

**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 REPLY COMMENTS

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Summary

Sprint Corporation makes seven points in these reply comments:

1. There will be chaos unless the Commission promptly resolves the implementation issues in dispute. Industry cannot agree on numerous critical implementation issues and unless the Commission intervenes, there will be millions of customers who will be prevented from porting and millions more who will be unhappy by the porting process because of unreasonable delays and other problems. If the Commission does not act now, it will be forced to act in response to numerous customer complaints. Sprint urges the Commission to act now because uniform rules will reduce substantially the number of customer complaints submitted after LNP activation.

2. Certain planned ILEC restrictions on LEC-to-CMRS ports are unlawful. Some ILECs have decided unilaterally that they will restrict the ability of their customers to port their numbers to wireless carriers. Such restrictions include requiring wireless carriers to connect directly to each ILEC network (even when direct connection cannot be cost justified) and to pay the ILEC for delivering its own traffic to the wireless network. These porting restrictions contravene both the LNP statute and the Commission's existing interconnection rules affirmed on appeal.

3. The ILEC objections to CTIA's "rate center" petition are factually inaccurate. ILECs raise a host of objections to grant of CTIA's January 23, 2003 "rate center" petition. Sprint demonstrates in considerable detail that all of these objections are baseless.

4. Sprint has proposed a reasonable compromise regarding porting intervals. The land-line and wireless industries cannot agree over the intervals to use for LEC-CMRS ports. Sprint has submitted a compromise proposal that recognizes the challenges ILECs face while meeting the growing demands and expectations of customers.

5. The Commission, not states, should interpret, apply and enforce the FCC wireless LNP rules. The Commission's goal should be to establish a default framework where porting can occur without the need for any intercarrier document, and Sprint identifies the few steps the Commission would need to take to achieve this objective. In any event, the Commission should reject the ILEC argument that porting may not occur without a state approved Section 252 agreement. Requiring 50 different sets of state regulators to apply the same FCC LNP rule makes no sense, and would undermine the Congressional directive that the Commission establish "a Federal regulatory framework" to govern the offering of all wireless services.

6. There is no basis to grant smaller wireless carriers a "blanket exemption" from the LNP requirement. The Commission reaffirmed the current BFR-based process only last week, and if any small carrier believes it faces a unique situation and undue hardship, it can request a rule waiver.

7. It is time for the Commission to address the Sprint routing/rating petition. Sprint's petition has been pending for over a year, and resolution of the petition would reduce the number of controversies over wireless LNP implementation.

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SPRINT REPLY COMMENTS

Sprint Corporation, on behalf of its local, long distance and wireless divisions (“Sprint”), hereby replies to the comments submitted in response to the declaratory ruling petition filed by Cellular Telecommunications & Industry Association (“CTIA”) raising several local number portability (“LNP”) implementation issues (hereinafter, “CTIA Petition”).¹

I. THE COMMISSION NEEDS TO DECIDE WHETHER IT WILL TOLERATE CHAOS OR FACILITATE THE ABILITY OF CARRIERS TO MEET CUSTOMER EXPECTATIONS

Industry comments reveal a wide divergence of views on numerous LNP obligations and implementation issues, especially between local exchange carriers (“LECs”) and providers of commercial mobile radio service (“CMRS”). AT&T correctly characterizes the current impasse when it states that there is “no consensus in the industry today concerning the proper scope of wireline carriers’ LNP obligations, confusion and concern over the ILECs’ claims that numbers

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).

cannot be ported outside of their rate centers, and almost complete discord on the proper timing and implementation of the Commission's LNP rules."²

While industry does not agree on many implementation issues, it does agree that the Commission must promptly resolve the areas of disagreement – and resolve these matters before wireless LNP activation – because the issues will not be resolved without Commission intervention.³ State regulators likewise agree that “prompt resolution” of the issues CTIA has raised is “desirable” and “important”:

In a perfect world, it would be best to resolve all of the policy issues surrounding both intramodal and intermodal porting prior to implementation.⁴

Nevertheless, stating that the implementation issues have “no bearing on the wireless carriers’ technical feasibility to port” and pose no “obstacle to on-schedule LNP implementation,” state regulators contend that none of the implementation issues constitutes “a valid reason to delay wireless LNP implementation.”⁵

² AT&T Comments at 5-6. Given that industry has been unable for years to resolve many of these issues, there is no factual basis to the view of the New York Department of Public Services (“NYDPS”) that “we expect the parties to resolve these issues via traditional commercial negotiation.” NYDPS Comments at 2.

³ *See, e.g.*, Alltel Comments at 1 (“The issues cited by CTIA are pressing The time for their resolution in a lawful manner is short.”); AT&T Wireless Comments at 2 (“[T]he Commission must resolve the issues raised in these petitions in an expedited manner.”); BellSouth Comments at 2 (“[T]here are a number of outstanding issues that must be resolved sufficiently in advance of the implementation date for number portability.”); Cincinnati Bell Wireless Comments at 2 (“[I]t is crucial that the issues raised by CTIA be resolved.”); Rural Cellular Association (“RCA”) Comments at 2 (“[S]pecific direction from the agency is urgently need to enable the industry to meet the LNP compliance schedule.”); SBC Comments at 13 (SBC “certainly supports any effort to get clarity on issues impacting number porting.”); T-Mobile Comments at 2 (“The Commission must act quickly to provide the guidance necessary to overcome the current impasse that is preventing the successful implementation of wireless LNP.”); Verizon Opposition at 2 (“There are several issues that the Commission must resolve before CMRS number portability can be implemented.”).

⁴ California Public Utilities Commission (“CPUC”) Comments at 1; Public Utilities Commission of Ohio (“PUCO”) Comments at 2-3.

⁵ CPUC Comments at 4 and 10; PUCO Comments at 2.

[T]he issues raised in the CTIA Petition do not require immediate Commission action and are not critical to the November 24, 2003 deadline. . . . [C]onsumers would be more frustrated should the Commission push back the wireless LNP deadline.⁶

According to state regulators, the issues CTIA has raised are “entirely administrative in nature” and “even if [they] were to remain unresolved, this should not affect the technical feasibility of implementing wireless LNP.”⁷

State regulators are correct: the implementation issues that have been raised are unrelated to the technical feasibility of LNP. Sprint fears, however, that state commissions may not appreciate that the failure to resolve these issues before wireless LNP activation will impact the very success of LNP. In particular, if the Commission does not promptly resolve the raised issues:

- Millions of customers, told by the news media they will be able to port the numbers to wireless carriers, will be precluded from doing so even though porting is technically feasible;
- Millions of customers will be frustrated when the new service provider cannot give them firm conversion deadlines, because the old service provider is unwilling or unable to provide such deadlines; and
- Millions of customers will be angered when porting is not completed within a time they deem reasonable.

As Verizon correctly observes, “Carriers and customers have to know what numbers are portable before portability begins.”⁸ On the other hand, “forcing carriers to implement wireless LNP without Commission-endorsed guidelines will result in consumer confusion and complaints, service degradation, and unnecessary costs and burdens.”⁹

⁶ Nebraska Public Service Commission (“NPSC”) Comments at 3. *See also* Illinois Citizens Utility Board (“CUB”) Comments at 2 (“The issues raised in CTIA’s latest petition need not be resolved to implement wireless to wireless portability on November 24, 2003.”).

⁷ New York Department of Public Service (“NYDPS”) Comments at 2.

⁸ Verizon Opposition at 11.

⁹ T-Mobile Comments at 1-2.

It is unrealistic to think that customers angered over the LNP process will accept without complaint the chaotic environment that will occur if LNP is implemented without basic rules applicable to all carriers. It is also unrealistic to think regulators, both state and federal, will respond to customer complaints by stating they were aware of these problems but decided to proceed with LNP implementation without resolving core issues that would have eliminated many (if not, most) of the problems.

Importantly, the choice need not be between chaos, on the one hand, and delayed LNP availability on the other hand. The current LNP deadline can proceed as scheduled – *if* the Commission acts promptly on the CTIA petitions. Besides, as T-Mobile correctly observes, “the Commission eventually will be forced to resolve [these disputes] even if carriers are required to meet the implementation deadline without Commission guidance”:

Specifically, the Commission will be forced to address the consumer complaints that will result from confusion and uncertainty about wireless LNP, as well as disputes between carriers over porting intervals, service degradation and portability eligibility.¹⁰

Sprint submits that everyone – customers, carriers and regulators (state and federal) – would benefit if fundamental implementation disputes were resolved *before* wireless LNP is activated.

II. CERTAIN PLANNED ILEC RESTRICTIONS ON LEC-TO-CMRS PORTS ARE UNLAWFUL

Numerous ILECs have announced plans to restrict the ability of their customers to port their numbers to wireless carriers. These restrictions are unlawful as a matter of law, as Sprint demonstrates below.

It is important to emphasize at the outset that the LEC obligation to support LNP is based on requirements imposed by the Communications Act and that this obligation already extends to

¹⁰ T-Mobile Comments at 9.

“all telecommunications carriers, including commercial mobile radio services (CMRS) providers.”¹¹ The LNP statute recognizes only one justification for not providing LNP upon request: technical feasibility.¹² No LEC has ever contended that the restrictions on porting it intends to impose are needed to make LEC-to-CMRS porting technically feasible. As a matter of law, therefore, the restrictions that numerous LECs intend to impose unilaterally on their customers’ ability to port their numbers to wireless carriers are unlawful because the restrictions are unrelated to the technical feasibility of providing LNP.

A. LECs May Not Lawfully Condition the Availability of LNP on a Direct Interconnection Arrangement

Wireless carriers generally interconnect indirectly *via* a transit service provider (typically, the RBOC) with most LECs, both rural and competitive LECs. Indirect interconnection is utilized because the two sets of carriers do not exchange sufficient traffic volumes to cost justify a direct connection between their respective networks. Nevertheless, several rural ILECs are taking the position they will not support LEC-to-CMRS ports *unless* a wireless carrier “agrees” to interconnect with them directly – even if direct interconnection cannot be cost justified and even though direct interconnection is not technically needed to provide LNP. For example, OPASTCO has announced that its members have decided unilaterally to declare that the LNP bona fide requests (“BFR”) that its members have received are “not valid because the requesting carriers . . . do [not] have any established point of presence in the rural carriers’ rate centers.”¹³ This rural ILEC position is patently unlawful under current Commission rules.

¹¹ *First LNP Order*, 11 FCC Rcd 8352, 8355 ¶ 3 (1996). *See also id.* at 8357 ¶ 8 (“LECs are obligated under the statute to provide number portability to customers seeking to switch to CMRS carriers.”).

¹² *See* 47 U.S.C. § 252(b)(2).

¹³ Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) Comments at 2. *See also* Missouri Independent Telephone Company Group (“MITG”)

The rural ILEC position is inconsistent with the LNP statute. The Act defines number portability to mean “the ability of users of telecommunications services to retain, *at the same location*, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”¹⁴ So long as a wireless carrier provides its mobile services “at the same location” where the customer had been receiving his ILEC services, the ILEC is required to permit porting – whether the wireless carrier interconnects with the ILEC directly or indirectly.

The rural ILEC position is also inconsistent with the Commission’s general interconnection rules. The Commission has explicitly ruled that CMRS carriers have no obligation to interconnect directly with other carriers.¹⁵ The Commission has further held that it is the interconnecting carrier, not the ILEC, that can choose the type of interconnection “based upon [its] most efficient technical and economic choices,”¹⁶ expressly ruling that “a LEC is obligated to provide a CMRS provider with the interconnection of its choice upon its request.”¹⁷ In this regard, FCC rules explicitly state that a LEC “*must* provide the type of interconnection reasonably requested

Comments at 9 (“CMRS carriers may obtain LNP only through a request for direct interconnection pursuant to section 251(c) of the 1996 Act.”); Rural Iowa Independent Telephone Association (“RIITA”) Comments at 3 (LNP is “not . . . legally available” unless wireless carrier interconnects directly); United States Telecom Association (“USTA”) Comments at 6-9. Smaller wireless carriers owned by rural ILECs take the same position. See Rural Cellular Association (“RCA”) Comments at 3-4; Rural Telecommunications Group (“RTG”) Comments at 2-8.

¹⁴ 47 U.S.C. § 153(30)(emphasis added).

¹⁵ See *First Local Competition Order*, 11 FCC Rcd 15499, 15991 ¶ 997 (1996). See also 47 U.S.C. § 251(a)(1) (“Each telecommunications carrier has the duty to interconnect directly *or indirectly* with the facilities and equipment of other telecommunications carriers.”)(emphasis added).

¹⁶ See *First Local Competition Order*, 11 FCC Rcd at 15991 ¶ 997.

¹⁷ *Bowles v. United Telephone*, 12 FCC Rcd 9840, 9849 ¶ 15 (1997). See also *Third Radio Common Carrier Interconnection Order*, 4 FCC Rcd 2369, 2376 ¶ 47 (1989).

by a mobile carrier.”¹⁸ In addition, the Commission has ruled that a competitive carrier possess “the right to request a single point of interconnection in a LATA.”¹⁹

There is, therefore, no basis to the rural ILEC argument that they can prevent their customers from porting their numbers to wireless carriers unless the wireless carrier “agrees” to connect directly with the ILEC.

B. ILECs May Not Lawfully Condition the Availability of LNP on a Wireless Carrier’s “Agreement” to Pay the ILEC Its Costs for Delivering Its Own Traffic to the Wireless Network

Several ILEC interests contend that wireless carriers should pay the originating ILEC the costs that the ILEC incurs in delivering its own intraMTA traffic to a wireless carrier.²⁰ This ILEC argument has nothing to do with LNP – and, this argument is flatly inconsistent with existing FCC interconnection rules affirmed on appeal regarding exchange of wireless intraMTA traffic.

As noted above, Commission rules permit wireless carriers to adopt a single point of interconnection in each LATA. Commission rules further prohibit ILECs from charging terminating carriers for the costs incurred in delivering their own intraMTA traffic to a wireless network,²¹ and it recently reaffirmed this prohibition:

¹⁸ 47 C.F.R. § 20.11(a)(emphasis added).

¹⁹ *Virginia Arbitration Order*, 17 FCC Rcd 27039 ¶ 52 (2002). *See also Unified Inter-carrier Compensation Regime*, 16 FCC Rcd 9610, 9650-51 ¶ 112 (2001)(“[A]n ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA.”).

²⁰ *See, e.g.*, USTA Comments at 6; GVNW Comments at 14; RTG Comments at 4 n.6 and 9.

²¹ *See* 47 C.F.R. § 51.703(b).

The Commission's rules . . . prevent any LEC from assessing charges on another telecommunications carrier for telecommunications traffic subject to reciprocal compensation that originates on the LEC's network. Furthermore, under these rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic.²²

These Commission rules have been affirmed on appeal,²³ and federal courts have applied these rules in arbitration appeals.²⁴

GVNW's suggestion that these *existing* Commission rules are not competitively neutral is baseless.²⁵ To be sure, an ILEC has the obligation to deliver (without charge) its customers' land-to-mobile intraMTA traffic to the wireless carrier's mobile switch (i.e., where the CMRS carrier's interconnection point is located). This arrangement is hardly unreasonable since the wireless carrier has the reciprocal obligation to deliver its mobile-to-land traffic to the rural ILEC's end office switch (i.e., where the LEC's interconnection point is located).²⁶

C. The Commission Should Confirm That Wireless Carriers Need Not Obtain Numbers They May Not Need as a Condition for LEC-to-CMRS Porting

Wireless carriers have been judicious in obtaining scarce numbering resources. They ordinarily obtain thousands blocks/NXX codes in only certain of the ILEC rate centers where they provide their services. A group of smaller wireless carriers, owned by rural ILECs, have an-

²² *Virginia Arbitration Order*, 17 FCC Rcd 27039 at ¶ 52 (2002).

²³ *See, e.g., Qwest v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

²⁴ *Southwestern Bell v. Texas Public Utility Comm'n*, Civil Action No. MO-01-CA-045, 2002 U.S. Dist. LEXIS 26002 (W.D. Tex., Dec. 26, 2002)(FCC rules "prohibit SWBT from imposing charges for delivering its "local" traffic originating on its network to the point of interconnection selected by AT&T even when that point is outside of a local calling area of SWBT, and that because the PUCT decision below allows such charges the PUCT has erred, as the PUCT has now confessed to this Court in light of the latest FCC pronouncement on this issue.").

²⁵ *See* GVNW Comments at 14.

²⁶ However, since both the wireless carrier and the rural ILEC ordinarily have large facilities (*e.g.*, DS-3s) to the LATA tandem switch, the incremental cost of delivering this traffic to the destination switch is negligible.

nounced that they will not allow their customers to port their numbers to other wireless carriers unless the wireless carrier has obtained “numbering resources in the rate center.”²⁷ This announced restriction on porting has nothing to do with LNP. Whether a carrier does, or does not, possess its own set of numbers in a given rate center has no relevance whatsoever to the technical feasibility of porting a number within that rate center to another carrier.

On the other hand, this restriction on porting would be easy for wireless carriers to overcome. Wireless carriers could simply begin requesting numbering resources in every rate center. Commission rules are very clear that a carrier may obtain numbering resources in each rate center in which it provides its services.²⁸ But requiring carriers to obtain scarce numbering resources they may never need makes no sense – and would undermine the Commission’s numbering optimization policies. As the California Commission has recognized, if wireless carriers are forced to acquire additional numbers in additional rate centers just so ILECs and their wireless affiliates will port existing numbers to them, “many numbers would be unnecessarily stranded.”²⁹ The Commission should, therefore, confirm that carriers may not condition the availability of LNP based on whether another carriers has, or does not have, a different supply of telephone numbers rated in the same rate center.

²⁷ RTG Comments at 4.

²⁸ See 47 C.F.R. §§ 52.15(g)(2) and (3)(B). See also *First NRO Order*, 15 FCC Rcd 7574, 7577 n.2 (2000); *NRO NPRM*, 14 FCC Rcd 10322, 10371 n.174 (1999).

²⁹ CPUC Comments, CC Docket No. 95-116, at 11 (Feb. 26, 2003).

III. THE ILEC OBJECTIONS TO CTIA'S "RATE CENTER" PETITION ARE FACTUALLY INACCURATE

Numerous ILECs, both large and small, use their comments on CTIA's May 13, 2003 LNP petition to repeat their earlier objections to CTIA's January 23, 2003 "rate center" petition. These ILEC arguments lack merit, as Sprint demonstrates below.

A. Grant of the CTIA petition will not, as some ILECs assert, require the porting of numbers outside the rate center. Several ILECs assert that grant of the CTIA petition would result in numbers being ported "outside of their assigned rate center."³⁰ This assertion is inaccurate. If the ILEC customer's number is "rated" to a particular rate center before the port, the number will remain "rated" to the same rate center after the port.

The Commission adopted the decision by the NANC LNPA Architecture Task Force that service provider portability should be "limited to rate center/rate district boundaries of the incumbent LEC due to rating/routing concerns."³¹ The decision by an ILEC customer to port her number from the ILEC to a wireless carrier meets this requirement – regardless of whether the wireless carrier interconnects directly or indirectly with the ILEC and regardless of whether the wireless carrier has obtained its own set of numbers in the rate center. So, again, if the ILEC customer's number is "rated" to a particular rate center before the port, the number will remain "rated" to the same rate center after the port.

NANC documents confirm that LEC-to-CMRS porting is consistent with this rate center limitation. Specifically, NANC describes the situation where a "[w]ireline subscriber with tele-

³⁰ OPASTCO Comments at 4-6. *See also* GVNW Comments at 7-8; USTA Comments at 8; Missouri Independent Telephone Group ("MITG") Comments at 10..

³¹ North American Numbering Council, NANC – LNP Architecture Task Force, *Architecture & Administrative Plan for Local Number Portability*, at 6 § 7.3 (April 23, 1997). *See also* 47 C.F.R. § 52.26(a); *Second LNP Order*, 12 FCC Rcd 12281, 12315 ¶ 54 (1997).

phone number 214-789-2222, located in RC [Rate Center] 7, wishes to change to wireless service while remaining at the same location.”³² NANC states that in this example, “[p]orting would be permissible.”³³ Indeed, NANC notes that LEC-to-CMRS porting is permissible even if the customer happens to change his physical location at the time of the port:

Because the subscriber will have terminal mobility and the actual location of the phone will vary, the move of the billing location to another rate center does not impact rating.³⁴

There is, therefore, no basis to the ILEC argument that grant of the CTIA “rate center” petition will somehow contravene the requirement that porting is permitted only within a rate center. In short, a number ported from a wireline carrier to a wireless carrier will remain attached to that rate center for purposes of rating the local call.

B. Grant of the CTIA petition will not, as some ILECs assert, result in the provision of location portability. Several ILECs assert that “CTIA seeks to impose on wireline carriers ‘location portability,’ an obligation which is not required by statute or Commission rules.”³⁵ This allegation is factually inaccurate.

The Commission has defined location portability as “the ability of users of telecommunications services to retain existing telecommunications numbers . . . when moving from one physical location to another.”³⁶ The Commission declined to require carriers to support location portability, noting that the Act’s LNP requirement is “limited to situations when users remain ‘at

³² NANC LNPA Working Group, Wireless – Wireline Service Provider Portability Rate Center Discussion, at 4 § 1.11 (Feb. 27, 1998).

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Independent Alliance Comments at 103. *See also* Rural Iowa Independent Telephone Association (“RIITA”) Comments at 2; Missouri Independent Telephone Company Group (“MITG”) Comments at 2-4; SBC Comments at 4.

³⁶ 47 C.F.R. § 52.21(h)(i). *See also First LNP Order*, 11 FCC Rcd 8352, 8443 ¶ 174 (1996).

the same location' and 'switch[] from one telecommunications carrier to another.'"³⁷ The CTIA petition simply asks the Commission to confirm that a LEC is required to permit its customers to port their numbers to wireless services when a wireless carrier provides its mobile services "at the same location" as the LEC. There is, therefore, no basis to the ILEC argument that grant of the CTIA "rate center" petition would result in LECs being required to provide location portability.

C. Grant of the CTIA petition will not, as some ILECs assert, result in any calls being converted from local to toll. Numerous ILECs assert that, if the CTIA petition is granted, "customers calling the ported number may find that the call is suddenly subject to toll charges, which were not imposed prior to porting."³⁸ This allegation is factually inaccurate.

As the Commission has noted, carriers rate calls as local or toll "by comparing the originating and terminating NPA-NXX codes."³⁹ Thus, if a wireless carrier obtains a thousands block or NXX code that is "rated" in a particular ILEC rate center, calls by ILEC customers in this rate center to wireless customers with numbers rated in this same rate center will be rated as local and not toll – because the originating and terminating NPA-NXX codes are rated in the same rate center.

The very same situation applies to a number that is ported. If a call to a ILEC customer is a local call today, that call will necessarily remain a local call after the number is ported because

³⁷ *First LNP Order*, 11 FCC Rcd at 8447 ¶ 181, *quoting* 47 U.S.C. § 153(30)(definition of number portability).

³⁸ OPASTCO Comments at 4. *See also* RIITA Comments at 2; SBC Comments at 3; South Dakota Telecommunications Association ("SDTA") Ex Parte at 2 (June 17, 2003).

³⁹ *Virginia Arbitration Order*, 17 FCC Rcd 27039 ¶ 301 (2002).

the telephone number (including the NPA-NXX code) is identical both before and after the number is ported.⁴⁰

Nor is there any basis to the ILEC suggestion that calls dialed with seven digits will require the entry of extra digits after the number is ported (whether 1+seven digits or 1+10 digits).⁴¹ LECs are required to provide “dialing parity to competing providers of telephone exchange service,” which precludes LECs from requiring their customers to dial extra digits (*e.g.*, an access code) to reach a competing carrier’s customers.⁴² This statutory requirement ensures that calls that can be originated with seven digits before a number is ported will be dialed with only seven digits after the number is ported.⁴³

D. Grant of the CTIA petition will not, as some ILECs assert, result in “one way porting.” A consultant for numerous rural ILECs asserts repeatedly that grant of the CTIA petition will result in “de facto one-way portability from wireline to wireless”:

Wireline carriers in other, smaller rate centers face one-way portability that allows customers to leave them while retaining their number, but does not allow them to obtain customers from the wireless carriers in a similar manner.⁴⁴

This assertion is factually inaccurate. If a rural ILEC customer ports her number to a wireless carrier, the rural ILEC can “win back” the customer and have the customer port the same number back to the rural ILEC. Similarly, if the wireless carrier has customers with a telephone number (NXX code or thousands block) rated in the rural ILEC’s rate center, the mobile

⁴⁰ Accordingly, there is no basis to USTA’s unsupported fear that ILECs “*could* lose significant intrastate toll revenues” if CTIA’s petition is granted. USTA Comments at 8 (emphasis added).

⁴¹ See, *e.g.*, RIITA Comments at 2.

⁴² 47 U.S.C. § 251(b)(3). See also *id.* at § 153(15).

⁴³ See Western Wireless Comments at 5.

⁴⁴ GVNW Consulting Comments at 3, 8 and 14. See also SDTA Ex Parte at 2 (June 17, 2003).

customer can port his mobile number to the rural ILEC – in the “same manner” that an ILEC customer can port his number to a wireless carriers.

Of course, there may be instances where a wireless carrier does not currently have customers with numbers rated in a given rate center. This situation, however, has nothing to do with the technical feasibility of ILEC customers porting their numbers to a wireless carrier. In addition, this situation raises no discrimination or parity issue because if an ILEC wants to serve the wireless carrier’s customers all it has to do is provide service in the rate centers where the wireless customers’ numbers are rated. The fact that a carrier chooses not to provide its services throughout the area of a competing carrier does not present an issue of discrimination or parity. There is, in short, no discrimination of any kind.⁴⁵

E. Grant of the CTIA petition will not, as some ILECs assert, result in any increased costs to rural ILECs. Some rural ILECs complain that grant of the CTIA petition will result in their incurring “further expenses to route traffic to a carrier that had requested LNP.”⁴⁶ This argument is baseless.

Sprint agrees that LNP requirements impose “significant costs” on carriers,⁴⁷ but these costs are imposed by the LNP requirement, and not by grant of the CTIA petition. Specifically, certain rural ILECs complain about the cost of transporting a local call from their originating

⁴⁵ Moreover, even if a rural ILEC could show discrimination (and it cannot), it would be a discrimination that Congress has sanctioned. After all, it was Congress that decided that LECs, but not CMRS providers, must provide LNP. Thus, Congress envisioned that LEC-CMRS portability would involve one-way porting only.

⁴⁶ OPASTCO Comments at 2-3. The FCC cannot grant, without conducting a new rulemaking proceeding, GVNW’s additional request that the costs of “transport should be borne by the carrier that is receiving the ported number.” GVNW Consulting Comments at 14. Current FCC rules require the originating carrier to bear the cost of transport to the terminating carrier’s switch serving the called party, and these specifically prohibit LECs from charging CMRS carriers for such delivery, and CMRS carriers need establish only one point of interface in a LATA. See Part II.B above.

⁴⁷ See OPASTCO Comments at 5.

switch to a mobile switching center (“MSC”) serving the called mobile customer. However, current FCC rules require the originating carrier to bear the cost of transport to the wireless terminating carrier’s switch serving the called party.⁴⁸ FCC rules also specifically prohibit LECs from charging CMRS carriers for such delivery, and authorize CMRS carriers to establish only one point of interface in a LATA.⁴⁹ Thus, rural ILECs face the “transport” costs about which they complain whether or not a number is ported.

F. “Virtual NXXs” have nothing to do with the CTIA Petition. Some rural ILECs complain that grant of the CTIA petition will somehow result in the Commission approving “virtual NXXs.”⁵⁰ This assertion is factually inaccurate because “virtual NXXs” have nothing to do with the CTIA petition.

The Commission has defined virtual NXX codes as “central office codes that correspond with a particular geographic area that are assigned to a customer located in a different geographic area.”⁵¹ Wireless carriers do not use virtual NXX codes because they assign their customer telephone numbers only in geographic areas where they provide service. Even if wireless carriers did use “virtual NXXs,” the Commission has already ruled that such code arrangements are lawful under the current Commission rules.⁵²

More fundamentally, however, the subject of “virtual NXXs” has nothing to do with LNP generally or CTIA’s LNP petition in particular. The Act requires ILECs to permit their custom-

⁴⁸ See II.B above.

⁴⁹ See *ibid.* at § 51.703(b).

⁵⁰ MITG Comments at 4-6.

⁵¹ *Unified Intercarrier Compensation Regime*, 164 FCC Rcd 9610, 9652 n.188 (2001).

⁵² *Virginia Arbitration Order*, 17 FCC Rcd 27039 ¶¶ 286-303 (2002).

ers to port their numbers to other carriers providing service “at the same location.”⁵³ So long as a wireless carrier provides its services “at the same location” as the ILEC customer wanting to port, the ILEC is obligated by the LNP statute to permit its customer to port his number to that wireless carrier.

G. Rural ILECs are wrong in suggesting that CMRS carriers cannot establish different rating and routing points. One rural ILEC association asserts that a “CMRS carrier is not *entitled* to the establishment of a rate point within an ILEC’s network and a route point outside of the network.”⁵⁴ It is understandable why this association fails to recite any legal authority in support of this assertion, because the assertion is patently false.

CMRS carriers have used different rating and routing points since the inception of the cellular industry 20 years ago. Industry guidelines expressly permit this arrangement, providing that “[e]ach switching center, each rate center and each POI may have unique V&H coordinates.”⁵⁵ Different routing and rating points for the same thousands block/NXX code is an inevitable consequence of indirect interconnection and the Commission’s “one POI per LATA” rule.

IV. A NEW CUSTOMER SURVEY CONFIRMS THE NEED FOR A BRIEF “REAL LIFE” TESTING PERIOD

In its comments, Sprint urged the Commission to postpone the national LNP start date by seven weeks (from November 24, 2003 to January 12, 2004) so carriers would have some 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 over 180

⁵³ 47 U.S.C. §§ 153(30), 251(b)(2).

⁵⁴ MITG Comments at 8 (emphasis in original).

million landline customers.⁵⁶ Sprint noted that the Commission directed LECs to conduct a field test of LNP before making the capability more widely available because it wanted to “ensur[e] the integrity of the public switched network as number portability is deployed nationwide” and believed “a field test will help to identify technical problems in advance of widespread deployment, thereby safeguarding the network.”⁵⁷ Sprint further noted that the Australian regulator had determined that numerous problems with LNP in that country could have been avoided had field tests been conducted before LNP activation.⁵⁸ Sprint submits that the results of a customer survey released last week further confirm the need to conduct field tests in selected smaller markets before LNP is activated nationwide.

On June 18, 2003, The Management Network Group released “key findings from the first wireless communications user study gauging the impact of Wireless Number Portability (WNP) on wireless and wireless service providers.”⁵⁹ Key findings of this study included:

- “Six percent of wireless users (which equates to 8.7 million of the current 146 million U.S. users) said they would switch wireless providers the day after wireless number portability was available;” and
- “[M]ore than 16.7 percent of survey respondents said they would definitely or probably switch their current home phone number to a wireless phone if they could take their home phone number with them. That represents 9.1 million home-telephone lines that could potentially shift to wireless once wireless number portability is available (scheduled for late November 2003).”⁶⁰ The press release

⁵⁵ Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, at § 6.2.2 (Jan. 7, 2002).

⁵⁶ See Sprint Comments at 20-23.

⁵⁷ *First LNP Order*, 11 FCC Rcd 8352, 8394 ¶ 79 (1996).

⁵⁸ See Sprint Comments at 21-22.

⁵⁹ The Management Network Group Press Release, *TMNG Study Reveals 39 Million Wireless Phone Users Are Ready to Switch Providers* (June 18, 2003), available at www.tmng.com/News/Releases/2003-06-28.htm (“TMNG Press Release”). See also TELEPHONY ONLINE, *Study: Number Portability Will Trigger Huge Migration* (June 19, 2002), available at www.telephonyonline.com.

⁶⁰ TMNG Press Release (emphasis added). This study was conducted in May 2003, and the results were based on more than 2,700 valid user responses resulting in a 95 percent level of confidence with a +/- 3 percent margin of error.

does not indicate how many landline customers will port their numbers to wireless carriers immediately following the availability of wireless LNP.

As a point of comparison, in Australia, only 90,000 mobile customers switched serving carriers in the first two months following LNP activation.⁶¹

Churn of this magnitude in such a short period of time – nine million customers in a single day – could overwhelm carrier resources. Sprint submits that this customer survey confirms the critical need to conduct field tests before LNP activation. Sprint further submits this data confirms the critical need for the Commission to address the implementation issues that CTIA has raised in its petition.

V. SPRINT HAS PROPOSED A REASONABLE COMPROMISE REGARDING PORTING INTERVALS

There is sharp division within the industry regarding porting intervals. ILECs oppose any change in their four-day procedure on the ground that their customers are accustomed to this interval and that it could be costly for them to modify their systems and expedite the process.⁶² CMRS carriers, in contrast, contend that customers deserve better than a four-day interval.⁶³ As a company providing both landline and wireless services, Sprint understands both sides of this debate.

Sprint submits that two points should not be challenged by anyone. First, some type of Commission imposed or sanctioned maximum porting interval is needed to encompass all porting scenarios – whether LEC-LEC, LEC-CMRS or CMRS-CMRS. As Sprint explained in its

⁶¹ See Sprint Comments at 22.

⁶² See, e.g., BellSouth Comments at 3-9; Qwest Comments at 1-10; SBC Comments at 4-9; Verizon Opposition at 2-10.

⁶³ See, e.g., Virgin Mobile Comments at 4; Nextel Comments at 5-6; T-Mobile Comments at 6-9.

opening comments, the old carrier does not have an economic incentive to port-out numbers promptly, and the new carrier cannot advise its customer when the port will be successfully completed without some assurance from the old carrier that the port will be completed in a reasonable time and by a date/time certain.⁶⁴ Customers will not be happy if the porting process takes too long or if porting deadlines are missed. Hence, both carriers and customers will benefit by having predictable time frames in which to expect port request completion. Indeed, LECs have already agreed to this concept by adopting wireline guidelines that were later codified by the Commission.

Second, Sprint believes that most wireless carriers would acknowledge that it is not possible, as a practical matter, for ILECs to modify before November (that is, in five months) their operational support systems in order to port out numbers more rapidly. Besides, as Qwest correctly observes, it would “not be prudent to change those [ILEC] porting intervals contemporaneously with the initiation of WLNP.”⁶⁵ Implementing LEC-to-CMRS ports will be challenging, at least initially, and complicating the process by requiring ILECs to change concurrently their operational systems simply invites additional customer-affecting problems. Sprint agrees with Qwest that the LEC-to-CMRS porting process should be stabilized before ILECs change their porting interval systems.

Sprint proposed in its opening comments a compromise position on porting intervals. Under this proposal, at wireless LNP activation, existing LEC intervals would be used for LEC-LEC and LEC-CMRS ports, while CMRS-CMRS ports would be completed on a faster sched-

⁶⁴ See Sprint Comments at 5-9.

⁶⁵ Qwest Comments at 9.

ule.⁶⁶ At some later date (*e.g.*, 18 months later), faster maximum porting intervals would be used for LEC-LEC and LEC-CMRS ports.⁶⁷ These accelerated intervals would be imposed only after NANC groups determined how they could be achieved and only after cost recovery for needed systems changes is addressed.⁶⁸

Sprint wishes to make one clarification and one change to its original proposal. The clarification is that the intervals proposed in Sprint's comments assume that there are no verification problems with the port request. Thus, the intervals that Sprint proposed would begin once the new carrier receives from the old carrier a "Firm Order Confirmation."

The change to the original proposal involves the interval for CMRS-to-CMRS ports. Smaller CMRS carriers have expressed concern that they may not have the capability and resources to complete ports without 2.5 hours.⁶⁹ These concerns are legitimate, and Sprint agrees that the maximum interval for CMRS-to-CMRS ports should be one business day, as the smaller carriers have proposed.⁷⁰ The intervals Sprint recommends are "default" intervals only, and two wireless carriers would always remain free to port numbers between themselves at a faster pace (*e.g.*, 2.5 hours).

⁶⁶ See Sprint Comments at 9-10.

⁶⁷ See *id.* at 10-11.

⁶⁸ See *id.* at 11. While Sprint agrees that LEC porting intervals should not be changed at this time, it disagrees with the argument that the FCC is legally precluded from shortening LEC porting intervals at this time under the Administrative Procedures Act ("APA"). See Qwest Comments at 3-4; Verizon Opposition at 3-5. APA requirements are met here because CTIA's petition was filed in an ongoing rulemaking proceeding, and the FCC has published notice of the issues in the Federal Register. See 68 Fed. Reg. 34547 (June 10, 2003). Verizon's reliance on *Sprint v. FCC*, 315 F.3d 369 (D.C. Cir. 2003) is unavailing because, as the appellate court repeatedly noted, the FCC did not in that case publish any notice in the Federal Register. See *id.* at 372, 374 and 376.

⁶⁹ See, *e.g.*, Rural Telecommunications Group ("RTG") Comments at 12.

⁷⁰ See, *e.g.*, Rural Cellular Association ("RCA") Comments at 5 ("[W]ireless-to-wireless porting [should] be accomplished within one business day.").

In conclusion, Sprint submits that the Commission will be compelled to adopt maximum porting intervals and that, as a practical matter, the only question the Commission faces will be when it adopts rules. Sprint fears there will be thousands of customer delayed port complaints once LEC-to-CMRS porting becomes possible, and it believe these complaints invariably will require the Commission to adopt maximum intervals (as what occurred in Australia).⁷¹ Sprint submits that the better course would be for the Commission to adopt such intervals now, because such rules should minimize considerably the number of customer complaints and increase the opportunity that customers will enjoy a satisfying number porting experience.

**VI. THE COMMISSION, NOT STATES, SHOULD INTERPRET, APPLY AND ENFORCE
FCC WIRELESS LNP RULES**

Industry cannot agree over the procedures that should be utilized in implementing wireless LNP, which encompasses both CMRS-CMRS and LEC-CMRS ports. Wireless carriers, some ILECs and state commissions contend that interconnection agreements are inappropriate and should not be required.⁷² In contrast, most ILECs generally take the view that state-approved Section 252 agreements are appropriate.⁷³ Indeed, some ILECs take the position they will not permit their customers to port to wireless carriers without such an agreement, with OPASTCO announcing that its members have decided unilaterally that BFRs received by its members are “invalid because the requesting carriers do not have any interconnection agree-

⁷¹ See Sprint Comments at 8.

⁷² See, e.g., CPUC Comments at 6-7; Verizon Opposition at 10; AT&T Wireless comments at 6-8; RCA Comments at 5-6; Verizon Wireless Comments at 5; Virgin Mobile Comments at 4-5; Western Wireless Comments at 2-3.

⁷³ See, e.g., BellSouth Comments at 9-11; GVNW Comments at 11-13; MITG Comments at 7-9; SDTA Ex Parte at 2 (June 17, 2003).SBC Comments at 9-13; USTA Comments at 4-5.

ments.”⁷⁴ OPASTCO takes a position that would completely exempt its members from providing LNP to wireless carriers under any circumstances.⁷⁵

Sprint submits that the Commission’s objective should be to eliminate the need for any type of intercarrier porting agreement, especially for carriers that interconnect indirectly and operate without any interconnection contract.⁷⁶ As Sprint has explained, it would be an administrative nightmare if every sales employee must know the existence of each porting agreement so they can tell prospective customers whether porting is, or is not available.⁷⁷ Customers certainly will not understand that their numbers are not portable because two carriers have not signed a piece of paper and that it may be months before such a paper is executed (assuming carriers can cost justify the negotiation of an intercarrier porting agreement).⁷⁸ “Clearly, customers would benefit if ports could be implemented without the need for any intercarrier document, such as an SLA.”⁷⁹ Sprint has identified the few steps that the Commission would need to take to obviate the need for any intercarrier agreement.⁸⁰

There is, however, no basis to the argument that ILECs can prohibit their customers from porting their numbers to a wireless carrier until a state either approves a Section 252 agreement

⁷⁴ OPASTCO Comments at 2.

⁷⁵ Although OPASTCO is taking the position that its members will not provide LNP without a Section 252 agreement, it further takes the position that its members are legally “exempt” from negotiating such agreements and are even exempt from negotiating with wireless carriers in good faith. *See, e.g.*, OPASTCO Comments, CC Docket No. 01-92, n.9 (Aug. 21, 2001); OPASTCO Reply Comments, CC Docket No. 01-92, at (Nov. 5, 2001). *Compare First LNP Reconsideration Order*, 12 FCC Rcd 7236, 7303 n.392 (1997)(“Section 251(f)(1) does exempt rural carriers from the duty to negotiate in good faith over the terms and conditions of agreements to fulfill the duties of Section 251(b), including number portability.”).

⁷⁶ *See* Sprint Comments at 13-19.

⁷⁷ *See id.* at 14.

⁷⁸ *See ibid.*

⁷⁹ *Id.* at 18.

or arbitrates and LNP dispute. AT&T Wireless notes correctly that as “a legal matter, all LECs have the obligation *today* to provide LNP ‘to all telecommunications carriers, including commercial mobile radio services (CMRS) providers.’”⁸¹ The Commission adopted its wireless LNP rule under Section 332 of the Communications Act.⁸² In amending this statute, Congress specifically directed the 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.”⁸³

This “Federal regulatory framework’ will not be established if the FCC LNP rule is interpreted, applied and enforced by 50 different state commissions. This Commission has the authority – and the obligation – to interpret, apply and enforce its own rules.⁸⁴ Indeed, the one state commission addressing this point “agrees . . . that the Commission is free to establish procedures governing the terms under which LECs engage in number portability.”⁸⁵

In summary, the Commission should confirm that LECs may not condition LEC-to-CMRS porting based on a state approved Section 252 agreement. Sprint further urges the Com-

⁸⁰ *See id.* at 17-19.

⁸¹ AT&T Wireless Comments at 3 (emphasis added), *quoting First LNP Order*, 11 FCC Rcd 8352, 8355 ¶ 3 (1996).

⁸² *See id.* at ¶ 4.

⁸³ 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).

⁸⁴ *See, e.g., Qwest v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

⁸⁵ CPUC Comments at 7.

mission to adopt the minimal rules necessary so written agreements are not even needed before customers can begin porting their numbers.⁸⁶

VII. THERE IS NO BASIS TO GRANT SMALLER WIRELESS CARRIERS A “BLANKET EXEMPTION” FROM THE LNP REQUIREMENT

One smaller cellular carrier asks that the Commission “permanently suspend its number portability requirements as to wireless carriers to the extent that they have operations that are outside of the largest 100 MSAs.”⁸⁷ There is no evidence in the record that would warrant grant such sweeping and permanent relief.

Currently, all wireless carriers are required to support LNP upon receipt of a bona fide request (“BFR”), just as all LECs must provide LNP upon receipt of a BFR. Wireless carriers in the top 100 MSAs must be prepared to offer LNP on November 24, 2003 (assuming they received a BFR by February 24, 2003).⁸⁸ In contrast, wireless carriers outside the top 100 MSAs need not support LNP until May 24, 2004 (assuming they receive a BFR by November 24, 2003).⁸⁹ Just last week, the Commission “reemphasized” that wireless LNP is “an important tool for enhancing competition, promoting numbering resource optimization, and giving consumers

⁸⁶ Of course, two carriers could always agree voluntarily to different terms, but the Commission’s rules would govern until an agreement is reached.

⁸⁷ First Cellular of Southern Illinois Comments at 1-2.

⁸⁸ See *Fourth NRO Order*, CC Docket No. 99-200, FCC 03-126, at n.26 (June 18, 2003)(“*Fourth NRO Order*”). It is Sprint’s understanding that all covered CMRS carriers within the top 100 MSAs timely received BFRs. See, e.g., Verizon Wireless Comments at 6.

⁸⁹ See *Verizon Wireless Forbearance Order*, 17 FCC Rcd 14972, 14986 ¶ 31 (2002)(“Outside the largest 100 MSAs, CMRS carriers that receive a request to allow end users to port their telephone numbers must be capable of doing so within six months after receiving the request or within six months after November 24, 2003, whichever is later.”); *First LNP Reconsideration Order*, 12 FCC Rcd 7236, 7314 ¶ 137 (1997). The FCC recently affirmed the obligation of wireless carriers in smaller markets to support LNP upon receipt of a BFR. See *Fourth NRO Order* at ¶ 18 (such carriers can defer pooling until they receive a LNP BFR).

greater choices,” and that “the current [BFR] requirements are sufficient to meet these important statutory goals.”⁹⁰

There is no basis in the record to support issuance to all wireless carriers located outside the top 100 MSAs a blanket extension of their LNP obligations – much less a permanent exemption. If any wireless carrier believes it faces a unique situation and undue hardship by the LNP rule, that carrier should submit a waiver petition pursuant to the Commission’s rule waiver procedures.⁹¹

VIII. IT IS TIME FOR THE COMMISSION TO ADDRESS THE SPRINT ROUTING/RATING PETITION

Over a year ago, on May 9, 2002, Sprint petitioned the Commission to resolve an ongoing and widespread controversy involving the rating and routing of landline calls to wireless carriers.⁹² The comment period closed over 10 months ago, and the Sprint petition remains pending. CTIA in its petition asks the Commission to promptly resolve the Sprint petition because the issues Sprint raised “directly affects the availability of LNP to consumers.”⁹³

BellSouth, while agreeing that the Sprint petition “must be resolved,” states that the Sprint rating/routing petition and the CTIA LNP petition involve “distinct and separate issues.”⁹⁴ Technically, BellSouth is correct in that the Sprint and CTIA petitions involve separate issues, as reflected by the fact that the two petitions are pending in different rulemaking proceedings. But as the discussion in Parts II and III above confirms, many of the LNP issues that ILEC are rais-

⁹⁰ *Fourth NRO Order* at ¶ 9.

⁹¹ *See* 47 C.F.R. § 1.3.

⁹² *See Public Notice, Comment Sought on Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs*, CC Docket No. 01-92, DA 02-1740 (July 18, 2002).

⁹³ CTIA LNP Petition at 26.

⁹⁴ BellSouth Comments at 11-12. *See also* CPUC Comments at 7; Verizon Opposition at 11-12.

ing are related to the rating and routing issues that Sprint raised in its petition. Sprint therefore encourages the Commission to act on its petition expeditiously.

IX. CONCLUSION

For the foregoing reasons, Sprint Corporation respectfully requests that the Commission promptly grant the two CTIA LNP petitions currently pending and take further actions consistent with the positions Sprint has taken in this proceeding.

Respectfully submitted,

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