

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

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

To: The Commission

Comments of ALLTEL Communications, Inc.

ALLTEL Communications, Inc. (“ALLTEL”) here by submits its comments on the above-captioned “Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association” (the “CTIA Petition”) as filed with the Commission on May 13, 2003.¹ While questioning whether a petition for declaratory ruling is the appropriate procedural vehicle to resolve the various issues noted in the CTIA Petition, ALLTEL nonetheless vigorously supports Commission consideration of the Local Number Portability (“LNP”) implementation issues raised by CTIA. The issues cited by CTIA are pressing and have far reaching implications. The time for their resolution in a lawful manner is short.

ALLTEL noted in its comments filed in response to the CTIA Rate Center Petition² that the Commission’s Second Report and Order³ set forth the process through

¹ The CTIA Petition appeared on public notice on May 22, 2003. See, Public Notice, DA-03-1753 (released May 22, 2003.)

² Petition for Declaratory Ruling of the Cellular Telecommunications and Internet Association (filed January 23, 2003) (“CTIA Rate Center Petition”). See, Comments of ALLTEL Communications, Inc. (filed February 26, 2003).

which the Commission would consider and adopt NANC LNP recommendations (and the CTIA Petition deals with NANC recommendations) including public notice and comment. While a declaratory ruling may be the vehicle of convenience given the time exigencies stemming from the impending LNP deadline, it is no substitute for the notice and comment procedures prescribed by the Administrative Procedures Act (“APA”) if the recommendations are ever to be enforced as law.⁴ For as ALLTEL and others have noted, NANC is but an advisory committee charged only with the ability to make recommendations and not promulgate substantive rules.⁵ The various NANC reports and recommendations cited in the CTIA Petition must be put before the public for comment before they can be enacted, not only under the APA, but for compliance with the Regulatory Flexibility Act⁶ (“RFA”) as well. Clearly, if a NANC recommendation such as a porting interval is to be enforced, the Commission must conduct the requisite regulatory flexibility analysis with respect to each of the NANC recommendations, not simply those cited by CTIA as requiring immediate resolution.

The need for resolution by the Commission of the issues raised in the CTIA Petition through due administrative process under the APA is pressing. ALLTEL is constrained to note, as did the Federal Court of Appeals for the District of Columbia Circuit, that by the Commission’s own reasoning, “.... it is unlikely for the entire

³ See, Telephone Number Portability, CC Docket No. 95-116, Second Report and Order, 12 FCC Rcd at 12281, paras. 129-130; Comments of ALLTEL Communications, Inc. (filed February 26, 2003) at pages 4-5).

⁴ Comments of ALLTEL Communications, Inc. (filed February 26, 2003).

⁵ Id. at page 5; CTIA Petition at page 10.

⁶ 5 U.S.C. Sec. 601 et. seq.

industry to agree to move to wireless [number portability] voluntarily.”⁷ It is consequently inconceivable that an agency citing market failure as the justification for retention of a rule could justly expect market participants to placidly go forward and implement the mandate fairly and uniformly without benefit of concrete, enforceable rules and guidance. Yet, in the absence of the rulings sought by CTIA, this is precisely what the Commission appears to expect.

In conclusion, ALLTEL believes that wireless LNP must be implemented on a predictable and uniform basis industry-wide. The CTIA Petition, while raising issues of merit, falls short on process. The Commission must immediately address the procedural deficiencies in its process and promulgate definitive, evenhanded guidance governing WLNP through a bona fide rulemaking process in accord with both the APA and the RFA.

Respectfully submitted

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⁷ Cellular Telecommunications & Internet Ass’n and Cellco Partnership d/b/a Verizon Wireless v. FCC, No. 02-1264 (D.C. Cir. June 6, 2003) slip at 8 citing Verizon Wireless Petition for Partial Forbearance From the Commercial Mobile Radio Services Number Portability Obligation, Memorandum, Opinion & Order 17 FCC Rcd 14972 (2002).