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EX PARTE

July 17, 2003

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W., TW-A325
Washington, DC 20554

Re: *In the Matter of Telephone Number Portability,* CC Docket No. 95-116

Dear Ms. Dortch:

On July 15, 2003, Cronan O'Connell representing Qwest Communications International Inc., Kathleen Levitz of BellSouth and Michael Tan of SBC met with Barry Ohlson, Legal Advisor to Commissioner Jonathan Adelstein. The purpose of the meeting was to discuss intermodal telephone number portability issues. In particular, we discussed the fact that local number portability ("LNP") mandated by the FCC is defined as service provider portability, which enables a customer's number to be ported within a wireline rate center.[1] Expansion of LNP beyond the wireline rate center is equivalent to Location Portability. As the FCC's *First Report and Order* clearly articulates, Location Portability has been delegated to the states:

> To avoid the consumer confusion and other disadvantages inherent in requiring location portability, however, we believe state regulatory bodies should determine, consistent with this Order, whether to require carriers to provide location portability. We believe the states should address this issue because we recognize that "rate centers" and local calling areas have been created by individual state commissions, and may vary from state to state. To the extent rate centers and/or local calling areas vary from state to state, the degree of location portability possible without causing consumer confusion may also vary. We therefore expect state regulatory bodies to consider the particular circumstances in their respective locales in determining whether to require carriers to implement location portability.[2]

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[1] *See In the Matter of Telephone Number Portability*, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 8352, 8447-40 ¶¶ 181-87 (the relevant pages are appended hereto).

[2] *Id.* at 8449 ¶ 186.

Therefore, even if it chooses to proceed with wireless LNP on November 24, 2003, the FCC should defer intermodal LNP implementation until such time as the FCC has initiated a *Notice of Proposed Rulemaking* to weigh: 1) the costs of implementation by local exchange carriers ("LECs"); 2) the implications to the consumer; and, 3) the need for state commission review of the cost implications of expanding LNP beyond the wireline rate center from both a consumer and LEC standpoint.[3] Alternatively, the FCC should affirm that intermodal LNP is defined as service provider portability. Any other decision to expand the LNP scope beyond the wireline rate center would be contrary to the current FCC mandate, State Commission review, NANC recommendation and industry practice.

Finally, regarding porting intervals between wireline and wireless providers, current FCC rules clearly state that LNP administration shall comply with the recommendations of the NANC's Local Number Portability Administration ("LNPA") Selection Working Group, dated April 25, 1997 and its appendices. *See* 47 C.F.R. § 52.26(a). In particular, the "LNPA - Technical & Operational Requirements Task Force Report," dated April 25, 1997, appended hereto, accepted the incumbent LECs' proposal of three days following Firm Order Confirmation due date for completion of number porting requests (*see* Pages A-1&2). Any interval contrary to the current rules must be promulgated through a proper rulemaking with notice and comment as contemplated by the Administrative Procedure Act and fully taking into consideration the costs of the changes required to all LECs' operating support systems.[4] This is not to say that wireless providers cannot implement a 2.5 hour window between themselves, but if wireless LNP occurs, when a port is submitted between two LECs or from a LEC to a CMRS provider, the approved 4-day interval is and should remain the standard.[5]

In accordance with FCC Rule 47 C.F.R. § 1.49(f), this *ex parte* letter is being filed electronically for inclusion in the public record of the above-referenced dockets pursuant to FCC Rule 47 C.F.R. § 1.1206(b)(2).

Sincerely,
/s/ Cronan O'Connell

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[3] *See* Reply Comments of the Association for Local Telecommunications Services ("ALTS"), CC Docket No. 95-116, filed June 24, 2003 in response to the Cellular Telecommunications & Internet Association's ("CTIA") May 13, 2003, Petition for Declaratory Ruling ("PFDR"). ALTS urges the FCC not to make a hasty decision without understanding the implications to the LEC billing systems. Rather, the FCC should address these issues through a rulemaking proceeding. *Id.* at 1, 3-4.

[4] *Id.* at 2-3. which supports the current four-day interval between LECs.

[5] *See* Comments of Qwest Corporation, CC Docket No. 95-116, filed June 13, 2003, in response to CTIA's PFDR. In its Comments, Qwest stated that its porting intervals for most simple ports are within three days rather than the four-day process as a result of deliberate system enhancements and service delivery modifications. *Id.* at 5-6.

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Lisa Zaina (via e-mail at Lisa.Zaina@fcc.gov with attachments)
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Attachments

TD 391E

FCC 96-286

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	RM 8535
	)	

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FIRST REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: June 27, 1996 Released: July 2, 1996

Comment Date: August 16, 1996
Reply Comment Date: September 16, 1996

By the Commission:

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I. INTRODUCTION

1. We initiated this proceeding on July 13, 1995, when we adopted a Notice of Proposed Rulemaking seeking comment on a wide variety of policy and technical issues related to telephone number portability.[1] Since our adoption of the Notice, the Telecommunications Act of 1996 became law.[2] Section 251, added by the 1996 Act, requires all local exchange carriers (LECs), both incumbents and new entrants, to offer number portability in accordance with requirements prescribed by the Commission.[3] On March 14, 1996, the Common Carrier Bureau released a Public Notice seeking comment on how the passage of the 1996 Act may have affected the issues raised in the Notice.[4]

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[1] Telephone Number Portability, CC Docket No. 95-116, 10 FCC Rcd 12350 (1995) (Notice). A list of parties filing comments and reply comments in response to the Notice is attached below as Appendix A.

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

[3] 47 U.S.C. § 251(b)(2).

[4] Further Comments: Telephone Number Portability, Public Notice, CC Docket No. 95-116, DA 96-358, 61 Fed. Reg. 11,174 (1996) (Public Notice). A list of parties filing comments and reply comments in response to the Public Notice is included in Appendix A, below.

confusion, and that the 1996 Act does not prohibit provision of location portability within that limitation.[532]

180. OPASTCO, SBC Communications, and Nextel argue that location portability should only be provided through use of non-geographic numbers, such as 500 services.[533] GTE argues that its survey illustrates that customers are not adverse to a one-time number change to a non-geographic number in order to have number portability.[534] Florida PSC maintains, however, that location portability and 500 services serve different purposes, with location portability providing the ability to take a phone number when a customer changes premises, and 500 services providing the ability to take a telephone number to different locations during the day, week, or month.[535]

3. Discussion

181. We decline at this time to require LECs to provide either service or location portability. This decision is not inconsistent with the 1996 Act, which mandates the provision of service provider portability, but does not address explicitly service or location portability. The 1996 Act's requirement to provide number portability is limited to situations when users remain "at the same location," and "switch[ ] from one telecommunications carrier to another," and thus does not include service and location portability.[536]

182. While the 1996 Act does not require LECs to offer service and location portability, it does not preclude this Commission from mandating provision of these features if it would be in the public interest, nor does it prevent carriers from providing service and location portability, consistent with this Order, if they so choose. We believe, however, that requiring service or location portability now would not be in the public interest. As the record indicates, service provider portability is critical to the development of competition, but service and location portability have not been demonstrated to be as important to the development of competition.[537]

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[532] New York DPS Further Comments at 2.

[533] OPASTCO Comments at 15-16; SBC Communications Comments at 7-8; Nextel Comments at 4; Nextel Reply Comments at 3. See also Missouri PSC Comments at 6 (customers who wish to lose the geographic significance of their telephone number may use a service-specific NPA).

[534] GTE Reply Comments at 3.

[535] Florida PSC Comments at 5.

[536] See 47 U.S.C. § 153(30).

[537] See supra ¶¶ 28, 175.

183. Consistent with the result advocated by most parties commenting on this issue, we believe that a mandate for service portability is unnecessary for several reasons. First, and most importantly, requiring carriers to make the necessary switch and network modifications to accommodate service portability as well as service provider portability may delay implementation of the latter. Second, consumer demand for service portability is unclear. The record indicates that the benefits of service portability are limited because the current unavailability of this capability affects only customers who wish to change their current service to Centrex and ISDN services or vice versa. Since most non-basic services offered by incumbent LECs are purchased in addition to (not in lieu of) basic services, implementation of service portability may actually lower demand for the alternate services if it raises their prices.[538] Third, our requirement to provide service provider portability does not preclude carriers from offering service portability where they perceive a demand for it. In fact, our mandate will likely facilitate carriers' ability to provide service portability. Service provider portability will naturally drive the provision of service portability because if a user can receive a different service and keep the same number simply by switching carriers, service providers will have an incentive to offer service portability to keep those customers. Finally, carrier attempts to differentiate their products from those of other carriers will stimulate changes in services by customers, regardless of service portability.

184. We also believe that, at this time, the disadvantages of mandating location portability outweigh the benefits. Our chief concern is that users currently associate area codes with geographic areas and assume that the charges they incur will be in accordance with the calling rates to that area. Location portability would create consumer confusion and result in consumers inadvertently making, and being billed for, toll calls. Consumers would be forced to dial ten, rather than seven, digits to place local calls to locations beyond existing rate centers. In order to avoid this customer confusion, carriers, and ultimately consumers, would incur the additional costs of modifying carriers' billing systems, replacing 1+ as a toll indicator, and increasing the burden on directory, operator, and emergency services to accommodate 10-digit dialing and the loss of geographic identity.

185. In addition to the disadvantages, the demand for location portability is currently unclear. There is no consensus on the preferred geographic scope of location portability. Also, users who strongly desire location portability can use non-geographic numbers by subscribing to a 500 or toll free number. Finally, whereas having to change numbers deters users from switching service providers, we believe that a customer's decision to move to a new residential or business location generally would not be influenced significantly by the availability of number portability. Therefore, location portability will not foster the development of competition to the same extent as service provider portability.

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[538] See SBC Communications Comments at 8.

186. We recognize that new entrants will be able to offer a greater range of location portability per switch due to their network architecture and because they will generally have fewer customers in the area covered by a switch.[539] To avoid the consumer confusion and other disadvantages inherent in requiring location portability, however, we believe state regulatory bodies should determine, consistent with this Order, whether to require carriers to provide location portability. We believe the states should address this issue because we recognize that "rate centers" and local calling areas have been created by individual state commissions, and may vary from state to state. To the extent rate centers and/or local calling areas vary from state to state, the degree of location portability possible without causing consumer confusion may also vary. We therefore expect state regulatory bodies to consider the particular circumstances in their respective locales in determining whether to require carriers to implement location portability.

187. We recognize that location portability would promote consumer flexibility and mobility and potentially promote competition by allowing carriers to offer different levels of location portability in a competitive manner. Also, the importance that consumers attribute to the geographic identity of their telephone numbers may change, and our concerns regarding customer confusion may no longer hold true. For these reasons, we require any long-term method to have the capability of accommodating location and service portability if, in the future, demand increases or the burdens decrease.[540]

I. 500 and 900 Number Portability

1. Background

188. Currently, consumers can purchase 500 or 900 services from either local exchange or interexchange carriers. A consumer subscribing to 500 service receives a 500 "area code" number that can be programmed to deliver calls wherever the consumer travels in the United States and in many locations around the world. 900 service is a calling service providing businesses with a method to deliver information, advice, or consultations quickly and conveniently by telephone. Individuals calling 500 or 900 subscribers dial 500 or 900 plus a 7-digit number (NXX-XXXX). When a call is placed to a 500 or 900 service telephone number, the originating LEC uses the NXX of the dialed number to identify the carrier serving either the owner of the 500 number, or the

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[539] We anticipate that a new entrant will employ equipment capable of serving a larger area per switch, and serve fewer customers in each area served by one switch, than incumbent LECs do presently. As a result, one switch of a new entrant could serve all customers in a certain area, while the incumbent LEC must use two or more switches to serve all customers in that area. Thus, the new entrant's network would be capable of geographically transferring telephone numbers across rate centers of incumbent LECs.

[540] See supra ¶ 58.

North American Numbering Council

LNPA Technical & Operational Requirements Task Force Report

April 25, 1997

NORTH AMERICAN NUMBERING COUNCIL
LNPA TECHNICAL & OPERATIONAL REQUIREMENTS TASK FORCE
REPORT

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APPENDIX A

ISSUES AND RESOLUTIONS

ISSUES AND RESOLUTIONS

I. ISSUE STATEMENT

LNP Provisioning Flows Issue

A. The issue concerned the amount of control the old and new SPs can exercise during the customer porting process in the NPAC as documented in the provisioning flows. Following failure by the Task Force to reach a consensus, the issue was escalated to the LNPA Selection Working Group on January 7, 1997, and presented to NANC on January 13. NANC directed the Task Force to continue working the issue and to report back to the NANC chairman on January 23.

ISSUE RESOLUTION

LNP Provisioning Flows Issue

A. After several attempts to reach compromise, the ILECs made a proposal that was adopted with minor modifications on January 20, 1997. Following are descriptions of the three (3) part compromise proposed by the ILEC members of the LNPA T&O Task Force followed by the compromise adopted by the full Task Force:

1. <u>ILEC Proposal</u>

a. After the Firm Order Commitment (FOC) is received by the new Service Provider (SP), both old and new SPs send subscription records to the NPAC which must include the FOC due date. The FOC due date will be no earlier than three (3) business days after the FOC receipt date. No NPAC subscription version may activate before the FOC due date unless a new FOC is negotiated with the old SP.

b. The NPAC SMS processing timers will include business hours only. Local business hours are to be defined as 12 daytime hours per day on Mondays through Fridays, except holidays. (Time zone issue must be resolved and will be addressed separately.)

c. An old SP may only cause a subscription version to be set to conflict state one (1) time from the pending state, and only up to noon on the business day before the subscription due date. Within six (6) business hours of the conflict initiation, "conflict off" may be set only by the old SP alone or by the concurrence of both SPs. After six (6) business hours, "conflict off" may be set by the new SP alone, **except** when the LSR/FOC process has not been followed, and/or the subscription version submitted to the NPAC

SMS includes a vacant, non-working telephone number, then the old SP alone controls the conflict/cancellation process.

2. Accepted Compromise

a. The ILEC proposal was accepted. This represents a compromise by the CLECs as they maintain this adds an additional day to the provisioning process since the three (3) business days are counted from the FOC due date rather than the LSR receipt date.

b. The ILEC proposal was accepted.

c. An old SP may only cause a subscription version to be set to conflict state one (1) time from the pending state, and only up to noon on the business day before the subscription due date. Within six (6) business hours of the conflict initiation, "conflict off" may be set only by the old SP alone or by the concurrence of both SPs. After six (6) business hours "conflict off" may be set by either the old or new SP. This represents a compromise by the ILECs as the ILEC proposal included an exception to the conflict process where the old SP controlled removal from conflict in certain cases.

B. Points a and c above are linked, therefore, withdrawal or modification of either point by industry factions nullifies the compromise agreement. In addition, adoption of the compromise is contingent on satisfying the following conditions:

1. The Task Force will recommend a policy to the Working Group for NANC and FCC concurrence that carriers will not port unassigned numbers unless and until there is an explicit authorization for such porting from a regulator with appropriate jurisdiction.

2. A tracking vehicle in the NPAC will be developed to measure the reasons transactions are placed into conflict. This measurement becomes the vehicle to identify specific SPs or processes needing improvement and subsequently to develop process improvement plans.

3. The LNPA T&O Task Force will recommend to the Working Group for NANC and FCC concurrence an expedited process to resolve instances of SP non-compliance with the assumption that all SPs will follow the Local Service Request (LSR) and Firm Order Commitment (FOC) processes.

C. The industry vote in support of the compromise provisioning flows was unanimous in both the Task Force and the Working Group. However, while Pacific Bell voted yes, they do not agree with a process that does not allow the prevention of porting of unassigned telephone numbers or telephone numbers that do not have an associated LSR and FOC. Pacific Bell recognizes the need to move forward with these process flows with the condition that NANC recommend that porting of unassigned numbers is prohibited until a commission