

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

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

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. (“Nextel”), by its attorneys, hereby submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) Further Notice of Proposed Rulemaking seeking comment on ways to facilitate wireless-to-wireline porting where there is a mismatch between the rate center associated with the wireless number to be ported and the landline rate center in which the wireline carrier seeks to serve the customer.¹

I. INTRODUCTION

The record in this proceeding thus far reveals that many incumbent Local Exchange Carriers (“ILECs”), and particularly rural ILECs, claim that wireless-to-wireline porting can only occur in cases where the wireless customer’s telephone number is associated with the wireline rate center to which the number is to be ported. These ILECs insist that if a customer’s wireless number is physically associated with a rate center location outside the landline rate center in which the landline phone is located, porting-in that wireless phone number could result in calls to and from that number being re-rated as toll calls. As a result, many ILECs assert that they effectively are precluded from porting to that subset of wireless subscribers who, though living

¹ Telephone Number Portability, *Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, FCC 03-284, (rel. November 10, 2003) (“*Further Notice*”).

in the same local area, do not have wireless numbers associated with the rate center in which their landline phone is located.² Furthermore, the ILECs contend that for them to offer wireless-to-wireline number porting in this context would require significant and costly changes to their network operations and service processes.

While there are certain technical or operational modifications to the ILEC networks that must occur for the implementation of full intermodal portability, the challenge to make it work is certainly no greater than the challenges associated with ILECs implementing other market-opening provisions of the Telecommunications Act of 1996. The Commission's *Intermodal Porting Order* sets the correct direction and tone, namely that industry groups and individual ILECs must begin to work towards a solution to the ILEC rate center problem so intermodal portability will be possible.³

The Commission expressed no great concern about the costs wireless carriers incurred to prepare their networks and to upgrade support systems to become LNP-capable, even in the face

² See, e.g., United States Telecom Association and CenturyTel of Colorado, Inc. Joint Petition for Stay Pending Judicial Review, CC Docket No. 95-116, FCC 03-298 (filed November 18, 2003); ITTA, NTCA, and OPASTCO Emergency Joint Petition for Partial Stay and Clarification, CC Docket No. 95-116 (filed November 21, 2003).

³ Of course, the Commission could decide, for the immediate future, an ILEC's Section 251 porting obligation has been satisfied once the ILEC becomes capable of porting numbers out to wireless carriers. The fact that their systems are not designed to port-in wireless numbers is less of an immediate concern from the standpoint of competition. Indeed, the purpose behind the porting obligations was to encourage *intermodal* competition to the ILECs. See Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, ¶ 160 (1996) (noting 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."). By requiring that intermodal portability begin on November 24, 2003, the Commission recognized that the greater harm to competition would be to stall implementation of all intermodal porting while these separate capabilities are being developed.

of uncertain demand for wireless LNP.⁴ The ILECs' claims of complex implementation problems and significant cost should not sway the Commission from pursuing a path towards fully functional two-way portability from wireless to wireline networks, particularly since the LNP cost recovery mechanism for ILECs already is well-established.⁵ While complex and potentially costly, full intermodal portability is an obligation Congress and the FCC have imposed on ILECs, and the FCC suggests a number of options for resolving the ILECs intermodal porting issues. Like the wireless industry, the ILECs should make those investments and network changes to ensure it is available to all consumers.

II. WIRELINE CARRIERS CAN ACHIEVE FULL INTERMODAL PORTABILITY.

The *Further Notice* seeks comment on issues that ILECs have raised regarding wireless-to-wireline porting, particularly how to overcome the ILEC rate center mismatch challenge. Specifically, the Commission requests comment on whether there are competitive issues that affect the intermodal porting requirements.⁶ The competitive concerns that should be paramount

⁴ Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation And Telephone Number Portability, *Memorandum Opinion and Order*, 17 FCC Rcd 14972, ¶ 20 (2002) (We remain convinced that wireless LNP will result in . . . competitive benefits in the long term. Accordingly, we find that permanent forbearance is not in the public interest."); Telephone Number Portability, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, ¶ 141 (1997) ("We conclude 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.").

⁵ BellSouth recently filed a Petition for Declaratory Ruling requesting that the FCC allow ILECs to recover the costs to implement wireless local number portability through a federal charge on end user bills. See BellSouth Corporation Petition for Declaratory Ruling and/or Waiver, CC Docket No. 95-116 (filed November 14, 2003). In particular, BellSouth sought to modify its existing monthly end-user LNP charge by extending the recovery period beyond the existing 5-year cap. Comments and reply were received by the FCC on the BellSouth Petition that largely supported BellSouth's request.

⁶ *Further Notice* at ¶ 44 ("[W]e seek comment on whether there are other competitive issues that could affect our LNP requirements.").

are what conditions are necessary to permit fully functioning LNP to work well in the vast majority of circumstances.

Like in the case of many other contentious telecommunications industry issues, the Commission's best course may be to articulate its goals, establish the rules and timetables associated with meeting the goals, and refer the matter to the NANC for identification of the means to reach the goals. One reason no real ILEC intermodal implementation planning appears to have occurred is that the Commission did not provide specific direction to previous NANC working groups as to what was to be expected of ILECs whenever there was a rate center mismatch. Now that the Commission has clarified in the *Intermodal Porting Order* that its rules require full intermodal portability, NANC is in a position to make technical recommendations to the FCC regarding the best means for achieving it.

The *Further Notice* also proposes a number of options that seek to address any porting problems that may arise when there is a rate center mismatch. Among other things, the Commission asks whether LECs 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.⁷ To the extent that wireless-to-wireline porting raises issues regarding the rating of calls to and from the ported number, wireline carriers – to the extent they wish to serve the customer – *should* be prepared to absorb the cost of allowing the customer with a wireless ported number to maintain the same or similar local calling area that the customer had with the wireless service provider. Indeed, CMRS carriers have spent many millions of dollars to upgrade their networks to ensure that consumers would be able to port their numbers to both

⁷ *Id.* (“[W]e 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.”).

wireline and other wireless carriers on November 24, 2003. There is no reason the ILECs should not now do the same.

Furthermore, the ILECs have spent a great deal of time throughout this proceeding asserting that intermodal porting creates competitive disadvantages to ILECs compared to the CMRS carriers operating in the ILEC territories.⁸ This line of argument by the ILECs is unavailing. Without exception, whenever the Commission has determined that the benefits to consumers outweigh any possible unfair competitive advantage to a particular a carrier or class of carriers, the rule or policy under consideration will stand.⁹ Here, where the Commission has

⁸ See, e.g., CenturyTel Comments on CTIA's January 23rd Petition for Declaratory Ruling at 5-6 (filed February 26, 2003) ("This approach would create an unlawful disparity by allowing wireless carriers to port a wireline customer over a greater geographic area than wireline carriers could port wireless customers."); Fred Williams & Associates Comments on CTIA's January 23rd Petition at 8 (filed February 26, 2003) ("allowing the CMRS providers to require wireline porting in every rate center that a CMRS service area happens to overlap would give the CMRS providers a strong competitive advantage over the wireline LECs."); and SBC Comments on CTIA's January 23rd Petition at 2 (filed February 26, 2003) ("From the wireline carriers' perspective, the issue is seen as one of disparity of treatment; *i.e.*, with respect to telephone number portability, wireless carriers will have a competitive advantage over wireline carriers."); *Ex Parte* Letter to Marlene H. Dortch, Secretary of the Federal Communications Commission, from Kathleen B. Levitz, Vice President-Federal Regulatory for BellSouth Corporation, CC Docket No. 95-116 (filed October 30, 2003) ("Wireline carriers, ILECs and CLECs alike would be unable to compete for wireless customers holding TNs not associated with the customer's rate center location and could even lose the opportunity to win back customers who initially decide to port their TNs to a wireless carrier.").

⁹ See, e.g., Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review -- Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets, *Report and Order*, 16 FCC Rcd 7418, ¶ 38 (2001) "Overall, we find that the potential anticompetitive impact of allowing incumbent LECs to bundle local exchange service with CPE is outweighed by the public interest benefits associated with bundling."; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, *Second Order on Reconsideration*, 12 FCC Rcd 8653, ¶ 55 (1997) ("we emphasize that Congress did not ignore, nor have we, the integrative efficiencies that may result when the same people and facilities of a BOC that provide local service provide interLATA service as well. Indeed, by providing for the sunset of the separate affiliate requirement within three years of BOC entry (for telecommunications services) unless the Commission acts otherwise, *Congress envisioned that there may well come a point when the benefits of such efficiencies come to outweigh any risk of anti-competitive harm due to discrimination and improper cost allocation such that consumers are better off.*") (emphasis added); Applications of Teleport Communications Group Inc., and AT&T Corp., for

concluded that intermodal portability benefits consumers,¹⁰ and where any perceived competitive issues can be readily resolved through identification and implementation of ILEC system and process changes, the Commission's rule certainly should stand.

Thus, rather than asserting there are unfair advantages to wireless due to ILEC network or regulatory limitations, ILECs should concentrate on identifying solutions that allow them to achieve full intermodal porting. In the short-term, this could mean, as stated above, bearing the cost of allowing consumers porting to an ILEC from a CMRS carrier (if the ILEC wishes to serve the customer) to maintain the same or similar local calling area as the wireless carrier provided. Or, in the alternative, ILECs could opt to serve customers with numbers ported from wireless carriers on a Foreign Exchange (FX) or virtual FX basis.¹¹ While Nextel recognizes that this could be a costly option – due in most part to the fact that each ported number would need its own dedicated FX line – it nonetheless exists as an *option* for ILECs to utilize if they so desire. Similarly, ILECs can make use of Remote Call Forwarding to terminate a call outside of

Consent to Transfer of Control of Corporations Holding Point-to-Point Microwave Licenses and Authorizations to Provide International Facilities-Based and Resold Communications Services, *Memorandum Opinion and Order*, 13 FCC Rcd 15236, ¶ 52 (1998) (“determining whether a merger serves the public interest, the issue is not whether the merged entity will have competitive advantages over its rivals, *but rather whether any such advantages will be so great as to impede the effective functioning of a competitive market.*”) (emphasis added).

¹⁰ Indeed, the Commission recently rejected an ILEC motion for stay of the intermodal porting obligation, stating that “number portability promotes competition between telecommunications service providers, allowing customers the flexibility to respond to price and service changes without changing their telephone numbers. We see no reason, based on the instant petition, to delay these benefits to consumers, carriers and to the competitive marketplace.” See, Telephone Number Portability; United States Telecom Association and CenturyTel of Colorado, Inc. Joint Petition for Stay Pending Judicial Review, *Order*, CC Docket No. 95-116, FCC 03-298, ¶ 7 (rel. November 20, 2003).

¹¹ *Further Notice* at ¶ 44.

a particular ILEC rate center.¹² While this option would necessarily require that the ILEC have “two legs” in the local call, it nonetheless provides a solution for those ILECs that want to overcome the rate center mismatch issue.

Similarly, the Commission recognizes that rate center consolidation could solve many of the intermodal porting disputes at issue in the *Further Notice*. Nextel agrees with the Commission that this provides another avenue for the ILECs to resolve the issues they raise regarding mismatched rate centers. In the number conservation context, rate center consolidation has been an effective, pro-competitive tool, and the Commission has encouraged states to implement it as soon as possible.¹³ In the portability context, the Commission could encourage further consolidation of rate centers as one more means of addressing the ILECs’ rating and routing issues.

Nextel appreciates that rate center consolidation is not a simple or easy option for certain states and carriers (particularly those that have relatively limited geographic local calling area boundaries), given the historic connection between ILEC rate centers, the routing of calls, and billing of end users. Indeed, ILEC rate centers most often determine which landline calls are treated as local versus toll, and thus consolidation may deprive some carriers of toll revenue,

¹² For this alternative to work, the call would terminate at the ILEC Central Office at the rate center associated with the NPA-NXX in the LERG. The ILEC would then have to forward the call to a pseudo ANI to terminate to the new customer location outside of the terminating rate center.

¹³ Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Connecticut Department of Public Utility Control Expedited Petition for Additional Authority; Michigan Public Service Commission Petition for Additional Delegated Authority to Implement Number Conservation Measures; Petition of the North Carolina Utilities Commission for Additional Delegated Authority to Implement Number Optimization Measures, Order, 16 FCC Rcd 15842 (2001).

primarily intrastate toll revenue.¹⁴ Nonetheless, rate center consolidation is a viable option for addressing ILECs' concerns about wireless-to-wireline porting, and the benefits to be gained from rate center consolidation could well outweigh the potential costs.

III. THE INTERMODAL PORTING INTERVAL SHOULD BE SHORTENED.

In addition to the solutions proposed to help ameliorate the intermodal porting rate center issues, the Commission seeks comment on whether it should reduce the current wireline four business day porting interval for LEC intermodal porting.¹⁵ Nextel supports shortening the intermodal porting interval from the present four business day interval because consumers are demanding and expecting a quicker turnaround on their port requests. Nextel recognizes that shortening the porting interval is a difficult task and one that will require time to accomplish. Therefore, Nextel suggests that the Commission consider a phase-in of gradually more aggressive intervals or a transition period to move to shorter intervals as parties become more experienced with intermodal porting. At a minimum, the ILECs – like wireless carriers – should have a more stringent goal to which to strive. Continuing to work towards a porting interval no better than four business days does not satisfy consumers and is not, therefore, in the public interest.

¹⁴ Numbering Resource Optimization; Petition for Declaratory Ruling and Request For Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, *Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice Of Proposed Rulemaking in CC Docket No. 99-200*, 16 FCC Rcd 306, ¶ 148 (2000).

¹⁵ *Further Notice* at ¶ 49.

IV. CONCLUSION

As the Commission already has concluded, intermodal porting is in the public interest. In fact, making it available to consumers was a key component of the Commission's decision to mandate wireless LNP. Thus, rather than continuing to claim competitive disadvantages, the ILECs – like their CMRS competitors – should make the investments and network changes necessary to ensure that intermodal porting is available to all consumers. Additionally, the ILECs should strive to achieve a porting interval that is more aggressive than their current four business day goal, which would benefit consumers.

Respectfully submitted,

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