



## TABLE OF CONTENTS

<b>Section:</b>	<b>Tab:</b>
Table of Contents .....	ii
Summary and Introduction .....	1
Comments .....	3
A. Facilitating Intermodal Porting .....	3
1. Promoting intermodal porting by technical “solutions” is unnecessarily costly and not in the public interest .....	3
2. The Commission should not require incumbent LECs to “absorb the cost of” allowing wireless customers porting to wireline carriers to maintain the same wireless local calling area .....	7
3. Incumbent LECs cannot reasonably serve customers with numbers ported from wireless carriers on a Foreign Exchange or virtual FX basis .....	9
4. The Commission should focus on addressing the fundamental cause of the competitive disparity by completing wholesale reform of the current regime of implicit subsidies, universal service, and retail rates .....	10
B. Reducing the Porting Interval .....	12
Conclusion .....	14



controls at the state level . . . be eliminated or that wireless numbers . . . be assigned based on LEC rate center designations associated with the wireless customer’s primary address.”<sup>5</sup> In spite of the concerns of many commenters, the Commission chose to move forward with intermodal porting, waving off concerns of competitive disparity by asserting that the extent to which “wireline carriers may have fewer opportunities to win customers through porting[] . . . results from the wireline network architecture and state regulatory requirements, rather than Commission rules.”<sup>6</sup>

The *LNP Order & Notice* makes it clear that the Commission’s initial belief is that the answer to addressing the competitive disparity of the rate-center issue lies with wireline network architecture. SBC disagrees. The Commission’s proposals to facilitate wireless-to-wireline porting are technical, re-regulatory “fixes” whose costs far outweigh any benefits to the public. The path forward to toe-to-toe intermodal competition is deregulation. The Commission should focus on addressing the fundamental cause of the competitive disparity by completing wholesale reform of the current regime of implicit subsidies, universal service, and retail rates, and resist the temptation to require costly technical changes to the wireline network.

In the *LNP Order & Notice*, the Commission “decline[d] to require wireline carriers to follow a shorter porting interval for intermodal ports at [that] time.”<sup>7</sup> Instead the Commission sought comments on reducing the length of the porting interval. SBC opposes any unilateral Commission action to reduce the porting interval outside of industry-led forums. SBC is convinced that industry consensus can be reached on this issue. The existing porting intervals, which were developed through industry consultations and consensus and which have served carriers and consumers well since their implementation, guarantee that all carriers can port numbers accurately. To have the Commission impose different porting intervals on wireline

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<sup>5</sup> *Id.* at p. 5.

<sup>6</sup> *LNP Order & Notice*, 18 FCC Rcd at ¶ 27.

<sup>7</sup> *LNP Order & Notice*, 18 FCC Rcd at ¶ 38.

carriers risks the success of number porting achieved over the past seven years and, therefore is not in the public interest.

## Comments

### A. Facilitating Intermodal Porting

#### 1. Promoting intermodal porting by technical “solutions” is unnecessarily costly and not in the public interest.

Having mandated intermodal porting in the face of competitive disparities, the Commission now seeks to explore avenues for facilitating wireless/wireline porting. The Commission proposes technical solutions to a problem created largely by differing regulatory treatment of the two services. These technical solutions do not address the underlying cause of the problem (*i.e.*, rate-center requirements and pricing controls imposed on incumbent LECs at the state level) and are unduly costly when measured against any perceived benefit to the public. Consequently, these proposed technical solutions are not in the public interest.

To facilitate wireless-to-wireline porting, the Commission wants to know the degree to which technical impediments exist that would keep a wireline carrier from “porting in” a wireless customer’s number when the wireless customer’s number is associated with one rate center and the wireline facilities serving the wireless customer’s home or business are in another. While it is technically feasible<sup>8</sup> today to port that wireless customer’s number in, the incumbent LEC would have significant technical issues to resolve in order to provision mismatched numbers, to guarantee that the customer is properly billed for local and toll calls, and to direct 911 calls to the proper Public Safety Answering Point (PSAP).

The initial technical issue is provisioning. At present, orders involving mismatched telephone numbers are automatically rejected. SBC roughly estimates that it would cost approximately \$10 to \$20 million to undo this automatic rejection within SBC’s multiple

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<sup>8</sup> By “technically feasible,” SBC is presuming that the Commission means to refer “solely to technical or operational concerns,” taking into account “[s]pecific, significant, and demonstrable network reliability concerns.” See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; etc.*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499 ¶ 198 (1996).

provisioning systems. Unfortunately, undoing this safeguard could easily lead to accidental assignment of “wrong numbers.”<sup>9</sup>

Changes to the billing system would present a special challenge. For local and toll rating purposes, out-dialed calls could either be rated based on the rate center of the telephone number or of the service address. Presumably, this decision would be made by state commissions, meaning among other things that how calls were billed would vary between jurisdictions. If the calling scope were based on the rate center of the telephone number, then switches would need either additional switch translations to allow for multiple local calling areas or additional switch hardware to permit storing of toll billing information *for all calls*. If the calling scope were based on the service address, then the telephone company would have to rebuild the billing system as the present system uses the calling and called telephone numbers to determine toll rating. Either way, SBC would have to make costly and yet untested changes to its telephone company systems. A third option — rating the call on both the rate center of the telephone number and the service address — would result in the loss of revenues. As discussed below, this lost revenue would include loss of implicit universal service subsidies that keep local calling rates low (indeed below cost). On top of the loss of these revenues, SBC would incur significantly higher costs to effectuate the changes necessary to port in mismatched numbers, including increased transport costs. In short, the proposed technical cures are worse than the disease.

The technical issues arising in the 911 arena are significant. These arise as a result of both existing network design constraints and the limitations of PSAP equipment. At a minimum, the technical implications of mismatching telephone numbers and rate centers for 911 service include the following:

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<sup>9</sup> Today, when customers request new service at a particular address, the system makes sure that the new telephone number matches the service address (*i.e.*, that the telephone number is associated with a switch in the central office serving that address). If the system were to produce a mismatch, the safeguard would detect it. This prevents the improper rating of calls. If the safeguard were to be removed, it is possible that some customers might inadvertently be assigned mismatched numbers, which could affect the rating of calls both to and from those customers.

- Upgrading PSAP equipment to handle additional digits;
- Upgrading enhanced multi-frequency (EMF) trunks;
- Implementing SS7 protocol for end-office-to-selective-router trunks to pass additional digits to the router;
- Upgrading selective router software and 911 databases to support five-digit emergency routing numbers (ESNs) to facilitate tandem-to-tandem transfers and eliminate duplication of ESNs; and,
- Enhancing 911 database validation techniques to ensure data integrity.

Simply listing these technical issues belies their underlying complexity, as well as the costs and time involved to put them in place. Taking one item, the 911 selective router database, as an example is illuminating. When a 911 call is received, the 911 selective router queries a 911 selective-routing database using the automatic number identification (ANI) of the caller to determine the appropriate PSAP for routing purposes. The query returns an ESN, which indicates the appropriate trunk group for call routing.

Historically, SBC has used three-digit ESNs for selective routing purposes, because the three-digit limitation was a technical limitation of the 5E switch. The 911 databases that support the selective routing function were designed to accommodate this three-digit limitation. Each selective routing switch could support up to 1,024 ESNs. The routing instructions for each ESN within a selective router are unique to that switch. Thus, as example, ESN 100 in one selective router would direct calls to PSAP A; while ESN 100 in another selective router would direct calls to PSAP B.

If an NPA-NXX could be delivered to more than one selective router, then the telephone numbers with that NPA-NXX would need to be loaded into each selective router. However, the ESN associated with that telephone number would be for a specific PSAP. For 911 to work properly, SBC — and presumably similarly situated incumbent LECs — would need to eliminate duplicate ESNs with different routing directions. This would require considerable work on the part of the telephone company and the PSAP community. In addition, the

elimination of duplicate ESNs from multiple selective routers without ESN expansion to five digits could cause ESN exhaust, because of the 1,024 ESN limitation.

Expansion of the current three-digit ESNs to five-digit ESNs could mitigate the potential for ESN duplication where NPA-NXXs span selective routers. Expansion to five-digit ESNs, however, would require selective router upgrades, as well as upgrades to the 911 databases.

Similar detailed and costly adjustments would be needed for the other piece parts of the 911 system. In the end, however, none of these costly changes needed to accommodate the mismatching of telephone numbers and rate centers would improve the 911 system or related services. This is particularly important because of the costs imposed on PSAPs. In an era of shrinking public budgets and revenues and heightened public safety concerns, imposing these costs on PSAPs would be untenable.

Without more information on the scope of any obligation, including which solutions are being implemented, and an intensive study of the network requirements, it is next to impossible to provide the Commission with “detailed information on the magnitude of the cost of such upgrades along with documentation of the estimated costs.”<sup>10</sup> In order to provide reliable cost information, SBC would also need to have a reasonable estimate of expected demand. SBC notes that the volume of wireline-to-wireless porting is presently below market analysts expectations.<sup>11</sup> At present, therefore, SBC can only roughly estimate that the costs of system changes for 911 and order provisioning would be in the order of tens of millions of dollars.

Requiring the expenditure of these kinds of funds is not in the public interest. First, it cannot be said that the benefits to consumers outweigh the costs. The expected market demand for wireless-to-wireline porting cannot presently be determined with any precision. To meet that uncertain demand, however, incumbent LECs would be required not only to spend tens of millions of dollars, but also to divert human resources from better serving customers. At the end of the day, the proposed changes to the network would not improve service to consumers or

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<sup>10</sup> *LNP Order & Notice*, 18 FCC Rcd at ¶ 42.

<sup>11</sup> This is a further indication that these technical solutions would in fact benefit few customers, if any.

make the network more reliable or efficient. And, as these costs are ultimately borne by consumers, these changes will not make wireline telecommunications services more competitively priced.

Second, these technical solutions merely address the problem indirectly, leaving the fundamental causes of the problem untouched. As will be discussed in more detail below, the causes of the competitive disparity are the rate-center structure and pricing controls at the state level; therefore, any remedy should address those causes and not paper over them. The proposed technical adjustments to the network are costly and temporary, and do not remedy the problem.

**2. The Commission should not require incumbent LECs to “absorb the cost of” allowing wireless customers porting to wireline carriers to maintain the same wireless local calling area.**

The Commission asks that commenters address other competitive issues that could affect its LNP requirements. As an example, the Commission wonders whether incumbent LECs should be required to “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.”<sup>12</sup> This suggestion is wrong-headed. The answer to the competitive disparity problem in LNP is deregulation, not more regulation. SBC fails to see how requiring incumbent LECs to “absorb” more costs would make wireline telecommunications services more competitive with wireless services. After all, the fundamental idea behind LNP is to “give[] customers flexibility in the quality, price, and variety of telecommunications services they can choose to purchase” and to allow them “to respond to price and service changes without changing their telephone numbers.”<sup>13</sup> In other words, in a competitive marketplace, telecommunications carriers should be free to compete on the quality, price, and variety of their services, and consumers should be free to respond to that competition free of any constraint imposed by having to change telephone numbers. To impose by regulation, and not competition,

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<sup>12</sup> *LNP Order & Notice* at ¶ 44.

<sup>13</sup> *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 ¶30 (1996).

the same calling area on incumbent LECs is to fly in the face of the deregulatory vision of Congress in enacting the Telecommunications Act, in general, and section 251(b)(2), in particular. After all, it makes no more sense to require incumbent LECs to match the calling areas of wireless carriers than it does to require wireless carriers to match the calling areas of incumbent LECs.

This proposal suffers from the additional failing of being unmanageable. Wireline customers who would not be confused as to why some customers (former-wireless customers) have a different calling area than they would soon realize how to game the system in their favor. To match calling areas enjoyed by their former-wireless-customer neighbors, they would port from a wireline carrier to a wireless carrier and back again just to get the wireless carrier's calling area for their wireline telephone service. In short the scheme introduces distortions in the market that serve no legitimate competitive interest.

Moreover, it is unclear what the Commission intended by referring to "absorb[ing] the cost" of maintaining the same calling area. If the Commission were to require incumbent LECs to maintain the same calling area of wireless providers for some or all of the incumbent LECs' customers, the costs of complying with any such requirement would certainly be exogenous and, therefore, recoverable.<sup>14</sup> What is more, without prejudging the issue of the Commission's authority to preempt the states and to dictate the scope of calling areas for a purely intra-state service, SBC notes that, if the Commission were able to accomplish this, the more direct and rational way of addressing the competitive disparity issue would be to preempt the states rate-center requirements and pricing controls, giving incumbent LECs the ability to compete on all levels with wireless carriers. This alternative scheme would at least have the additional benefit of being consistent with the deregulatory thrust of the Telecommunications Act.

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<sup>14</sup> See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6807 ¶ 166 (1990); 47 C.F.R. § 61.45. Again, SBC does not have an accurate estimate of the cost of any such regulation, but it has every reason to believe that it would be a very costly requirement indeed.

**3. Incumbent LECs cannot reasonably serve customers with numbers ported from wireless carriers on a Foreign Exchange or virtual FX basis.**

The Commission asks for comments 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.”<sup>15</sup> Virtual FX service allows customers to obtain dial tone from the central office serving their physical address, whereas their telephone numbers would normally be associated with a different central office in a different rate center.<sup>16</sup> An example of this would be a customer with a Washington, DC service address served by a Washington, DC central office and an Annapolis, MD area code and prefix (NPA-NXX). The problems arising from the proposed virtual FX solution, as it could be offered by incumbent LECs, have been already addressed above in section A. 1. Essentially, it would require costly changes to billing, 911, and provisioning systems to provide little or no benefit to consumers.

FX service, on the other hand, allows customers in one central office area to lease a dedicated circuit to a central office in a different rate center (*i.e.*, a “foreign” central office — one not serving their physical address) and have a telephone number associated with that foreign office. This solution has been available for decades and remains available. It is, however, a very inefficient solution, as it ties up an interoffice circuit on an around-the-clock basis, regardless of whether the telephone line is actually in use (*i.e.*, off hook).

Again, the proposed FX solution does not address the root cause of competitive disparity in intermodal porting but seeks to paper over it by imposing additional costs on wireline carriers. FX service was never intended to be a competitive alternative to local telephone service. FX service imposes costs on the wireline carrier above and beyond those of regular local service. Consequently, it cannot be priced competitively with either wireline local service or wireless service. Requiring the incumbent LECs to serve former-wireless customers on a FX-basis suffers from the same criticism of the proposal to have incumbent LECs match wireless calling

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<sup>15</sup> *LNP Order & Notice* at ¶ 44.

<sup>16</sup> SBC’s operating companies do not presently offer virtual FX service under tariff in any of SBC’s 13 states.

areas — it imposes more needless and costly regulation on carriers in direct contradiction of the deregulatory spirit of the Telecommunications Act.

**4. The Commission should focus on addressing the fundamental cause of the competitive disparity by completing wholesale reform of the current regime of implicit subsidies, universal service, and retail rates.**

All of the proposed technical solutions raised in the *LNP Order & Notice* suffer from the same failing: they are costly, temporary technical fixes that do not address head on the fundamental problem of differences in calling scopes between wireless carriers and LECs caused by outdated rate center requirements and pricing controls at the state level. As SBC previously has observed, the “rate-center” issue arises largely from regulatory differences between wireline and wireless services.<sup>17</sup> While wireless services are largely unregulated and free of state pricing controls, incumbent LECs are subject to stringent rate regulation at the state level. In particular, wireless carriers are free to establish very broad calling areas and price their services based on business needs. In contrast, incumbent LECs have been required under state pricing controls to establish much narrower calling scopes based on rate centers, which may be as small as a single wire center, or even a portion of a wire center.<sup>18</sup> As a consequence, incumbent LECs are severely constrained in their ability to port numbers from wireless carriers, and thus cannot compete effectively with wireless carriers for customers seeking or willing to port their numbers to other, intermodal carriers.

SBC believes that the Commission cannot adequately address the competitive disparity raised by the rate-center issue until wireline and wireless carriers are able to compete on a level playing field for all of each other’s customers. To this end, incumbent LEC rate center requirements and pricing controls at the state level must be eliminated or wireless numbers must be assigned based on incumbent LEC rate center designations associated with the wireless customer’s primary address.<sup>19</sup> Because the Commission thus far has been disinclined to change

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<sup>17</sup> SBC Aug. 29<sup>th</sup> *Ex Parte* at 4.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 5.

the way in which wireless numbers are assigned, it must take steps to encourage the states to fundamentally reform their pricing structures for wireline carriers by eliminating the rate center construct and providing incumbent LECs the pricing flexibility they need to compete in the marketplace.

Any reform of state pricing controls must begin with the complex and difficult issues of implicit subsidies inherent in state pricing structures (of which the rate center construct is an integral part) and universal service reform. Although Congress and the Commission long have recognized that implicit subsidies are unsustainable in a competitive environment,<sup>20</sup> the Commission thus far has failed to take the steps necessary to induce the states to replace implicit subsidies with explicit support mechanisms for universal service.<sup>21</sup> Indeed, in its recent *Tenth Circuit Remand Order*, the Commission specifically disclaimed any responsibility for inducing the states to move to explicit subsidies, and readopted a federal universal service support mechanism that expressly relies on the continued existence of implicit subsidies.<sup>22</sup> As SBC has pointed out, such an approach is flatly inconsistent with the requirements and objectives of the 1996 Act, as well as the Tenth Circuit's remand.<sup>23</sup> The Commission therefore should, as SBC advocated in its comments on the Commission's FNPRM in the *Tenth Circuit Remand Order*, redesign its high cost support mechanisms to provide the necessary inducements to encourage the states to replace implicit subsidies with explicit universal service support.<sup>24</sup> At the same

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<sup>20</sup> S. Conf. Rep. No. 104-230, at 131 (1996) ("To the extent possible, the conferees intend that any support mechanisms continued or created under new section 254 should be explicit, rather than implicit as many support mechanisms are today."); *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8786-87 (1997) (explaining that implicit subsidies are not sustainable in a competitive environment); *Federal-State Joint Board on Universal Service*, Report and Order, 13 FCC Rcd 11501, 11505 (1998) ("Recognizing the vulnerability of [] implicit subsidies to competition, Congress, in the 1996 Act, directed the Commission and the states to restructure their universal service support mechanisms to ensure the delivery of affordable telecommunications services to all Americans in an increasingly competitive marketplace.").

<sup>21</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, FCC 03-249 (rel. Oct. 27, 2003) (*Tenth Circuit Remand Order*).

<sup>22</sup> *Id.*

<sup>23</sup> See Comments of SBC Communications Inc., CC Docket 96-45 (filed Jan. 14, 2004) ("SBC Tenth Circuit Remand FNPRM Comments").

<sup>24</sup> *Id.*

time, the Commission should adopt mechanisms to encourage the states to eliminate outdated pricing controls (including reliance on the rate center construct) and grant incumbent LECs the pricing flexibility they need to compete effectively with wireless carriers. Thus, rather than adopting costly and proscriptive “technical” solutions that might facilitate wireless-to-wireline number porting, the Commission should directly address the root cause of the competitive disparity at the heart of the rate-center issue — the rate-center structure and inefficient and anticompetitive pricing controls at the state level.

### **B. Reducing the Porting Interval**

In the CTIA’s May 2003 Petition of Declaratory Ruling, the CTIA asked the Commission to reduce the existing porting interval to a so-called “pro-competitive” two and one half hours for intermodal porting, which was described as the wireless industry’s standard for wireless-to-wireless porting.<sup>25</sup> In response, the Commission advised that it viewed the wireless industry’s two-and-one-half-hour standard as “feasible” for wireless-to-wireless porting, encouraging wireless carriers to complete ports within that timeframe, but it did not require wireless or wireline carriers to follow that or any other reduced standard for intermodal porting.<sup>26</sup> The Commission did, however, seek comments on whether the porting interval should be reduced.<sup>27</sup>

SBC continues to oppose the forced reduction of the porting interval outside of industry collaboration. The existing wireline standard was developed to allow all carriers to port numbers accurately, ensuring that all call-related databases were properly updated, and to coordinate their activities, facilitating a smooth porting experience for consumers. SBC is confident that a NANC-mediated industry consensus can be reached to refine the porting process and ultimately

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<sup>25</sup> Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association, CC Docket No. 95-116, pp. 7 - 15 (filed May 13, 2003) (CTIA January Petition)

<sup>26</sup> *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order, 18 FCC Rcd 20971 ¶ 26 (2003); *LNP Order & Notice* at ¶ 38.

<sup>27</sup> *LNP Order & Notice* at ¶¶ 45-51.

reduce the porting interval.<sup>28</sup> Imposing a porting interval by regulatory fiat may risk the successful porting record achieved by wireline carriers over the last seven years.

In the *LNP Order & Notice*, the Commission speculates that “[r]educing the porting interval could benefit consumers by making it quicker for consumers to port their numbers.”<sup>29</sup> Quicker, however, is not always better. In the long run, consumers are better served by guaranteeing that number porting is accurate and well coordinated. Under the status quo, wireless carriers are free to port within their industry’s timeframe, and wireline carriers are free to use the porting interval that has served consumers and competition well over the past seven years. Recent intermodal porting experience underscores the importance of having the two industries work out mutually agreeable processes in the context of industry-led forums. This model has worked well in the wireline-to-wireline porting arena.

SBC also opposes a reduction in the porting interval because it would expose SBC and other incumbent LECs to potential fines. Unlike competitive LECs, SBC and other incumbent LECs are subject to performance measurements. If, for example, a performance measurement required that 96.5% of LNP orders must be worked within industry guidelines — as is the case for performance measurement 91 in the five-state Southwestern Bell Telephone region — then SBC could face fines not imposed on competitors for the same level of performance. Porting intervals need to be developed by industry consensus in order to avoid this kind of performance-measurement trap.

There is no evidence to support any supposition that the existing wireline porting interval is anti-competitive or detrimental to consumers. To the contrary, the success of wireline porting over the past seven years is substantial proof that the process developed within the NANC benefits both consumers and carriers.<sup>30</sup> To dictate a porting interval from above would risk the

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<sup>28</sup> Industry consensus was reached among wireline carriers in spite of intense competition. While SBC believes that consensus can be reached among wireline and wireless carriers, SBC is not contending that any possible reduction would necessarily be on a par with the present wireless industry standard.

<sup>29</sup> *Id.* at ¶ 49.

<sup>30</sup> Any industry-supported, common porting interval would be competitively neutral, because it would essentially remove the porting interval as a consideration for carrier selection.

success enjoyed by the industry to date. Given the diversity of carrier capabilities, the complexity of the porting process, and the importance of accurately updating call-related databases, reducing the porting interval without industry consensus would endanger the accuracy of number porting and impose unnecessary costs on some carriers.

### **Conclusion**

The heart of the competitive disparity in intermodal porting is regulatory, not technical. The proposed technical fixes, therefore, do not address the real problem — the rate-center structure and pricing control at the state level. These proposed fixes merely pile up additional regulations and costs but provide no real benefits to consumers or in any way improve the quality, price, and variety of telecommunications services offered by either wireline or wireless carriers. In short, the proposals are not in the public interest. Rather, the answer to the competitive disparity issue can be found in having the Commission complete wholesale reform of the current regime of implicit subsidies, universal service, and retail rates.

The Commission should also resist imposing new porting intervals on telecommunications carriers. The existing wireline industry standard has served consumers and competitors well for years. It allows accurate and certain number porting, which is a real benefit to consumers. Any changes that need to be made to shorten the porting interval are best handled in industry-sponsored forums, like the NANC. This way, all carriers can meet the demands of number porting and provide quality service to their customers.

Respectfully submitted,

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