

July 11, 2003

Mr. John B. Muleta
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: CC Docket No. 95-116: Wireless Local Number Portability Implementation

Dear Mr. Muleta:

We are sending this letter in response to your July 3, 2003, “guidance” on certain LNP implementation issues recently raised by Verizon Wireless and CTIA. Even more importantly, this letter underscores the fact that for six years the Commission has failed to provide any guidance on how wireless number portability actually will be implemented – and now with our backs to the wall, it is consumers who will bear the brunt of this reality.

1. Threshold implementation decisions remain unaddressed

Wireless number portability cannot proceed as required by Section 52.31 of the Commission’s Rules until the FCC resolves the implementation issues CTIA has raised in its two petitions in this docket.

The Commission’s inaction on these critical implementation issues will result in a train wreck for consumers. If the Commission does not promptly resolve the issues CTIA has raised:

- Consumers with every right to expect full 911 capability will discover they fall into a “no man’s land” while they await their number to be ported – a situation that can last for several days;
- Millions of customers, told by the news media they will be able to port their 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.



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We must emphasize again that if LNP is to proceed on schedule, the Commission must clarify the critical unaddressed implementation issues by Labor Day. Instead of a commitment to meet the Labor Day schedule – a date that will have given the Commission more time to address these issues than the Commission will give carriers to implement its decisions – the letter instructs the wireless industry to merely “anticipate” these issues will be addressed “well in advance” of the November 24th implementation deadline. I fear the careful choice of the words “well in advance” is a warning that the Commission probably will not resolve these threshold issues in a manner timely enough to avoid consumer hardship.

Let me be perfectly clear: *consumers will discover a portability nightmare as the direct result of the Commission’s failure to resolve implementation issues in a timely manner. Even Labor Day may be too late to implement LNP on time.* We plead with you to provide the needed guidance no later than Labor Day.

2. Failure to provide full portability with wireline

Your letter states, “we reiterate the Commission’s view that local number portability is necessary to preserve consumer choice and enhance competition among commercial mobile radio service (CMRS) carriers *and between the wireless and wireline industries* [emphasis added].” However, when it comes time to provide guidance on the Commission’s regulations the letter retreats from the Commission’s decision that LNP is “necessary to preserve consumer choice and enhance competition...between the wireless and wireline industries” by describing the threshold issue in wireline-to-wireless porting as a “limited issue” with “limited scope.”

The fact that approximately 90 percent of subscribers will not be able to port their wired number to their wireless phone *because of the Commission’s rules* is NOT a “limited issue.”

How are customer service representatives going to explain to consumers that the portability the Commission claims to be promising is gutted by detailed rules that say that wired-to-wireless will only be available to about one in eight consumers?

We respectfully submit that an issue that will prevent upwards of 90 percent of wired customers from taking advantage of competitive wireless services is NOT a matter of “limited scope.”

3. Failure to provide full portability within wireless

The failure to deal with this so-called “limited issue” extends beyond intermodal porting. You have heard from many small wireless carriers, both individually and through the comments of the Rural Cellular Association and Rural Telecommunications Group, that LNP is not required when the wireless carrier seeking the port lacks a “point of presence” or has no numbering resources in the rate center serving the customer.

Again, let's be clear: there won't even be wireless-to-wireless porting in many instances if the Commission does not address this issue! Absent Commission action, the random uncertainties caused by the rate center issue will leave consumers (and wireless sales associates) unaware as to whether or not a particular port request will be honored by the customer's original carrier since information regarding the rate center associated with a phone number and other carriers' presence in that rate center is not readily available.

Once again, put yourself in the shoes of a customer who signs up for wireless service because the Commission announced they could port their phone number only to discover four business days later that the Commission "wished to emphasize" the limited scope of carriers' porting obligations.

Make no mistake: we continue to believe the Rule to be misguided and unnecessary to promote competition. But it simply isn't right to claim you have done something when, in fact, the Commission's inaction has created an entirely different reality.

4. Limited public safety

While CTIA welcomes your guidance that the Commission's E911 rules do not prohibit a situation where – due to the different wireline and wireless porting intervals – a wireless carrier cannot provide accurate call back capability to the 911 agency, we respectfully submit that your letter does not even reference, let alone attempt to reconcile, your July 3 guidance with the Commission's June 18, 2003, Fourth Report and Order in the *Number Resource Optimization* proceeding (CC Docket Nos. 99-200, 96-98, 95-116) which seemingly is contradictory in requiring wireless carriers to deliver accurate call-back numbers to PSAPs pursuant to section 20.18(d) of the Rules.

In addition, we must express our disappointment that the Commission, having created this problem, leaves it to the carriers to explain to consumers the limited safety capability that will be available to them during their porting process.

5. Wireline porting interval discourages consumers

As you know, the wireless industry has established a two and one-half hour porting standard for the implementation of the Commission's Rules. This contrasts to the wireline carriers' four-business day standard. This means that in those limited instances (approximately one in eight) where the consumer can jump through all the hurdles and port his/her wired number, they will be looking at nearly a week when they cannot receive calls on their wireless phone because of the Commission's failure to require the wireline carriers to have a meaningful porting interval.

Let's face it, four days is a disincentive to port. Four business days (*i.e.*, it could be six days if the request is made on a Friday) is also not necessary, as the wireless industry's standards demonstrate. (Indeed, the wireline carriers originally justified this lengthy interval because they had to physically reconfigure copper wires – which doesn't apply in an intermodal port.) It is abusive and disrespectful of the value of a customer's time for the Commission to walk away from requiring a meaningful porting interval for wireline carriers.

6. Inviting fraud and bad debt

The Commission, in your letter, has taken the amazing step of inviting fraud and abuse in the wireless subscription process. When you ordered that a wireless carrier may not require a consumer to live up to his/her contractual obligation you put the Federal government on the side of marketplace malfeasance.

When Federal Rules tell a consumer that it is not necessary to pay their bills, they are bad Rules.

When Federal Rules force a wireless company to port a subscriber's number even if the customer has received a deeply discounted phone and has failed to abide by their contract, they are bad Rules.

When Federal Rules impose on honest subscribers the cost of making up for the bad debt of those who exploited the Rules, they are bad Rules.

I cannot walk away from my new car lease just because I see a snappier new model at another dealership, why should I be encouraged by Federal Rules to walk away from the commitment I made when I signed a contract for wireless service?

We recognize that you issued this guidance in response to a request that the Commission follow the procedures set forth in section 52.26(b) of its Rules to clarify that the porting-out carrier may not impose any restrictions on releasing a number (other than those necessary to validate the identity of the customer requesting the port). However, your interpretation flaunts that part of your Rules because the Rules specifically assign to the North American Numbering Council the responsibility of submitting any carrier porting dispute to the Chief of the former Common Carrier Bureau "as a recommendation for Commission review" that is required, thereafter, to be placed on public notice.

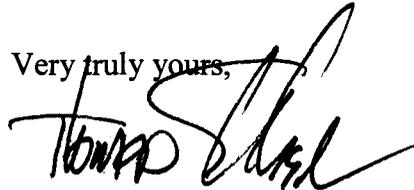
7. "Last in-first out" rather than dealing with a six-year hangover

While we applaud the Commission for moving forward and providing guidance, on delegated authority, regarding the 911 call-back issue and the business rules issue first raised by Verizon Wireless on May 20, 2003, it is difficult to fathom the "last in, first out" informal treatment of these issues when the Commission recognized back in the 1997 LNP *Second Report and Order* (at para. 91) its need to seek comment and formally adopt rules "to modify and update the current local number portability standards and procedures in order to support wireless number portability."

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Labor Day is only 51 days away. We reiterate our plea that you to act on the crucial issues in the CTIA Petition (only some of which are included in this response to you guidance letter) by that date. If the Commission delays, carriers and their customers will be misled, frustrated, angered, and abused by the Commission's failure to resolve critical LNP implementation issues the Commission has left unanswered for the past six years.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas E. Wheeler", written over the typed name below.

Thomas E. Wheeler