

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC.**

In the Matter of)
)
Telephone Number Portability)
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_____)

CC Docket No. 95-116

**REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC. ON
MAY 13 2003 CTIA PETITION FOR DECLARATORY RULING**

AT&T Wireless Services, Inc. (“AWS”) hereby submits these reply comments in support of the Petition for Declaratory Ruling of the Cellular Telecommunications and Internet Association (“CTIA”), filed May 13, 2003 (“CTIA petition”).¹

I. INTRODUCTION AND SUMMARY

Although the parties may disagree on the proper resolution of the issues raised by this petition and the first CTIA petition, and by other parties in this docket,² there is nearly unanimous agreement that there are a multitude of critical wireless porting issues that the Commission must address and resolve. These issues affect not only wireline-wireless but also wireless-wireless porting. Thus, the manner in which the Commission resolves these issues will fundamentally affect most (if not all) ports involving wireless service. Specifically, the Commission’s failure to address these issues *prior* to the wireless local number portability

¹ Public Notice, *Comment Sought on CTIA Petition for Declaratory Ruling on Local Number Portability Implementation Issues*, DA 03-1753, CC Docket No. 95-116 (comments due June 13, 2003; replies due June 24, 2003).

² See *Petition for Declaratory Ruling of the Cellular Telecommunications and Internet Association*, CC Docket No. 95-116 (Jan. 23, 2003) (“first CTIA petition” or “CTIA Rate Center petition”). See also Cingular comments and Verizon Wireless comments (concerning ability to deny a port due to unpaid balances).

(“LNP”) implementation date³ will likely result in considerable customer and industry confusion and frustration.

Moreover, as a legal matter and for the sake of clarity and parity, the Commission should adopt wireless LNP guidelines and standards (as it has already done for wireline LNP); develop a full record on all of these issues; and resolve them *within a formal rulemaking before the commencement of wireless LNP*.⁴ If, however, the Commission decides to permit wireless LNP to proceed before resolution of these issues, it must allow porting to proceed for *all* types of telephone numbers in *all* geographic locations within a carrier’s service area. In particular, given the Commission’s repeated emphasis on inter-modal competition as one of the justifications for requiring wireless LNP, the Commission should reject any assertions of wireline carriers that it delay wireline to wireless porting while permitting wireless porting to proceed.

II. THE FCC NEEDS TO RESOLVE THESE ISSUES IN A FORMAL RULEMAKING

As noted by parties, the list of issues that require resolution prior to the implementation of wireless LNP is long and varied. Among the unresolved issues that parties have raised and that the Commission should address through a rulemaking are:

- the rate center issue
- appropriate wireless-wireless and wireline-wireless porting intervals
- the form of LNP agreement
- rating/routing and interconnection-related issues raised by the ILECs and rural wireless carriers (“local presence” in a rate center issue)

³ Such resolution would also need to occur in sufficient time to permit implementation of the resolutions adopted by the Commission. As noted in AWS’ and Cingular’s opening comments, September 1, 2003 may not be soon enough. AWS comments at 2; Cingular comments at 2.

⁴ Cingular comments at 14-17.

- porting of Type 1 numbers; and
- the ability of a carrier to deny port-outs on unpaid accounts.⁵

Although many of these issues were originally framed as affecting wireline-wireless (“inter-modal”) porting, it is clear from the comments filed in this proceeding that many of these issues are also fundamental to intra-modal porting. As a result, these issues should be decided before *any* type of wireless LNP can proceed. Moreover, AWS supports Cingular’s comments that the Commission needs to resolve formally these outstanding issues in a rulemaking in order to ensure enforceability of the basic elements of porting by and to wireless carriers.⁶ AWS has provided extensive comments on most of these issues in its opening comments as well as on the first CTIA petition, and will not repeat its comments here. However, AWS does offer comments on some new issues and/or arguments raised in the opening comments.⁷

Wireless LNP Processes. As a preliminary matter, many parties highlight that although the Commission formally adopted wireline LNP procedures and guidelines after a notice and comment procedure, the Commission has failed to act similarly in the wireless context.⁸ The adoption of wireless-wireless and wireline-wireless LNP methods and procedures would ensure that carriers act in a uniform and consistent manner in porting, and would further resolve one of

⁵ The Commission addressed the outstanding issues of the definition of 100 MSAs and whether specific requests for LNP are required in its recent *Fourth NRO Order*. See *Numbering Resource Optimization, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 03-126, CC Docket Nos. 99-200, 96-98, 95-116, Fourth Report and Order in CC Docket No. 99-200 and CC Docket No. 95-116, and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 99-200 (2003) (“Fourth NRO Order”).

⁶ Cingular comments at 17-19. Given that the wireless and wireline industries have clearly failed to resolve these issues on their own and have requested the Commission’s assistance on several occasions, the Commission must step in to provide guidance.

⁷ AWS has emphasized previously in this proceeding and in many other contexts why these issues require resolution. See, e.g., AWS comments and reply comments on CTIA Rate Center Petition (filed Feb. 26, 2003 and Mar. 13, 2003).

⁸ See, e.g., Alltel comments at 2; Cingular comments at 15-19; T-Mobile comments at 5; Verizon Wireless comments at 2-3.

the primary issues that CTIA highlights, involving the appropriate porting interval for wireline-wireless and wireless-wireless ports.⁹ It is not only critical that the Commission provide guidance to ensure all carriers will comply, but it is only fair and reasonable that the wireless industry have the same level of guidance and rules for porting as does the wireline industry.

Cingular points out that the Commission's failure to adopt formal wireless LNP methods and procedures is in violation of the Administrative Procedure Act ("APA") and the Federal Advisory Committee Act ("FACA"), as well as the Commission's own rules providing that it will seek comment and act on the North American Number Council ("NANC") recommendations on wireless LNP procedures and issues.¹⁰ Further, consistent with the Commission's¹¹ direction, the NANC presented wireless LNP procedure recommendations to the Commission in a timely manner after the release of the *Second Report & Order* and also identified the issues highlighted in the CTIA petitions; however, *four years later* the Commission has still failed to act (or even to place the report on public notice and seek comment on the NANC reports).¹¹

The importance of Commission adopted wireless LNP methods and procedures should not be underestimated. In fact, the Commission recognized in its early LNP orders that among other things, "CMRS providers will need clear guidelines as to how to query the Service

⁹ Related to the porting interval issue is NENA's proposal that wireline carriers disconnect service more quickly and that wireless carriers activate service close to activation or completion of the port, to reduce the potential for "mixed service" 911 callback issues. See NENA comments at 4. NENA's proposal would create more complexity in the porting process and have considerable impact on existing wireless systems that are not configured to activate service in such a manner, which could ultimately result in porting delays. Accordingly, AWS opposes this proposal.

¹⁰ Cingular comments at 16-19; see 47 C.F.R Section 52.26 (b)(3).

¹¹ See NANC Local Number Portability Administration Working Group First Report on Wireless Wireline Integration (1999) ("NANC First Report"); NANC Local Number Portability Administration Working Group Second Report on Wireless Wireline Integration (1999) ("NANC Second Report"); NANC Local Number Portability Administration Working Group Third Report on Wireless Wireline Integration (2000) ("NANC Third Report"). Although the Commission placed the NANC First Report on public notice for comment, it has not done

Management System databases to determine proper call routing, as well as how to implement wireless number portability.”¹² By failing to act and establish formal methods and procedures for wireless carriers, the industry has no binding and enforceable rules on how to proceed even at the most basic level with regard to inter-carrier communications processes, not to mention the more difficult issues presented by the CTIA petitions.¹³

Moreover, as a matter of regulatory parity, the Commission should establish formal guidelines for wireless LNP *and* address these outstanding issues. The Commission clearly anticipated adopting wireless guidelines because it noted when adopting the LNP operational standards for wireline carriers that it “will probably be necessary to modify and update the current local number portability standards and procedures in order to support wireless number portability.”¹⁴ Further, when referring to NANC the task of recommending LNP methods and procedures for CMRS providers, the Commission urged the NANC “to ensure that CMRS providers are not unfairly disadvantaged by virtue of the fact that wireline number portability is being implemented before number portability for CMRS providers.”¹⁵ Yet, wireless carriers will be disadvantaged if there are established and enforceable rules governing wireline porting but no

so for the NANC Second Report or the NANC Third Report.

¹² See *Matter of Telephone Number Portability*, CC Docket No. 95-116, Second Report and Order (1997) (“LNP Second Report and Order”) at para. 91.

¹³ As the Commission recognized in formally adopting the NANC recommendations on wireline LNP processes, “uniform national standards in this area will promote *efficient and consistent use* of number portability methods and numbering resources on a nationwide basis, ensure the interoperability of networks, and facilitate the ability of carriers to meet number portability implementation deadlines.” LNP Second Rep. and Order at para. 52. (emphasis added) (further finding that “uniform national standards should minimize expenditure of time and resources, maximize use of local number portability resources for all companies, produce timely and cost effective offers of local number portability related products, . . . and improve service quality for carriers providing service in multiple regions.”) In the absence of uniform rules, carriers will need to resolve these issues through inter-carrier negotiations.

¹⁴ *LNP Second Report and Order* at para. 91.

¹⁵ *Id.*

such rules for wireless carriers.¹⁶ Although the Commission may not have intended this result, the lack of Commission guidance on these issues will clearly have this negative effect.¹⁷

Local Presence in Rate Center (Rating/Routing and rate center issues): CTIA originally framed this issue as a request for the Commission to resolve the pending BellSouth/Sprint dispute over disparate rating/routing, which primarily relates to wireline local exchange carriers (“LECs”)’s rating of calls to wireless customers in the LEC’s local rate center.¹⁸ CTIA stated that it was concerned that absent Commission resolution, LECs would take advantage of the lack of clarity on this issue and argue that they do not need to honor wireless carriers’ disparate rating and routing points for numbers.¹⁹

The opening comments demonstrate that CTIA’s fears were well-founded and in fact, may have been understated. A number of commenters (both wireline *and wireless*) are raising new arguments that they should have no obligation to port a number, unless the carriers establish a local presence in the rate center.²⁰ These parties contend that, among other things, in order to port a number from a carrier, wireless carriers need to obtain: (i) a point of presence (“POP”) in

¹⁶ For example, although wireline carriers are subject to rules that may be enforceable in the context of an inter-carrier porting dispute, in the absence of Commission adopted wireless LNP operational guidelines, wireless carriers cannot point to equivalent binding guidelines in a dispute or complaint.

¹⁷ Moreover, Sprint proposes that the Commission require carriers to engage in testing with other carriers upon request, and to extend the LNP implementation date in order to allow for inter-carrier testing in a few smaller markets. Sprint comments at 21. As Sprint notes, in Australia, there were significant problems following LNP implementation due to limited real-life testing. No matter what the FCC decides regarding the CTIA petitions, given the considerable confusion that continues to surround carriers’ porting obligations, AWS supports a period of testing after the holidays because the industry is at its most busy during the months of November and December.

¹⁸ See CTIA petition at 25; See *Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs*, CC Docket No. 01-92 (filed May 9, 2002) (“Sprint petition”).

¹⁹ Specifically, many of these carriers have asserted that disparate rating/routing points of a number result in transport obligations and inadequate compensation; and that wireless LNP will exacerbate these issues. See, e.g. Missouri Independent Telephone Co. Group comments at 5; OPASTCO comments at 4; Rural Telecommunications Group (RTG) comments at 7-8; USTA comments at 7-8.

²⁰ See, e.g., USTA comments at 6-7; RTG comments at 4-8; OPASTCO comments at 2.

the wireline carrier's rate center;²¹ (ii) numbering resources in the rate center;²² and (iii) some form of local interconnection with carriers in the rate center.²³ Some commenters have gone so far as to argue that absent a carrier's point of presence and interconnection agreement with the incumbent, they will not even prepare the network for LNP pursuant to a carrier's request for LNP.²⁴

As AWS and many other parties note, the issues raised by the Sprint petition and pertaining to rating/routing and compensation issues have been pending at the Commission for some time and are not changed or affected by wireless LNP.²⁵ Given the vehemence of the rural carriers' comments in this proceeding, however, it is very likely that these carriers will use these purported "rating/routing" issues to obstruct porting to wireless carriers.²⁶ It is critical therefore that the Commission take action, reject these rural carriers' attempts to subvert existing interconnection practices and wireless LNP, and affirm that (i) the wireless carriers may use disparate rating and routing points; and (ii) wireless carriers do not need to obtain POPs, numbers, or local interconnection within a rate center in order to port a number from that rate center.²⁷ If the Commission does not make these affirmative findings, at a minimum, it must reject any attempts by carriers to restrict or otherwise unlawfully limit porting.

²¹ See, e.g., RTG comments at 4; ; Missouri Independent Telephone Company Group comments at 8; USTA comments at 6-7; USTA ex parte (May 20, 2003).

²² See, e.g., RTG comments at 4-5; Rural Cellular Association comments at 2-3.

²³ See, e.g., RTG comments at 5.

²⁴ See, e.g., OPASTCO comments at 2.

²⁵ See, e.g., AWS comments at 10-11; Verizon comments at 10-11; BellSouth comments at 12.

²⁶ Indeed, rural wireless carriers are making the argument that wireless carriers must have a point of presence in order to port a number from them. See Rural Cellular Association comments at 3-4.

²⁷ See, e.g., AWS comments at 8-11; Cingular comments at 25.

Recovery of Outstanding Balances and Fees Prior to Port Out. Although not raised in the CTIA petitions, some parties have raised other critical issues regarding wireless LNP, such as a carrier's right to recover unpaid balances prior to porting out a number. For example, Verizon Wireless contends that the Commission should find that carriers cannot impose restrictions on the porting out process by requiring customers to pay outstanding balances or early termination fees.²⁸ Although Verizon Wireless claims that the public interest would be served by allowing customers to move between carriers without restriction, Cingular and Nextel correctly point out, restricting a carrier's ability to recover outstanding balances and fees prior to port out would actually harm carriers and customers rather than promote the public interest.²⁹

There are several reasons why preventing carriers from recovering outstanding balances and fees prior to port out would be poor public policy. First, as Cingular argues it may not be within the Commission's jurisdiction to restrict carriers from recovering outstanding balances and fees through contract; especially where there are existing contractual provisions.³⁰ Even if the Commission can impose such a restriction, it would be contrary to the Commission's market-based approach to regulating CMRS providers for the Commission to issue such a restrictive regulation. As Cingular points out, the "Commission has a longstanding policy of leaving the basic terms for mobile telephone service to be set in the competitive marketplace" and "differences in the terms the terms and conditions of such agreements ... are a primary and fundamental means of competition among carriers."³¹ Thus, if Verizon Wireless feels that requiring payment of outstanding balances and fees prior to port-out is bad for customers, instead

²⁸ See Verizon Wireless comments at 3-4.

²⁹ See Cingular comments at 20-25 and Nextel comments at 7-9.

³⁰ See Cingular comments at 22.

³¹ Cingular comments at 20-21.

of asking the Commission to “ensure a level playing field,” it should use the flexibility to its advantage in the marketplace to attract customers who feel that the other carriers’ termination and porting policies are too restrictive.

In addition, restricting a carrier’s ability to recover outstanding balances and fees prior to port out raises equity concerns. A carrier should not be required to assist its soon-to-be-former customer in changing service providers when the customer owes the carrier money.³² Further, allowing customers to port out without pay outstanding balances and fees may limit a carrier’s ability to lower customers’ up-front costs of service by offering phones at reduced prices.³³

III. THE COMMISSION SHOULD NOT PERMIT ANY RESTRICTION OR LIMITATIONS ON WIRELINE-WIRELESS OR OTHER TYPES OF PORTING

As discussed above, the issues raised in this proceeding pertain to how and when wireless carriers may port in and port out numbers. It is thus critical that the Commission resolve these issues within a rulemaking prior to the wireless LNP deadline. If, however, the Commission ignores the well-reasoned arguments supporting resolution of all these issues in a formal rulemaking prior to the implementation of wireless LNP, at a minimum, the Commission should ensure at this time that carriers are not permitted to carve out areas where porting requirements do not apply or are further delayed.

For example, a number of carriers have argued that certain restrictions should be placed on porting or certain numbers should be exempt from porting. The record reflects that these restrictions are unfounded and unreasonable. None of the arguments raised by these parties seeking to limit porting to wireless carriers are based on technical infeasibility, which is the only

³² See also Nextel comments at 8-9 (asserting that LNP will facilitate customers’ changing carriers without paying their bills).

³³ See Cingular comments at 23. In this respect wireless service is different from at least residential wireline service, where the carrier rarely incurs substantial upfront costs to initiate service.

basis under the Act that would excuse LECs from their duty to support LNP.³⁴ For example, as noted above, some ILECs (and rural wireless carriers) have argued that they should only have to port a number to a wireless carrier where the wireless carrier has a point of presence in the same rate center.³⁵ However, existing law permits competitive and CMRS providers to establish only one point of interconnection in a LATA and there is no technical issue with porting a number to a wireless carrier where it does not have a POP in the rate center.³⁶ Placing such a restriction on porting would prevent millions of wireline customers from porting their numbers to wireless carriers.³⁷

Another example of some carriers' attempt to delay or restrict porting of certain types of numbers is BellSouth's assertion that Type 1 numbers may not be ported until the Commission addresses, reviews, and establishes procedures for these numbers.³⁸ Although it would be preferable (as discussed above) that the Commission initiate a comprehensive proceeding to review and resolve all the issues raised here before wireless LNP is implemented, if it declines to do that, the Commission should not allow carriers to pick and choose the types of numbers it will port. While certain carriers, including AWS, have made substantial efforts to eliminate Type 1 numbers, other wireless carriers still have a considerable amount of these types of numbers. Further, restricting the porting of Type 1 numbers would be at odds with the pro-competitive goals of the Act and unfair for wireless carriers with a significant number of customers with Type 1 numbers to "lock them up" and prevent them from porting their numbers to other

³⁴ See Sprint comments at 3.

³⁵ See, e.g., RTG comments at 4, The Independent Alliance comments at 1-3, and Rural Cellular Associations comments at 2-3.

³⁶ See Sprint comments at 2-5. Further, the concerns raised by rural carriers are primarily intercarrier compensation issues and do not raise questions of whether such porting is technically feasible. See Cingular comments at 25-26.

³⁷ See, e.g., Nextel comments at 3-4 and Sprint comments at 3-4.

carriers. Finally, as CTIA notes, the issues pertaining to porting of Type 1 numbers are procedural, and not “technical.”³⁹ There are existing wireline-CLEC procedures for Type 1 ports, and until the Commission resolves these issues, wireline and wireless carriers should rely on these existing procedures for porting Type 1 numbers and not restrict such types of porting.⁴⁰

Finally, perhaps most critically, a number of commenters have urged the Commission to delay porting of wireline numbers to wireless carriers while certain issues are resolved.⁴¹ As a legal matter, wireline carriers already have the obligation to port to wireless carriers and have for seven years.⁴² Further, the prospect of inter-modal competition was one of the Commission’s primary motivations in imposing the LNP obligation on wireless carriers. When the Commission first ordered wireless LNP requirement, it stated “[w]e base this conclusion on our view ... that cellular, broadband PCS, and covered SMR providers will compete directly with one another, and potentially will compete in future with wireline carriers.”⁴³

³⁸ See BellSouth ex parte and BellSouth reply comments on CTIA Rate Center petition.

³⁹ See CTIA petition at 27. Moreover, where the Type 1 numbers are being ported to Type 1 interconnection, no party has raised any technical concerns. In addition, some carriers have argued that porting requirements should not apply to grandfathered numbers. See *Verizon’s Proposal to Prohibit the Porting of Grandfathered Numbers at the Industry Numbering Committee*. Similarly, no one has alleged that it is technically infeasible to port out these numbers. In fact it is unclear whether even if it wished to, the Commission could eliminate this requirement in this docket.

⁴⁰ Cingular suggests that existing wireline-CLEC procedures for Type 1 ports do not include adequate customer validation procedures, but it is unclear why these procedures do not include “customer validation” because the same issue arises in the CLEC Type 1 context. See Cingular comments at 28, n.93.

⁴¹ See Ohio PUC Comments at 3-4. The Ohio PUC seems to suggest that the Commission should move forward with wireless-wireless porting and deal with the wireline-wireless porting issues later. See also BellSouth Comments at 12.

⁴² *Matter of Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking (1996) (“LNP First Report and Order”) at para. 3; see AWS comments at 3.

⁴³ *LNP First Report and Order* at para. 154. The Commission has continued to emphasize the fact that inter-modal porting will lead to increased inter-modal competition. Most recently, the Commission stated that the “implementation of LNP ... would enhance competition between carriers as well as promote competition between wireless and wireline carriers.” *Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligations*, WT Docket No. 01-184, Memorandum Opinion and Order (2002).

There is no rational basis upon which the Commission could decide to move forward with wireless-wireless porting while excluding or delaying wireline-wireless porting. Although wireline carriers have raised concerns regarding porting with wireless carriers, it is clear that wireline-wireless porting problems are no more serious than the concerns that have been raised regarding wireless-wireless porting. If the Commission chooses to go forward with wireless LNP at this time, it should not restrict or delay porting for certain types of porting or certain classes of numbers.

IV. CONCLUSION

Given the continuing silence of the Commission on these critical issues, the industry remains in limbo on how to proceed. It is essential that the Commission act immediately and resolve these matters formally in a rulemaking proceeding. In the event that the Commission permits wireless LNP to proceed before resolving these issues, it should at a minimum, ensure that porting will proceed for all types of telephone numbers in all geographic locations within a carrier's service area.

Respectfully submitted,

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