

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

In the Matter of

Telephone Number Portability

WC Docket No. 95-116

OPPOSITION OF VERIZON

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TABLE OF CONTENTS

Summary 1

I. The Commission Must Reject CTIA’s Request To Change the LEC Porting Interval. 2

 A. CTIA Cannot Have Regulations Changed Through a Declaratory Ruling. 3

 B. The Existing Porting Interval Has Worked Well for Consumers and the Industry for Years, and CTIA Offers No Good Reason Why Everyone Should Change Now. 6

 C. The Commission Should Ignore CTIA’s Scare Tactics. 8

II. Some Sort of Inter-Carrier Agreement Is Necessary for Porting, but Interconnection Agreements Are Not. 10

III. The Other Issues Raised by CTIA. 11

Conclusion 12

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Summary

CTIA spends much of its petition blaming the local exchange carrier industry for the supposed difficulties that CMRS providers face in implementing number portability. That claim is disproved on the face of CTIA's own petition, as most of the issues it raises relate to CMRS-to-CMRS portability and do not involve LECs at all.

Where a LEC-CMRS issue is involved, the Commission must reject CTIA's efforts to pin the blame on the LECs. CTIA is now telling the Commission that the only way that CMRS providers can implement number portability is if the local exchange carrier industry changes the way it has been doing number portability for the past six years. The Commission should promptly reject CTIA's proposal. Current LEC practices are incorporated into Commission regulations, which cannot be changed in response to CTIA's declaratory ruling petition. More important, the existing number portability system has worked well for consumers and carriers; it should not be reengineered now, at a cost to Verizon¹ and its customers alone of tens of millions of dollars. If CMRS providers want to implement different systems for porting numbers between them, they

¹ The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc., listed in Attachment A.

surely may do so. What they may not do is force other carriers with existing systems that work to everyone's satisfaction to conform to the new model that they want to adopt.

Verizon does agree with CTIA on one point, however. There are several issues that the Commission must resolve before CMRS number portability can be implemented. These include the four CMRS-to-CMRS porting issues identified in the petition (how to define the top 100 MSAs, whether the Commission will keep the bona fide request requirement and when carriers must provide support for nationwide roaming, whether additional requirements are necessary for porting Type I CMRS numbers). While the Sprint-BellSouth dispute is certainly ripe for resolution, it is not related to number portability and the Commission need not expedite its decision on it.

If, for whatever reason, the Commission decides again to delay the requirement that CMRS providers port out numbers assigned to their customers, it should also suspend the requirement that LECs port numbers to CMRS providers. Number portability has been made a requirement that applies to all carriers in a marketplace. Section 251(b), for example, imposes it on all LECs, not just on incumbent LECs. This requirement is not intended to "jump-start competition" or to give new entrants an advantage. Allowing CMRS providers to receive LEC-assigned numbers while allowing those same providers to refuse to let their customers take their numbers with them to a LEC would be inconsistent with the policies supporting number portability and inconsistent with the public interest.

I. The Commission Must Reject CTIA's Request To Change the LEC Porting Interval.

CTIA asks the Commission to require LECs to overhaul their systems in order to accelerate the porting process. Existing processes have worked well for consumers and the

industry since number portability was introduced in 1997. CTIA's request that the Commission change them now is both procedurally improper and substantively unsound.

A. CTIA Cannot Have Regulations Changed Through a Declaratory Ruling.

The time interval within which LECs port telephone numbers is contained in the Commission's rules. The Commission may change the interval only pursuant to a notice-and-comment rulemaking proceeding, conducted pursuant to the provisions of the Administrative Procedure Act ("APA").² Those procedures have not been followed here. The Commission may not change it in response to CTIA's declaratory ruling petition.

The Commission largely based the number portability requirements it imposed on LECs on recommendations it received from the North American Numbering Council. Thus, section 52.26(a) of its rules states:

"Local number portability administration shall comply with the recommendations of the North American Numbering Council (NANC) as set forth in the report to the Commission prepared by the NANC's Local Number Portability Administration Selection Working Group, dated April 25, 1997 (Working Group Report) and its appendices, which are incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. Except that: Section 7.10 of Appendix D of the Working Group Report is not incorporated herein."³

Appendix E to the NANC Working Group Report is the LNPA Technical and Operational Requirements Task Force Report. This Task Force Report deals with the time it should take for a telephone number to be ported after a porting order is placed. It adopts a three-part compromise

² 5 U.S.C. § 553.

³ By incorporating the NANC Working Group Report into 47 C.F.R. § 52.26(a), that document became part of the regulation and may only be changed pursuant to the APA's notice and comment process. *See* 1 C.F.R. § 51.11(a)(1) ("An agency that seeks approval for a change to a publication that is approved for incorporation by reference must . . . [p]ublish notice of the change in the Federal Register and amend the Code of Federal Regulations.").

among ILECs and CLECs concerning number portability provisioning flows, one of the prongs of which was:

“After the Firm Order Commitment (FOC) is received by the new Service Provider (SP), both old and new SPs send subscription records to the NPAC which must include the FOC due date. The FOC due date will be no earlier than three (3) business days after the FOC receipt date. No NPAC subscription version may activate before the FOC due date unless a new FOC is negotiated with the old SP.”⁴

Thus, under the Commission’s rules, a carrier may not require another carrier to port a telephone number any sooner than three business days after the date the firm order commitment is received.

A Commission rule, of course, may be changed only through a rulemaking proceeding meeting the requirements of the APA, and changes that do not meet this standard shall be set aside. The D.C. Circuit has explained that it is a “maxim of administrative law” that, “[i]f a second rule . . . is irreconcilable with [a prior legislative rule], the second rule must be an amendment of the first; and, of course, an amendment to a legislative rule must itself be legislative” and promulgated through the APA’s notice and comment procedures.⁵ Therefore, “new rules that work substantive changes in prior regulations” — such as CTIA’s proposal to change the porting interval codified in 47 C.F.R. § 52.26(a) — “are subject to the APA’s procedures”; failure to follow those procedures requires a reviewing court to “vacate the rule, and

⁴ Local Number Portability Administration Selection Working Group, Ex. E (LNPA Technical and Operational Requirements Task Force Report) at A1.

⁵ *National Family Planning & Reproductive Health Ass’n v. Sullivan*, 979 F.2d 227, 235 (D.C. Cir. 1992) (internal quotation marks omitted; second alteration in original).

remand the case to the Commission.”⁶ The Commission has not followed those procedures here.⁷ Regulations may not be changed through a declaratory ruling proceeding which is not conducted in conformance with APA rulemaking requirements.⁸

CMRS providers should also not be allowed to deviate from other number portability procedures that are standard in the industry. The LNPA Technical and Operational Requirements Task Force Report recognizes, for example, that the Local Service Request (LSR) and the Firm Order Commitment (FOC) were the standard documents carriers exchanged in order to initiate number ports.⁹ CMRS providers must use these standard forms to port in numbers assigned to LEC customers and to port out CMRS numbers to LECs.

⁶ *Sprint Corp. v. FCC*, 315 F.3d 369, 374, 377 (D.C. Cir. 2003). CTIA claims that 47 C.F.R. § 52.26(a) does not establish the interval for wireline-to-wireless number porting. Petition at 4 & n.11. Even if CTIA were correct — and it is not — the Commission still could not establish a binding interval for wireline-to-wireless number porting through a declaratory ruling. Such a rule would have the force of law and, therefore, must be promulgated pursuant to the notice-and-comment rulemaking procedure in the APA; if not, it must be vacated. *CropLife America v. EPA*, No. 02-1057, 2003 WL 21262716, at *6-*7 (D.C. Cir. June 3, 2003) (agency “directive . . . [that] binds private parties . . . with the force of law . . . constitutes a regulation” and, therefore, the agency “was required to follow notice and comment procedures”; because “[t]his was not done,” “we vacate [the agency’s] rule”) (internal quotation marks omitted); *General Elec. Co. v. EPA*, 290 F.3d 377, 382-83, 385 (D.C. Cir. 2002) (same).

⁷ Sections 1.412-13 of the Commission’s rules prescribe the content of a Notice of Proposed Rulemaking and where such Notice must be given. The Public Notice of CTIA’s declaratory ruling did not meet these requirements.

⁸ Nor could the Commission invoke any of the “clear and limited exceptions to the requirements of notice and comment.” *Utility Solid Waste*, 236 F.3d at 754. Those exceptions are “limited to emergency situations,” which are not present here. *Id.* (internal quotation marks omitted); *see id.* at 754-55 (describing exceptions and finding them inapplicable).

⁹ Local Number Portability Administration Selection Working Group, Ex. E (LNPA Technical and Operational Requirements Task Force Report) at 6.

B. The Existing Porting Interval Has Worked Well for Consumers and the Industry for Years, and CTIA Offers No Good Reason Why Everyone Should Change Now.

The local exchange carrier industry has worked with this porting interval since it began providing number portability in 1997. There has been no complaint of which Verizon is aware about the length of the porting interval. Nor, as far as Verizon knows, have consumers ever said that the industry's standard porting interval was too long.

CTIA, of course, knew that this was the porting interval since the Commission adopted it in 1997, and it knew that LECs designed their systems and processes around this interval. And yet CTIA and its members apparently adopted their own standards and processes ignoring what was already in place in the LEC industry. And now, six years later, they want the LECs to undo everything the LECs have been doing — and doing successfully — just because they would rather that the LECs did it in some other way.

CTIA's members agreed to a shorter porting interval knowing what the rest of the industry had already done. Verizon, of course, has no objection to CMRS providers agreeing to whatever porting interval they want for ports between CMRS providers. And the CTIA petition does not even discuss the obvious solution — letting CMRS providers port between themselves in whatever interval they have agreed to, while porting with LECs on the terms established by the Commission's rules. What the Commission should not let CTIA get away with is ignoring the reality of what already exists, making plans that are inconsistent with that reality and then, at the eleventh hour, demanding that everyone else change that reality to accommodate the plans it made.

CTIA's claim that "the benefits advanced by the Commission for imposing the number portability mandate on wireless carriers will not be realized"¹⁰ unless the porting interval is changed is without merit. Wireline customers have not been reluctant to change carriers or port because of the time it takes for a port to complete. In fact, more than 25 million telephone numbers were ported nationwide over the past three-year period. And the experience overseas demonstrates that porting intervals measured in days, as opposed to the hours CTIA insists is necessary, will not inhibit porting. In Hong Kong, for example, where the porting time is "one to two business days,"¹¹ the introduction of number portability caused a "surge in customers porting or switching to other carriers."¹² By contrast, "the impact was mixed" in Australia even though the porting interval was less than three hours.¹³

Finally, the local exchange carrier industry designed its processes based on the porting interval in the Commission's rules. It would be extremely expensive for those carriers to change those processes now. It cost Verizon well over \$100 million to modify its then-existing operating support systems to provide number portability using the standard porting interval. Many of these systems, as well as the brand new systems Verizon had to deploy to support number portability, would have to be changed to accommodate CTIA's drastically shortened porting interval. Changes would be necessary in Verizon systems running from ordering through provisioning. Verizon's high-level estimates suggest that tens of thousands of programming hours would be

¹⁰ Petition at 14.

¹¹ Prudential Financial Research, *What Does Wireless Number Portability Mean for Wireless Stocks?*, dated May 29, 2003, at 8.

¹² Prudential Financial Research, *What Does Wireless Number Portability Mean for Wireless Stocks?*, dated May 29, 2003, at 7.

¹³ Prudential Financial Research, *What Does Wireless Number Portability Mean for Wireless Stocks?*, dated May 29, 2003, at 10.

required just to make changes of this sort, and the work would take many months to complete. While most number portability orders today flow through without manual intervention, a significant number do require special handling. Even if the systems were changed to incorporate a shorter interval, there would still be orders that would require manual handling, and they would not meet that standard.

C. The Commission Should Ignore CTIA's Scare Tactics.

CTIA claims that not adopting its proposal "may pose a threat to public safety by degrading the availability of E911."¹⁴ This is nonsense. There is no "threat to public safety" here. And if there were, the threat would be caused by the CMRS provider's business decision, and the CMRS provider can take steps on its own to ensure that no such "threat" exists.

The problem claimed by CTIA is caused by the CMRS provider's decision to activate the wireless phone with the ported telephone number before the port is completed. This results in a period of "mixed service" — a period when the customer's telephone number is active in both the LEC and CMRS network. As CTIA correctly notes, this can cause problems — "if a wireless phone is activated for service prior to the completed port activation by the NPAC, and the customer calls 911, a call back attempt by a PSAP would be routed through the old wireline switch to the fixed location, not to the wireless caller" and "if a call is placed from the wireline phone and the 911 operator attempts to reestablish connectivity; the PSAP's call could be routed to the wireless phone instead of the wireline phone from which the emergency was reported."¹⁵

First, there is no "threat to public safety" because there is no connection between the length of the porting interval and CMRS provider's obligation to transmit E911 calls from

¹⁴ Petition at 11.

¹⁵ Petition at 11.

subscribers' handsets. CMRS providers must send those calls from all activated handsets. If the wireless carrier determines to activate a ported customer's service, it must provide that customer with E911 calling capability. Leaving the existing porting interval in place for LEC-CMRS porting does not alter that obligation.

Second, CTIA's "callback" issue is illusory because, if CMRS providers which choose to activate service immediately advise consumers that, until the port is completed, they will not receive incoming calls, customers will be fully aware that callbacks will not occur. This would be true for all calls, not just 911 calls. This approach promotes public safety by enabling customers to call for help with an activated phone, even if they cannot receive a callback.

Third, the Commission has recognized that 911 callbacks will not occur in a variety of situations, such as in the case of mobile units that are not associated with a dialable number or are used in origination-only rate plans, yet it found no public safety threat present in these situations, even though E911 callbacks would never occur.¹⁶ If there is no public safety issue in these situations, where customers cannot be called back at all, there can be no such concern when callbacks are delayed only for at most a few days.

If the Commission concludes that there is a problem here that needs to be solved, the solution is not for the LECs to change all their systems to shorten the porting interval. The solution is simply for the CMRS provider to do what the LEC does today, activate the ported-in number only after the port is completed.

Another solution may also be practical. If it is absolutely necessary for the CMRS provider to give its customer a working wireless phone immediately, it could assign a temporary number to the phone, to permit the customer to begin using it immediately, until the port of the

LEC number was completed. In a couple of days when the number has been deactivated in the LEC network and the port is completed, the ported number could be activated in the CMRS network.

II. Some Sort of Inter-Carrier Agreement Is Necessary for Porting, but Interconnection Agreements Are Not.

Verizon agrees with CTIA that “some sort of agreement [between service providers] must be reached to govern the terms under which carriers will test with and port numbers to one another.”¹⁷ No one has suggested that contractual provisions to flesh out these details of number portability are not necessary. Verizon supports the sort of “streamlined negotiations”¹⁸ and agreements CTIA’s petition contemplates.

CTIA asks the Commission to clarify what type of agreement is required to govern number portability between LECs and CMRS providers. LECs have included number portability provisions in section 251 interconnection agreements because these arrangements were negotiated at the same time the parties were negotiating their broader interconnection agreements and because LEC-LEC number portability is a section 251(b) obligation.

There is no reason, however, that CMRS-LEC number portability agreements must be “section 251 interconnection agreements.” CMRS-LEC number portability is not a section 251 requirement. The Commission has imposed number portability on CMRS providers pursuant to sections 1, 2, 4(i), and 332 of the Act.¹⁹ It is not necessary, therefore, for LECs or CMRS providers to incorporate CMRS-LEC portability into section 251 agreements.

¹⁶ *Enhanced 911 Emergency Calling Systems*, 12 FCC Rcd 22665, ¶ 108 (1997).

¹⁷ Petition at 16.

¹⁸ Petition at 16 n.42.

¹⁹ *Telephone Number Portability*, 11 FCC Rcd 8352 ¶ 153 (1996).

III. The Other Issues Raised by CTIA.

CTIA's petition says that the Commission must resolve five other disputes before CMRS portability can be successfully implemented.²⁰ Verizon agrees that the Commission needs to resolve four of these five before CMRS portability is implemented, but as they are really disputes among CMRS providers, it takes no position on the substance.

Two of these disputes relate to the portability of CMRS telephone numbers — how to define the top 100 MSAs and whether the Commission will keep the bona fide request requirement. Carriers and consumers have to know what numbers are portable before portability begins. Similarly, the Commission should also resolve any disputes about how ports of numbers used by CMRS providers with Type I interconnection should be accomplished so that all the affected providers can get ready to effectuate such ports. The Commission also must decide whether all wireless carriers must implement the industry-standard for supporting roaming. Consumers have to know about any changes in their ability to roam in order to decide whether to port their numbers when they change providers.

While the other issue identified by CTIA is certainly ripe for Commission decision and the Commission should decide it, that issue is not connected to CMRS number portability, as it relates to what one LEC must do to facilitate interconnection between a CMRS provider and another LEC. CTIA itself concedes that “the dispute between Sprint and BellSouth largely concerns matters of intercarrier compensation, not numbering administration or number portability.”²¹ If the position of BellSouth causes problems for CMRS providers, it causes those problems today. CTIA has not explained how those problems will be exacerbated by CMRS

²⁰ Petition at i, 23-33.

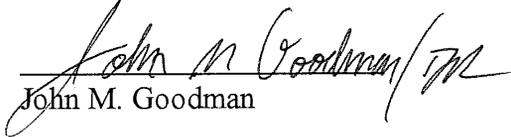
²¹ Petition at 25.

portability, much less how CMRS portability will be impeded if the dispute is not immediately resolved.

Conclusion

The Commission should dismiss CTIA's request to change the LEC porting interval, confirm that LECs and CMRS providers can enter into ordinary contractual arrangements to implement porting between them and resolve the CMRS porting issues presented in CTIA's petition before CMRS portability is implemented.

Respectfully submitted,


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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.