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EX PARTE

September 25, 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:

Today, Cronan O'Connell and Mary Retka of Qwest Communications International Inc., accompanied by Jon Nuechterlein of Wilmer, Cutler and Pickering, met with Jeffrey Dygert, Sharon Diskin and Debra Weiner of the Office of General Counsel at the Federal Communications Commission ("FCC"). The purpose of the meeting was to discuss intermodal telephone local number portability ("LNP") issues, including:

- 1) the technical burdens involved in any changes from the LNP rules today as articulated in Qwest's *ex parte* filed on September 17, 2003;
- 2) the competitive inequities for all providers who implemented LNP according to the FCC's rules, in effect since 1996, should the Commission modify the current LNP rules as currently advocated by the wireless providers;
- 3) how the modifications as advocated by the wireless providers are inconsistent with the FCC's own "Policy Objectives for Numbering", included in FCC Report and Order, CC Docket No. 92-237, released July 13, 1995, which provides overarching principles for all North American Numbering Plan ("NANP") issues, including;
 - o Administration of the NANP should not unduly favor or disadvantage any particular industry segment or group of consumers.
 - o Administration of the NANP should not unduly favor one technology over another. The NANP should be largely technology neutral (see handout attached).
- 4) the procedural steps the FCC must first take were they to change the rules for LNP that are in place today.

The discussion was consistent with Qwest's comments and *ex partes* as filed on the record.

Ms. Marlene H. Dortch, Secretary
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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 proceeding pursuant to FCC Rule 47 C.F.R. § 1.1206(b)(2).

Sincerely,
/s/ Cronan O'Connell

cc: Jeffrey Dygert (via e-mail at jeffrey.dygert@fcc.gov)
Sharon Diskin (via e-mail at sharon.diskin@fcc.gov)
Debra Weiner (via e-mail at debra.weiner@fcc.gov)

Attachment

Wireless Wireline Integration Task Force

Rate Center Issue Position Paper

**North American Numbering Council
January 20, 1998**

EXECUTIVE SUMMARY

The paper addresses the three key questions being referred to the NANC by the WWITF:

1. Does the difference in scope of porting capabilities between wireless and wireline service providers create a competitive disadvantage which would be inconsistent with the FCC's objectives for numbering?
2. If so, is this competitive disadvantage overridden by the FCC's order to implement wireless - wireline portability to encourage CMRS - wireline competition?
3. Would the inability in certain situations for a wireless end user, staying at the same location, to keep their telephone number when changing to a wireline service provider be acceptable from a statutory or regulatory perspective?

All parties recognize that a difference exists in the scope of number portability when porting from a wireless to a wireline service provider as compared to porting from a wireline to a wireless service provider. Porting from a wireline to a wireless service provider is virtually unlimited - the end user can be physically located anywhere, while porting from a wireless to a wireline service provider is narrowly limited to the situation where the wireless end user is physically located within the rate center associated with the NPA-NXX of the end user's telephone number. This is a significant disparity in porting capabilities which would create a distinct competitive disadvantage to wireline service providers. This is clearly not in compliance with the FCC's Policy Objectives for Numbering in that it unduly disadvantages an industry segment, wireline service providers, and it unduly favors wireless technology.

Some wireless participants have argued that resolution of this disparity is not a prerequisite to meeting the FCC's ordered implementation of service provider portability between wireless and wireline service providers. They suggest that the disparity is not unreasonable compared to the benefit of portability to foster CMRS - wireline competition and thus is overridden by the FCC's mandate to integrate wireless into number portability. It is not plausible that the FCC would condone the imposition of a significant competitive disadvantage on a competing industry segment, wireline carriers, in order to encourage competition between two industry segments. The FCC's orders on number portability were not to the exclusion of their Policy Objectives for Numbering. Competitive parity is not optional.

Finally, implementation of wireless - wireline number portability must be compliant with the definition of portability contained in the Telecommunications Act of 1996, that is, an end user staying at the same location must be able to change service providers and retain their telephone number. With the current method/architecture, wireless customers staying at the same location would not be able to retain their number when they change to a wireline service provider if they are physically located outside of the rate center associated with the NPA-NXX of their assigned telephone number.

The attached paper addresses these issues further and examines alternatives for the introduction of wireless - wireline number portability within the scope of the FCC's policy objectives for numbering.

I. ASSUMPTIONS

A. The following is responsive to the FCC's directive that the NANC develop standards and procedures necessary to provide for CMRS participation in local number portability. It is not an endorsement of number portability between CMRS providers or between CMRS and wireline service providers.

B. There are two key criteria that any service provider portability method must meet: 1) rate center integrity, which is required in the wireline industry to ensure the ability to properly rate, bill and route calls, and 2) competitive parity which is a principle fundamental to all FCC orders dealing with numbering and competitive issues.

II. DISCUSSION AND IMPACTS

A. Rate Center Integrity

1. Section 7.3 of the Architecture Task Force report which was adopted by the FCC states "portability is technically limited to rate center/rate district boundaries of the incumbent LEC due to rating/routing concerns." It also noted that additional boundary limitations could be required due to E911 or NPA serving restrictions. Although this originally addressed only wireline service providers, service provider portability between wireline and wireless service providers via LRN continues to be technically limited to the rate center.

2. Rate centers have been established by state regulators, and are the fundamental building block for toll/local differentiation, toll rating and network routing. Rate center integrity (consistent rate center boundaries) is essential to maintain these capabilities. Inconsistencies create ambiguities in identifying a terminating customer's location which in turn create inconsistencies in originating calling scopes and toll rating, consumer confusion and potential problems routing to a customer's presubscribed intraLATA or interLATA carrier.

3. Additionally, the initial introduction of numbering pooling is planned at the rate center level. Rate center consistency is a requisite part of that introduction, and inconsistencies would unnecessarily complicate and delay the introduction of pooling or could create the need for multiple pools.

B. Competitive Parity

1. The FCC's "Policy Objectives for Numbering" included in their Report and Order, CC Docket No. 92-237 Released 7/13/95 provides overarching principles for all NANP issues:

- Administration of the plan (NANP) must seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications service providers.
- Administration of the NANP should not unduly favor or disadvantage any particular industry segment or group of consumers.
- Administration of the NANP should not unduly favor one technology over another. The NANP should be largely technology neutral

2. Currently available wireless-wireline porting methodologies proposed in the WWITF have met the criterion of rate center integrity within the technical limitations of LRN service provider portability, but have not met the criterion of competitive parity included in the FCC's Policy Objectives for Numbering and their orders addressing interconnection and other competitive issues.

3. As indicated in Section 6.0 of the Report from Wireless Wireline Integration Task Force to the North American Numbering Council (12/16/97),

“Porting from a wireline service provider to a wireless service provider is permitted as long as the subscriber's initial rate center is within the WSP's service area and the WSP has established interconnection/business arrangements for calls to wireless numbers within that rate center. This could apply even when the subscriber is moving to another LATA because of the terminal mobility characteristic of almost all wireless applications. With terminal mobility the subscriber can be physically located anywhere.

Porting from a wireless service provider to a wireline service provider is *only* allowed when the subscriber's physical location is within the wireline rate center associated with the wireless NPA-NXX.”

4. Since wireless telephone numbers are not assigned based on the physical service location of the end user, it is expected that in the majority of cases wireless end users will not be physically located within the rate center area. These end users would have to change their number to change to wireline service. This disparity clearly favors the wireless industry segment and creates an unfair competitive disadvantage to the wireline industry segment.

5. The root causes of this disparity are inherent differences in rating methods, service areas, terminal mobility and number assignment methods between wireline and wireless service providers and technical LRN limitations. A number of potential alternatives to eliminate this disparity while maintaining rate center integrity have been identified and considered, but none were found to be practical solutions. Two of these alternatives are examined more closely in Sections 2.3 -2.4.

C. Rate Center Consolidation/Modification

1. Some wireless participants have indicated that the problem is solely due to limitations of the wireline service providers' billing systems and rate center structure, which if modified, would alleviate all concerns. Rate centers, which are the fundamental building block of wireline rating systems, have been created by individual state commissions. Wireless service does not utilize rate centers other than for rating of calls from wireline end users. As indicated in Section 2.1 of the 12/16/97 report to the NANC, wireless carriers have flexibility in defining their rating architecture - it is solely a business decision. Besides the issue of preemption of the state regulators rights to establish rate center boundaries, forced modification of wireline *or* wireless rating systems is not an appropriate solution.

2. Rate center consolidation has also been suggested as an alternative to eliminate this disparity. Rate center consolidation is being considered by some state commissions

as a means to conserve NXX codes. If ordered by a state, it would enlarge the geographic area of a rate center which in turn would reduce the disparity in porting. However, wireless service areas are not limited to rate centers, but can extend beyond rate center, NPA, state and LATA boundaries, so enlarging the rate center will not eliminate the disparity. Additionally consolidation may not be appropriate in many states, and as indicated in 2.3.1, forced consolidations would raise the issue of preemption of what the FCC has recognized as a state matter.

D. Numbering Alignment

1. This alternative assumed that both wireless and wireline service providers would use the same NXX and telephone number assignment rules and conventions to meet the rate center integrity and parity criteria. This would require wireless service providers to be assigned an NXX for each rate center in which they offered service and the assignment of telephone numbers based on the physical location of the wireless customer.

2. This alternative was discarded because of the impact on NPA exhaust and the fact that there is no technical need from a routing or rating perspective within the wireless service provider's network for this restriction. Because most wireless applications include terminal mobility, there is no technical requirement for association of the telephone number and a geographic location of the user.

III. Conclusions/Recommendations

A. The FCC's mandate for service provider portability between wireless and wireline service providers was not a separate and distinct order but rather was part of a complex series of orders on number portability and numbering principles in general. It therefore cannot be considered in isolation, but must be considered in context of the other requirements specified by the FCC including the minimum performance criteria, delegation of location portability to the states, and policy objectives for numbering. Parity between service providers is a minimum criteria for portability between wireless and wireline service providers.

B. In their Second Report and Order the FCC directed the NANC to develop standards and procedures necessary to provide for CMRS provider participation in number portability and to provide recommendations to the Commission. The FCC recognized that changes to local number portability standards and procedures would probably be needed to support wireless number portability and that differences in service area boundaries between wireline and wireless service would need to be considered. However, neither the FCC or the industry understood the complexity or the scope of the changes that portability between wireless and wireline service providers would entail.

C. The WWITF began an in depth discussion of these issues in its August 1997 meeting and reached consensus to refer the issue to the NANC at the September NANC meeting. However immediately before the September NANC meeting several WWITF members complained that they had not had adequate time to review the material and disagreed that referral was necessary. This has resulted in a 3 to 4 month delay in getting the issue resolved with no substantive change in the background material or issue that was planned for the NANC in September. Much of the intervening WWITF meetings

have been spent debating whether a disparity exists and whether the disparity needed to be resolved or if the existing method/architecture was adequate.

D. The background material provided to WWITF members in August included a number of potential alternatives to resolve the disparity. However, none of these provide a viable solution available today that meets the minimum criteria of parity and rate center integrity. Additionally, the available method/architecture does not meet the definition of number portability found in the Telecommunications Act of 1996 and the FCC's First Report and Order and Further Notice of Proposed Rulemaking (FNPRM) in CC Docket 95-116 because some wireless end users staying at the same location would not be able to change to a wireline service provider and retain their telephone number. Implementation of this method/architecture would not constitute compliance with the FCC's ordered implementation of CMRS number portability.

E. While no method exists today, it is important to note that no competition exists today between wireless and wireline services, and by most experts, neither is expected to provide services which will replace the other in the foreseeable future. The one exception to this is wireless local loop, where wireless technology is used to replace the physical loop facility to the end user service location. Because this is a replacement local loop architecture, rather than a service, this fixed location, non-roaming situation should be considered separately.

F. Because no service competition exists and is not expected in the foreseeable future, the recommended course of action is to defer the introduction of portability between wireless and wireline service providers until a clear and real competitive need exists. This would allow the natural course of competition in the marketplace to address the issues of rate center integrity, service areas, pricing methodology and the LNP provisioning processes between service providers.

G. There is only one technical alternative that has been identified that can meet the FCC's requirements including the minimum criteria identified above - location portability beyond rate center, NPA, state and LATA boundaries. In the First Report and Order and FNPRM, the FCC delegated location portability 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 the 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."

H. Location portability is expected to be an enormous undertaking which could be at least as large in scope, complexity and cost as service provider portability. In addition, it will have significant consumer impact due to the loss of traditional toll service indicators and NPA boundary restrictions. Location portability also raises significant regulatory and jurisdictional issues that will need to be addressed at federal and state levels. Location portability should not be introduced until adequate market demand exists to support the associated enormous costs or until there is a real and compelling need from a competitive perspective and cost recovery mechanisms developed. Because competition does not currently exist between wireless and wireline services, location portability should not be advanced to provide number portability between wireless and wireline service providers.

I. Wireless Local Loop/Fixed Location, Non Roaming Wireless Applications

1. As noted earlier, wireless technology is being used in some instances to replace existing or avoid placement of physical loop facilities, and there may be a need to identify a means to address number portability for these situations. In the Fixed CMRS Notice the Commission tentatively concluded that wireless local loop would be provided by CMRS providers, however, this technology has also been used within the wireline industry in the past.

2. In order for number portability to work with this fixed location application, wireless service providers would need to utilize wireline numbering conventions including the assignment of NXXs to each rate center where the application is being used and the assignment of telephone numbers based on the physical service location of the end user. Prior to the availability of number pooling this could create some additional pressure on NXX codes. However, new NXX codes would only be required for new customers as existing wireline customers would already be assigned telephone numbers. Considering the limited nature of the application and the existing rate of NXX code usage by wireless service providers, the increase in NXX code demand need not be significant. This proposal would provide wireless service providers an option for participating in number portability with wireline service providers if the need existed.

J. Summary

- The difference in porting capabilities between wireless and wireline service providers with the existing method/architecture creates a significant competitive disadvantage to wireline service providers. Despite the absence of real competition between wireless and wireline service providers today this competitive disparity is not consistent with the Commission's policies and should not be allowed.
- The FCC's orders on number portability were not intended to exclude the Commission's requirements for competitive parity and thus do not override their Policy Objectives for Numbering.
- There are no alternatives currently available for wireless wireline number portability which meet these criteria. The current method/architecture does not meet the definition of number portability in the Telecommunications Act of 1996, and if implemented would not constitute compliance with the FCC's orders on number portability.
- Location portability beyond rate center, NPA, state and LATA boundaries is the only identified technical alternative which meets the minimum criteria for wireless - wireline portability. However in light of the absence of substantive wireless - wireline service competition and the complexity, scope and costs of location portability, it is recommended that location portability not be advanced and that wireless - wireline portability, other than the fixed location applications discussed in 3.8, be delayed until a clear and real competitive need exists.