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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	)	

MEMORANDUM OPINION AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: November 7, 2003 **Released: November 10, 2003**

By the Commission: Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein issuing separate statements.

Comment Date: 20 days after publication in the Federal Register.
Reply Comment Date: 30 days after publication in the Federal Register.

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I. INTRODUCTION

1. In this order, we provide guidance to the industry on local number portability (LNP) issues relating to porting between wireless and wireline carriers (intermodal porting). First, in response to a Petition for Declaratory Ruling filed on January 23, 2003, by the Cellular Telecommunications and Internet Association (CTIA), we clarify that nothing in the Commission's rules limits porting between wireline and wireless carriers to require the wireless carrier to have a physical point of interconnection[1] or numbering resources in the rate center where the number is assigned. We find that porting from a wireline carrier to a wireless carrier is required where the requesting wireless carrier's "coverage area" overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port. The wireless "coverage area" is the area in which wireless service can be received from the wireless carrier. In addition, in response to a subsequent CTIA petition, we clarify that wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting between the carriers. We also decline to adopt a mandatory porting interval for wireline-to-wireless ports at the present time, but we seek comment on the issue as noted below.

2. In the accompanying Further Notice of Proposed Rulemaking (Further Notice), we seek comment on how to facilitate wireless-to-wireline porting if the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer. In addition, we seek comment on whether we should require carriers to reduce the length of the porting interval for ports between wireless and wireline carriers.

II. BACKGROUND

A. Statutory and Regulatory Background

3. Section 251(b) of the Communications Act of 1934, as amended (the Act) requires local exchange carriers (LECs) to provide local number portability, to the extent technically feasible, in accordance with requirements prescribed by the Commission.[2] Under the Act and the Commission's rules, local number portability is defined as "the ability of users of telecommunications services to retain,

[1] Referred to hereinafter as "point of interconnection."

[2] 47 U.S.C. § 251(b)(2).

at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[3]

4. The Commission released the Local Number Portability *First Report and Order* in 1996, which promulgated rules and deployment schedules for the implementation of number portability.[4] The Commission highlighted the critical policy goals underlying the LNP requirement, indicating that "the ability of end users to retain their telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of telecommunications services they can choose to purchase."[5] The Commission found that "number portability promotes competition between telecommunications service providers by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers."[6]

5. The Commission adopted broad porting requirements, noting that "as a practical matter, [the porting obligation] requires LECs to provide number portability to other telecommunications carriers providing local exchange or exchange access service within the same MSA."[7] In addition, the Commission noted the section 251(b) requires LECs to port numbers to wireless carriers. The Commission stated that "section 251(b) requires local exchange carriers to provide number portability to all telecommunications carriers, and thus to Commercial Mobile Radio Service (CMRS) providers as well as wireline service providers."[8]

6. The Commission adopted rules implementing the LNP requirements. Section 52.21(k) of the rules defines number portability to mean "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[9] Section 52.23(b)(1) provides that "all local exchange carriers (LECs) must provide a long-term database method for number portability in the 100 largest Metropolitan Statistical Areas (MSAs) by December 31, 1998 ... in switches for which another carrier has made a specific request for the provision of number portability ..."[10] Finally, Section 52.23(b)(2)(i) of the Commission rules provides that "any wireline carrier that is certified ... to provide local exchange service, or any licensed CMRS provider, must be permitted to make a request for the provision of number portability."[11]

7. In 1997, in the Local Number Portability *Second Report and Order*, the Commission adopted recommendations from the North American Numbering Council (NANC) for the implementation of

[3] 47 U.S.C. § 153(30); 47 C.F.R. §52.21(k).

[4] Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (First Report and Order).

[5] *Id.* at 8368, para. 30.

[6] *Id.*

[7] *Id.* at 8393, para. 77.

[8] *Id.* at 8431, para. 152.

[9] 47 C.F.R. § 52.21(k).

[10] 47 C.F.R. § 52.23(b)(1).

[11] 47 C.F.R. § 52.23(b)(2)(i).

wireline-to-wireline number portability.[12] Under the guidelines developed by the NANC, porting between LECs was limited to carriers with facilities or numbering resources in the same rate center to accommodate technical limitations associated with the proper rating of wireline calls.[13] The NANC guidelines made no recommendations regarding limitations on intermodal porting.

8. Although the Act excludes CMRS providers from the definition of local exchange carrier, and therefore from the section 251(b) obligation to provide number portability, the Commission has extended number portability requirements to CMRS providers.[14] In the Local Number Portability *First Report and Order*, the Commission indicated that it had independent authority under sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, to require CMRS carriers to provide number portability.[15] The Commission noted that "sections 2 and 332(c)(1) of the Act give the Commission authority to regulate commercial mobile radio service operators as common carriers ..."[16] Noting that section 1 of the Act requires the Commission to make available to people of the United States, a rapid, efficient, nation-wide and world-wide wire and radio communication service, the Commission stated that its interest in number portability "is bolstered by the potential deployment of different number portability solutions across the country, which would significantly impact the provision of interstate telecommunications services.[17] Section 4(i) of the Act grants the Commission authority to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Communications Act of 1934, as amended] as may be necessary in the execution of its functions.[18] The Commission concluded that "the public interest is served by requiring the provision of number portability by CMRS providers because number portability will promote competition between providers of local telephone services and thereby promote competition between providers of interstate access services."[19]

9. The Commission determined that implementation of wireless LNP, which would enable wireless subscribers to keep their phone numbers when changing carriers, would enhance competition between wireless carriers as well as promote competition between wireless and wireline carriers.[20] The

[12] Telephone Number Portability, CC Docket No. 95-116, *Second Report and Order*, 12 FCC Rcd 12,281 (1997) (*Second Report and Order*). The requirement that LECs port numbers to wireless carriers has not been applied previously due to extensions of the deadline for wireless carriers' implementation of LNP. *See* Telephone Number Portability, Cellular Telecommunications & Industry Association's Petition for Extension of Implementation Deadlines, CC Docket No. 95-116, *Memorandum Opinion and Order*, 13 FCC Rcd 16315 (1998); Telephone Number Portability, Cellular Telecommunications & Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229, *Memorandum Opinion and Order*, 14 FCC Rcd 3092 (1999); and Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184 and CC Docket No. 95-116, *Memorandum Opinion and Order*, 17 FCC Rcd 14972 (2002).

[13] North American Numbering Council Local Number Portability Selection Working Group Final report and Recommendation to the FCC, Appendix D at 6 (rel. April 25, 1997). This report is available at http://www.fcc.gov/wcb/tapd/nanc/lnpastuf.html.

[14] *First Report and Order* at 8431, paras 152-53.

[15] *Id.* at para. 153. *See* 47 U.S.C. §§ 1, 2, 4(i), and 332.

[16] *Id.*

[17] *Id.* at 8432, para. 153.

[18] 47 U.S.C. § 154(i).

[19] *First Report and Order* at 8432, para. 153.

[20] *Id.* at 8434-36, paras. 157-160.

Commission noted that "service provider portability will encourage CMRS-wireline competition, creating incentives for carriers to reduce prices for telecommunications services and to invest in innovative technologies, and enhancing flexibility for users of telecommunications services."[21] Commission rules reflecting the wireless LNP requirement provide that, by the implementation deadline, "all covered CMRS providers must provide a long-term database method for number portability ... in switches for which another carrier has made a request for the provision of LNP."[22]

10. In the Local Number Portability *Second Report and Order*, after adopting NANC guidelines applicable to wireline-to-wireline porting, the Commission directed the NANC to develop standards and procedures necessary to provide for wireless carriers' participation in local number portability.[23] The Commission indicated its expectation that changes to LNP processes would need to be made to accommodate porting to wireless carriers. The Commission noted that "the industry, under the auspices of NANC, will probably need to make modifications to local number portability standards and processes as it gains experience in implementing number portability and obtains additional information about incorporating CMRS providers into a long-term number portability solution and interconnecting CMRS providers with wireline carriers already implementing their number portability obligations."[24] In addition, the Commission noted that the NANC would have to consider issues of particular concern to wireless carriers, including how to account for differences between service area boundaries for wireline versus wireless services.[25]

11. In 1998, the NANC submitted a report on the integration of wireless and wireline number portability from its Local Number Portability Administration (LNPA) Working Group to the Common Carrier Bureau (now known as the Wireline Competition Bureau).[26] The report discussed technical issues associated with wireless-to-wireline porting. The report noted that differences between the local serving areas of wireless and wireline carriers affected the porting capabilities of each type of carrier, making it infeasible for some wireline carriers to port-in numbers from wireless subscribers. The report explained that because wireline service is fixed to a specific location the subscriber's telephone number is limited to use within the rate center within which it is assigned.[27] By contrast, the report noted, because wireless service is mobile and not fixed to a specific location, while the wireless subscriber's number is associated with a specific geographic rate center, the wireless service is not limited to use within that rate center.[28] As a result of these differences, the report indicated that, if a wireless subscriber seeks to port his or her number to a wireline carrier, but the subscriber's NPA-NXX is outside of the wireline rate center where the subscriber is located, the wireline carrier may not be able to receive the ported number.[29] The NANC did not reach consensus on a solution to this issue, and reported that this lack of symmetry, referred to as

[21] *Id.* at 8437, para. 160.

[22] 47 C.F.R. § 52.31(a).

[23] Second Report and Order at 12333, para. 90.

[24] *Id.*

[25] *Id.* at 12334, para. 91.

[26] North American Numbering Council Local Number Portability Administration Working Group Report on Wireless Wireline Integration, May 8, 1998, CC Docket No. 95-116 (filed May 18, 1998) (First Report on Wireless Wireline Integration).

[27] *Id.* at 7.

[28] *Id.*

[29] *Id.*

"rate center disparity," raises questions by some carriers about competitive neutrality.[30] The Common Carrier Bureau sought comment on the NANC report.[31]

12. The NANC submitted a second report on the integration of wireless and wireline number portability to the Commission in 1999,[32] and a third report in 2000,[33] both focusing on porting interval issues. The second report provided an analysis of the wireline porting interval and considered alternatives to reduce the porting interval for ports between wireless and wireline carriers.[34] The report recommended that each potential alternative be thoroughly developed and investigated.[35] The third report again analyzed the elements of the wireline porting interval and examined whether the length of the porting interval for both intermodal ports and wireline-to-wireline ports could be reduced.[36] The NANC determined that the wireline porting interval should not be reduced, but it was unable to reach a consensus on an intermodal porting interval.[37] Accordingly, we seek comment on the appropriate interval for intermodal porting.[38]

B. Outstanding Petitions for Declaratory Ruling

13. On January 23, 2003, CTIA filed a petition requesting that the Commission issue a declaratory ruling that wireline carriers have an obligation to port their customers' telephone numbers to wireless carriers whose service areas overlap the wireline rate center that is associated with the number.[39] In its petition, CTIA claims that some LECs have narrowly construed their LNP obligations with regard to wireless carriers, taking the position that portability is only required where the wireless carrier receiving the number already has a point of presence or numbering resources in the wireline rate center.[40] CTIA urges the Commission to confirm that wireline carriers have an obligation to port to wireless carriers when their respective service areas overlap. CTIA notes that, in several of its decisions, the Commission has found that LNP is necessary to promote competition between the wireless and wireline

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[30] Letter from Alan C. Hasselwander, Chairman, NANC to A. Richard Metzger, Jr., Chief. Common Carrier Bureau (filed Apr. 14, 1998).

[31] Common Carrier Bureau Seeks Comment on North American Numbering Council Recommendation Concerning Local Number Portability Administration Wireline and Wireless Integration, CC Docket No. 95-116, *Public Notice*, 13 FCC Rcd 17342 (1998).

[32] North American Numbering Council Local Number Portability Administration Working Group Second Report on Wireless Wireline Integration, June 30, 1999, CC Docket No. 95-116 (filed Nov. 4, 1999) (Second Report on Wireless Wireline Integration).

[33] North American Numbering Council Local Number Portability Administration Working Group Third Report on Wireless Wireline Integration, Sept. 30, 2000, CC Docket no. 95-116 (filed Nov. 29, 2000) (Third Report on Wireless Wireline Integration).

[34] Second Report on Wireless Wireline Integration at section 3.

[35] *Id.* at section 1.1.

[36] Third Report on Wireless Wireline Integration at section 3.

[37] Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau, (filed Nov. 29, 2000).

[38] *See* paras. 45-51, *infra*.

[39] CTIA Petition for Declaratory Ruling, CC Docket No. 95-116 (filed Jan. 23, 2003) (January 23rd Petition).

[40] *Id.* at 3.

industries. CTIA argues that, without Commission action to resolve the deadlock over the rate center disparity issue, the reality of wireline-to-wireless porting will be at risk because many wireline subscribers will be unable to port their numbers to wireless carriers that serve their areas.[41]

14. CTIA also requests that the Commission confirm that a wireline carrier's obligation to port numbers to a wireless carrier can be based on a service-level porting agreement between the carriers, and does not require an interconnection agreement. According to CTIA, number portability requires only that a carrier release a customer's number to another carrier and assign the number to the new carrier in the Number Portability Administration Center (NPAC) database, which is queried solely to identify the carrier that can terminate calls to the customer.[42]

15. The majority of wireless carriers submitting comments support CTIA's request for declaratory ruling. They agree with CTIA that, without Commission action to resolve the rate center issue, the majority of wireline customers will be prevented from porting their number to a wireless carrier.[43] They call for the Commission to reject any proposal that would restrict porting to rate centers where a wireless carrier has already obtained numbers, contending that such a limitation would be inconsistent with the competitive objectives of intermodal LNP and would waste numbering resources.[44]

16. Wireline carriers generally oppose CTIA's petition.[45] Some argue that requiring LECs to port to carriers who do not have a point of interconnection or numbering resources in the same rate center in which the number is assigned would give wireless carriers an unfair competitive advantage over wireline carriers.[46] LECs argue that, in contrast to wireless carriers who have flexibility in establishing their service areas and rates, wireline carriers are governed by state regulations. Under the state regulatory regime, they rate and route local and toll calls based on wireline rate centers. Consequently, LECs contend, wireline service providers do not have the same opportunity that wireless carriers have to offer number portability where the rate center in which the number is assigned does not match the rate center in which the LEC seeks to serve the customer.[47] Others argue that CTIA's petition would amount to a system of location portability rather than service provider portability, causing customer confusion over

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[41] *Id.* at 19.

[42] *Id.* at 3.

[43] AT&T Wireless, Midwest Wireless, Nextel, Sprint, T-Mobile, and US Cellular all filed comments supporting CTIA's January 23rd petition. Comments and Reply Comments filed in response to the CTIA's January 23rd and May 13th petitions are listed in Appendix A.

[44] *See, e.g.*, Sprint Reply Comments on CTIA's January 23rd Petition at 9; T-Mobile Comments on CTIA's January 23rd Petition at 14-15; and Virgin Mobile Reply Comments on CTIA's January 23rd Petition at 4.

[45] Centurytel, Fred Williams & Associates, the Independent Alliance, the Michigan Exchange Carriers Association, NECA and NTCA, the Nebraska Rural Independent Companies, OPASTCO, SBC, TCA, USTA, and Valor Communications all filed comments opposing CTIA's January 23rd petition.

[46] *See, e.g.*, Centurytel Comments on CTIA's January 23rd Petition at 5-6; Fred Williams & Associates Comments on CTIA's January 23rd Petition at 8; SBC Comments on CTIA's January 23rd Petition at 1; Letter from Cronan O'Connell, Vice President-Federal Regulatory, Qwest to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116 (filed Oct. 9, 2003) (Qwest Oct. 9th *Ex Parte*); and Letter from Kathleen B. Levitz, Vice President-Federal Regulatory, BellSouth to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116 (filed Sept. 9, 2003) (BellSouth Sept. 9th *Ex Parte*).

[47] *See, e.g.*, Letter from James C. Smith, Senior Vice President, SBC Telecommunications, Inc. to Michael K. Powell, Chairman, FCC, CC Docket No. 95-116 (filed Aug. 29, 2003) (SBC Aug. 29th *Ex Parte*); and BellSouth Sept. 9th *Ex Parte*.

the rating of calls.[48] Several LECs also argue that the Commission may not permit intermodal porting outside of wireline rate center boundaries without first issuing a Notice of Proposed Rulemaking.[49] Several rural LECs argue that requiring porting between wireline and wireless carriers where the wireless carriers do not have a point of interconnection in the same rate center as the ported number would raise intercarrier compensation issues, as wireline carriers would be required to transport calls to ported numbers through points of interconnection outside of rural LEC serving areas.[50]

17. On May 13, 2003, CTIA filed a second Petition for Declaratory Ruling. In its petition, CTIA argues that, in addition to the rate center issue that was the subject of its January petition, there are additional LNP implementation issues that have not been resolved by industry consensus and therefore must be addressed by the Commission.[51] Specifically, CTIA requests that the Commission rule on the appropriate length of the porting interval, the necessity of interconnection agreements, a dispute between BellSouth and Sprint concerning the ability of carriers to designate different routing and rating points, definition of the largest 100 Metropolitan Statistical Areas (MSAs), the bona fide request requirement, and whether carriers must support nationwide roaming for customers with ported numbers.

18. On October 7, 2003, we released a Memorandum Opinion and Order addressing carrier requests for clarification of wireless-wireless porting issues.[52] In response to CTIA's May 13th petition as well as a Petition for Declaratory Ruling/Application for Review, we concluded that wireless carriers may not impose "business rules" on their customers that purport to restrict carriers' obligations to port numbers upon receipt of a valid request to do so. In addition, we clarified that wireless-to-wireless porting does not require the wireless carrier receiving the number to be directly interconnected with the wireless carrier that gives up the number or to have numbering resources in the rate center associated with the ported number. We clarified that, although wireless carriers may voluntarily negotiate interconnection agreements with one another, such agreements are not required for wireless-to-wireless porting. We confirmed also that, in cases where wireless carriers are unable to reach agreement regarding the terms and conditions of porting, all such carriers must port numbers upon receipt of a valid request from another carrier, with no conditions.

19. We encouraged wireless carriers to complete "simple" ports within the industry-established two and one half hour porting interval and found that no action was necessary regarding the porting of numbers served by Type 1 interconnection because carriers are migrating these numbers to switches served by Type 2 interconnection or are otherwise developing solutions.[53] Finally, we reiterated the requirement that wireless carriers support roaming nationwide for customers with pooled and ported

[48] *See* Centurytel Comments on CTIA's January 23rd Petition at 4-5.

[49] *See, e.g.*, Letter from Gary Lytle, Qwest to Marlene H. Dortch, Secretary, FCC (filed Oct, 17, 2003) (Qwest Oct. 17th *Ex Parte*); and SBC Aug. 29th *Ex Parte*.

[50] NECA and NTCA Comments on CTIA's January 23rd Petition at 6. *See,* In the Matter of Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, Sprint Petition for Declaratory Ruling, CC Docket No. 01-92 (filed July 18, 2002) (Sprint Petition for Declaratory Ruling).

[51] CTIA Petition for Declaratory Ruling, CC Docket No. 95-116 (filed May 13, 2003) (May 13th Petition).

[52] Telephone Number Portability, CC Docket No. 95-116, *Memorandum Opinion and Order*, FCC 03-237, rel. Oct. 7, 2003.

[53] Type 1 numbers reside in an end office of a LEC and are assigned to a Type 1 interconnection group, which connects the wireless carrier's switch and the LEC's end office switch. Type 2 numbers reside in a wireless carrier's switch and are assigned to a Type 2 interconnection group, which connects the wireless carrier's switch and a LEC access tandem switch or end office switch.

numbers, and we addressed outstanding petitions for waiver of the roaming requirement. We indicated our intention to address issues related to intermodal porting in a separate order.[54]

III. ORDER

A. Wireline-to-Wireless Porting

20. *Background.* In its January 23rd Petition, CTIA requests that the Commission clarify that the LNP rules require wireline carriers to port numbers to any wireless carrier whose service area overlaps the wireline carrier's rate center that is associated with the ported number.[55] CTIA claims that, absent such a clarification, a majority of wireline customers will not be able to port their phone number to the wireless carrier of their choice because wireless carriers typically have a point of interconnection or numbering resources in only a fraction of the wireline rate centers in their service areas.[56] Citing prior Commission decisions, CTIA notes that the Commission has cited intermodal competition as a basis for imposing LNP requirements on wireless carriers.[57] CTIA argues that the Commission's objectives with respect to intermodal competition cannot be realized without prompt action.

21. *Discussion.* The Act and the Commission's rules impose broad porting obligations on LECs. Section 251(b) of the Act provides that all local exchange carriers "have the duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[58] The Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[59] In implementing these requirements in the Local Number Portability *First Report and Order*, the Commission determined that LECs were required to provide portability to all other telecommunications carriers, including CMRS service providers, providing local exchange or exchange access service within the same MSA.[60] The Commission's rules reflect these requirements, requiring LECs to offer number portability in switches for which another carrier made a request for number portability and providing that all carriers, including CMRS service providers must be permitted to make requests for number portability.[61]

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[54] Remaining issues from CTIA's January 23rd and May 13th petitions pertaining to intermodal porting are addressed in this order. Additional issues from CTIA's May 13th petition, including the implication of the porting interval for E911, the definition of the 100 largest MSAs, and the bona fide request requirement have been addressed separately. *See* Letter from John B. Muleta, Chief, Wireless telecommunications Bureau, to John T. Scott, III, Vice President and Deputy General Counsel, Verizon Wireless and Michael F. Altschul, Senior Vice President, General Counsel, CTIA, CC Docket No. 95-116, DA 03-2190, dated July 3, 2003. *See also*, Numbering Resource Optimization, *Fourth Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket Nos. 99-200 and 95-116 (rel. June 18, 2003).

[55] January 23rd Petition at 3.

[56] *Id.* at 18.

[57] *Id.* at 12-16.

[58] 47 U.S.C. § 251(b).

[59] 47 U.S.C. § 153(30).

[60] *First Report and Order* at 8393, 8431, paras. 77 and 152.

[61] 47 C.F.R. § 52.23(b)(1), (b)(2)(i).

22. We conclude that, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.[62] Permitting intermodal porting in this manner is consistent with the requirement that carriers support their customers' ability to port numbers while remaining at the same location. For purposes of this discussion, the wireless "coverage area" is the area in which wireless service can be received from the wireless carrier. Permitting wireline-to-wireless porting under these conditions will provide customers the option of porting their wireline number to any wireless carrier that offers service at the same location. We also reaffirm that wireless carriers must port numbers to wireline carriers within the number's originating rate center. With respect to wireless-to-wireline porting, however, because of the limitations on wireline carriers' networks ability to port-in numbers from distant rate centers, we will hold neither the wireline nor the wireless carriers liable for failing to port under these conditions. Rather, we seek comment on this issue in the Further Notice below.

23. We make our determinations based on several factors. First, as stated above, under the Act and the Commission's rules, wireline carriers must port numbers to other telecommunications carriers, to the extent that it is technically feasible to do so, in accordance with regulations prescribed by the Commission.[63] There is no persuasive evidence in the record indicating that there are significant technical difficulties that would prevent a wireline carrier from porting a number to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number. Accordingly, the plain text of the Act and the Commission's rules, requiring LECs to provide number portability applies. In fact, several LECs acknowledge that there is no technical obstacle to porting wireline numbers to wireless carriers whose point of interconnection is outside of the rate center of the ported numbers.[64] Moreover, at least two LECs, Verizon and Sprint, have already established agreements with their wireless affiliates that specifically provide for intermodal porting.[65] In addition, BellSouth indicates in its comments that it has no intention of preventing customers from porting their telephone numbers to wireless carriers upon the customers' requests – regardless of whether or not the

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[62] We anticipate that a minimal amount of identifying information will be transmitted from the wireless carrier to the LEC when a customer seeks to port. For example, carriers may choose to verify the zip code of the porting-out wireline customer in their validation procedures.

[63] 47 U.S.C. § 251(b)(2), 47 C.F.R. § 52.23.

[64] *See* BellSouth Comments on CTIA's January 23rd Petition at 3; and USTA Comments on CTIA's January 23rd Petition at 7-8.

Several interexchange carriers (IXCs) have brought to the Commission's attention a problem IXCs face in identifying whether a customer has switched carriers. This problem can result in customers receiving erroneous bills from IXCs after they have switched local or interexchange carriers, and could also be a problem when customers port from a wireline carrier to a wireless carrier. While we do not address this issue in the instant order, we have sought comment on carrier petitions regarding this matter. *See* Pleading Cycle Established for Comments on Petition for Declaratory Ruling and/or Rulemaking, filed by Americatel Corporation, and for Comments on Joint Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, filed by AT&T Corp., Sprint Corp., and WorldCom, Inc., CG Docket No. 02-386, *Public Notice*, 17 FCC Rcd 25535 (2002).

[65] "Verizon and Verizon Wireless Reach Barrier-Free Porting Agreement in Advance of November 24 Deadline," Press Release from Verizon Wireless dated Sept. 22, 2003, available at http://news.vzw.com/news/2003/09/pr2003-09-22.html; and "Sprint Wireless Local Number Portability Plans on Track, on Schedule for November Deadline," Press Release from Sprint dated Oct. 1, 2003, available at Sprint.com.

carriers' service areas overlap.[66] Accordingly, BellSouth states, number portability can still occur despite the "rate center disparity" issue. We note that, to the extent that LECs assert an inability to port numbers to wireless carriers under the circumstances described herein, they bear the burden of demonstrating with specific evidence that porting to a wireless carrier without a point of interconnection or numbering resources in the same rate center to which the ported number is assigned is not technically feasible pursuant to our rules.

24. Second, neither the Commission's LNP rules nor any of the LNP orders have required wireless carriers to have points of interconnection or numbering resources in the same rate center as the assigned number for wireline-to-wireless porting. In the Local Number Portability *Second Report and Order*, the Commission adopted NANC recommendations regarding several specific aspects of number portability implementation, including technical and operational standards for the provision of number portability by wireline carriers.[67] In this context, the Commission adopted the NANC recommendations concerning the boundaries applicable to wireline-to-wireline porting. Specifically, the Commission adopted NANC recommendations limiting the scope of ports to wireline carriers based on wireline carriers' inability to receive numbers from foreign rate centers.[68]

25. In this order, we address a different issue, wireline-to-wireless porting. The NANC recommendations that were the subject of the *Second Report and Order* included a boundary for wireline-to-wireline porting, but were silent regarding wireline-to-wireless porting issues. In adopting the NANC recommendations, the Commission specifically recognized that the NANC had not included recommendations regarding wireless carriers' participation in number portability and that modifications to existing standards and procedures would probably need to be made as the industry obtained additional information about incorporating CMRS service providers into a long-term number portability solution and interconnecting CMRS carriers with wireline carriers already implementing number portability.[69] However, while the Commission noted that NANC should consider intermodal porting issues of concern to wireless carriers, it did not impose limits on wireline-to-wireless porting while NANC considered these issues, nor did it give up its inherent authority to interpret the statute and rules with respect to the obligation of wireline carriers to port numbers to wireless carriers. Accordingly, we find that in light of the fact that the Commission has never adopted any limits regarding wireline-to-wireless number portability, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's coverage area overlaps the geographic location of the rate center to which the number is assigned.[70]

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[66] *See* BellSouth Comments on CTIA's January 23rd Petition at 3. In recent ex parte filings, BellSouth argues that the Commission cannot proceed to require intermodal porting until it addresses the issues arising from the differences in network architecture, operational support systems, and regulatory requirements that distinguish wireline carriers from wireless carriers. *See, e.g.*, BellSouth Sept. 9th *Ex Parte*.

[67] *See Second Report and Order*. Subsequent NANC reports address technical issues associated with wireless-to-wireline porting. In the Further Notice, we seek comment on these technical feasibility issues.

[68] North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, Appendix D at 6 (rel. April 25, 1997). This report is available at www.fc.gov/wcb/tapd/nanc/lnpastuf.html.

[69] *Second Report and Order* 12 FCC Rcd at 12333-34.

[70] Similarly, wireless-to-wireline porting is required, as of November 24, 2003, where the requesting carrier's coverage area overlaps the geographic location of the rate center to which the number is assigned

26. We reject the argument advanced by certain wireline carriers,[71] that requiring LECs to port to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number would constitute a new obligation imposed without proper notice. In fact, the requirement that LECs port numbers to wireless carriers is not a new rule. Citing the D.C. Circuit's decision in the *Sprint* case specifying the distinction between clarifications of existing rules and new rulemakings subject to APA procedures, Qwest, for example, argues that the permitting wireline-to-wireless porting in the manner outlined above would change LECs' existing porting obligations.[72] As described earlier, however, section 251(b) of the Act and the Commission's Local Number Portability *First Report and Order* impose broad porting obligations on wireline carriers. Specifically, these authorities require wireline carriers to provide portability to all other telecommunications carriers, including wireless service providers. While the Commission decision in the Local Number Portability *Second Report and Order* limited the scope of wireline carriers' porting obligation with respect to the boundary for wireline-to-wireline porting, the Commission, as noted above, has never established limits with respect to wireline carriers' obligation to port to wireless carriers. The clarifications we make in this order interpret wireline carriers' existing obligation to port numbers to wireless carriers. Therefore, these clarifications comply with the requirements of the Administrative Procedure Act as well as the D.C. Circuit's decision in the *Sprint* case.

27. We also reject the argument made by some LECs that the scope of wireline-to-wireless porting should be limited because wireline carriers may not be able to offer portability to certain wireless subscribers.[73] As discussed above, under the Act and the Commission's rules, wireline carriers must port numbers to other telecommunications carriers, to the extent technically feasible. The fact that there may be technical obstacles that could prevent some other types of porting does not justify denying wireline consumers the benefit of being able to port their wireline numbers to wireless carriers. Each type of service offers its own advantages and disadvantages (e.g., wireless service offers mobility and larger calling areas, but also the potential for dropped calls) and wireline customers will consider these attributes in determining whether or not to port their number. In our view, it would not be appropriate to prevent wireline customers from taking advantage of the mobility or the larger local calling areas associated with wireless service simply because wireline carriers cannot currently accommodate all potential requests from customers with wireless service to port their numbers to a wireline service provider. Evidence from the record shows that limiting wireline-to-wireless porting to rate centers where a wireless carrier has a point of interconnection or numbering resources would deprive the majority of wireline consumers of the ability to port their number to a wireless carrier.[74] With such limited intermodal porting, the competitive benefits we seek to promote through the porting requirements may not be fully achieved. The focus of the porting rules is on promoting competition, rather than protecting individual competitors. To the extent that wireline carriers may have fewer opportunities to win customers through porting, this disparity results from the wireline network architecture and state regulatory requirements, rather than Commission rules.

28. We conclude that porting from a wireline to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number does not, in and of itself, constitute location portability, because the rating of calls to the ported number stays the same. As stated above, a wireless carrier porting-in a wireline number is required to maintain the number's original rate center designation following the port. As a result, calls to the ported number will continue to be rated

[71] *See, e.g.*, Letter from Gary Lytle, Qwest to Marlene H. Dortch, Secretary, FCC (filed Oct, 17, 2003) (Qwest Oct. 17th *Ex Parte*); and SBC Aug. 29 Ex Parte.

[72] Qwest Oct. 17th *Ex Parte* at 11. *See* Sprint Corp. v. FCC, 315 F. 3d 369 (D.C. Cir. 2003).

[73] *See, e.g.*, SBC Aug. 29th *Ex Parte* and BellSouth Sept. 9th *Ex Parte*.

[74] January 23rd Petition at 6.

in the same fashion as they were prior to the port. As to the routing of calls to ported numbers, it should be no different than if the wireless carrier had assigned the customer a new number rated to that rate center.[75]

29. Some wireline carriers contend that they lack the technical capability to support wireline-to-wireless porting in the manner outlined above, and that they need time to make technical modifications to their systems. We emphasize that our holding in this order requires wireline carriers to support wireline-to-wireless porting in accordance with this order by November 24, 2003, unless they can provide specific evidence demonstrating that doing so is not technically feasible pursuant to our rules.[76] We expect carriers that need to make technical modifications to do so forthwith, as the record indicates that major system modifications are not required and that several wireline carriers have already announced their technical readiness to port numbers to wireless carriers without regard to rate centers.[77] We recognize, however, that many wireline carriers outside the top 100 MSAs may require some additional time to prepare for implementation of intermodal portability. In addition we note that wireless carriers outside the top 100 MSAs are not required to provide LNP prior to May 24, 2004, and accordingly are unlikely to seek to port numbers from wireline carriers prior to that date. Therefore for wireline carriers operating in areas outside of the 100 largest MSAs, we hereby waive, until May 24, 2004, the requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned. We find that this transition period will help ensure a smooth transition for carriers operating outside of the 100 largest MSAs and provide them with sufficient time to make necessary modifications to their systems.

30. Carriers inside the 100 largest MSAs (or outside the 100 largest MSAs, after the transition period) may file petitions for waiver of their obligation to port numbers to wireless carriers, if they can provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules.[78] We note that several wireline carriers have already filed requests for waiver.[79] We will

[75] As noted in paras. 39-40 below, there is a dispute as to which carrier is responsible for transport costs when the routing point for the wireless carrier's switch is located outside the wireline local calling area in which the number is rated. *See* Sprint Petition for Declaratory Ruling. The existence of this dispute over transport costs does not, however, provide a reason to delay or limit the availability of porting from wireline to wireless carriers.

We recognize that the Act limits wireline carriers' ability to route calls outside of Local Access Transport Area (LATA) boundaries. *See* 47 U.S.C. § 272. *See also*, Application by SBC Communications, Inc., Southwestern Bell Telephone, and Southwestern Bell Communications, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, *Memorandum Opinion and Order*, 15 FCC Rcd 18354 (2000). Accordingly, we clarify that our ruling is limited to porting within the LATA where the wireless carrier's point of interconnection is located, and does not require or contemplate porting outside of LATA boundaries.

[76] 47 U.S.C. § 251(b). We anticipate that, as a general matter, enforcement issues regarding both wireless-wireless and wireless-wireline local number portability at this time are likely to be better addressed in the context of Section 208 formal compliant proceedings or related mediations as opposed to FCC-initiated forfeiture proceedings. In this connection, we note that a violation of our number portability rules would constitute an unjust and unreasonable practice under section 201(b) of the Act.

[77] We note that Verizon has already announced its intention to port numbers without regard to rate centers. *See* "Verizon and Verizon Wireless Reach Barrier-Free Porting Agreement in Advance of November 24 Deadline," Press Release from Verizon Wireless dated Sept. 22, 2003, available at http://news.vzw.com/news/2003/09/pr2003-09-22.html.

[78] 47 C.F.R. § 1.3, 52.25(e). *See also* WAIT Radio v. FCC, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

consider these requests separately, and our decision in this order is without prejudice to any potential disposition of these requests.

B. Interconnection Agreements

31. *Background.* In its January 23rd petition, CTIA requests that the Commission confirm that a wireline carrier's obligation to port numbers to a wireless carrier requires only that a carrier release a customer's number to another carrier and assign the number to the new carrier in the Number Portability Administration Center (NPAC) database, which is queried solely to identify the carrier that can terminate calls to the customer. From a practical perspective, CTIA contends, such porting can be based on a service-level porting agreement between carriers, and does not require direct interconnection or an interconnection agreement. Moreover, CTIA argues, because the Commission imposed number portability requirements on wireless carriers pursuant to its authority under sections 1, 2, 4(i), and 332 of the Act, and outside the scope of sections 251 and 252, number portability between wireline and wireless carriers is governed by a different regime than number portability between wireline carriers and is subject to the Commission's unique jurisdiction over wireless carriers.[80]

32. A number of wireless carriers agree with CTIA, arguing that requiring wireless carriers to establish interconnection agreements with wireline carriers from whom they sought to port numbers would delay LNP implementation.[81] Several wireline carriers, however, assert that interconnection agreements for porting are necessary.[82] SBC, for example, argues that under sections 251 and 252 of the Act, LECs must establish interconnection agreements for porting.[83] SBC contends that interconnection agreements guarantee parties their right to negotiate, provide a means of resolving disputes, and allow public scrutiny of agreements.[84] In addition, some LECs argue that, without interconnection agreements, they have no means to ensure that they will receive adequate compensation for transporting and terminating traffic to wireless carriers.

33. Other LECs, on the other hand, disagree that interconnection agreements are a necessary precondition to intermodal porting. Verizon contends that intermodal porting is not a Section 251 requirement and is therefore not necessary to incorporate wireless-wireline porting into Section 251 agreements.[85] AT&T questions whether either service level agreements or interconnection agreements are necessary, contending that because such little information needs to be exchanged between carriers for porting, less formal arrangements may be sufficient.[86] Sprint argues that interconnection agreements are

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[79] *See e.g.*, Franklin Telephone Company, Inc. Petition for Waiver, CC Docket Nos. 95-116 (filed Sept. 24, 2003); Intercommunity Telephone Company, LLC Petition for Waiver, CC Docket No. 95-116 (filed Sept. 24, 2003); and North Central Telephone Cooperative, Inc. Petition for Waiver, CC Docket No. 95-116 (filed Sept. 24, 2003).

[80] May 13th Petition at 17-18.

[81] *See* Sprint Comments on CTIA's May 13th Petition at 16; T-Mobile Comments on CTIA's May 13th Petition at 8; and Virgin Mobile Comments on CTIA's May 13th Petition at 4-5.

[82] *See* Missouri Independent Telephone Company Group Comments on CTIA's May 13th Petition; National Telecommunications Cooperative Association Comments on CTIA's May 13th Petition; and SBC Comments on CTIA's May 13th Petition.

[83] SBC Comments on CTIA's May 13th Petition at 8.

[84] *Id.*

[85] Sprint Comments on CTIA's May 13th Petition at 18; Verizon Comments on CTIA's May 13th Petition at 10.

[86] AT&T Reply Comments on CTIA's May 13th Petition at 7-8.

not required for LNP because whether or not a customer ports a number from one carrier to another has nothing to do with the interconnection arrangements two carriers use for the exchange of traffic.[87] Several LECs urge the Commission to let carriers determine on their own what type of agreement to use to facilitate porting.[88]

34. *Discussion.* We find that wireless carriers need not enter into section 251 interconnection agreements with wireline carriers solely for the purpose of porting numbers. We note that the intermodal porting obligation is also based on the Commission's authority under sections 1, 2, 4(i) and 332 of the Act. Sprint argues that interconnection agreements are not required to implement every section 251 obligation.[89] Sprint also claims that because porting involves a limited exchange of data (e.g., carriers need only share basic contact and technical information sufficient to allow porting functionality and customer verification to be established), interconnection agreements should not be required here.[90] We agree with Sprint that wireline carriers should be required to port numbers to wireless carriers without necessarily entering into an interconnection agreement because this obligation can be discharged with a minimal exchange of information. We thus find that wireline carriers may not unilaterally require interconnection agreements prior to intermodal porting. Moreover, to avoid any confusion about the applicability of section 252 to any arrangement between wireline and wireless carriers solely for the purpose of porting numbers, we forbear from these requirements as set forth below.

35. To the extent that the *Qwest Declaratory Ruling Order* could be interpreted to require any agreement pertaining solely to wireline-to-wireless porting to be filed as an interconnection agreement with a state commission pursuant to sections 251 and 252 of the Act, we forbear from those requirements. First, we conclude that interconnection agreements are not necessary to prevent unjust or unreasonable charges or practices by wireless carriers with respect to porting. The wireless industry is characterized by a high level of competition between carriers. Although states do not regulate the prices that wireless carriers charge, the prices for wireless service have declined steadily over the last several years.[91] No evidence suggests that requiring interconnection agreements for intermodal porting is necessary for this trend to continue.

36. For similar reasons, we find that interconnection agreements for intermodal porting are not necessary for the protection of consumers.[92] The intermodal LNP requirement is intended to benefit

[87] Letter from Luisa L. Lancetti, Vice President, PCS Regulatory Affairs, Sprint to John Rogovin, General Counsel, FCC (filed Sept. 22, 2003).

[88] *See* Association for Local Telecommunications Services Reply Comments on CTIA's May 13th Petition at 3, BellSouth Comments on CTIA's May 13th Petition at 9; and USTA Reply Comments on CTIA's May 13th Petition at 6.

[89] *See* note 87.

[90] Sprint's profile information exchange process is an example of the type of contact and technical information that would trigger an obligation to port. *See,* Letter from Luisa L. Lancetti, Vice President PCS Regulatory Affairs, Sprint Corp. to John B. Muleta, Chief, Wireless Telecommunications Bureau (filed Sept. 23, 2003); and Letter from Luisa L. Lancetti, Vice President, PCS Regulatory Affairs, Sprint Corp. to John B. Muleta, Chief, Wireless Telecommunications Bureau and William Maher, Chief, Wireline Competition Bureau (filed August 8, 2003).

[91] Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Eighth Report*, FCC 03-150, at 45 (rel. July 14, 2003).

[92] Certain LECs have expressed concern that without interconnection agreements between LECs and CMRS carriers, calls to ported numbers may be dropped, because NPAC queries may not be performed for customers who have ported their numbers from a LEC to a CMRS carrier. *See* Letter from Mary J. Sisak, Counsel for Centurytel, Inc. to Marlene H. Dortch, Secretary, FCC (filed Oct. 23, 2003). We do not find these concerns to be justified,

consumers by promoting competition between the wireless and wireline industries and creating incentives for carriers to provide new service offerings, reduced prices, and higher quality services. Requiring interconnection agreements for the purpose of intermodal porting could undermine the benefits of LNP to consumers by preventing or delaying implementation of intermodal porting. We also do not believe that the state regulatory oversight mechanism provided by Section 251 is necessary to protect consumers in this limited instance.

37. Finally, we conclude that forbearance is consistent with the public interest. Number portability, by itself, does not create new obligations with regard to exchange of traffic between the carriers involved in the port. Instead, porting involves a limited exchange of data between carriers to carry out the port. Sprint, for example, notes that to accomplish porting, carriers need only exchange basic contact information and connectivity details, after which the port can be rapidly accomplished.[93] Given the limited data exchange and the short time period required to port, we conclude that interconnection agreements approved under section 251 are unnecessary. In view of these factors, we conclude that it is appropriate to forbear from requiring interconnection agreements for intermodal porting.

C. The Porting Interval

38. CTIA requests that the Commission require wireline carriers to reduce the length of the porting interval, or the amount of time it takes two carriers to complete the process of porting a number, for ports from wireline to wireless carriers.[94] Currently, the wireline-to-wireline porting interval is four business days.[95] The wireline porting interval was adopted by the NANC in its Architecture and Administrative Plan for Local Number Portability, which was approved by the Commission.[96] Upon subsequent review of the porting interval, the NANC agreed that the four business day porting interval for wireline-to-wireline porting should not be reduced; it did not specify a porting interval for intermodal porting.[97] The current porting interval for wireless-to-wireless ports is two and one half hours.[98] We decline to require wireline carriers to follow a shorter porting interval for intermodal ports at this time. Instead, we will seek comment on this issue in the Further Notice. We note that, while we seek comment on whether to reduce the length of the wireline porting interval, the current four business day porting

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however, because the Commission's rules require carriers to correctly route calls to ported numbers. *See* Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7307-08, paras. 125-126.

[93] Sprint Comments on CTIA's May 13th Petition at 13-14.

[94] May 13th Petition at 7.

[95] Wireline carriers are required to complete the LSR/FOC exchange within 24 hours and complete the port within three business days thereafter. *See* North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, Appendix E (rel. April 25, 1997).

[96] *Second Report and Order*, 12 FCC Rcd 12281 (1997

[97] Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau, (filed Nov. 29, 2000).

[98] *See* North American Numbering Council Local Number Portability Administration Working Group Report on Wireless Wireline Integration, May 8, 1998, CC Docket No. 95-116 (filed May 18, 1998) (First Report on Wireless Wireline Integration); North American Numbering Council Wireless Number Portability Subcommittee Report on Wireless Number Portability Technical, Operational, and Implementation Requirements Phase II, CC Docket No. 95-116 (filed Sept. 26, 2000); ATIS Operations and Billing Forum, Wireless Intercarrier Communications: Interface Specification for Local Number Portability, Version 2, at § 2 p. 6 (Jan. 2003).

interval represents the outer limit of what we would consider to be a reasonable amount of time in which wireline carriers may complete ports. We note also that whatever porting interval affiliated wireline and wireless service providers offer within their corporate family must also be made available to unaffiliated service providers.[99]

D. Impact of Designating Different Routing and Rating Points on LNP

39. CTIA asks the Commission to resolve the intercarrier dispute between BellSouth and Sprint as it affects the rating and routing of calls to ported numbers.[100] CTIA contends that, although the dispute largely concerns matters of intercarrier compensation, to the extent LECs argue that they need not differentiate between rating and routing points for local calls, intermodal porting may not be available to consumers.[101] To ensure that permitting porting beyond wireline rate center boundaries does not cause customer confusion with respect to charges for calls, we clarify that ported numbers must remain rated to their original rate center. We note, however, that the routing will change when a number is ported. Indeed, several wireline carriers have expressed concern about the transport costs associated with routing calls to ported numbers. The National Exchange Carrier Association (NECA) and National Telecommunications Cooperative Association (NTCA), for example, argue in their joint comments, that when wireless carriers establish a point of interconnection outside of a rural LEC's serving area, a disproportionate burden is placed on rural LECs to transport originating calls to the interconnection points.[102] They argue that requiring wireline carriers to port telephone numbers to out-of-service area points of interconnection could create an even bigger burden. Other carriers point out, however, that issues associated with the rating and routing of calls to ported numbers are the same as issues associated with rating and routing of calls to all wireless numbers.[103]

40. We recognize the concerns of these carriers, but find that they are outside the scope of this order. As noted above, our declaratory ruling with respect to wireline-to-wireless porting is limited to ported numbers that remain rated in their original rate centers. We make no determination, however, with respect to the routing of ported numbers, because the requirements of our LNP rules do not vary depending on how calls to the number will be routed after the port occurs. Moreover, as CTIA notes, the rating and routing issues raised by the rural wireline carriers have been raised in the context of non-ported numbers and are before the Commission in other proceedings.[104] Therefore, without prejudging the outcome of any other proceeding, we decline to address these issues at this time as they relate to intermodal LNP.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Wireless-to-Wireline Porting

41. *Background.* As noted above, some LECs argue that allowing wireless carriers to port numbers wherever their coverage area overlaps the rate center in which the number is assigned would

[99] 47 U.S.C. §§ 201(b) and 202(a).

[100] May 13th Petition at 25-26.

[101] *Id.*

[102] NECA and NTCA Comments on CTIA's January 23rd Petition at 6.

[103] BellSouth Comments on CTIA's May 13th Petition at 11-12.

[104] *See, e.g.* In the Matter of Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, Sprint Petition for Declaratory Ruling, CC Docket No. 01-92 (filed July 18, 2002).

give wireless service providers an unfair competitive advantage over wireline carriers.[105] They contend that while this may facilitate widespread wireline-to-wireless porting, wireless-to-wireline porting can only occur in cases where the wireless customer is physically located in the wireline rate center associated with the phone number.[106] If the customer's physical location is outside the rate center associated with the number, porting the number to a wireline telephone at the customer's location could result in calls to and from that number being rated as toll calls. As a result, the LECs assert, they are effectively precluded from offering wireless-to-wireline porting to those wireless subscribers who are not located in the wireline rate center associated with their wireless numbers.[107] Furthermore, the LECs contend that for them to offer wireless-to-wireline porting in this context would require significant and costly operational changes.[108] Qwest, for example, argues that if the Commission were to make the Local Access Transport Area (LATA) or Numbering Plan Area (NPA) the relevant geographic area for porting, LECs would be required to upgrade switches, increase trunking, and rework billing and provisioning systems.[109]

42. *Discussion*. We seek comment on how to facilitate wireless-to-wireline porting where there is a mismatch between the rate center associated with the wireless number and the rate center in which the wireline carrier seeks to serve the customer. Some wireline commenters contend that requiring porting between wireline and wireless carriers where the wireless carrier does not have a point of interconnection or numbering resources in the rate center creates a competitive disparity because wireline carriers would not have the same flexibility to offer porting to wireless customers whose numbers are not associated with the wireline rate center. We seek comment on the technical impediments associated with requiring wireless-to-wireline LNP when the location of the wireline facilities serving the customer requesting the port is not in the rate center where the wireless number is assigned. We seek comment on whether technical impediments exist to such an extent as to make wireless-to-wireline porting under such circumstances technically infeasible. Commenters that contend there are technical implications should specifically describe them, including any upgrades to switches, network facilities, or operational support systems that would be necessary. Commenters should also provide detailed information on the magnitude of the cost of such upgrades along with documentation of the estimated costs. We also seek comment on whether the benefits associated with offering wireless-to-wireline porting would outweigh the costs associated with making any necessary upgrades. We seek comment on the expected demand for wireless-to-wireline porting. We note that wireline customers who decide to port their numbers to wireless carriers are able to port their numbers back to wireline carriers if they choose, because the numbers remain associated with their original rate centers.

43. In addition to technical factors, we seek comment on whether there are regulatory requirements that prevent wireline carriers from porting wireless numbers when the rate center associated with the number and the customer's physical location do not match. Commenters that suggest such obstacles exist and result in a competitive disadvantage should submit proposals to address these impediments, as well as consider the collateral effect on other regulatory objectives as a result of these proposals. We note that wireline carriers are not able to port a number to another wireline carrier if the rate center associated with the number does not match the rate center associated with the customer's

[105] *See, e.g.*, Centurytel Comments on CTIA's January 23rd Petition at 5-6; Fred Williams & Associates Comments on CTIA's January 23rd Petition at 8; and SBC Comments on CTIA's January 23rd Petition at 1.

[106] *See, e.g.*, Qwest Oct. 9th *Ex Parte*; and Letter from Herschel L. Abbott, Jr., Vice President-Government Affairs, BellSouth to Michael K, Powell, Chairman, FCC (filed Oct. 14, 2003).

[107] *Id.*

[108] *See* Letter from Cronan O'Connell, Vice President-Federal Regulatory, Qwest to Marlene H. Dortch, Secretary, FCC (filed July 24, 2003) at 4-5 (Qwest July 24th *Ex Parte*); and SBC Aug. 29th *Ex Parte*.

[109] *See* Qwest July 24th *Ex Parte* at 4-5.

physical location. We seek comment on whether wireless and wireline numbers should be treated differently in this regard. We also seek comment on whether there are any potential adverse impacts to consumers resulting from wireless-to-wireline porting where the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer.

44. In addition, we seek comment on whether there are other competitive issues that could affect our LNP requirements. For example, to the extent that wireless-to-wireline porting may raise issues regarding the rating of calls to and from the ported number when the rate center of the ported number and the physical location of the customer do not match, we seek comment on the extent to which wireline carriers should absorb the cost of allowing the customer with a number ported from a wireless carrier to maintain the same local calling area that the customer had with the wireless service provider. Alternatively, we seek comment on the extent to which wireline carriers can serve customers with numbers ported from wireless carriers on a Foreign Exchange (FX) or virtual FX basis.[110] A third option is for wireline carriers to seek rate design and rate center changes at the state level to establish larger wireline local calling areas. We seek comment on the procedural, technical, financial, and regulatory implications of each of these approaches. We also seek comment on the viability of each of these approaches and whether there are any alternative approaches to consider.

B. Porting Interval

45. *Background.* Over the past several years, the NANC has studied the wireline porting interval and reviewed options for reducing the length of the interval for simple ports.[111] In the Third Report on Wireless/Wireline Integration, the Local Number Portability Administration Working Group analyzed the elements of the wireline porting interval and investigated how reducing the length of the interval for simple ports would affect carriers' operations.[112] The report noted that reducing the porting interval would require wireline carriers to make significant changes to their operations. First, reducing the porting interval would require wireline carriers to automate and make uniform the Local Service Request (LSR)/Local Service Request Confirmation (LSC) Firm Order Confirmation (FOC) process.[113] In addition, the report indicated that wireline carriers would likely have to eliminate or adjust their batch processing operations. The report noted that a change from batch processing to real time data processing would require in-depth system analysis of all business processes that use batch processing systems.[114] Based on its analysis of these and other challenges, the working group concluded that because most wireline carriers already found their processes and systems challenged to meet the current porting interval it was not feasible to reduce the length of the wireline porting interval for simple ports.[115]

46. Because of the number and complexity of changes that would be required in the porting process for wireline carriers, the NANC was not able to reach consensus on reducing the porting interval

[110] T-Mobile Comments on CTIA's January 23rd Petition at 11.

[111] *See* Second Report on Wireless Wireline Integration; Third Report on Wireless Wireline Integration.

[112] *See* Third Report on Wireless Wireline Integration. Simple ports are defined as those ports that: do not involve unbundled network elements, involve an account for a single line (porting a single line from a multi-line account is not a simple port), do not include complex switch translations (e.g., Centrex or Plexar, ISDN, AIN services, remote call forwarding, multiple services on the loop), may include CLASS features such as Caller ID, and do not include a reseller. All other ports are considered "complex" ports. *Id.* at 6.

[113] *Id.* at 13.

[114] *Id.* at 13-14.

[115] *Id.* at 14.

to accommodate intermodal porting.[116] The wireless industry expressed concern that the wireline four business day porting interval does not fit within its business model.[117] In order to accommodate the wireless business model, the NANC attempted to shorten the porting interval for wireline-to-wireless ports by developing a process that will allow the wireless carrier to activate the port before the wireline carrier activates the disconnect in the Number Portability Administration Center (NPAC). This process results in a situation referred to as a "mixed service" condition, whereby the customer can make calls on both the wireline and wireless phones before the port is completed. The NANC reported that this mixed service condition can result in misdirected callbacks in an emergency situation.[118] That is, for example, if the emergency operator attempts to callback a person that made a call from the wireless phone, the call may be routed to the wireline phone. The NANC consulted with the National Emergency Number Association and concluded that, while the mixed service condition is not desirable, the incidence of such is low and would not impede intermodal porting[119]

47. LECs contend that their current porting interval cannot be reduced readily for intermodal porting, because it is necessary to support the complex systems and procedures of wireline carriers.[120] SBC, for example, explains that the current porting interval not only ensures that the porting out carrier correctly ports a number to the porting in carrier, but also that these carriers accurately update other systems, including E911, billing, and maintenance.[121] Qwest notes that wireline carriers have longer porting intervals due to differences in network and system configurations.[122] Qwest indicates that wireline carriers are often constrained by the provisioning of physical facilities (e.g., loops) to serve customers.[123] Moreover, LECs contend, reducing the length of the current wireline porting interval would require them to make changes to many of their systems and would involve significant expense.[124]

48. Wireless carriers argue that a reduced intermodal porting interval would encourage more consumers to use porting by eliminating confusion about the porting process.[125] They argue that a reduced porting interval is technically achievable and that wireline carriers should be required to make the

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[116] Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau (filed Nov. 29, 2000).

[117] Wireline carriers are required to complete the LSR/FOC exchange within 24 hours and complete the port within three business days thereafter. *See* North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, Appendix E (rel. April 25, 1997). *See also* Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau (filed Nov. 29, 2000).

[118] *See* Second Report on Wireless Wireline Integration.

[119] *See* Letter from John R. Hoffman, Chair, NANC to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, dated Nov. 29, 2000.

[120] *See* letter from Kathleen Levitz, Vice President-Federal Regulatory, BellSouth to Marlene H. Dortch, Secretary, FCC, dated Oct. 15, 2003.

[121] SBC Aug. 29th *Ex Parte.*

[122] Qwest Comments on CTIA's May 13th Petition at 7.

[123] *Id.*

[124] *Id.* at 5.

[125] *See, e.g.*, AT&T Wireless Comments on CTIA's May 13th Petition at 3-6; Sprint Comments on CTIA's May 13th Petition at 6-12; and T-Mobile Comments on CTIA's May 13th Petition at 7-9.

necessary changes to their systems. At least one wireless carrier recognizes, however, that significant changes to LEC systems may be required to achieve reduced porting intervals.[126]

49. *Discussion.* Reducing the porting interval could benefit consumers by making it quicker for consumers to port their numbers. To that end, wireless carriers intend to complete intramodal wireless ports within two and one-half hours.[127] There, however, may be technical or practical impediments to requiring wireline carriers to achieve shorter porting intervals for intermodal porting. We seek comment on whether we should reduce the current wireline four business day porting interval for intermodal porting. If so, what porting interval should we adopt? Commenters proposing a shorter porting interval should specify what adjustments should be made to the LNP process flows developed by the NANC.[128] For example, the wireline NANC LNP Process Flows establish that the FOC must be finalized within 24 hours of receiving the port request.[129] Specific time periods are also established for other steps within the porting process that may require adjustment in the event that a shorter porting interval is adopted.

50. We also seek comment on whether adjustments to the NPAC processes, including interfaces and porting triggers, would be required.[130] In addition, we seek comment on the risks, if any, associated with reducing the porting interval for intermodal porting. We seek comment on an appropriate transition period in the event a shorter porting interval is adopted, during which time carriers can modify and test their systems and procedures.

51. We seek input from the NANC on reducing the interval for intermodal porting. The NANC recommendation should include corresponding updates to the NANC LNP process flows and any recommendations on an appropriate transition period. The NANC should provide its recommendations promptly as we intend to review the record and address this issue expeditiously.

V. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

52. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities of the proposals suggested in the *Further Notice*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the *Further Notice*, and must have a separate and distinct heading designating them as responses to the IRFA.

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[126] *See* Sprint Comments on CTIA's May 13th Petition.

[127] *See* First Report on Wireless Wireline Integration; North American Numbering Council Wireless Number Portability Subcommittee Report on Wireless Number Portability Technical, Operational, and Implementation Requirements Phase II, CC Docket No. 95-116 (filed Sept. 26, 2000); and ATIS Operations and Billing Forum, Wireless Intercarrier Communications: Interface Specification for Local Number Portability, Version 2, at § 2 p. 6 (Jan. 2003).

[128] *See* Local Number Portability Selection Working Group Final Report and Recommendation to the FCC (rel. April 25, 1997).

[129] FOC, or Firm Order Confirmation refers to the response the old service provider sends to the new service provider upon receiving the new service provider's request to port a number, setting a due time and date for the port. *See* Local Number Portability Selection Working Group Final Report and Recommendation to the FCC (rel. April 25, 1997).

[130] The NPAC, administered by NeuStar, operates and maintains the centralized databases associated with LNP. Interaction with the NPAC is required for all porting transactions.

B. Paperwork Reduction Analysis

53. This *Further Notice* contains no new or revised information collections.

C. Ex Parte Presentations

54. This is a permit-but-disclose notice and comment rule making proceeding. Members of the public are advised that ex parte presentations are permitted, provided they are disclosed under the Commission's Rules.[131]

D. Comment Dates

55. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before twenty (20) days from the date of publication of this Further Notice in the Federal Register and reply comments thirty (30) days from the date of publication of this Further Notice in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

56. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rule making number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an E-mail to ecfs@fcc.gov, and should including the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

57. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rule making number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rule making number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room TW-A306, 445 12th Street, S.W., Washington, D.C. 20554.

58. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered diskette filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be

[131] *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to: 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, the docket number of this proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554.

59. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202)418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov. This Further Notice can be downloaded in ASCII Text format at: http://www.fcc.gov/wtb.

E. Further Information

60. For further information concerning this Further Notice of Proposed Rulemaking, contact: Jennifer Salhus, Attorney Advisor, Policy Division, Wireless Telecommunications Bureau, at (202) 418-1310 (voice) or (202) 418-1169 (TTY) or Pam Slipakoff, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-1500 (voice) or (202) 418-0484 (TTY).

VI. ORDERING CLAUSES

61. Accordingly, IT IS ORDERED THAT, pursuant to sections 4(i) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i) and 160, the Petitions for Declaratory Ruling filed by CTIA on January 23, 2003, and May 13, 2003, are GRANTED to the extent stated herein.

62. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX A

List of Parties

A. January 23rd Petition

Comments

ALLTEL
AT&T
AT&T Wireless
BellSouth
California Public Utilities Commission (CA PUC)
CenturyTel, Inc.
Fred Williamson & Associates
Illinois Citizens Utility Board
Independent Alliance
Michigan Exchange Carriers Association
Midwest Wireless
National Exchange Carrier Association and National Telephone Cooperative Association (NECA & NTCA)
Nebraska Rural Independent Companies
New York State Department of Public Service (NY DPS)
Nextel
Ohio Public Utilities Commission (Ohio PUC)
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Rural Telecommunications Group (RTG)
SBC
TCA, Inc
Texas 911 Agencies
T-Mobile
United States Telecom Association (USTA)
United States Cellular (US Cellular)
WorldCom

Reply Comments

AT&T
AT&T Wireless
BellSouth
CA PUC
Cingular Wireless
CTIA
Fred Williamson & Associates
McLeod USA Telecommunications Services
Mid-Missouri Cellular
Bernie Moskal
South Dakota Telecommunications Association
Sprint
T-Mobile
USTA

Valor Telecommunications Enterprises
Virgin Mobile

B. May 13th Petition

Comments

ALLTEL
AT&T
AT&T Wireless
BellSouth
CA PUC
Cincinnati Bell Wireless
Cingular Wireless
City of New York
First Cellular of Southern Illinois
Illinois Citizens Utility Board
Independent Alliance
Missouri Independent Telephone Group
Nebraska Public Service Commission
NENA
Nextel
Ohio PUC
OPASTCO
Qwest
Rural Cellular Association
Rural Iowa Independent Telephone Association
RTG
SBC
Sprint
T-Mobile
Triton PCS
USTA
Verizon
Verizon Wireless
Virgin Mobile
Western Wireless
Wireless Consumers Alliance

Reply Comments

ALLTEL
ALTS
AT&T
AT&T Wireless
Cellular Mobile Systems of St. Cloud, LLC
Cingular Wireless
CTIA
ENMR-Plateau
Illinois Citizens Utility Board

Missouri Independent Telephone Group
NTCA
NTELOS Inc.
T-Mobile
South Dakota Telecommunications Association
Sprint
US Cellular
USTA
Verizon
Verizon Wireless
XIT Cellular

APPENDIX B

Initial Regulatory Flexibility Analysis
Further Notice of Proposed Rulemaking
CC Docket No. 95-116

1. As required by the Regulatory Flexibility Act, as amended (RFA),[132] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice), CC Docket No. 95-116. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, the Further Notice and IRFA (or summaries thereof) will be published in the *Federal Register*.[133]

A. Need for, and Objectives of, the Proposed Rules

2. The Further Notice seeks comment on how to facilitate wireless-to-wireline porting where the rate center associated with the wireless number and the rate center in which the wireline carrier seeks to serve the customer do not match. The Further Notice also seeks comment on whether the Commission should reduce the current four-business day porting interval for intermodal porting.

B. Legal Basis for Proposed Rules

3. The proposed action is authorized under Section 52.23 of the Commission's rules, 47 C.F.R. § 52.23, and in Sections 1, 3, 4(i), 201, 202, 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154(i), 201-202, and 251.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[134] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[135] In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.[136] Under the Small business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established

[132] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[133] *See* 5 U.S.C. § 603(a)

[134] See 5 U.S.C. § 603(b)(3).

[135] 5 U.S.C. § 601(6).

[136] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment , establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

by the Small Business Administration (SBA).[137] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[138] Nationwide, as of 1992, there were approximately 275,801 small organizations.[139]

5. **Incumbent Local Exchange Carriers.** We have included small incumbent local exchange carriers LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[140] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[141] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts. According to the FCC's *Telephone Trends Report* data, 1,337 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services.[142] Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees.[143]

6. **Competitive Local Exchange Carriers.** Neither the Commission nor the SBA has developed a specific small business size standard for providers of competitive local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.[144] According to the FCC's *Telephone Trends Report* data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.[145] Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees.[146]

7. **Wireless Service Providers.** The SBA has developed a size standard for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under

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[137] 15 U.S.C. § 632.

[138] *Id.* § 601(4).

[139] Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[140] 5 U.S.C. § 601(3).

[141] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 5 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[142] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, at Table 5.3, p 5-5 (Aug. 2003) (*Telephone Trends Report*).

[143] *Id.*

[144] 13 C.F.R. § 121.201, NAICS code 513310.

[145] Telephone Trends Report, Table 5.3.

[146] *Id.*

that standard, such a business is small if it has 1,500 or fewer employees.[147] According to the FCC's *Telephone Trends Report* data, 719 companies reported that they were engaged in the provision of wireless telephony.[148] Of these 719 companies, an estimated 294 have 1,500 or fewer employees and 425 have more than 1,500 employees.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.

8. To address concerns regarding wireline carriers' ability to compete for wireless customers through porting, future rules may change wireline porting guidelines. In addition, future rules may require wireline carriers to reduce the length of the current wireline porting interval for ports to wireless carriers. These potential changes may impose new obligations and costs on carriers.[149] Commenters should discuss whether such changes would pose an unreasonable burden on any group of carriers, including small entity carriers.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

9. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[150]

10. The Further Notice reflects the Commission's concern about the implications of its regulatory requirements on small entities. Particularly, the Further Notice seeks comment on the concern that wireline carriers, including small wireline carriers, have expressed that permitting wireless carriers to port numbers wherever their rate center overlaps the rate center in which the number is assigned would give wireless carriers an unfair competitive advantage over wireline carriers. Wireline carriers contend that while permitting porting outside of wireline rate center boundaries may facilitate widespread wireline-to-wireless porting, wireless-to-wireline porting can only occur in cases where the wireless customer is physically located in the wireline rate center associated with the phone number. If the customer's physical location is outside the rate center associated with the number, porting the number to a wireline telephone at the customer's location could result in calls to and from that number being rated as toll calls. As a result, LECs assert, they are effectively precluded from offering wireless-to-wireline porting to those wireless subscribers who are not located in the wireline rate center associated with their wireless numbers.

11. The Further Notice seeks comment on how to facilitate wireless-to-wireline porting when the location of the wireline facilities serving the customer requesting the port is not in the rate center where the wireless number is assigned. The Further Notice seeks comment on whether there are technical or regulatory obstacles that prevent wireline carriers from porting-in wireless numbers when the rate center associated with the number and the customer's physical location do not match. The Further Notice

[147] 13 C.F.R. § 121.201, NAICS code 513322.

[148] Telephone Trends Report, Table 5.3.

[149] *See e.g.*, Further Notice, paras. 41, 48-49.

[150] *See* 5 U.S.C. § 603.

asks commenters that contend that such obstacles exist and result in a competitive disadvantage to submit proposals to mitigate these obstacles.

12. In addition, the Further Notice seeks comment on alternative methods to facilitate wireless-to-wireline porting. To the extent that wireless-to-wireline porting may raise issues regarding the rating of calls to and from the ported number when the rate center of the ported number and the physical location of the customer do not match, the Further Notice seeks comment on the extent to which wireline carriers should absorb the cost of allowing the customers with a number ported from a wireless carrier to maintain the same local calling area that the customer had with the wireless service provider. Alternatively, the Further Notice seeks comment about whether wireline carriers may serve customers with numbers ported from wireless carriers on a Foreign Exchange (FX) or Virtual FX basis. The Further Notice seeks comment on the procedural, technical, and regulatory implications of each of these approaches. These questions provide an excellent opportunity for small entity commenters and others concerned with small entity issues to describe their concerns and propose alternative approaches.

13. The Further Notice also seeks comment about whether the Commission should require wireline carriers to reduce the length of the current wireline porting interval for ports to wireless carriers. The Further Notice analyzes the current wireline porting interval and seeks comment about whether there are technical or practical impediments to requiring wireline carriers to achieve shorter porting intervals for intermodal porting. The Further Notice recognizes that, if a reduced porting interval was adopted, carriers may need additional time to modify and test their systems and procedures. Accordingly, the Further Notice seeks comment on an appropriate transition period in the event a shorter porting interval is adopted.

14. Throughout the Further Notice, the Commission emphasizes in its request for comment, the individual impacts on carriers as well as the critical competition goals at the core of this proceeding. The Commission will consider all of the alternatives contained not only in the Further Notice, but also in the resultant comments, particularly those relating to minimizing the effect on small businesses.

F. Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules

15. None.

SEPARATE STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: *In re Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; CC Docket No. 95-116*

After today it's easier than ever to cut the cord. By firmly endorsing a customer's right to untether themselves from the wireline network – and take their telephone number with them – we act to eliminate impediments to competition between wireless and wireline services. Seamless wireline-to-wireless porting is another landmark on the path to full fledged facilities-based competition.

Our action promises significant consumer benefits for wireline and wireless customers. I have heard the concerns expressed by some wireline providers that wireline network architectures and state-imposed rate centers complicate number portability. This proceeding has undoubtedly focused the Commission's attention on these issues. State regulators have long been champions of local number portability and I appreciate their support. I look forward, however, to working with my colleagues in the states to remove additional barriers to inter-modal local number portability such as the difficulty of some providers to consolidate rate centers to more accurately match wireless carrier service areas.

In the end, the consumer benefits associated with inter-modal LNP convince me that the time for Commission action is now. No doubt there will be some bumps in the road to implementation, but I trust that carriers will use their best efforts to ensure consumers have the highest quality experience possible. I look forward to the Commission's November 24th trigger for this obligation and to working with my colleagues to ensure that full wireline to wireless portability is a reality for all consumers everywhere.

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Telephone Number Portability – CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No. 95-116

This Order removes the final roadblocks to implementing wireline-to-wireless number portability, which is an important step in facilitating intermodal competition. The Commission mandated local number portability (LNP) within and across the wireline and wireless platforms, where technically feasible, with the goal of maximizing consumer choice. As of November 24, 2003, this goal will become a reality: Most consumers who seek to switch wireless providers or to move from a local exchange carrier to a wireless carrier will be able to retain their existing telephone numbers. While I expressed sympathy in the past to arguments that the November 24 deadline was premature, our present focus must be on implementation, and the foregoing Order provides much-needed clarity regarding the parties' obligations.

I recognize that wireline network architecture and state rating requirements will prevent many (if not most) consumers from porting wireless numbers to wireline carriers. Although, in the short term, wireline carriers will have more limited opportunities to benefit from intermodal LNP than wireless carriers will, I was simply not willing to block consumers from taking advantage of the porting opportunities that are technologically feasible today. I am hopeful that existing obstacles to wireless-to-wireline porting will be addressed as expeditiously as possible through technological upgrades and, where necessary, state regulatory changes.

Finally, I am pleased that the Commission is stepping up its consumer outreach efforts on the issues of wireless and intermodal LNP. To this end, I commend the recent proactive efforts of the Wireless Telecommunications Bureau and the Consumer and Government Bureau to educate the public about our LNP rules. I am also pleased with the recent efforts of industry to reach out to consumers so that they understand what number-porting opportunities are available to them. For consumers to benefit from our expanded LNP regime, it is imperative for them to have sufficient information to make the most appropriate choices for themselves.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL J. COPPS

Re: *Telephone Number Portability CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues (CC Docket No. 95-116)*

With today's action, consumers are assured that intermodal telephone number portability will begin, at last, to become a reality later this month. After numerous delays, consumers are on the verge of enjoying the significant new ability to take their current telephone numbers with them when they switch between carriers and technologies. This gives consumers much sought-after flexibility and it provides further competitive stimulus to telephone industry competition. This makes it a win-win situation for consumers and businesses alike.

It was some seven years ago, in the 1996 Act, when Congress recognized that the ability of consumers to retain their phone numbers when switching providers would facilitate the development of competition. Congress instructed us to get this job done and to use "technical feasibility" as our guide in making sure the vision became reality. This we have labored mightily to do. As a result, American consumers will be able to take their digits with them, unimpeded by the hassle, loss of identity and attendant expenses that until now have accompanied switching between service providers and technologies.

The bulk of the problems accompanying the challenge of porting numbers are behind us now. A very limited few remain and these are the subject of the Further Notice of Proposed Rulemaking also approved today. I am confident that these can be handled expeditiously if all interested parties work together. Similarly, any minor implementation problems that develop should be amenable to swift and cooperative corrective actions. It has taken considerable cooperation to bring us to this important point, and I believe consumer support for porting will encourage all parties to reach quick resolution of the few remaining challenges.

Finally, it is difficult to see how we are ever going to have true intermodal competition in the telephone industry apart from initiatives like the one we embark on today. Intermodal competition always receives strong rhetorical support. Today it gets some action, too.

SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN

Re: *Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116

I am pleased to support this item because it provides important consumer benefits by promoting competition in the wireline telephone market. One of the primary reasons I supported wireless local number portability is the additional competition it is likely to encourage in the wireline market. *See* Press Statement of Commissioner Kevin J. Martin on the Commission's Decision on Verizon's Petition for Permanent Forbearance from Wireless Local Number Portability Rules (July 16, 2002). As I stated last year, the ability to transfer a wireline phone number to a wireless phone is an important part of ensuring that competition with wireline phones continues to grow. I am glad that today the full Commission agrees.

I am disappointed, however, that the Commission was not able to provide this guidance until weeks before the LNP requirement is scheduled to take effect. The Commission has an obligation to minimize the burdens our regulations place on carriers, and I wish we had provided the guidance in this Order considerably sooner.

Finally, I recognize that LNP – although very important for consumers – places real burdens on the carriers, particularly the small and rural carriers. Accordingly, I support the decision to waive our full porting requirements until May 24, 2004, for wireline carriers operating in areas outside of the largest 100 MSAs. I am also pleased that we emphasize that those wireline carriers may file waiver requests if they need additional time.

SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: In re Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; CC Docket No. 95-116

I am pleased to support this Order because it clarifies that our rules and policies provide for enhanced number portability opportunities for American consumers. Specifically, we enable consumers to port their wireline telephone numbers to local wireless service providers. We also affirm that wireless carriers are required to port telephone numbers to wireline carriers but recognize that wireline carriers are only able to receive those numbers from wireless carriers on a limited basis. Finally, we rightly seek comment on how to deal with these limitations and further facilitate wireless-to-wireline porting.

I believe that our decision is consistent with Section 251(b) of the Communications Act, which requires local exchange carriers (LECs) to provide local number portability to the extent technically feasible. However, I do recognize that there may be certain limitations on the ability of the nations' smallest LECs to technically provide local number portability. In this regard, I am extremely pleased we made the decision to waive until May 24, 2004, the requirement of LECs operating in areas outside of the largest 100 MSAs to port numbers to wireless carriers that do not have a point of interconnection or numbering resource in the rate center where the LEC customer's wireline number is provisioned.

I recognize that there may be other compelling circumstances that make it disproportionately difficult for these same LECs to provide full number portability. Consequently, I am pleased we agreed to the language in the item recognizing that those wireline carriers may need to file additional waivers of our LNP requirement.

I remain concerned, however, that today's clarification of our LNP rules and obligations will exacerbate the so-called "rating and routing" problem for wireless calls that are rated local, but are in fact carried outside of wireline rate centers. While I appreciate the language in the Order that clarifies that ported numbers must remain rated to the original rate center, the rating and routing issue continues to remain unresolved for rural wireline carriers as well as neighboring LECs and the wireless carriers whose calls are being carried. I believe that we must redouble our efforts to resolve this critical intercarrier compensation issue as quickly and comprehensively as possible.

Finally, I take very seriously the concerns of those wireline carriers that have argued wireline-to-wireless number portability should be limited pending the resolution of issues associated with full wireless-to-wireline porting. While I do not believe that these concerns outweigh the very significant benefits to American consumers that our clarification provides today, I do want to highlight my keen interest in working both with industry and the Chairman and my fellow Commissioners on solutions to address this inequity. The Commission should constantly strive to level the proverbial playing field, and the situation presented by our LNP rules and policies should not be any different.