Carrier Association, Inc. and the National Telecommunications Cooperative Association at 8 (“Critical issues regarding LNP obligations and wireline-wireless interconnection should be resolved in the context of ongoing proceedings, and not in the context of the instant petition for declaratory ruling”); Independent Alliance’s Comments at 5 (“In order to change these existing rules and policies, the Commission must first develop and consider the necessary factual record”).

CERTIFICATE OF SERVICE

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLC, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Independent Alliance" in CC Docket No. 95-116 was served on this 13th day of June 2003, via hand delivery to the following parties:


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