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	)	
	)	

SPRINT COMMENTS

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Table of Contents

Summary of Comments ii

I. Introduction..... 1

II. Customer Expectations Will Not Be Satisfied Unless the Commission Promptly Grant the CTIA "Rate Center" Petition 2

III. Customer Expectations Will Not Be Satisfied Unless the Commission Establishes Maximum Porting Intervals 5

A. Commission Regulation of Porting Intervals Is Necessary If Customer Expectations Are to be Met 6

B. The Commission Should Adopt Reasonable Porting Intervals for Both Simple and Complex Ports..... 9

C. The Commission Should Impose LNP Reporting Requirements on All Service Providers – Both Landline and Wireless 12

IV. Customer Expectations Will Not Be Satisfied Unless the Commission Abrogates the Need for Interconnection Agreements and Minimizes the Need for Service Level Agreements, ... 13

A. There Is No Basis in Law or Policy for the ILEC Position That LEC-to-CMRS Ports Cannot Occur Without an Interconnection Contract Approved by a State Regulator 15

B. The Commission Should Take steps to Minimize the Need for Carriers to Execute Inter-Carrier Porting-Related Agreements..... 17

V. The Commission Should Require ILECs to Engage in Porting Tests Upon Request 19

VI. The Australian Experience Suggests That the Commission Postpone the National LNP Start Date by Seven Weeks So Carriers Can Conduct Limited "Real Life" Tests 20

VII. Conclusion 24

Summary of Comments

Sprint Corporation urges the Commission to take the following actions expeditiously, before wireless LNP is implemented later this year:

1. The Commission should promptly grant the CTIA "rate center" petition. Landline customers will expect they will be able to port their number to a wireless carrier beginning later this year. However, some incumbent LECs have stated their intention to impose a "rate center" limitation on wireline-to-wireless portability such that CMRS carriers could only port numbers from rate centers in which they have numbers. These limitations have nothing to do with the technical feasibility of LNP and would only serve to dramatically decrease the number of wireline customers eligible to port their numbers to wireless providers. Furthermore, this "rate center" limitation flies in the face of number conservation. Left unchecked, the promise of LNP and the billions of dollars invested to make wireline and wireless systems LNP-compliant will be left withering on the vine. In addition, landline customers will be confused (if not angry) when they learn they cannot port their numbers to wireless carriers as expected when other ILEC customers are able to port their numbers. This subject is addressed by CTIA's January 23, 2003 "rate center" LNP petition, and Sprint urges the Commission to promptly address that petition.

2. The Commission should establish maximum porting intervals for all porting scenarios – including complex ports. Customers will expect their desired port will be activated within a reasonable time and by a date certain. The new service provider cannot give its new customer a firm activation date, because the old service provider is not required to complete its part by a date certain – and the old service provider does not have any economic incentive or regulatory mandate to complete the process promptly. Industry guidelines do not address all porting situations, and carriers are free to ignore these guidelines in any event. The Commission must therefore establish porting intervals so customers will have assurance that their ports will be implemented within a reasonable time and by a date certain. Without such intervals, the Commission may face thousands of customer complaints over delayed porting activation.

3. The Commission should take steps to minimize the need for porting agreements. Customers will expect they will be able to port their number to any carrier that provides services at the customer's location. This expectation cannot be met if the old service provider demands that some type of agreement be in place before it will agree to port numbers. Interconnection agreements, in particular, are unnecessary and in contravention to law. Put another way, customers will not expect that their ability to port will depend on whether a piece of paper has been signed between two carriers. The Commission should therefore adopt a minimal set of regulations so as to obviate the need for such agreements, or, at a minimum, to clearly express that absence of such an agreement does not relieve a carrier from its obligation to port numbers. However, to the extent any such agreement is executed, Sprint also seeks clarification that any LNP-related porting agreement, including an SLA or Operating Agreement, that may be executed between a wireless carriers and a LEC must not be filed with the state commission.

4. The Commission should require ILECs to engage in porting tests upon request. Customers should not encounter problems in the porting process because their current carrier refused to engage in testing before the LNP capability was activated, yet some incumbent ILECs have refused to engage in porting tests with Sprint PCS. The Commission should therefore require ILECs in particular to engage in good faith porting tests with any requesting CMRS provider and

to confirm that an ILEC may not condition the commencement of testing on the finalization of all business arrangements between the ILEC and the carrier seeking to test.

5. The Commission should postpone by seven weeks (to January 12, 2004) the date to activate wireless LNP nationwide, so carriers have a brief period of time to conduct "real life" LNP testing in selected markets. The mobile LNP experience in Australia Communications Authority suggests that the Commission postpone for seven weeks the national LNP deadline, so carriers have a brief period of time to conduct "real life" LNP tests in several smaller markets. The Commission directed the conduct of such tests when LECs introduced LNP, and given that wireless LNP is more complex than LEC LNP, similar time for testing should be afforded to wireless carriers. The Australian experience suggests that many implementation/coordination bugs can be addressed – and customer affecting problems avoided – by the conduct of "real life" testing.

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SPRINT COMMENTS

Sprint Corporation, on behalf of its local, long distance and wireless divisions ("Sprint"), submits these comments in response to the declaratory ruling petition that the Cellular Telecommunications & Industry Association ("CTIA") filed on May 13, 2003 raising several wireless local number portability ("LNP") implementation issues (hereinafter, "CTIA Petition").[1]

I. INTRODUCTION

The Commission has required wireless carriers to provide LNP "promote competition between CMRS and wireline service providers" and to "bring market forces to bear on the existing LECs."[2] This Commission objective will be achieved only if customer expectations of the LNP capability are satisfied.

Due to the bilateral nature of porting, LNP can be implemented only with the cooperation of two competitors. These competing interests create a natural tension that is likely to result in

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[1] *See Public Notice*, 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), *summarized in* 68 Fed. Reg. 34547 (June 10, 2003).

[2] *First LNP Order,* 11 FCC Rcd 8352, 8436 ¶ 160 (1996). Indeed, just last year, the Commission reaffirmed its view that wireless LNP is "necessary" to "enhance competition . . . between the wireless and wireline industries." *Second CMRS Forbearance Order,* 17 FCC Rcd 14972 ¶¶ 18, 34 (2002).

widely disparate LNP practices that harm the consumer. Sprint believes, therefore, that the Commission has an obligation to adopt a core set of regulations to ensure that the inter-carrier porting process will work consistently. Without such LNP regulation, the competitive rationale supporting LNP will be undermined.

II. CUSTOMER EXPECTATIONS WILL NOT BE SATISFIED UNLESS THE COMMISSION PROMPTLY GRANT THE CTIA "RATE CENTER" PETITION

The Commission's web site proclaims that the Commission has taken steps to "ensure that *all* Americans have the ability to keep their existing telephone number at the same location when changing local telephone service providers."[3] In fact, "all Americans" will *not* have the opportunity to use LNP fully if the Commission leaves unchecked some of the ILECs' intended business practices. Specifically, numerous ILECs have announced they will not allow their customers to port numbers to wireless carriers unless the wireless carrier happens to have telephone numbers in the ILEC rate center.[4] These ILECs have adopted this "rate center" limitation even though they concede there is no technical basis for their position.[5]

CMRS carriers currently hold, on average, telephone numbers in only one of eight ILEC rate centers.[6] This ILEC "rate center" limitation could thus preclude a significant percentage of ILEC customers from porting their numbers to a wireless carrier. As the California Public Utili-

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[3] FCC Consumer Information on Local Telephone Number Portability, *available at* www.fcc.gov/Bureaus/Common_Carrier/Factsheets/portable.html (emphasis added).

[4] *See, e.g.,* SBC Opposition, CC Docket No. 95-116 (Feb. 26, 2003); National Telecommunications Cooperative Association, CC Docket No. 95-116 (Feb. 26, 2003); Organization for Promotion and Advancement of Small Telecommunications Companies, CC Docket No. 95-116 (Feb. 26, 2003).

[5] *See* NANC, Local Number Portability Administration Working Group, *First Report on Wireless Wireline Integration,* Appendix D – Rate Center Issue, at 41-42 § II.D.2 (May 8, 1998)("[T]here is no technical need from a routing or rating perspective within the wireless service provider's network for this restriction. Because most wireless applications include terminal mobility, there is no technical requirement for association of the telephone number and a geographic location of the user.").

[6] *See* CTIA Rate Center Petition at 6.

ties Commission ("CPUC") has pointed out, even if the Commission could ignore the statutory commands that Congress has placed on LECs, consumers would be "losers" under the ILEC position and the ILEC position would effectively force wireless carriers to obtain numbers in "every rate center," which would result in "many numbers [being] unnecessarily stranded."[7]

The new obstacles that ILECs seek to impose on their customers in porting out their telephone numbers are inconsistent with their statutory obligations. Congress made very clear that the only basis that would excuse ILECs from their statutory duty to support LNP is technical feasibility,[8] and none of the ILEC-proposed limitations on LEC-to-CMRS porting are related to the technical feasibility of LNP. Moreover, Sprint strongly asserts that the "rate center" limitation flies in the face of number conservation principles.

On January 23, 2003, CTIA petitioned the Commission to confirm that limitations on LNP of the sort that ILECs are advocating are unlawful.[9] CTIA further asked the Commission to reaffirm that ILEC customers have the statutory right to port their numbers to any wireless carrier that provides its services "at the same location" where the LEC customer receives its existing landline services.[10] The Commission's statement – it has taken actions to "ensure that *all* Americans have the ability to keep their exiting telephone number at the same location when changing local telephone service providers." – will not be accurate until the Commission grants the CTIA petition. More importantly, LEC customers will be confused – and angry – when they

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[7] CPUC Comments, CC Docket No. 95-116, at 11 (Feb. 26, 2003).

[8] *See* 47 U.S.C. § 251(b)(2)("Each local exchange carrier has . . . the duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.").

[9] *See* CTIA Petition for Declaratory Ruling, CC Docket No. 95-116 (Jan. 23, 2003). *See also Public Notice*, 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, DA 03-211 (Jan., 27, 2003); Sprint Reply Comments, CC Docket No. 95-116 (March 13, 2003).

[10] *See* 47 U.S.C. § 153(30)(definition of number portability).

learn that they cannot port their numbers to wireless carriers when other LEC customers are able to do so. Thus, if *all* LEC customers are to enjoy the benefits of wireless LNP, the Commission should promptly grant the CTIA's January 23, 2003 "rate center" petition. In short, Sprint implores the Commission to issue an order preventing carriers from imposing this "rate center" limitation and making clear that wireless carriers can port-in any numbers so long as the number remains associated with the rate center.[11]

Very recently, the United States Telecom Association ("USTA") suggested that the Commission impose a different limit on the right of LEC customers to port their numbers to wireless carriers. According to USTA, such ports should be allowed only if a wireless carrier connects directly to the LEC's network.[12] However, whether a wireless carrier interconnects directly or indirectly with a particular LEC has nothing to do with technical feasibility of a LEC customer porting his or her number to a wireless carrier. (There are many other defects with USTA's latest proposal, including that CMRS carriers cannot be required as a matter of law to interconnect directly with any other carrier,[13] and that USTA's proposal is inconsistent with the

[11] This assumes, of course, that the wireless carrier has coverage in the geographic area served by the rate center.

[12] According to USTA, LEC-to-CMRS ports should be permitted only if a CMRS carrier has "physical circuit(s) (i.e., DS0, DS1, DS3, OCn) that provides interconnection trunking" within "the serving rate center." Letter from Michael T. McMenamin, USTA Associate Counsel, to Marlene Dortch, former FCC Secretary, DD Docket No. 95-116, at 1 (May 30, 2003). The only reason a CMRS carrier would have interconnection circuits within a rate center would be to connect directly to the LEC switch serving that rate center.

[13] The FCC has held repeatedly that CMRS carriers are under no statutory obligation to interconnect directly with any carrier and that for CMRS carriers, "indirect interconnection . . . is all that is required by the 1996 Act." *See Fourth CMRS Interconnection Order,* 15 FCC Rcd 13523, 13534 ¶ 28 (2000); *First Local Competition Order,* 11 FCC Rcd 15499, 15991 ¶ 997 (1996).

"one POI per LATA" rule.[14]) Again, Sprint implores the commission to issue an order dismissing this most recent attempt to greatly limit wireless LNP.

III. CUSTOMER EXPECTATIONS WILL NOT BE SATISFIED UNLESS THE COMMISSION ESTABLISHES MAXIMUM PORTING INTERVALS

Customers wanting to port their number from one provider to another will want to know when the port will complete successfully. Specifically, customers will want to know whether the change will occur in three hours, three days, three weeks or three months. At present, it may be very difficult for the new carrier to give the customer a reliable estimate for port completion because the intercarrier porting time frames are not well defined.

While the Commission has adopted porting intervals for LEC-to-LEC ports,[15] these guidelines are incomplete because they do not address all porting circumstances, including CMRS-to-CMRS, CMRS-to-LEC, and LEC-to-CMRS ports. And, while the industry has attempted to fill this void through its own guidelines, without the force and effect of Commission approval, individual carriers are free to ignore these guidelines and operate at a slower pace.[16] Sprint believes that Commission regulation of porting intervals is the only way to ensure a level playing field for all carriers. Such regulation will also greatly aid carriers in setting and meeting consumer expectations for port completion. Failure to adopt such regulation could result in thousands (if not, millions) of unhappy customers and a splurge of customer complaints.

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[14] *See, e.g., Virginia Arbitration Order,* CC Docket No. 00-218, 17 FCC Rcd 27039 ¶ 52 (2002)("Under the Commission's rules, competitive [carriers have] . . . the right to request a single point of interconnection in a LATA.")(supporting citations omitted).

[15] *See* 47 C.F.R. § 52.26(a).

[16] Some carriers have already made apparent they do not intend to follow the intervals specified in applicable industry standards.

In addition, as CTIA points out in its Petition, the Commission should also consider the impacts of the porting process on the availability and effectiveness of E911 service.[17] The shorter the porting interval, the less likely problems with E911 service will be encountered.

So the record is clear. Sprint does not generally favor regulations for competitive markets; nevertheless, the Commission has decided that competitive CMRS carriers should provide LNP and these rules have been affirmed on appeal.[18] Having chosen this regulatory path in the hope of boosting competition, the Commission must now follow through by regulating key areas of the LNP process to ensure that reasonable customer expectations are satisfied and competition is, in fact, enhanced.

A. Commission Regulation of Porting Intervals Is Necessary if Customer Expectations Are to be Met

Customers will expect that their desired number ports will occur in a reasonable amount of time. And, perhaps more importantly, they will expect that their desired port will occur by a date and time certain. These customer expectations will not be met unless the Commission intervenes and establishes maximum porting intervals.

The wireless industry has developed a goal that CMRS-to-CMRS ports would generally be completed within 2.5 hours.[19] Admittedly, this is an ambitious goal. This 2.5 hour target interval, however, applies only to "simple ports" – namely, ports of a single customer with a single number. The wireless industry guidelines do not establish a target interval for "complex ports" – that is, ports involving multiple numbers (generally business, or "enterprise" customers). By

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[17] *See* CTIA Petition at 11-13.

[18] *See CTIA* v. *FCC,* No. 02-1264 (D.C. Cir., June 6, 2003).

[19] *See* ATIS Operations and Billing Forum, *Wireless Intercarrier Communications: Interface Specification for Local Number Portability,* Version 2, at § 2 p. 6 (Jan. 2003).

definition, complex ports involve added complexity, and additional time may be needed for data entry and increased coordination between the old and new service providers.

The landline industry has similarly developed a goal that most LEC-to-LEC ports would occur within three business days.[20] This three-day interval does not distinguish between simple and complex ports, but, from a practical perspective, complex ports are often negotiated between the new and old service providers to ensure a coordinated "cut over" so that the customer (usually a business customer) does not have any service interruption.

As discussed, however, there are no guidelines – for simple or complex ports – for LEC-to-CMRS and CMRS-to-LEC ports. With respect to these ports, NANC has attempted to establish such guidelines, but the landline industry has, thus far, decided to treat CMRS porting no differently than LEC porting. In other words, due to the industry's inability to achieve consensus, LECs intend to treat wireless porting under their current landline to landline intervals (*i.e.,* three days).

A recent consumer study determined that wireless services are "posing a large competitive threat [to LECs] as consumers continue to ditch their wireline service for wireless at an accelerating rate" and that "the threat posed by wireless service to wireline telephone companies is potentially staggering."[21] Chairman Powell similarly advised Congress earlier this year that CMRS represents the "most significant" competitive threat to incumbent local exchange carrier ("ILEC") voice services."[22] Sprint believes that in order for this competition to further develop

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[20] *See,* NANC Local Number Portability Administration Selection Working Group, *Report dated April 25, 1997*, as codified in 47 C.F.R. §52.26(a)..

[21] CIT-PriMetrica Press Release, *Telcos Face Mounting Challenge – When Will Wireless Take Over? New Research for CIT-PriMetrica Highlights Customer Switching to Wireless Phones* (March 23, 2003), *available at* www.prmetrica.com.

[22] Written Statement of Chairman Michael K. Powell, Competition issues in the Telecommunications Industry, before the Senate Commerce Committee, at ii and 4 (Jan. 14, 2003).

in a wireless LNP environment, the Commission must establish competitively neutral porting intervals that meet customer expectations.

Additionally, international experience confirms that regulatory intervention is necessary. In Australia, wireless carriers were required to implement mobile LNP on September 25, 2001, and government rules at the time only required carriers to implement the port "as early as practical."[23] Significant delays were encountered at service launch and within weeks, the Australian regulator imposed the following more specific rules on wireless carriers:

- At least 90 percent (90%) of ports shall be completed in less than three hours;
- No port shall take more than two days; and
- Carrier responses to "port outs" and "port ins" shall "be the same."[24]

Implementation of wireless LNP in the U.S. is far more complex than in Australia. In Australia, the mobile LNP requirement applied to mobile carriers only, and there were only four facilities-based mobile carriers in Australia at the time. In contrast, in the U.S. there are hundreds of wireless carriers, and wireless carriers must be able to accept ports from the over 1,000 incumbent LECs (in addition to numerous competitive LECs).

Sprint urges the Commission to adopt reasonable maximum porting intervals for all carriers.[25] Customers will demand such intervals, and if the Commission does not adopt such intervals now, customer complaints involving porting intervals will inevitably compel the Commis-

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[23] *See* Australian Communications Authority Investigation, *Mobile Number Portability Process*, at 4 (Oct. 2001), *available at* www.aca.gov.au/telecomm/telephone_numbring/mobile_number_portability.../index.ht.

[24] *See* Australian Communications Authority Media Release, *Regulatory Imposes New MNP Standards on Mobile Carriers,* No. 58 (Oct. 4, 2001), *available at* www.aca.gov.au/aca_home/media_releases/media_enquiries/2001/01-58.htm; ACA Investigation, *Mobile Number Portability Process*, at 12 (Oct. 2001).

[25] Sprint envisions that the Commission would establish "default" rules only, and that two carriers could mutually decide to use different porting intervals. However, pending the mutual agreement of different intervals, the Commission's default maximum porting intervals would apply.

sion to eventually adopt such intervals. With wireless LNP scheduled for launch on November 24, 2003, Sprint urges the Commission to take quick action to establish such porting intervals.

B. The Commission Should Adopt Reasonable Porting Intervals for Both Simple and Complex Ports

Sprint, after consulting its landline and wireless divisions, puts forth the following proposal that it believes establishes fair, reasonable, and technically feasible porting intervals applicable to all carriers. As reflected in the charts below, Sprint recommends that the Commission adopt interim porting intervals consistent with present industry guidelines and that it do so by September 1, 2003 (so industry has time to implement the uniform intervals the Commission establishes). Sprint believes such Commission action is necessary to essentially "codify" the guidelines (i.e., give industry guidelines the force and effect of law). Carriers and consumers will benefit by having predictable time frames in which to expect port request completion. Sprint believes these interim porting intervals are fair, reasonable and technically feasible given the current time constraints.

1. Interim Porting Interval Proposal

Sprint recommends that the Commission establish the following porting intervals for the first 18 months following the activation of wireless LNP:

		To CMRS	To LEC
From CMRS	Simple	2.5 hours	3 business days
	Complex	1 business day	3 business days
From LEC	Simple	3 business days	3 business days
	Complex	3 business days	3 business days

Sprint starts with the premise that existing landline porting intervals (*i.e.,* the "To LEC" column above) should be left untouched as they have been adopted by the Commission and were developed based on technical constraints inherent in wireline provisioning (*i.e.,* a change of service provider *via* porting in the landline world necessitates physical changes at both the new and old service providers' end offices). Indeed, because of wireline provisioning constraints and the realities of the looming deadline, Sprint also believes that CMRS-to-LEC porting could also follow existing landline porting intervals — for the proposed 18-month interval. Thus, Sprint advocates maintaining current three-day porting intervals for LEC-to-LEC porting and applying these same intervals to LEC-to-CMRS, and *vice versa.* With respect to CMRS-CMRS porting, Sprint believes the industry-agreed upon intervals contained in the ATIS Ordering and Billing Forum, Wireless Intercarrier Communications, *Interface Specification for Local Number Portability, Version 2.0* should be codified by the Commission.[26]

2. Long Term Porting Interval Proposal

Sprint recommends that the Commission establish the following porting intervals for wireless LNP after the feature has been available for 18 months:

		To CMRS	**To LEC**
From CMRS	Simple	2.5 hours	2.5 hours
	Complex	1 business day	1 business day
From LEC	Simple	2.5 hours	3 business days
	Complex	1 business day	3 business days

[26] There currently is no complex interval contained within the WICIS guidelines, but Sprint believes the proposed one business day interval should be included to fill this gap in order to set customer expectations.

Sprint further recommends, however, that the telecommunications industry quickly migrate to faster porting intervals particularly for LEC-CMRS porting. Sprint believes the above shorter porting intervals will meet customers' expectations for quick transition of numbers between carriers. Moreover, Sprint believes the proposed long-term port intervals are fair, reasonable and technically achievable. Sprint suggests migration to these long-term porting intervals should occur within 18 months of the Commission's adoption of an order, or from November 24, 2003, whichever is later. This 18-month period should be an adequate amount of time for the appropriate NANC groups to reach consensus on how to achieve these porting intervals and correspondingly enough time for carriers and perhaps NPAC to modify and test systems to achieve these intervals

Importantly, however, the Commission must provide for cost recovery for the incremental investment made to achieve these long-term porting intervals. Carrier systems, and perhaps NPAC, will need to be modified to meet these quicker porting intervals and carriers must be able to recover these costs.[27]

Finally, Sprint, in recommending for Commission adoption the above proposed time frames for both the interim and long-term porting intervals, does not suggest that the port intervals proposals should otherwise change existing exception processes to ports. The intercarrier communications processes established by both wireless and wireline industries allow for departures from existing intervals where delay is necessary or where resolution is required. Sprint does not advocate changing these necessary processes and does not believe these exceptions should factor into calculating the times set forth above.

[27] The recovery of costs to meet quicker porting intervals is just one of many additional costs for which wireline carriers may wish to seek recovery in efforts to become wireless LNP-capable.

C. The Commission Should Impose LNP Reporting Requirements on All Service Providers – Both Landline and Wireless Carriers

Sprint does not favor reporting requirements for wireless carriers as a general matter. Nevertheless, in this particular instance, without industry-wide reporting requirements, there would be no effective means to determine that carriers are meeting the porting intervals the Commission establishes and are not discriminating against "porting out" customers in favor of "porting in" customers.

The reporting requirements Sprint envisions need not be overly detailed. Only consolidated data from each carrier by porting category is needed. More important is that all carriers follow the same reporting methodology so the Commission and the public can easily compare the performance of carriers against each other.[28] Sprint encourages the Commission to adopt an electronic data entry system to ease the paperwork burden on carriers and to facilitate the availability to the public of the data results.

It is important that all LNP capable carriers, both landline and wireless, submit reports. The same reports should also be completed by carriers regardless of size. In other words, the burden of reporting requirements would be shouldered equitably by all carriers.

Sprint believes that, over time, the LNP process will become routine as carriers become accustomed to operating within the porting intervals that the Commission establishes and as the process is increasingly automated. Sprint, therefore, recommends that the Commission sunset the reporting requirements – at least for those carriers that have consistently demonstrated their ability to meet Commission requirements.

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[28] *Compare Public Notice,* Wireless Telecommunications Bureau Standardizes Carrier Reporting on Wireless E911 Implementation, CC Docket No. 94-102, DA 03-1902 (June 6, 2003).

IV. CUSTOMER EXPECTATIONS WILL NOT BE SATISFIED UNLESS THE COMMISSION MINIMIZES THE NEED FOR INTER-CARRIER PORTING-RELATED AGREEMENTS

Wireless carriers are scheduled to begin supporting LNP on November 24, 2003, and this start date undoubtedly will receive considerable attention in the national media as this date approaches. Both landline and wireless customers will expect they will be able to take advantage of wireless LNP as soon as the capability becomes available – namely, on November 24, 2003. This customer expectation will not be met, however, if carriers are permitted to decline porting with another carrier until an interconnection, SLA, or operating agreement is executed. Sprint is particularly troubled by LEC attempts to require an interconnection agreement as a pre-requisite to porting and even inter-carrier LNP testing.

If the Commission's goal is to "ensure that *all* Americans have the ability to keep their existing telephone number at the some location when changing local telephone service providers,"[29] the Commission should take steps to minimize the need for carrier-to-carrier porting agreements (*e.g.,* service level agreements, operating agreements, and, particularly, interconnection agreements). Simply put, Sprint does not believe that such an agreement should be or is a necessary condition-precedent to porting; after all, the absence of such an agreement does not make porting technically infeasible. Stated differently, Sprint believes that carriers have a statutory or regulatory duty to port and that duty to port cannot be usurped by a carrier-imposed requirement that such an agreement must exist before porting can occur between carriers.

In fact, very little information is necessary to effectuate portability between carries. So long as the new service provider knows how to send the local service request ("LSR") or wireless port requests ("WPR") to the old service provider and who to contact for issue resolution,

[29] FCC Consumer Information on Local Telephone Number Portability, *available at* www.fcc.gov/Bureaus/Common_Carrier/Factsheets/portable.html (emphasis added).

porting is technically achievable.[30] To that end, Sprint PCS is in the process of sending out a follow-up to its bona fide requests ("BFRs") in which it will ask carriers for the basic information needed from other carriers so that when a port request is received on November 24, 2003, Sprint PCS knows how to communicate such request with the other carriers. Practically speaking, Sprint PCS does not have the resources to negotiate a porting agreement with the hundreds of wireless carriers and the thousands of landline local carriers with which Sprint PCS may port numbers – and other carriers face the same practical problem. So, Sprint PCS is proactively contacting each of these carriers to gather the necessary baseline information so that it is prepared to port with as many carriers as possible on November 24, 2003.

Imagine a new service provider trying to explain to a customer that her number is not portable because the new and old service providers have not signed a piece of paper (*i.e.,* this is irrelevant to the consumer and, again, not technically necessary for porting). Imagine further the nightmare of tracking carriers with whom the new service provider does and does not have an agreement, updating systems when agreements are signed, and training the sales force and customer care so that information is properly communicated to the customer. Sprint submits that such a scenario endangers the type of competitive environment the Commission intended when it adopted LNP for wireless carriers. For these reasons, Sprint urges the Commission to abrogate the need for interconnection agreements and minimize the need for carriers to execute inter-carrier porting-related agreements.

[30] Assuming, of course, that both carrier have implemented and upgraded switches and systems to become LNP-compliant.

A. There Is No Basis in Law or Policy for the ILEC Position That LEC-to-CMRS Ports Cannot Occur Without an Interconnection Contract Approved by a State Regulator

Some ILECs, large and small, have made apparent that they will not permit their customers to port their numbers to a wireless carrier unless the CMRS provider first negotiates (and if necessary, arbitrates) an interconnection contract that a state commission approves.[31] For example, according to SBC, Sprint PCS must first negotiate, arbitrate and obtain state approval of duplicative porting contracts in over a dozen states before all of SBC's customers will be able port their number to Sprint PCS.[32] (Other wireless carriers would be required to engage in the same state-by-state process in order to port numbers from SBC customers.) If the Commission fails to prevent such a carrier-imposed requirement, ILEC customers will be unable to port their numbers to wireless carriers on November 24, 2003, because there is insufficient time to complete the Section 252 negotiation/arbitration/federal court review process.

CTIA persuasively demonstrates in its petition that there is no basis in law for this ILEC position.[33] The Commission did not (and could not) impose the wireless LNP requirement pursuant to Section 251(b)(2) of the 1996 Act, because that statute does not apply to wireless carriers. Rather, the Commission imposed the wireless LNP mandate exercising its regulatory authority under numbering statute and Section 332. Under the numbering statute, the Commission possesses "exclusive jurisdiction."[34] Likewise, in amending Section 332, Congress directed the

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[31] *See, e.g.,* CenturyTel Comments, CC Docket No. 95-116, at 6-7 (Feb. 26, 2003); Nebraska Rural Independent Company Comments, CC Docket No. 95-116, at 2-3 (Feb. 26, 2003); SBC Comments, CC Docket No. 95-116, at 7-8 (Feb. 26, 2003); Valor Reply Comments, CC Docket No. 95-116, at 7-8 (March 13, 2003);

[32] *See* SBC Comments, CC Docket No. 95-116, at 7-8 (Feb. 26, 2003).

[33] *See* CTIA Petition at 16-21.

[34] *See* 47 U.S.C. § 251(e)(1).

Commission "to establish a Federal regulatory framework to govern the offering of all commercial mobile services," in order to "foster the growth and development of mobile services that, by their very nature, operate without regard to state lines as an integral part of the national telecommunication infrastructure."[35] As CTIA points out, Congress expects state commissions will regulate wireless services only "if the wireless carrier was the sole local exchange carrier in the relevant geographic market."[36]

Moreover, putting legalities aside, a porting interconnection contract cannot be justified in policy. It is important to emphasize that an interconnection contract is not a technical prerequisite to number porting. Indeed, number pooling (which is effectively the porting of numbers in 1000 blocks) has been implemented without interconnection agreements or any agreements for that matter. Why then should the porting of a single number necessitate such an agreement? Forcing wireless carriers to engage in formal interconnection negotiations that are subject to state review (and possibly, arbitration and federal court appeal) would have three negative effects: (a) significantly delay wireline-to-wireless LNP; (b) permit ILECs to raise their rivals' costs and inhibit ILEC-CMRS competition; and (c) open the door for state commissions to adopt conflicting porting requirements, thereby undermining the "Federal regulatory framework" that Congress expected this Commission to establish for the wireless industry.[37]

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[35] H.R. CONF. REP. NO. 103-213, 103d Cong., 1st Sess. at 490 (1993); H.R.. REP. NO. 103-111, 103d Cong., 1st Sess. at 260 (1993).

[36] CTIA Petition at 19 n.50.

[37] The FCC may recall the dispute between U S WEST (now, Qwest) and CMRS providers over whether CMRS carriers could receive reciprocal compensation at U S WEST's tandem rate. The FCC eventually decided this issue, *see Unified Intercarrier Compensation Regime,* 16 FCC Rcd 9610, 9648 ¶ 105 (2001), but only after the issue had been arbitrated in a dozen states (with the PUCs reaching conflicting decisions) and only after the issue had been litigated in over ten federal district and appellate courts. An earlier FCC decision on this subject would have obviated this duplicative and costly litigation.

Wireless carriers are implementing LNP pursuant to FCC rule.[38] As a matter of both law and policy, it should be this Commission, and not 50 separate sets of state regulators, that apply and enforce this FCC rule. Sprint urges the Commission to rule expeditiously on this request, since the LNP deadline is only five months away, and as discussed below, numerous LECs are refusing even to engage in cooperative testing without the execution of a state-approved interconnection porting contract.

While no such agreement is necessary for carriers to begin porting, Sprint also urges the Commission to clarify that any LNP-related porting agreement, including an SLA or Operating Agreement, that may be executed between a wireless carriers and a LEC must not be filed with the state commission. Although LECs may have an obligation to file interconnection and UNE-related agreements with state commissions under Section 252 of the Act, for the reason stated above, Sprint does not believe this filing obligation extends to number portability-related agreements.

B. The Commission Should Take Steps to Minimize the Need for Carriers to Execute a Porting Agreement – Especially for Carriers That Interconnect Indirectly

While an interconnection contract is not a necessary prerequisite to number porting, a port can be successfully executed in a reasonable time only if (a) the new carrier has access to contact information so it knows who within the old carrier should receive (and will process) "port-out" requests; and (b) the old and new carriers agree on the protocols for exchanging between themselves the information needed to effectuate the port. It is these kinds of details that are typically addressed in a service level porting agreement ("SLA").

[38] *See* 47 C.F.R. § 52.31.

Carrier imposition of an executed SLA as a prerequisite to porting, however, suffers from many of the same problems as interconnection contracts (although the problems certainly are not as severe). Among other things, there are costs and delays in executing SLAs, and a carrier that expects to lose more customers than it gains may have the incentive to litigate the details as a way to delay the inevitable. If a SLA is required for porting (so as to address the details of porting implementation) and if a SLA cannot be cost justified, there may be a sizable number of customers that will be unable to port their number – not because of technical infeasibility, but because of the costs associated with negotiating the details of a SLA. Clearly, customers would benefit if ports could be implemented without the need for any intercarrier document, such as an SLA.

Wireless carriers have defined in detail the operational requirements and technical specifications that two carriers need to exchange in order to implement a number port.[39] This industry agreement provides a standardized data structure, common data elements, and communications protocols that will help ensure that number ports can be activated within a reasonable interval. Sprint urges the Commission to direct carriers to use the process specified in this document. By taking this step, the Commission would obviate the need for carriers to negotiate these operational and technical details with dozens (and, perhaps, hundreds) of other carriers. Customers would benefit if such tedious and redundant negotiations were eliminated.

Sprint also believes that dispute resolution — a major component of porting related interconnection agreements, SLAs, or operating agreements — could also be relegated to rules thereby eliminating another need for such agreements.

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[39] *See* Ordering and Billing Forum, *Wireless Intercarrier Communications: Interface Specification for Local Number Portability,* Version 2.0 (Jan. 2003).

The need for an SLA may be eliminated altogether if there was a centralized location where the new service provider ("port-in" carrier) could immediately access LNP contact information for the old service provider. One approach would be for the Commission to establish a web site whereby each carrier could input its relevant information, information that would be available to other carriers. Another option would be for the two major trade associations, CTIA and USTA, to assume this function on behalf of their members.

The Commission's objective should be to ensure that all customers can port their number to their desired carrier within a reasonable amount of time, and a customer's ability to port should not be thwarted because a SLA cannot be cost justified in the circumstances. The Commission's objective can be achieved by the adoption of a few straightforward steps that would minimize, if not eliminate altogether, the need for service level porting agreements.

V. THE COMMISSION SHOULD REQUIRE ILECS TO ENGAGE IN PORTING TESTS UPON REQUEST

Sprint PCS is desirous of engaging in porting tests with ILECs to help ensure that when wireless portability becomes available, customers will have smooth transition when they make a port request. Many ILECs, however, have expressed no interest in engaging in porting tests, and they often state that testing is not necessary because ILECs already port with CLECs. However, Sprint's LEC learned from wireless carrier testing that its processes had to be modified to accommodate LEC-to-CMRS ports.

Earlier this year, Sprint asked the Commission to require ILECs to engage in good faith porting tests with any CMRS carrier requesting such tests and to confirm that an ILEC may not condition the commencement of testing on the finalization of all business arrangements between

the ILEC and the carrier seeking to test.[40] Sprint again urges the Commission to take actions that facilitate LNP testing before customers begin using the LNP capability. To begin with, Sprint urges the Commission to encourage wireline carriers to actively participate in the Wireless Test Sub Committee (WTSC) in order to coordinate testing with wireless providers.

Wireless carriers in Australia faced substantial problems when LNP was activated in September 2001 — what the Australian regulator characterized as "teething difficulties."[41] The regulator in a post-activation report noted that many of these problems were caused by the fact that "only limited, 'real life' testing was undertaken" and that it would have been beneficial had additional testing been conducted.[42]

As noted above, implementation of wireless LNP in this country will be far more complex compared to Australia because hundreds of carriers will need to coordinate with each other (rather than only four carriers in Australia). Customers obviously do not benefit if problems are encountered upon LNP activation and if those problems could have been avoided had testing been conducted before LNP activation. Sprint again urges the Commission to mandate that all carriers are required to engage in LNP tests upon the request of another carrier.

VI. THE AUSTRALIAN EXPERIENCE SUGGESTS THAT THE COMMISSION POSTPONE THE NATIONAL LNP START DATE BY SEVEN WEEKS SO CARRIERS CAN CONDUCT LIMITED "REAL LIFE" TESTS

Sprint requests that the Commission postpone the national LNP start date by seven weeks, from Monday, November 24, 2003, to Saturday, January 12, 2004, so carriers have some

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[40] *See* Sprint Reply Comments, CC Docket No. 950116, at 16 (March 13, 2003).

[41] *See* Australian Communications Authority Media Release, *Regulatory Imposes New MNP Standards on Mobile Carriers,* No. 58 (Oct. 4, 2001), *available at* www.aca.gov.au/aca_home/media_releases/media_enquiries/2001/01-58.htm.

[42] *See* Australian Communications Authority Investigation, *Mobile Number Portability Process*, at 7 and 9 (Oct. 2001).

time to conduct "real life" tests and thereby address and fix as many bugs as possible in the new process before the capability is activated nationwide for over 140 million mobile customers and 188 million landline customers.

The November 24 start date was chosen because November 24, 2002 was the conclusion of the five-year PCS buildout period, a date that is unrelated to the technical challenges in implementing a new technology like LNP.[43] November 24, 2003 is not a date that network engineers would voluntarily select as a day to activate nationwide a technology as complex as LNP. November 24 is in the middle of the industry's busy sales season, when each carrier's internal resources are already strapped. In addition, carriers ordinarily activate new technology during weekends, when traffic volumes are lighter, yet November 24, 2003 falls on the Monday before the busy extended Thanksgiving weekend when millions of Americans travel (and will be using their mobile handset).

Wireless carriers have implemented LNP in Australia, and Sprint submits that the Commission should draw upon the experience learned from that conversion. As noted above, significant problems were encountered immediately following the activation of the feature, problems which the Australian regulator determined were caused in part by the fact that "only limited, 'real life' testing was undertaken."[44] The regulator further found that as a result of limited testing, the "number of errors needing escalation and 'manual workarounds' have been much greater than anticipated."[45]

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[43] *See First LNP Forbearance Order,* 14 FCC Rcd 3092, 3093 ¶ 1, 3112 ¶ 39 (1999). The FCC later extended the November 24, 2002 deadline by one year. *See Second LNP Forbearance Order,* 17 FCC Rcd 14972 (2002).

[44] *See* Australian Communications Authority Investigation, *Mobile Number Portability Process*, at 9 (Oct. 2001).

[45] *Ibid.*

The implementation of mobile LNP in Australia was relatively straightforward. Mobile LNP involved wireless carriers only and there were only four facilities-based wireless carriers in Australia at the time LNP was introduced in September 2001. These four carriers collectively served a total of 12 million customers at the time.[46] During the first two months following the availability of mobile LNP, 90,000 mobile customers switched serving carriers.[47]

The wireless market in the U.S., in contrast, is over 10 times larger than the market in Australia (over 140 million customers vs. 12 million customers). Wireless LNP here involves hundreds of CMRS carriers (vs. four in Australia). In addition, unlike in Australia, LEC customers using 188 million switched access lines will have the opportunity to port their number(s) to wireless services.

The experience in Australia suggests that U.S. wireless carriers be given some time to conduct live tests of LNP before the capability is activated nationwide. Sprint envisions a seven week period in which LNP would be activated in four or five smaller markets only, so carriers have the opportunity to identify and resolve bugs in the system. Sprint recommends that the Commission give the industry a brief period of time (*e.g.,* 30 days) in which to recommend the specific markets where testing would be performed (perhaps one market per NPAC region). The objective would be to identify several smaller markets where most the national and regional carriers have a presence, so each carrier's system can be tested against the other.

As a point of comparison, for landline LNP, the Commission "directed" LECs to conduct a field test of LNP before making the capability more widely available, determining that "we

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[46] *See* Australian Communications Authority, *Telecommunications Performance Report 2001-02,* at 157 (Dec. 2002), *available at* www.aca.gov.au/aca_home/publications/reports/reports/performance/2001-02/report.htm.

have a significant interest in ensuring the integrity of the public switched network as number portability is deployed nationwide. We believe a field test will help to identify technical problems in advance of widespread deployment, thereby safeguarding the network."[48] The Commission thereafter required LECs to implement LNP on a phased, market-by-market basis. The Commission, in contrast, has decided that wireless carriers should implement LNP on a flash cut, nationwide basis. Regardless of the merits of this decision, the need for field tests for wireless carriers is as important as it was for landline carriers.[49]

Sprint submits that the Commission should consider the interests of the American consumer. American consumers may not prefer a seven week postponement of the LNP start date so carriers have time to conduct live field tests. However, one point should be uncontested: consumers will be angry if LNP is introduced on November 24, 2003 and if carriers cannot implement their port request within a reasonable time and by a date certain.

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[47] *See* Australian Communications Authority Media Release, *90,000 Customers Have Moved Their Mobile Number*, No. 62 (Nov. 26, 2001), *available at* www.aca.gov.au/aca_home/media_releases/media_enquiries/2001/01-62.htm.

[48] *First LNP Order,* 11 FCC Rcd 8352, 8393-94 ¶ 79 (1996).

[49] Sprint recognizes that the FCC previously rejected a proposal that the LNP start date be postponed briefly so wireless carriers could conduct limited field tests. The FCC concluded that "[n]othing prevents carriers from implementing portability before the November 24, 2003 deadline if they are concerned about making changes to their networks during their busy holiday sale season." *Second LNP Forbearance Order,* 17 FCC Rcd 14972, 14984 ¶ 28 (2002). With all due respect, given the complexity of this new technology, it is not practically possible to implement LNP before the November deadline to conduct "live" tests at any scale.

VII. CONCLUSION

For the foregoing reasons, Sprint Corporation respectfully requests that the Commission grant the CTIA Petition in full consistent with the comments above.

Respectfully submitted,

SPRINT CORPORATION

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