

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)	

REPLY COMMENTS OF AT&T CORP.
CTIA PETITION FOR DECLARATORY RULING

Pursuant to the Commission’s Public Notice released May 22, 2003 (DA 03-1753), AT&T Corp. (“AT&T”) submits these Reply Comments in response to the petition for declaratory ruling filed by the Cellular Telecommunications & Internet Association (“CTIA”) on May 13, 2003 (the “*Petition*”). Because CTIA impermissibly seeks to link the implementation of intramodal local number portability to the resolution of issues related to intermodal local number portability, the Commission should deny the *Petition* and should refer the intermodal LNP issues CTIA has raised to an appropriate rulemaking proceeding.

In the *Rate Center Petition*, CTIA stated that if wireless-to-wireless number portability is to go forward on the basis and timetable the Commission has ordered, the Commission must remove any uncertainty concerning the obligation of wireline carriers

to port numbers to wireless carriers.¹ CTIA asked the Commission to resolve these issues as expeditiously as possible, but in all events prior to November 24, 2003, the Commission's deadline for implementing wireless-to-wireless local number portability.² The comments filed in response to the *Rate Center Petition* demonstrated that CTIA had impermissibly sought to link the implementation of wireless-to-wireless number portability to the resolution of issues related to wireline-to-wireless number portability.³ The vast majority of the comments concluded that the *Rate Center Petition* should be denied, and many of the comments agreed with AT&T that the Commission should address the issues related to intermodal portability in a separate rulemaking proceeding.⁴

On May 13, 2003, CTIA filed the instant petition seeking clarification of several additional issues relating predominantly to wireline-to-wireless intermodal number portability. Specifically, CTIA seeks a declaration from the Commission that wireline carriers have an obligation to port their customers' telephone numbers to any CMRS carrier whose service area overlaps the wireline carrier's rate center. CTIA further requests that carriers not be required to enter into "unwieldy and unnecessary"

¹ See Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association (filed Jan. 23, 2003) ("*Rate Center Petition*") at 3.

² *Id.* at 18.

³ See, e.g., Comments of Public Utility Commission of Ohio at 6 ("CTIA has taken a new tack and raises the new and unrelated issue of whether wireline carriers are obligated to provide portability of their customers' telephone numbers to CMRS providers whose service area overlaps the wireline carriers' rate centers. This issue has nothing to do with the CMRS companies' compliance with the November 2003 deadline for instituting LNP and appears to be nothing more than subterfuge for the purpose of diverting attention away from the real issue of CMRS compliance with the established deadline for LNP deployment.")

⁴ See, e.g., Reply Comments of AT&T at 5-6; BellSouth at 1-2; California PUC at 4; Cingular Wireless at 1-2; McLeod USA at 1-2; USTA at 3-4; Valor at 7.

interconnection agreements with wireline carriers in order to implement the operational aspects of number portability.⁵ CTIA also asks the Commission to adopt a definitive wireline-to-wireless “porting interval,” defined as the amount of time it takes for two service providers to complete the process of porting a telephone number when a customer changes providers but keeps the same telephone number, and suggests that the porting intervals for wireline carriers and CMRS carriers should be identical.⁶

CTIA claims, as it did in the *Rate Center Petition*, that these issues “must be addressed in sufficient time to permit the scheduled November 24, 2003 introduction of wireless number portability,” stating that implementation will be precluded if the Commission fails to rule by September 1, 2003. In the *Petition*, however, CTIA has admitted that these issues relate predominantly to intermodal number portability rather than to wireless-to-wireless number portability,⁷ prompting several parties to claim that CTIA’s *Petition* is a thinly veiled attempt to delay the effective date of intramodal

⁵ CTIA also claims (at 23-24) that the Commission must address several issues that are “less universal in scope than the porting interval and nature of agreement issues . . . [that] tend to affect competition and consumption in a more geographically localized way” including the rating and routing dispute between BellSouth and Sprint, BellSouth’s claims with respect to CMRS providers utilizing Type 1 Interconnection, and several “CMRS specific” issues, including the definition of the top 100 MSAs, the continued viability of the *bona fide* request requirement, and support for nationwide roaming.

⁶ *Petition* at 7.

⁷ *Id.* at 8. (“While the porting interval issue predominantly affects LEC-CMRS ports, it may also delay CMRS-CMRS ports where certain CMRS providers may refuse to complete a port within the agreed-upon time frames established by industry working groups.”).

wireless LNP.⁸ Indeed, a number of the wireless carriers go so far as to claim that the November 24, 2003 deadline for implementing wireless-to-wireless LNP must be extended, because the intermodal LNP issues CTIA has raised can no longer be addressed sufficiently in advance of the November deadline.⁹

Contrary to CTIA's claims, the *Petition* demonstrates that there are fundamental wireline issues to be resolved that go well beyond the scope of wireless-to-wireless local number portability and must not be held hostage by it. As the Public Utilities Commission of Ohio states, "[f]ew of these issues impact wireless-to-wireless porting (intramodal porting)."¹⁰ The intermodal LNP issues CTIA has raised are significant to the industry and to consumers, and must not be overlooked by the Commission in a mad rush to implement local number portability.

The proper solution to issues of such importance is neither to sweep them under the rug nor to stampede them through the Commission in response to an unrelated petition for a declaratory ruling. The comments show that LNP issues cannot be addressed in response to a petition for a declaratory ruling in any event. As ALLTEL states (at 2), "[w]hile 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

⁸ See, e.g., Comments of BellSouth at 2-3; Illinois Citizens Utility Board at 2; Nebraska Public Service Commission at 1; City of New York at 1; SBC at 6.

⁹ See, e.g., Comments of AT&T Wireless at 2; Cincinnati Bell Wireless at 7-8; Cingular Wireless at 20; Sprint at 20-23.

¹⁰ See Comments of Public Utilities Commission of Ohio, at 3. See also, Comments of Nebraska Public Service Commission, at 3 ("Contrary to the CTIA's assertions, the issues raised in the CTIA Petition do not require immediate Commission action and are not critical to the November 24, 2003 deadline.").

(“APA”) if the recommendations are ever to be enforced as law.”¹¹ The correct approach is to refer these issues to a rulemaking proceeding. As the Independent Alliance states, “[t]he 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.”¹²

AT&T agrees with CTIA that there are significant issues to be resolved before intermodal number portability can be achieved. There is confusion and concern in the industry today about the “rate center disparity” identified by CTIA, conflict over the use of interconnection agreements to implement intermodal LNP, and complete discord over the proper porting interval for porting numbers from wireline carrier to wireless carriers.¹³ As the comments have demonstrated, the Commission must devote the time

¹¹ See Telephone Number Portability, CC Docket No. 95-116, Second Report and Order, 12 FCC Rcd at 12281, paras. 129-30 (setting forth procedures whereby the Commission would consider and adopt NANC LNP recommendations, including public notice and comment); *Sprint Corp. v. FCC*, 315 F.3d 369, 374, 377 (D.C.Cir. 2003) (stating that new rules that work substantive changes in prior regulations “are subject to the APA’s procedures”; failure to follow those procedures requires a reviewing court to “vacate the rule, and remand the case to the Commission.”).

¹² See also, Comments of Cingular Wireless at 17-19; GVNW Consulting at 9; Independent Alliance at 3-5; Qwest at 3-4; RIITA at 3; Verizon at 3-5.

¹³ *Petition* at 2-3 (“While industry working groups successfully resolved most of these issues, what remain for Commission resolution are the obstacles seemingly immune from consensus yet critical to achieving number portability as it was conceived in the *LNP First Report and Order*. These obstacles . . . are now being mirrored by some wireless carriers. Whether they fear the impact of additional competition that may result from number portability, or because they have different cultures and differing interpretations of their legal obligations, the wireline and wireless industries have reached an impasse that requires Commission resolution.”).

and resources needed to ensure that intermodal portability issues are carefully considered and comprehensively resolved.¹⁴ In so doing, the Commission must develop a full and complete record identifying the causes of the impasse in the NANC and the industry, and resolve the discord that has arisen with definitive and workable rules that will put the disputes among these carriers to rest.

In examining the ILECs' claims that numbers cannot be ported outside of their wire centers, the Commission should give careful consideration to differences between the networks of the ILECs - - who have developed a switching topography based upon the location of the wire center - - and the CLECs and CMRS carriers, who have not. The ILECs generally have at least one central office switch per wire center and numerous wire centers. Telephone numbers are assigned for use within the wire center, and service outside of the wire center requires a number change. Due to the cost of infrastructure and switching, and the relatively small size of their customer base, CLECs generally enter a market with a single switch, which is often located in a metropolitan area that serves many wire centers and rate centers. CMRS carriers generally enter a market with a single switch serving a geographic area defined by cellular sites they have built or leased. Thus, CLEC and CMRS customers' telephone numbers should not be tethered to a particular wire center or rate center.

In determining whether carriers should be required to use ILEC interconnection agreements, standard CMRS service level agreements ("SLAs") or some other more

¹⁴ Comments of AT&T at 6-7; ALLTEL at 2; Cingular Wireless at 25-32; GVNW Consulting (Rural Carriers) at 9; Independent Alliance at 4-5; Qwest at 3-4; RIITA at 3; USTA at 10.

informal alternative to implement wireline-to-wireless LNP, the Commission should carefully consider whether the costs and administrative burdens of complex inter-carrier agreements are justified. At present, there is no consensus in the industry concerning the use of such agreements. The LECs claim that Sections 251 and 252 of the Act require the incumbents to use interconnection agreements.¹⁵ The CMRS carriers state that Section 332 of the Act overrides these provisions and permits CMRS carriers to use SLAs.¹⁶ Adding to the confusion, as a number of parties have noted, is the fact that no model interconnection agreement, SLA, or even a matrix of terms has been put forth for comment. As BellSouth states, “[t]he Commission cannot mandate that all carriers be bound by the exact same agreement, the complete details of which remain unclear.”¹⁷ The record is also devoid of any information as to how these agreements would be implemented, or whether these wireless-to-wireless LNP agreements would work in the context of wireline-to-wireless LNP.

AT&T believes that the Commission should take steps to minimize the need for complex and burdensome carrier-to-carrier porting agreements. The Commission should consider whether SLAs or interconnection agreements should be required at all, or whether less formal agreements will serve equally well. The majority of the comments question the need for carriers to enter into long, costly negotiations under interconnection agreements or SLAs. A number of the comments argue convincingly for a more informal

¹⁵ See, e.g., Comments of BellSouth at 9-10; OPATSCO at 3; SBC at 11. See also, Cingular Wireless at 8.

¹⁶ See, e.g., Comments of Nextel at 2; RTG at 6.

¹⁷ Comments of BellSouth at 10; USTA at 5 (“There is no common understanding within the industry as to the definition of a SLA.”).

approach to LNP implementation, stating that it would be inefficient to require full-blown interconnection agreements or SLAs when something less formal will suffice.¹⁸ Rather than assume that a formal agreement is required, the Commission should look for the least intrusive, most cost-effective alternative to SLAs or interconnection agreements.

In making this determination, the Commission should acknowledge that the information needed to implement intermodal porting is neither voluminous nor complex. In the wireline industry, carriers have met their obligation to port numbers to one another without the benefit (or impediment) of cumbersome intercarrier agreements. As Sprint states:

In fact, very little information is needed to effectuate portability between carriers. 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 porting is technically achievable. [footnote omitted] Practically speaking, Sprint 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 problems. . . . 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.¹⁹

Wireline carriers can also post their porting requirements on websites and comply with these requirements without entering agreements for porting. As the comments show, in some cases consumers are already bearing the costs of wireless LNP, and will not be happy to bear additional costs arising from the imposition of cumbersome administrative and dispute resolution procedures that are not strictly necessary.²⁰

¹⁸ See, e.g., Comments of AT&T Wireless at 6-8; Cincinnati Bell Wireless at 4; Rural Cellular Association at 5-6; Sprint, at 13-17 Triton at 3-4.

¹⁹ Comments of Sprint at 13-14.

²⁰ Id. at 18-19.

Finally, CTIA claims that the Commission should establish a definitive “porting interval”-- defined as the amount of time it takes for two service providers to complete the process of porting a telephone number when a customer changes providers but keeps the same telephone number—for wireline-to-wireless ports that is substantially similar in duration to the porting interval that has been proposed by CMRS carriers for wireless-to-wireless ports.²¹ CTIA unrealistically seeks to equate apples and oranges by holding up the wireless industry’s goal of two and one half hours for processing wireless-to-wireless ports as a standard for the wireline industry to meet.²² The current four-day interval for wireline ports was developed by the industry to reflect the time necessary to update records in the various wireline operations support systems (“OSS”) that are implicated when a number is ported, and was designed to account for variations in complexity in systems and processes employed by wireline carriers.²³ As the comments show, unlike wireless ports, wireline ports typically involve the use of several different operations support systems. Changing these systems to meet a randomly chosen porting interval would involve the needless expenditure of money and resources for little gain.²⁴

²¹ *Petition* at 7.

²² See, e.g., Comments of Qwest at 7 (“Wireline carriers have longer porting timer settings than wireless carriers in large part due to the differences in network and system configurations. Wireline carriers often are constrained by the provisioning of physical facilities (e.g., loops) to serve customers and are regularly required to administer complex as well as simple ports.”).

²³ First NANC Report at 11, para. 3.3.2.5; North American Numbering Council Local Number Portability Administration Working Group, Second Report on Wireline Integration at 7-8, Section 3.3 (June 30, 1999).

²⁴ Comments of BellSouth at 4-5; Qwest at 5-6.

Nor has CTIA shown that there is a need to rush to judgment in determining the proper porting interval for wireline-to-wireless ports.²⁵ Rather than requiring all ports involving wireless carriers (intermodal and intramodal) to conform to the interval advocated by CTIA, the Commission should take the requisite time to examine the systems of each carrier to determine whether and to what extent to allow different intervals for different types of ports, while permitting the CMRS industry to adopt its goal of two and one half hours. The Commission should also determine whether it makes sense to impose on consumers the costs of imposing the wireless porting timeframe on intermodal porting. As SBC states, “[t]he CTIA seeks to supplant the present NANC guidelines on telephone number porting intervals with intervals that the CTIA believes better fit the wireless carriers’ own business models.”²⁶ Instead of rushing to adopt a new porting interval, or one that conforms wireline and wireless porting intervals for no apparent reason other than uniformity, the Commission should impose the porting interval that best reflects the factors identified in the comments.

²⁵ Comments of SBC at 6 (“In spite of the noise made by CTIA, there really is no “porting interval issue” begging for Commission action.”).

²⁶ Comments of SBC at 1.

CONCLUSION

Wireline-to-wireless LNP issues are no less important than the wireless industry's LNP rules, and must not be given short shrift. The comments filed in this proceeding demonstrate convincingly that the *Petition* should therefore be denied, and the Commission should refer the intermodal LNP issues raised to an appropriate rulemaking proceeding. In addressing the issues CTIA has raised, the Commission should exercise the same degree of care and forbearance as it has employed in developing its wireless-to-wireless local number portability requirements.

Respectfully submitted,

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