

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

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
CTIA Petitions for Declaratory Ruling on)	
Wireline-Wireless Porting Issues)	
_____)	

SPRINT OPPOSITION TO USTA PETITION FOR STAY

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November 20, 2003

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Sprint Corporation, on behalf of both its wireline and wireless divisions (“Sprint”), opposes the Petition for Stay Pending Judicial Review filed two days ago, on November 18, 2003, by the United States Telecom Association, a trade association representing both large and small incumbent local exchange carriers (“USTA Stay Petition”).¹ USTA asks the Commission to stay its November 10, 2003 *LEC-Wireless Porting Clarification Order* and to act on its Petition by today, November 20, 2003.²

On Monday, November 24, 2003, over 75 million local exchange carrier (“LEC”) customers residing in the 100 most populous Metropolitan Statistical Areas (“MSAs”) are expecting to have the ability to port their telephone number to a wireless carrier. A recent customer survey found that over 16 percent of LEC customers would “definitely or probably switch their current home phone number” once wireless portability becomes available.³ The Garnet Group has pre-

¹ CenturyTel, Inc. and CenturyTel of Colorado, Inc. also joined the USTA Stay Petition.

² See *Telephone Number Portability – CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 03-284 (Nov. 10, 2003)(“*LEC-Wireless Porting Clarification Order*”).

³ See The Management Network Group, *TMNG Study Reveals 39 Million Wireless Phone Users Ready to Switch Providers* (June 18, 2003), available at www.tnmg.com.

dicted that the impact of LEC-wireless porting “will be more dramatic” on the telecommunications industry than will wireless-wireless porting, with LEC-wireless porting “chang[ing] the telecom marketplace.”⁴

Although the USTA and its members have been aware of their statutory obligation for years, USTA now asks the Court to prevent its members’ customers from enjoying the new option of porting their numbers to wireless carriers. The USTA fails to demonstrate the existence of any of the four stay criteria, and its petition should be denied.

I. THE CRITERIA FOR A STAY ARE NOT MET

USTA acknowledges that it must meet four criteria for grant of its stay request.⁵ Specifically, USTA must show that: (1) it has a substantial likelihood of success on the merits; (2) its members will suffer irreparable injury if the stay is denied; (3) issuance of the stay will not cause substantial harm to other parties; and (4) the public interest will be served by issuance of the stay. The Commission has long held that a “high burden of proof is imposed on parties petitioning for stay of an order’s effectiveness.”⁶

Sprint demonstrates below that USTA fails to demonstrate the existence of any of the four stay criteria. Its petition should therefore be denied.

⁴ See Gartner Group, Press Release, *FCC’s Number Portability Ruling Will Reshape Wireless Industry* (Nov. 11, 2003), available at www4.gartner.com; RCR WIRELESS NEWS, *LNP Costs Could Trigger Consolidation* (Sept. 8, 2003).

⁵ See USTA Stay Petition at 6.

⁶ *Rust Craft Broadcasting*, 67 F.C.C.2d 180 ¶ 2 (1977). See also *AT&T*, 14 FCC Rcd 17266, 17267 ¶ 6 (1999); *Amendment of Section 1.420(f)*, 11 FCC Rcd 9501, 9595 (1996); *Connecticut Department Public Utility Control*, 11 FCC Rcd 848, 854 ¶ 20 (1995); *Price Cap Performance Review Order*, 10 FCC Rcd 11991, 11999 ¶ 17 (1995). *Compare Mobile Satellite Services*, 18 FCC Rcd 1962, 2086 (2003) (“The Commission cannot permit its processes to be paralyzed by filings that make no attempt to meet the high burden of a stay.”).

A. USTA HAS NOT DEMONSTRATED IT IS LIKELY TO PREVAIL ON THE MERITS

USTA asserts that the *LEC-Wireless Porting Clarification Order* is “procedurally improper and substantively inequitable.”⁷ These arguments lack merit. In fact, the contrary is true: the Commission would be required to change its current rules (after commencing a new APA rulemaking) to grant the relief that USTA seeks.

1. The LEC-Wireless Porting Rules Are Consistent with the LEC-LEC Porting Rules

USTA asserts that the *LEC-Wireless Porting Clarification Order* is “procedurally improper” because the Commission supposedly adopted LEC-wireless porting rules that are “*inconsistent* with the rules governing wireline-wireline portability.”⁸ According to USTA, “the NANC guidelines – which were incorporated into the Commission’s rules by reference, *see* 47 C.F.R. § 52.26(a) – limit porting to carriers with facilities or numbering resources in the same rate center”:

[W]ireline-wireline portability is limited to carriers with a presence (either a physical point of interconnection or numbering resources) within the same rate center.⁹

USTA is mistaken, for existing LEC-LEC porting rules do *not* require either a physical point of interconnection or numbering resources within the same rate center.

(a) Physical Point of Interconnection. USTA asserts that wireless carriers have “no presence within the rate center.”¹⁰ This is not accurate. Wireless carriers seek to establish porting arrangements only where they are providing wireless services in a LEC rate center. Indeed, a LEC customer would have little interest in porting his/her number to a wireless carrier if that car-

⁷ USTA Stay Petition at 1.

⁸ USTA Stay Petition at 1 and 8 (emphasis in original).

⁹ *Id.* at 4 and 8 (internal quotations omitted).

rier does not provide its services at the same location where the customer currently receives his/her LEC services.

USTA further asserts that the LEC-LEC porting rules require a “point of interconnection (“POI”) within in the rate center to which the numbers are assigned.”¹¹ It is understandable that USTA does not cite the NANC guidelines in support of this assertion, because those guidelines explicitly recognize that a “point of interconnection” in the rate center is *not* necessary, and that LECs can interconnect indirectly with each other. Specifically, NANC’s LEC-LEC porting guidelines state:

If no direct connection exists between LEC-4 and LEC-2 [the two porting carriers], calls may be terminated through a tandem agreement with LEC-1.¹²

Further, the Commission has stated that only one POI per LATA is required for interconnection.¹³ Finally, the Commission has also squarely ruled that wireless carriers cannot be compelled to connect directly with other carriers,¹⁴ and, in the context of LNP, has also held unequivocally that “carriers can interconnect directly *or indirectly* as required under Section 251(a)(1).”¹⁵ Thus, to confirm, not only is USTA incorrect in asserting that NANC guidelines require direct interconnection, but the Commission would be required to commence a new rule-

¹⁰ USTA Stay Petition at 7.

¹¹ *See id.* at 2. *See also id.* at 4 (LECs must have “a physical point of interconnection . . . within the same rate center”); at 10 (LECs must have “a point of presence within the rate center.”).

¹² NANC – LNP Architecture Task Force, *Architecture & Administrative Plan for Local Number Portability*, Appendix A, Scenario A3 at A-2.

¹³ FCC 01-132 (April 27, 2001), ¶ 72; DA 02-1731 (July 17, 2002), ¶ 52; CC Docket 00-65 (June 30, 2000).

¹⁴ *See First Local Competition Order*, 11 FCC Rcd 15499, 15991 ¶ 997 (1996); 47 U.S.C. § 251(a)(1). In fact, the Wireline Competition Bureau has held that, under existing rules, LECs cannot be required to interconnect directly with other LECs. *See, e.g., Virginia Arbitration Order*, 17 FCC Rcd 27039, 27085 ¶ 88 (2002).

¹⁵ *First Local Number Portability Reconsideration Order*, 12 FCC Rcd 7236, 7305 ¶ 121 (1997)(emphasis added).

making proceeding before it could exchange existing rules and require wireless carriers to connect directly with other carriers – whether in a porting or non-porting environment.

(b) Numbering Resources. USTA also asserts that LEC-LEC portability is “limited to carriers with . . . numbering resources within the same rate center”:

[T]he NANC guidelines – which were incorporated into the Commission’s rules by reference, *see* 47 C.F.R. § 52.26(a) – limit porting to carriers with . . . numbering resources in the same rate center.¹⁶

In fact, the NANC LEC-LEC porting guidelines contain no such limitation, as evidenced by USTA’s failure to cite any portion of these guidelines. Whether a competitive carrier has customers located in (and, therefore, telephone numbers rated to) an ILEC rate center has nothing to do with the technical feasibility of an ILEC porting *its* customers’ numbers to a competitive carrier.

The NANC Wireless Wireline Integration Task Force discussed in 1998 the subject of numbering resources in the context of LEC-wireless porting, with the Task Force considering the very alternative that USTA now advocates. The LECs agreed amongst themselves that this “numbers in every rate center” alternative should be “discarded because of the impact on NPA exhaust and the fact that there is no technical need from a routing perspective within the wireless service providers’ 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.¹⁷

Moreover, the evidence in the record is that Commission adoption of this USTA proposal would require the six largest national carriers alone to obtain an additional 54 million telephone num-

¹⁶ USTA Stay Petition at 4 and 8. *See also id.* at 2.

¹⁷ NANC, *Local Number Portability Administration Working Group Report on Wireless Wireline Integration*, Appendix D, § 1.3 – Wireline Position Paper at 41-42 (May 8, 1998).

bers – the equivalent of over eight scarce area codes – that they do not need.¹⁸ It is understandable that NANC concluded that the alternative which USTA now advocates would have “a significant negative impact on NPA exhaust.”¹⁹

The Commission has never in the 20-year history of the mobile telephony industry required wireless carriers to obtain telephone numbers in each ILEC rate center where they provide their services or imposed on wireless customers restrictions regarding the numbers they must use with their mobile services. Again, to adopt USTA’s proposal, the Commission would be required to change its current rules after commencing a new rulemaking proceeding.

* * *

USTA asserts that the Commission in the *LEC-Wireless Porting Clarification Order* “changed the rules of the game” and that it may adopt these “new rules” only by commencing a new APA rulemaking proceeding.²⁰ In fact, the *LEC-Wireless Porting Clarification Order* did not change any rules; the Commission reaffirmed existing statutory requirements and rules. In sum, the two conditions on the availability of porting that USTA wants the Commission to adopt – wireless carriers must interconnect directly with ILECs and must obtain telephone numbers in each rate center where they provide services – would constitute new rules, which the Commission could adopt only after commencing a new APA rulemaking proceeding.

2. The LEC-Wireless Porting Order Does Not Have Discriminatory Effects

USTA also asserts that the *LEC-Wireless Porting Clarification Order* is “substantively inequitable” because the Commission supposedly adopted “a policy of discrimination” by im-

¹⁸ See Sprint Ex Parte Letter, CC Docket No. 95-116, at 6 (Aug. 8, 2003).

¹⁹ See NANC, *Local Number Portability Administration Working Group Report on Wireless Wireline Integration*, Appendix D, at 38 (May 8, 1998).

²⁰ USTA Stay Petition at 7-12.

plementing “regulatory favoritism.”²¹ According to USTA, under the *Order* wireline carriers “will be unable to compete for customers currently served by wireless carriers”:

[The *Order*] permits wireless carriers to port the numbers of, and thereby compete for, wireline customers At the same time, it *prevents* wireline carriers from competing for the wireless carriers’ customers in those same circumstances.²²

USTA further claims that the *Order* does “not permit competition on a level playing field; instead, it self-consciously promotes the interests of the wireless industry over the wireline industry,” and as a result, the *Order* is “blatantly discriminatory.”²³ This USTA argument is wrong and is based on inaccurate statements.

USTA is wrong in asserting that “wireless carriers will have no obligation to port customers’ numbers to competing wireline carriers.”²⁴ In fact, beginning on Monday (and absent a stay), wireless customers will be able to port their wireless number to those LECs that provide their landline services at the location where a wireless customer wants to receive his or her services (e.g., the customer’s home or work location).²⁵ In addition, under the *LEC-Wireless Porting Clarification Order*, LECs can “win back” their former customers if they later experience “buyer’s remorse.” Nevertheless, USTA asserts there is one category of customer that its members cannot win back – namely, a LEC customer who ports to a wireless carrier *and* who then moves his residence to a location outside of the rate center *and* who then seeks to return to the LEC carrier.²⁶

²¹ USTA Stay Petition at 1, 2 and 11.

²² *Id.* at 2 (emphasis in original).

²³ *Id.* at 5 and 11.

²⁴ USTA Stay Petition at 14.

²⁵ There is a certain irony in USTA assertions they want to compete for the business of wireless customers, given that not a single USTA in the country asked Sprint PCS to provide LNP to them.

²⁶ See USTA Stay Petition at 16 (“Customers may be able to port wireline numbers out, but there is no guarantee that they will be able to port them back.”). See also BellSouth Letter to Chairman Powell, CC

This USTA argument is flawed on two levels. First, it is factually inaccurate, as Sprint has repeatedly documented.²⁷ With their foreign exchange services, an ILEC can “serve a customer physically located in one rate center but who has a number associated with another rate center.”²⁸ Industry guidelines explicitly acknowledge that such foreign exchange services are consistent with number assignment rules.²⁹ Thus, USTA members can win back customers who port their numbers to wireless carriers – even if the customer later moves across town to another wireline rate center after the LEC-wireless port.

Second, this USTA argument is internally inconsistent, even if the Commission accepts the premise that a wireline carrier cannot serve a former customer who has moved to another rate center after the LEC-to-wireless port has occurred. If a wireline carrier cannot serve that customer in another rate center with his or her original number, that fact is not changed by the existence of porting. If a wireline customer moves out of the original rate center, USTA suggests that its member would not (or could not) allow the customer to keep his/her number. This is not a function of LNP; rather, it is the result of wireline business decisions to limit the local calling scopes of their customers – even though wireless carriers generally offer larger calling areas.

Docket No. 95-116, at 4 (Oct. 14, 2003)(“[W]ireline carriers would be foreclosed from winning back any customer who ported his number to a wireless carrier and then moved to another rate center, while keeping his old number.”).

²⁷ See, e.g., Sprint Ex Parte Letter, CC Docket No. 95-116, at 4 (Oct. 8, 2003); Sprint Ex Parte Letter, CC Docket No. 95-116, at 3-4 (Sept. 22, 2003); Sprint Ex Parte Letter, CC Docket No. 95-116, at 4-5 (Aug. 18, 2003);

²⁸ Qwest Ex Parte Letter, CC Docket No. 95-116, at 3 n.5 (Oct. 17, 2003). See also *Southwestern Bell*, 13 FCC Rcd 13165, 13171 n.35 (1998)(LEC FX services described); *Virginia Arbitration Order*, 17 FCC Rcd 27039, 27177 ¶ 287 (2002).

²⁹ See Industry Numbering Committee, *Central Office Code (NXX) Assignment Guidelines*, INC-95-0407-008, at 8, § 2.14 (Aug. 15, 2003)(“It is assumed from a wireline perspective that CO codes/blocks allocated to a wireline service provider are to be utilized to provide service to a customer’s premise physically located in the same rate center that the CO codes/blocks are assigned. *Exceptions exist, for example, tariffed services such as foreign exchange service.*”)(emphasis added).

Thus, USTA's "competitive parity" argument reflects the view that the choices made available to consumers should be limited by the types of services that wireline carriers offer rather than the types of services that are available in the market generally – including those provided by competitive carriers.³⁰

B. THE USTA PETITIONERS WILL NOT SUFFER IRREPARABLE HARM IN THE ABSENCE OF A STAY

USTA asserts that its members will encounter "severe harm" without a stay because they will "lose thousands of customers to wireless carriers now able to offer existing wireline customers number portability."³¹ The loss of customers to competition is not an irreparable injury warranting issuance of a stay.

USTA goes further, asserting that its members "will be unable to offset these losses – or to join battle with wireless carriers on their own turf – not because of any limitation in their product, but simply because wireless carriers will have no obligation to port customer's numbers to competing wireline carriers."³² This USTA assertion – wireless carriers have "no obligation" to port their customers' numbers to LECs, including to USTA members – is incorrect. As demonstrated in Part I.A.2 above, USTA's members will have the opportunity to compete for every wireless customer.

³⁰ USTA is wrong in asserting that prior to the *LEC-Wireless Porting Clarification Order*, the FCC permitted LEC customers to port "only when the porting-in carrier would provide the *same* telecommunications service as the porting-out carrier." USTA Stay Petition at 11. In fact, the FCC never conditioned the availability of porting to the situation where the new carrier provides the identical service that the old carrier provides.

³¹ USTA Stay Petition at 2 and 14.

³² *Id.* at 14.

C. GRANT OF A STAY WOULD INJURE MILLIONS OF AMERICANS

USTA asserts that “no party will suffer harm” by grant of a stay and that wireless carriers would not experience “any cognizable harm” by a stay.³³ Sprint must respectfully disagree. Under the *LEC-Wireless Porting Clarification Order*, over 75 million LEC customers residing in the top 100 MSAs are entitled to port to wireless carriers, including to Sprint PCS, beginning on Monday. In contrast, under USTA’s proposed stay, less than half these LEC customers will be able to port their numbers to Sprint PCS (or other wireless carriers). Sprint submits that a Commission order preventing some 30 to 40 million LEC customers from porting their numbers to wireless carriers, when such porting is technically feasible, would constitute irreparable injury both to wireless carriers and to LEC customers.

Also unexplained is USTA’s assertion that “customers would be better off” if the Commission grants a stay.³⁴ Under the *LEC-Wireless Porting Clarification Order*, all LEC customers in the top 100 MSAs – at least 75 million customers – will have the choice of porting their numbers to wireless carriers. In stark contrast, under the USTA proposal, only a fraction of these LEC customers would enjoy this option. Sprint is confident that the millions of LEC customers who would be deprived of new porting opportunities would not agree with USTA that they are “better off” under the USTA stay proposal.

D. THE PUBLIC INTEREST WOULD BE HARMED BY ENTRY OF THE REQUESTED STAY

USTA finally asserts that “the public interest will benefit” from the proposed stay because a stay supposedly would “forestall the expense and consumer confusion that would result

³³ See USTA Stay Petition at 2 and 15.

³⁴ See USTA Stay Petition at 11.

from premature implementation of intermodal portability.”³⁵ Again, Sprint must respectfully disagree. Under USTA’s proposal, approximately 30 to 40 million LEC customers will be prohibited from porting their numbers to wireless carriers – even though such porting is technically feasible. Sprint submits that what will cause customer confusion is the stay that USTA proposes – because consumers will have difficulty understanding why friends and family can port their LEC numbers to wireless carriers, when they cannot, even though their desired porting is technically feasible.

USTA further asserts that the Commission has “failed to address how consumers will be informed about and protected against the loss of E911 capability”:

[C]onsumers will likely be unaware that, because wireless carriers have failed to implement E911 capability, consumers will be unable to rely on the 911 system automatically to directly emergency personnel to their location.³⁶

Several responses are in order. First, Sprint has not “failed to implement E911 capability” as USTA claims. Sprint PCS’ entire nationwide network has been E911 capable for 18 months. Admittedly, fewer PSAPs have deployed wireless E911 than LEC E911 and thus the service is not available nationwide. Part of the reason is a PSAP funding issue. But another major reason is that, as Dr. Hatfield has reported to the Commission, many wireline carriers have been slow to upgrade their E911 networks to accommodate wireless E911 networks.³⁷

Second, USTA assumes, without explanation, that its members’ customers “will likely be unaware” of limitations in wireless E911 services. Sprint is not prepared to make this assump-

³⁵ USTA Stay Petition at 2 and 15.

³⁶ USTA Stay Petition at 2 and 16.

³⁷ See Dale N. Hatfield, Ph.D., *A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services*, CC Docket No. 94-102 (Oct. 15, 2002).

tion. Indeed, the Wireless LNP Fact Sheet that the Commission published earlier this month openly discusses the limitations in the availability of wireless E911 services:

In some areas, 911 operators automatically receive the phone number or location of a wireless call, but in many areas, that is not the case. Technology that will provide that information – Enhanced 911 or “E911” – is currently being implemented, but is not yet available using many wireless phones and in most parts of the country.³⁸

Finally, and perhaps most importantly, the decision over the type of E911 capabilities that customers desire is a decision that should be made by customers – rather than by regulators or carriers. There are many differences between LEC and wireless services. For example, wireless carriers generally offer a much larger outbound local calling area (and with some Sprint PCS plans, the local calling area is co-extensive with the boundaries of the United States). In contrast, there are often fewer blocked or dropped calls with fixed landline networks. Customers will consider these differences in choosing to use a landline-based or wireless-based service. One of the factors consumers undoubtedly will consider in this decision is the difference in each service’s E911 capabilities. Again, it should be the consumer – not a government regulator and certainly not the incumbent carrier – that makes these kinds of decisions.

II. CERTAIN USTA ASSERTIONS ARE FACTUALLY INCORRECT OR UNSUPPORTED

USTA makes certain assertions in its Stay Petition that are either factually inaccurate or not supported by evidence. A brief response follows.

A. Location Portability. In the *LEC-Wireless Porting Clarification Order*, the Commission explicitly rejected the argument made by some (but not all) ILECs that LEC-wireless port-

³⁸ FCC Consumer Facts, *Wireless Local Number Portability* (Nov. 4, 2003).

ing constitutes location portability.³⁹ USTA nonetheless asserts that the *Order* still “requires location portability”:

The Commission’s [*Order*] requires wireline carriers to provide not just service provider portability but also *location* portability, because there is no reason to believe that the wireless customer will use the wireless service at the customer’s original location.⁴⁰

USTA ignores the fact that when NANC considered this issue, there was consensus that LEC-wireless porting of the sort the Commission reaffirmed in the *LEC-Wireless Porting Clarification Order* is not location portability. NANC specifically advised the Commission:

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 [Wireless Service Provider’s] service area . . . With terminal mobility the [wireless] subscriber can be physically located anywhere.⁴¹

Indeed, USTA’s members *agreed* at that time that the porting wireless carriers were seeking does not involve location portability.⁴²

USTA seeks to confuse location portability with mobile handset mobility and the nature of mobile telephony services.⁴³ Since the inception of the mobile telephony industry 20 years ago, wireless customers have enjoyed the flexibility to receive calls regardless of their location at the time – including when they travel to another state. The fact that wireless carriers can travel yet continue to receive calls has no bearing whatsoever on how ILECs rate and route their calls

³⁹ See *LEC-Wireless Porting Clarification Order* at ¶ 28.

⁴⁰ USTA Stay Petition at 2 and 5 (emphasis in original).

⁴¹ See NANC, *Local Number Portability Administrative Working Group Report on Wireless Wireline Integration* (May 8, 1998), Appendix D – Rate Center Issue, at 35 § 6.0.

⁴² See NANC, *Local Number Portability Administrative Working Group Report on Wireless Wireline Integration* (May 8, 1998), Appendix D – Wireline Position Paper, at 40 § II.B.3 (“Currently available wireless-wireline porting methodologies proposed in the [Wireless Wireline Integration Task Force] have met the criterion of rate center integrity within the technical limitations of LRN service provider portability.”).

to wireless customers. ILECs rate and route their calls to wireless customers the same – regardless of the location of the wireless customer at the time of the call and regardless of whether the wireless customer uses a ported or non-ported number. It is wireless carriers that bear the cost of transporting these calls to their customers.

B. USTA's LEC-wireless porting obligations. USTA asserts that the *LEC-Wireless Porting Clarification Order* is based “on the premise that wireless carriers have long been under an obligation to port numbers to requesting commercial mobile radio service (“CMRS”) providers”:

[W]ireline carriers have never before been required to port numbers to wireless carriers.⁴⁴

In fact, USTA and its members have been on notice for over seven years that LECs are required by statute to provide LNP to wireless carriers once wireless carriers become LNP capable. The Commission stated unequivocally in its 1996 *First LNP Order*:

Because the 1996 Act's definition of number portability requires LECs to provide number portability when customers switch from any telecommunications carrier to any other, the statutory obligation of LECs to provide number portability runs to other telecommunications carriers. Because CMRS falls within the statutory definition of telecommunications service, CMRS carriers are telecommunications carriers under the 1996 Act. As a result, LECs are obligated under the statute to provide number portability to customers seeking to switch to CMRS carriers.⁴⁵

The fact that the wireless LNP obligation was delayed does not change this statutory and regulatory requirement.

C. Porting options of USTA customers. USTA asserts that if “two customers – located next door to one another – each seek to switch service to a different (intermodal) provider, a

⁴³ With location portability, a customer changes his/her location at the time of the port. With terminal mobility, a customer moves *after* the port.

⁴⁴ USTA Stay Petition at 3.

⁴⁵ *First LNP Order*, 11 FCC Rcd 8352, 8357 ¶ 8 (1996).

wireless customers (seeking to switch to wireless) would be able to do so; the wireless customer (seeking to switch to wireline) likely would not.”⁴⁶ This assertion is factually inaccurate. As Sprint demonstrates in Part I.A.2 above, USTA members can compete for every wireless customer they choose to compete for.

D. Customers interested in porting. USTA asserts that it “stands to reason that many of the individuals most interested in intermodal portability are also individuals who may be likely to change residences often within the same urban rate area.”⁴⁷ However, USTA cites no support for this sweeping statement. Based on Sprint’s experience, as both an ILEC and a wireless carrier, this USTA assertion is not obvious, and Sprint has no reason to believe the assertion is accurate.

E. Rural LECs. USTA asserts that a stay is necessary to protect rural LECs because they will incur “tremendous costs”:

[T]he cost of implementation of intermodal capability may produce significant consumer harm in many small and rural exchanges.⁴⁸

However, all available evidence undercuts this USTA assertion. For example, the three rural LECs that have requested waivers of the LNP rules have identified LNP implementation costs of ranging from \$3.02 to \$7.39 per customer.⁴⁹ Similarly, staff of the Washington Commission reviewed the identified LNP implementation costs of numerous rural LECs and determined that their monthly surcharge to recover their costs would range from \$0.03 to \$0.53

⁴⁶ USTA Stay Petition at 10.,

⁴⁷ USTA Stay Petition at 15.

⁴⁸ USTA Stay Petition at 2-3 and 16.

⁴⁹ See Sprint Opposition to North Central Petition for Waiver, CC Docket No. 95-116 (Oct. 16, 2003); Sprint Opposition to Franklin Petition for Waiver, CC Docket No. 95-116 (Oct. 17, 2003); Sprint Opposition to Inter-Community Petition for Waiver, CC Docket No. 95-116 (Oct. 17, 2003).

monthly (vs. \$0.48 charged by Sprint's ILEC division).⁵⁰ Besides, a rural LEC facing extraordinary circumstances can submit either a waiver request with the Commission or a petition with its state regulator under Section 251(f)(2) of the Act.⁵¹

F. Routing and Rating of calls to wireless customers with ported numbers. USTA asserts that there is "simply no established method for routing and billing calls that have been ported out of the local exchange."⁵² This unsupported USTA assertion is factually inaccurate, as Sprint demonstrated in its opposition to the rural ILEC stay petition.⁵³

G. NANC Process. USTA asserts that that the Commission was without authority enter its declaratory ruling – despite express Congressional authorization to enter declaratory rules⁵⁴ – and that the Commission was instead required to "send the [LEC-wireless] porting issue back to the NANC."⁵⁵ USTA does not, however, identify what it thinks NANC would do if the Commission had remanded to NANC the LEC-wireless porting issues that the Commission addressed at NANC's specific request.

There is no requirement in law, sound public policy or common sense for the Commission to have NANC reconsider issues that the Commission decides, especially when NANC is

⁵⁰ Washington Utilities and Transportation Commission Staff, Memorandum for the October 29, 2003 Agenda, Docket UT-031535, at Attachment C. For example, Washington staff determined that the surcharge that CenturyTel would have to charge to recover its identified Washington LNP costs would be \$0.10 monthly. *See id.* The Washington rural LECs withdrew their Section 251(f)(2) suspension petition after Washington staff recommended that the Commission deny the requested relief with respect to most of the petitioners.

⁵¹ *See First LNP Reconsideration Order*, 12 FCC Rcd 7236, 7302 ¶ 115 (1997).

⁵² USTA Stay Petition at 16.

⁵³ *See Sprint Opposition to Rural Carrier Petition to Stay the Wireless Porting Order*, CC Docket No. 95-116, at 2-5 (Nov. 12, 2003).

⁵⁴ *See* 5 U.S.C. § 554(e) ("The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.").

⁵⁵ USTA Stay Petition at 8.

unable to reach consensus. For example, the Commission modified NANC's recommendation concerning the blocking of default traffic.⁵⁶ To Sprint's knowledge, neither USTA nor anyone else complained that the Commission lacked authority to make this modification without first returning this issue to NANC for further consideration.

III. CONCLUSION

For the foregoing reasons, Sprint Corporation respectfully requests that the Commission deny the USTA Stay Petition.

Respectfully submitted,

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⁵⁶ See *Second LNP Order*, 12 FCC Rcd 12281, 12324-25 ¶ 76 (1997).

Certificate of Service

I, Jo-Ann Monroe, certify that on this 20th day of November, I caused a copy of the foregoing Sprint Opposition to the USTA Stay Petition filed on November 18, 2003 to be served by facsimile to:

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