

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

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

**SPRINT OPPOSITION TO EMERGENCY JOINT
PETITION FOR PARTIAL STAY**

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Sprint Corporation, on behalf of its wireless, local and long distance divisions (“Sprint”), opposes the Emergency Joint Petition for Partial Stay filed on November 21, 2003 by three associations representing rural local exchange carriers (“RLECs”): the Independent Telephone and Telecommunications Alliance; the National Telecommunications Cooperative Association; and the Organization for the Promotion and Advancement of Small Telecommunications Companies (collectively, “the Rural Petitioners”).

I. INTRODUCTION AND SUMMARY

The Rural Petitioners ask the Commission to stay its November 10, 2003 *LEC-Wireless Porting Clarification Order* (or simply, “*Intermodal Order*”),¹ insofar as that *Order* applies to so-called “two percent” carriers – that is, any LEC serving “fewer than 2 percent of the Nation’s

¹ See *Telephone Number Portability – CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 03-284 (Nov. 10, 2003) (“*LEC-Wireless Porting Clarification Order*” or “*Intermodal Order*”).

subscriber lines.”² Under the proposed stay, all incumbent LECs except for the five largest ILECs would be relieved of providing number portability.³

The Rural Petitioners assert that the “intent” of their Petition is “not to stop or impede the evolution of either competition or local number portability.”⁴ But grant of the requested stay *will* stop and impede both number portability and competition for consumers residing in rural America and elsewhere. If a stay is granted, millions of LEC customers, including those residing in rural areas, would be deprived of the competitive choices that are today available to customers in urban and suburban areas. It bears remembering that one of the fundamental purposes of the 1996 Act is that “[c]onsumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas.”⁵

According to the Rural Petitioners, the central “problem” with the *Intermodal Order* is that it is “technically infeasible for 2 Percent carriers to comply generally with the rating and routing requirements established by the *Order*.”⁶ This allegation lacks merit, as Sprint demonstrates below.

The Commission should deny the request for stay. The Rural Petitioners have not demonstrated they meet any of the four stay criteria.

² See 47 U.S.C. § 251(f)(2).

³ LECs served 187.5 million loops at end of 2002, and two percent of this number is 3.75 million. See *Local Telephone Competition: Status as of December 31, 2002*, Table 1 (June 2003). Only five LECs serve more than 3.75 million lines: Sprint and the four RBOCs. See *Trends in Telephone Service*, Table 7.3 (Aug. 2003).

⁴ Rural Association Stay Petition at 2.

⁵ 47 U.S.C. § 254(b)(3).

⁶ Rural Association Stay Petition at 12 and 16.

II. THE RURAL PETITIONERS HAVE NOT DEMONSTRATED THEY WILL LIKELY SUCCEED ON THE MERITS OF THEIR CLAIMS

The Commission in its *Intermodal Order* determined that LEC-wireless porting should be subject to the same rules that apply to LEC-LEC porting. Specifically, the Commission ruled that LECs may not condition the availability of porting to wireless carriers by:

- Requiring direct interconnection, which is also not a condition for LEC-LEC porting;⁷ and
- Requiring wireless carriers to obtain their own set of numbers, which also is not a condition for LEC-LEC porting.⁸

The Rural Petitioners do not allege that the LEC-wireless porting rules are different than the LEC-LEC porting rules. Instead, they appear to contend that the *Intermodal Order* is legally defective for two reasons: (a) the Commission lacks the authority to require RLECs to provide number portability to wireless carriers, and, in any event, (b) the Commission has not given RLECs the six-month notice provided for in its rules. Neither argument has merit.

A. RLECS HAVE BEEN ON NOTICE OF THEIR LEC-WIRELESS PORTING OBLIGATIONS FOR SEVEN YEARS – NOT TWO WEEKS

The Rural Petitioners contend that the *Intermodal Order* is procedurally defective. Specifically, they assert that “2 percent carriers have not been required under the Commission’s existing rules to deploy number porting capability” until the Commission entered its November 10 *Order*.⁹ They then assert that a “two-week notice is an unquestionably inadequate period within which to deploy wireline-to-wireless porting capability,” pointing out that FCC rules provide for

⁷ See *First LNP Reconsideration Order*, 12 FCC Rcd 7236, 7305 ¶ 121 (1997) (“[T]o provide number portability, carriers can interconnect either directly or indirectly as required under Section 251(a)(1).”).

⁸ The FCC’s statement in the *Intermodal Order* – “Under the guidelines developed by the NANC, porting between LECs was limited to carriers with facilities or numbering resources in the same rate center” (¶ 7) – is not factually accurate. In point of fact, NANC’s LEC-LEC porting recommendations contain no such restrictions.

⁹ Rural Association Stay Petition at 6.

“a six-month notice period prior to provisioning.”¹⁰ In fact, RLECs and other “two percent” carriers have been on notice of their statutory LEC-wireless porting obligations for over seven years and, as a result, their “two-week notice” argument lacks all merit.

1. RLECs Have Been Aware of Their LEC-Porting Obligations Since 1996, and They Never Challenged This Obligation

The Rural Petitioners’ assertion – RLECs have “not been required under the Commission’s existing rules to deploy number porting capability” until the Commission entered its *Intermodal Order*¹¹ – cannot be squared with the facts. Congress determined in 1996 that “each local exchange carrier has the duty to provide . . . number portability in accordance with the requirements prescribed by the Commission.”¹² Congress further made clear that this LEC statutory duty extends to any telecommunications carrier that is LNP capable.¹³

In its 1996 *First LNP Order*, the Commission reaffirmed that “Section 251(b) requires that all local exchange carriers” provide number portability.¹⁴ The Commission required all LECs located in the top 100 MSAs to deploy LNP on a specified phased-in schedule, while LECs serving smaller MSAs or RSAs would not be required to provide LNP before 1999, and then, only six months after receiving a *bona fide* request.¹⁵ The Commission further made clear that this LEC obligation extended to wireless carriers:

Because CMRS falls within the statutory definition of telecommunications service, CMRS carriers are telecommunications carriers under the 1996 Act. As a

¹⁰ *Id.* at 7 and 9.

¹¹ Rural Association Stay Petition at 6.

¹² 47 U.S.C. § 251(b)(2).

¹³ *See* 47 U.S.C. § 153(30).

¹⁴ *First LNP Order*, 11 FCC Rcd 8352, 8391 ¶ 74 (1996)(emphasis added).

¹⁵ *See id.* at 8393-94 ¶¶ 77-80.

result, LECs are obligated under the statute to provide number portability to customers seeking to switch to CMRS carriers.¹⁶

RLECs, including NTCA and OPASTCO, did not challenge the Commission's reaffirmation of the duties contained in the LNP statute – namely, as LECs, they (or their members) are required to provide LNP and that this obligation extends to wireless carriers. Rather, they limited their reconsideration petition to the subject of implementation deadlines for RLECs located inside the top 100 MSAs. Specifically, NTCA and OPASTCO argued that RLECs in the top 100 MSAs should be subject to the same “provide LNP within six months of a BFR” rule that applies to RLECs located outside the top MSAs.¹⁷ The Commission granted this request in its reconsideration order.¹⁸

The Commission did, however, reject a request made by certain rural interests other than NTCA and OPASTCO that RLECs be given a blanket waiver from all LNP requirements:

We find that such a blanket waiver is unnecessary and may hamper the development of competition in areas served by smaller and rural LECs that competing carriers want to enter.¹⁹

The Commission noted that to the extent any RLEC has difficulty complying with the request, it has “two venues for relief”:

[A] LEC may apply for an extension of time on the basis of extraordinary circumstances beyond its control that prevent it from complying with the Commission's deployment schedule. In addition, under Section 251(f)(2), a LEC with fewer

¹⁶ *Id.* at 8357 ¶ 8. *See also id.* at 8355 ¶ 3 (“Number portability must be provided in these areas by all LECs to all telecommunications carriers, including commercial mobile radio services (CMRS) providers.”); *id.* at 8431 ¶ 152 (“Section 251 (b) requires local exchange carriers to provide number portability to all telecommunications carriers, and thus to CMRS providers as well as wireline service providers.”).

¹⁷ *See* NTCA and OPASTCO Petition for Reconsideration, CC Docket No. 95-116 (Aug. 26, 1996).

¹⁸ *See First LNP Reconsideration Order*, 12 FCC Rcd 7236, 7301 ¶ 113 (1997). Given that the FCC changed its rules to accommodate RLECs serving customers in the top 100 MSAs, there is no merit to the assertion that the FCC was unaware that the service areas of some RLECs includes MSAs.

¹⁹ *Id.* at 7302 ¶ 114. In asking for a rule waiver, the RLECs making this request necessarily acknowledged that they are required by Section 251(b)(2) and FCC rules to provide LNP, including to wireless carriers.

than two percent of the nation's subscriber lines installed in the aggregate nationwide (an "eligible LEC") may petition the appropriate state commission for suspension or modification of the requirements of Section 251(b).²⁰

There is, therefore, no factual basis to the Rural Petitioners' assertion that RLECs have "not been required under the Commission's existing rules to deploy number porting capability" and that prior to the *Intermodal Order*, there was "no basis for any LEC to act to support the type of intermodal LNP requested by the wireless carriers."²¹ Indeed, as NTCA has elsewhere acknowledged, under FCC rules, its members are required to provide number portability "within six months of a request from another carrier."²²

2. RLECs Have Had Ample Notice of Wireless LNP Start Date

As noted above, in its 1996 *First LNP Order* the Commission reaffirmed that the Communications Act requires RLECs to provide LNP to wireless carriers. The Commission initially required wireless carriers to support number portability by June 1, 1999.²³ The Commission granted several extension of this deadline, most recently in July 2002 when it extended the deadline to November 24, 2003.²⁴

Admittedly, RLECs are not required to make any LNP network modifications or purchase needed equipment until they receive a *bona fide* request.²⁵ But it is clear that RLECs had ample time to plan and prepare for the start date of LEC-wireless porting. In fact, and contrary

²⁰ *Id.* at ¶ 115

²¹ Rural Association Stay Petition at 9. The fact that wireless carriers challenged and sought to delay their regulatory LNP obligation does not change this fact.

²² See NTCA Petition for Reconsideration and Clarification, CC Docket No. 95-116, at 1 (July 29, 1998).

²³ See *First LNP Order*, 11 FCC Rcd at 8440 ¶ 166.

²⁴ See *Verizon Wireless Forbearance Order*, 17 FCC Rcd 14972 (2002), *aff'd* *CTIA v. FCC*, 330 F.3d 502 (D.C. Cir. 2003).

²⁵ While the Rural Petitioners assert that it would be "irresponsible" for RLECs to upgrade their networks to become LNP capable before receiving a *bona fide* request (Petition at 9), the fact is that many RLEC networks are LNP capable today, with RLECs having upgraded to LNP as part of new software generics.

to the suggestion of the Rural Petitioners, RLECs have had “years to prepare for LNP in their markets.”²⁶

3. RLECs Receiving *Bona Fide* Requests Have Been Given the Six-Month Notice Specified in FCC Rules

The Rural Petitioners assert that the *Intermodal Order* “establish[ed] the compliance deadline for wireline-to-wireless portability in the top 100 MSAs for November 24, 2003.”²⁷ They then assert that this ruling contravenes the Commission’s LNP rules, which provide for “a six-month notice period prior to provisioning.”²⁸

The Rural Petitioners are mistaken in believing that the *Intermodal Order* “established” November 24, 2003 as the start date for LEC-wireless porting. The start date for such porting is rather established by FCC Rule 52.23(c), which provides:

Beginning January 1, 1999, all LECs must make a long-term database method for number portability available within six months after a specific request by another telecommunications carrier in areas in which that telecommunications carrier is operating or plans to operate.²⁹

The Commission did not modify this rule in its *Intermodal Order*, although it did extend the deadline for LECs serving areas outside the top 100 MSAs.³⁰ In fact, the Commission recently reaffirmed that “LNP is request driven – that is, carriers do not need to deploy LNP until receiving a request from another carrier to do so.”³¹

²⁶ Rural Association Stay Petition at 7.

²⁷ Rural Association Stay Petition at 6.

²⁸ *Id.* at 9. *See also id.* at 7.

²⁹ 47 C.F.R. § 52.31(c). Given this six-month notice rule, no wireless carrier could possibly contend that it is entitled to request “immediate intermodal portability.” Rural Association Stay Petition at 11.

³⁰ *See LEC-Wireless Porting Clarification Order* at ¶ 29.

³¹ *USTA Stay Denial Order*, CC Docket No. 95-116, FCC 03-298, at ¶ 9 (Nov. 20, 2003).

Sprint and other wireless carriers submitted to certain RLECs *bona fide* requests prior to May 24, 2003. Thus, the RLECs that are required to provide LEC-wireless on November 24, 2003 have had the full six-month notice period specified in Rule 52.31(c).

The Rural Petitioners also suggest that the *bona fide* requests submitted by Sprint PCS are “not . . . legitimate”:

Prior to November 10, 2003, and the release of the Commission’s *Order*, no person or entity could maintain with certainty that a request for intermodal portability . . . could possibly be *bona fide*.³²

The Commission determined years ago that a LNP request is valid if it contains three elements.³³ The requests that Sprint PCS sent to certain RLECs include all three elements, and no RLEC has demonstrated that Sprint’s requests do not meet the requirements that the Commission established. There is no factual basis to the Rural Petitioners’ suggestion that Sprint’s *bona fide* requests are “not legitimate.”

B. THE COMMISSION HAS REQUIRED LECs TO PROVIDE NO MORE THAN WHAT THE LNP STATUTE REQUIRES

The Rural Petitioners acknowledge that “the requirement to provide number portability is established in Section 251 of the Act and number portability is defined in Section 3(30) of the Act.”³⁴ They then assert that the *Intermodal Order* “clearly requires number portability beyond the scope of the Commission’s authority” because the LEC-wireless porting required is supposedly inconsistent with the statute.³⁵ The simple response to this Rural Petitioners’ argument is

³² Rural Association Stay Petition at 7 and 8.

³³ See *First LNP Order*, 11 FCC Rcd at 8394 ¶ 80 (LNP “requests should specifically [1] request long-term number portability, [2] identify the discrete geographic area covered by the request, and [3] provide a tentative date six or more months in the future when the carrier expects to need number portability in order to port prospective customers.”). See also *Fourth LNP Order*, CC Docket No. 95-116, FCC 03-126, at ¶ 10 (June 18, 2003).

³⁴ Rural Association Stay Petition at 8 n.16.

³⁵ See *id.*

that it constitutes an impermissible collateral attack on prior Commission orders – orders that, as demonstrated above, the Rural Petitioners chose not to challenge.³⁶

The Rural Petitioners' legal argument also lacks merit. Congress determined that customers, such as RLEC customers, have the right “to retain, *at the same location*, existing telecommunications numbers . . . when switching from one telecommunications carrier to another.”³⁷ In its 1996 *First LNP Order*, the Commission held that “LECs are obligated under the statute to provide number portability to customers seeking to switch to CMRS carriers.”³⁸ As noted, the Rural Petitioners chose not to challenge this Commission determination.

The Commission's *Intermodal Order* did no more than reaffirm this prior ruling. The Commission held:

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.³⁹

In other words, the Commission required LECs to provide exactly what the LNP statute requires – and no more. Specifically, if a wireless carrier provides its services at the location where the RLEC customer receives his/her RLEC services, RLEC customer has the right under the Act the

³⁶ The FCC does not entertain “an untimely collateral attack on prior rulemakings.” *Minnesota PCS*, 17 FCC Rcd 126, 131 ¶ 11 (2001).

³⁷ 47 U.S.C. § 153(30)(emphasis added).

³⁸ *First LNP Order*, 11 FCC Rcd at 8357 ¶ 8. See also *id.* at 8355 ¶ 3 (“Number portability must be provided in these areas by all LECs to all telecommunications carriers, including commercial mobile radio services (CMRS) providers.”); *id.* at 8431 ¶ 152 (“Section 251 (b) requires local exchange carriers to provide number portability to all telecommunications carriers, and thus to CMRS providers as well as wireline service providers.”).

³⁹ *LEC-Wireless Porting Clarification Order* at ¶ 1.

“to retain, *at the some location*, existing telecommunications numbers . . . when switching from one telecommunications carrier to another.”⁴⁰

In summary, the Rural Petitioners have not demonstrated that the *Intermodal Order* contains any error, much less that any appellate challenge they may pursue will likely succeed on the merits.

III. THE RURAL PETITIONERS HAVE NOT DEMONSTRATED THAT THEIR MEMBERS WILL SUFFER IRREPARABLE INJURY WITHOUT A STAY

The Rural Petitioners assert their members will face “irreparable harm . . . in the absence of the requested stay.”⁴¹ According to the Rural Petitioners, the central “problem” with the *Intermodal Order* is that it is “technically infeasible for 2 Percent carriers to comply generally with the rating and routing requirements established by the *Order*” and that they may be subjected to “enforcement actions” as a result.⁴² They further assert that the rules governing the routing and rating of RLEC customer calls to wireless customers have “not been addressed,” and that as a result, such calls will drop or their customers will face “toll charges for calls that had historically been treated as local.”⁴³ In turn, the Rural Petitioners continue, these dropped calls or surprise toll charges will “inevitably lead to general customer confusion and dissatisfaction.”⁴⁴ These

⁴⁰ 47 U.S.C. § 153(30)(emphasis added). There is no basis to the Rural Petitioners’ assertion that the LEC-wireless porting that the FCC has required does “not require the customer to utilize the ported number ‘at the same location’ where the number was previously used prior to porting.” Rural Association Stay Petition at 8.

⁴¹ Rural Association Stay Petition at 4.

⁴² *Id.* at 4, 12 and 16.

⁴³ *Id.* at 18-19.

⁴⁴ *Id.* at 19.

Rural Petitioners' allegations lack merit, and Sprint previously has addressed NTCA and OPASTCO claims in this regard.⁴⁵

A. AN RLEC'S INTERCONNECTION OBLIGATIONS UNDER FCC RULES ARE CLEAR AND SETTLED

The Rural Petitioners assert that the interconnection obligations of their members "remain unaddressed."⁴⁶ They also argue, inconsistently, that they have no obligation under current interconnection rules to deliver local traffic to the terminating carrier, including when the terminating carrier's interconnection point is located outside the originating rate center:

[T]he interconnection obligations and technical capabilities of the 2 Percent Carriers are limited to their local exchange networks which are geographically limited by the bounds of their incumbent service territory.⁴⁷

The Rural Petitioners are wrong on both counts. The interconnection obligations imposed by the Act and the Commission's implementing rules are not ambiguous. In addition, the Rural Petitioners' belief that the "interconnection obligations" of their members are limited to the confines of their exchange boundaries is flatly inconsistent with current interconnection rules that have been affirmed on appeal.

Section 251(a)(1) of the Act imposes on all telecommunications carriers "the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers," thereby ensuring that calls made by customers will be completed. Section 251(b)(5) imposes on all LECs, including RLECs, "the duty to establish reciprocal compensations arrangements for the transport and termination of telecommunications." FCC interconnection rules, affirmed on appeal, make clear that an originating carrier is responsible for transporting its

⁴⁵ See Sprint Ex Parte Letter, CC Docket No. 95-116 (Oct. 21, 2003), responding to NTCA/OPASTCO Ex Parte Letter, CC Docket No. 95-116 (Sept. 30, 2003). See also Sprint Opposition to Rural Carrier Petition to Stay the Wireless Porting Order, CC Docket No. 95-116, at 2-15 (Nov. 12, 2003).

⁴⁶ Rural Association Stay Petition at 19.

⁴⁷ *Id.* at 16.

own customers' traffic "to the terminating carrier's end office switch that directly serves the called party."⁴⁸ Under the Commission's "single point of interconnection per LATA" rule,⁴⁹ this transport obligation requires an originating carrier to transport its customer's local traffic to the terminating carrier's point of interconnection in the originating LATA.⁵⁰

For traffic exchanged between a wireless carrier and an RLEC, FCC Rule 51.701(b)(2) specifies that this transport obligation applies to calls that "originate and terminate within the same Major Trading Area." Thus, under existing interconnection rules, an RLEC is required to transport -- at its own cost -- its customers' traffic to the wireless carrier's point of interconnection located within the originating MTA so long as the wireless carrier maintains at least one POI per LATA.

For example, when a Sprint PCS customer calls an RLEC customer, Sprint is responsible for transporting this call to the RLEC's end office switch serving the RLEC customer being called. Sprint does not generally connect directly with most RLEC networks (because traffic volumes ordinarily do not justify the cost of direct interconnection). As a result, Sprint must pay the LATA tandem switch owner its costs of transporting, or "transiting," the call to the appropriate RLEC end office. The costs Sprint incurs in transporting its customers' traffic to the correct destination carrier is a cost of doing business in a competitive environment.

⁴⁸ 47 C.F.R. § 51.701(b)(2). *See also id.* at § 51.701(c). Sprint does not suggest RLECs would bear the financial cost of facilities beyond a LATA boundary.

⁴⁹ *See, e.g., Unified Inter-carrier Compensation*, 16 FCC Rcd 9610, 9634 ¶ 72 (2001); *Virginia Arbitration Order*, 17 FCC Rcd 27039, 27064 ¶ 52 (2002).

⁵⁰ Since the inception of the mobile telephony industry 20 years ago, wireless carriers have used Type 2 interconnection, where the routing point (LATA tandem switch) is necessarily different than the rating point (a given rate center). *See, e.g., LEC-Wireless Carrier Interconnection Policy Statement*, 59 R.R.2d 1275, 1284 (1986); *LEC-Wireless Carrier Interconnection Declaratory Ruling*, 2 FCC Rcd 2910 ¶ 4, 2913 ¶ 29 (1987); 47 C.F.R. § 20.11(a)(wireless carrier, not LEC, chooses type of interconnection to use). Type 2 interconnection is consistent with the FCC's "single POI per LATA" rule.

Conversely, when an RLEC customer calls a Sprint PCS customer with a local number rated in the RLEC's local calling area, the RLEC is required to transport its customer's calls to Sprint PCS' mobile switch serving the called party. Thus, for RLEC calls to wireless customers with local numbers (whether ported or not), the RLEC has the responsibility under current rules for delivering these calls to the wireless network and paying for the cost of this transport. There is nothing unfair or inequitable in an RLEC incurring these transport costs; after all, every other carrier incurs these same transport costs – including when their customers call RLEC customers.⁵¹

The Rural Petitioners assert, however, they can route a land-to-mobile local call to a wireless customer only if the wireless carrier connects directly to the RLEC network.⁵² There are two flaws with this argument. First, the Commission has explicitly ruled that “to provide number portability, carriers can interconnect either directly or indirectly as required under Section 251(a)(1),”⁵³ and under FCC rules, it is the competitive carrier rather than the incumbent carrier that chooses the type of interconnection.⁵⁴ Second, a wireless carrier's direct interconnection would not assist an RLEC in any meaningful way, because under the Commission's rules, the RLEC would still be responsible for the costs of the transporting its traffic “to the terminating carrier's end office switch that directly serves the called party.”⁵⁵ In other words, for RLEC traffic sent over a direct-connect facility obtained by a wireless carrier, the RLEC would (in this example) still be responsible for reimbursing the wireless carrier for the prorated costs of the trunk

⁵¹ See *TSR Wireless v. US West*, 15 FCC Rcd 11166 (2000), *aff'd*, 252 F.3d 462 (D.C. Cir. 2001).

⁵² See Rural Association Stay Petition at 18 (“The [RLEC] switch will look for a trunk to switch the call to, but it will find no trunk because the wireless carrier has not established interconnection.”).

⁵³ *First LNP Reconsideration Order*, 12 FCC Rcd 7236, 7305 ¶ 121 (1997).

⁵⁴ See 47 C.F.R. § 20.11.

⁵⁵ 47 C.F.R. § 51.701(c).

group when used to deliver land-to-mobile local traffic to the wireless carrier.⁵⁶ Sprint is not suggesting that RLECs bear the cost of transport beyond the LATA boundary.

B. THE RURAL PETITIONERS' ASSERTION THAT IT IS TECHNICALLY INFEASIBLE FOR RLECs TO ROUTE LOCAL CALLS TO WIRELESS CARRIERS OUTSIDE OF THE ORIGINATING RATE CENTER IS FACTUALLY INCORRECT

Under the interconnection rules that have been in effect for seven years, an originating carrier like an RLEC is responsible for transporting its customers' calls to the network serving the person being called. The Rural Petitioners assert their members cannot comply with these rules because they are "physically and technically limited to transporting traffic within their exchange boundaries and to points at their boundaries":

[T]he 2 Percent Carriers do not provision local exchange services that involve transport responsibility or network functions beyond their own networks within their respective service areas. . . . [T]he interconnection obligations and technical capabilities of the 2 Percent Carriers are limited to their local exchange networks which are geographically limited by the bounds of their incumbent service territory. * * * [A] 2 Percent Carrier does not have the technical ability to transport a call beyond its network boundary.⁵⁷

In fact, RLECs face no "physical" or "technical" limitation in routing their customers' local calls to wireless networks "outside" of the originating exchange – as Sprint, which provides LEC services in many rural areas, can confirm. Most, if not all, RLEC networks are connected today to the LATA tandem switch. Indeed, wireless carriers use this same tandem-to-RLEC trunk group (or facilities) in routing their customers' calls to RLEC customers. In most cases, then, RLECs can route local land-to-mobile calls to wireless customers with ported numbers the same way they route land-to-mobile calls to wireless customers with non-ported local numbers.

⁵⁶ See 47 C.F.R. § 51.709(b). There is yet another problem with direct interconnection: as a practical matter, the RLEC would lose the option of having another carrier (e.g., LATA tandem switch owner) performing LNP database dips on its behalf.

⁵⁷ Rural Association Stay Petition at 16 and 18. See also *id.* at 12 ("It is technically infeasible for the 2 Percent Carriers to comply fully with the requirements of the *Order* with respect to routing and rating of calls to ported numbers.").

Specifically, rural LECs will route their customer's land-to-mobile local calls over the existing trunk group connecting their network to the LATA tandem switch, and the tandem switch will then forward the call to the mobile switching center ("MSC"). The only difference in a wireless porting environment is that, if the rural LEC does not perform its own LNP queries, the tandem switch owner will perform the additional function of performing the LNP queries on behalf of the RLEC.

Also factually inaccurate is the Rural Petitioners' assertion, entirely unsupported, that wireless carriers cannot have different routing and rating points for their telephone numbers.⁵⁸ Wireless carriers have used Type 2 interconnection since the inception of the mobile telephony industry 20 years ago. With Type 2 interconnection, the routing point of a telephone number (the LATA tandem switch) is necessarily different than the rating point (which must be associated with a specific rate center). Moreover, industry guidelines explicitly recognized that carriers may designate different rating and routing points for their telephone numbers.⁵⁹

In the end, the only reason some RLECs are unwilling to route land-to-mobile local calls to wireless carriers is because they are unwilling to acknowledge the obligation imposed by statute and FCC rules. However, the refusal to comply with current interconnection rules (affirmed on appeal) does not constitute injury – and certainly does not constitute irreparable injury – justifying entry of a stay of an order that reaffirms these rules.

⁵⁸ See Rural Association Stay Petition at 13.

⁵⁹ See Industry Numbering Committee, Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, at § 6.2.2 (Nov. 21, 2003).

IV. GRANT OF A STAY WILL HARM WIRELESS CARRIERS

One of the four stay components is the effect the stay would have on other parties.⁶⁰ The Rural Petitioners concede that their requested stay “will harm [wireless carriers’] competitive efforts,” but they assert that “any such asserted harm is not irreparable.”⁶¹ Sprint must respectfully disagree.

A Commission stay will preclude large numbers of RLEC customers from porting their numbers and switching their landline service to wireless carriers. In turn, wireless carrier will lose revenue resulting from such porting customers, and these revenue losses will not be recoverable.

V. THE PUBLIC INTEREST IS NOT SERVED BY DENYING NEW COMPETITIVE OPTIONS TO CONSUMERS

The Rural Petitioners assert that their requested stay “will serve the overall and balanced consideration of the public interest.”⁶² The Rural Petitioners provide no discussion in support of this assertion.

Sprint doubts that a single RLEC customer would agree with the Rural Petitioners’ suggestion that they would be better off with a stay. The question is whether RLEC customers should enjoy options not before made available to them – specifically, whether they should be permitted to port their number to another telecommunications carrier. Depriving customers of new competitive options is not in the public interest.

⁶⁰ See Rural Association Stay Petition at 5 n.9.

⁶¹ Rural Association Stay Petition at 4.

⁶² Rural Association Stay Petition at 5.

VI. THE COMMISSION HAS NOT PREEMPTED STATE RATEMAKING AUTHORITY

The Rural Petitioners assert there are a “myriad of issues” that the Commission must still address, but their Petition identifies only one issue. They assert that the *Intermodal Order* “assumes Commission jurisdiction over the rates charged by the 2 percent carriers in an inequitable anti-competitive manner and without due process.”⁶³ This Rural Petitioners’ argument also rests on a faulty premise, for the Commission has never, in any of its *LNP Orders*, attempted to regulate the rates that LECs charge for the local exchange services.

The issue is not the rates RLECs charge for local calls, and the Commission’s *LNP Orders* do not impose any limits on what RLECs may charge for their local exchange services. The issue rather is whether RLECs will be permitted to discriminate by billing calls between nonported numbers as local while treating a call to a ported number as toll – thereby requiring their customers calling ported numbers to dial extra digits, incur toll charges that were not assessed prior to the port, or both. An RLEC’s attempt to force its customers to dial extra digits for calls to ported numbers would contravene the dialing parity statute.⁶⁴ An RLEC’s attempt to force its customers to pay toll charges for calls to ported numbers, when calls were deemed local prior to the port, would constitute an unreasonable practice and be unreasonably discriminatory in contravention of the Communications Act.⁶⁵ Such a discriminatory arrangement would also contravene an RLEC’s duties under Section 251(a)(2) of the Act.⁶⁶

⁶³ Rural Association Stay Petition at 19.

⁶⁴ See 47 U.S.C. § 251(b)(3).

⁶⁵ See 47 U.S.C. §§ 201(b), 202(a). It bears remembering that the FCC possesses the statutory authority to order reasonable interconnection between LECs and wireless carriers, including with respect to intrastate traffic. See 47 U.S.C. §§ 2(b), 332(c)(1)(B).

⁶⁶ Section 251(b)(2) prohibits carriers from installing “network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section . . . 256.” 47 U.S.C. 251(a)(2). Congress enacted Section 256 precisely to “ensure the ability of users . . . to seamlessly and transparently transmit and receive information between and across telecommunications networks.” 47

The Supreme Court has noted that the concept of “state’s rights” has little relevance to local competition and the interconnection of competing networks:

But the question in these cases is not whether the Federal Government has taken the regulation of local telecommunications competition away from the States. With regard to the matters addressed by the 1996 Act, it unquestionably has. The question is whether the state commissions' participation in the administration of the new federal regime is to be guided by federal-agency regulations. If there is any "presumption" applicable to this question, it should arise from the fact that a federal program administered by 50 independent state agencies is surpassing strange.⁶⁷

VII. THE PETITIONERS' CRITICISM OF THE FCC TO CONGRESS IS UNFOUNDED

On November 19, 2003, or two days before they filed their stay petition, two of the three Rural Petitioners urged Congress to postpone the date that RLECs must begin to provide number portability. NTCA and OPASTCO told Congress that additional delay was necessary because the Commission had not done its job:

[The] agency has not at all adequately explained how small rural carriers will get paid for transporting calls to new service providers with whom they have no compensation or interconnection agreements. The Commission's rush to implement this [Intermodal] order without adequate carrier guidance will in all likelihood lead consumers to experience dropped calls and long distance charges for calls to ported numbers that were previously local.⁶⁸

This criticism of the Commission and its orders is unfounded. The Commission did not address in its *Intermodal Order* RLEC transport cost recovery because, under current interconnection rules affirmed on appeal, RLECs are responsible for transporting their own traffic to the terminating carrier. Also without merit, as explained above, is the assertion that RLEC customer

U.S.C. § 256(a)(2). The RLEC proposal to discriminate against wireless customers with ported local numbers and to create “customer confusion” among their own customers would be inconsistent with the Congressional directive that customers should be able to “seamlessly and transparently” send their calls “between and across telecommunications networks.”

⁶⁷ *AT&T v. Iowa Utilities Board*, 525 U.S. 366, 378 n.6 (1999).

⁶⁸ A complete copy of this letter is available at www.opastco.org and www.ntca.org.

calls to wireless customers with ported numbers will either drop or be converted into toll calls, as Sprint has previously explained.

VIII. CONCLUSION

For the foregoing reasons, Sprint submits that the Rural Petitioners have not begun to meet their burden on demonstrating that a stay of the November 10, 2003 *LEC-Wireless Porting Clarification Order* is warranted. Their request for a stay should be denied.

Respectfully submitted,

SPRINT CORPORATION

A handwritten signature in black ink, appearing to read 'L. Lancetti', with a long horizontal flourish extending to the right.

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December 10, 2003

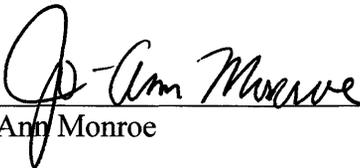
Certificate of Service

I, Jo-Ann Monroe, certify that on this 10th day of December, I caused a copy of the foregoing Sprint Comments to be served by facsimile to:

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