

technical solution are wireless carriers who are unaffiliated with any incumbent LEC wireline operations.² This should not be surprising. It's no skin off their noses if their wireline competitors are further burdened with unnecessary and costly regulations — regulations that neither address the underlying problem nor make wireline services more competitive. Commenters that support these technical proposals bathe themselves in the glow of telephone number porting and competition, but in plain fact they are largely unregulated carriers who are more than happy to reap the benefits of hobbling their direct competitors with new and additional regulatory obligations and costs. If competition were really their concern, they would welcome open competition by supporting the elimination of dated legacy regulations that impose pricing controls on incumbent LECs.

The commenters who oppose the Commission's technical proposals to facilitate intermodal porting have it right. Among other things they recognize the following:

- The proposals are too expensive and result in little or no benefit to consumers or telephone number porting.³
- The proposals are contrary to the deregulatory thrust of the Telecommunications Act of 1996.⁴

to port when rate centers do not match outweighs the problems and costs created for the wireline industry.”); Oklahoma Rural Telephone Companies Comments (ORTC), p. 3 (“[T]he Oklahoma RTCs propose that the Commission reject any proposals requiring an ILEC to match wireless carrier’s local calling scope or placing the burden on the ILEC to seek rate design changes at state commissions.”); United States Telecom Association Comments (USTA), p. 5 (“USTA urges the Commission to resolve all intercarrier compensation issues before requiring ILECs to accept numbers ported from outside their rate centers.”); and Verizon Comments (Verizon), p. 1 (“The possible changes posed in the Further Notice are either infeasible or would be very expensive to implement, and, in light of the success of number portability generally, cannot possibly provide benefits anywhere approaching these costs.”). Although less direct, some commenters reach much the same conclusion as the majority. For example, AT&T Corp. urges “care and forbearance” and counsels against requiring wireline carriers to port in wireless numbers using FX or FX-like arrangements (AT&T Corp. Comments, p. 11); Sprint Corporation (Sprint) ultimately proposes that “the Commission need not take any steps to facilitate LEC-wireless porting.” Sprint Comments (Sprint), p. 13.

² For example, Nextel Communications, Inc. (Nextel) and T-Mobile USA, Inc.

³ BellSouth, p. 3, 12; Verizon, p. 3, 9.

⁴ SDTA, p. 3; USTA, p. 5; Verizon, pp. 11-12.

- The proposals unnecessarily misdirect incumbent LEC resources — financial and human — away from making wireline services more competitive; that is, the proposals do not improve services to customers, lower the cost of wireline services, or improve the wireline network.⁵
- The proposals themselves are not competitively neutral.⁶
- The proposals violate the definitional limitation on number portability.⁷
- The proposals will generate consumer confusion and cause them to incur unanticipated charges.⁸
- The proposals do not address the underlying problem, which is the result of rate-center requirements and pricing controls imposed on incumbent LECs at the state level.⁹
- The proposals would impose unnecessary costs and restructuring on 911 systems, including costs on Public Safety Answering Points (PSAPs).¹⁰
- The proposals raise serious questions concerning the Commission’s jurisdiction to modify incumbent LEC local calling areas.¹¹

Intuitively, commenters that oppose the suggested technical solutions recognize that there is nothing inherent in the porting requirements of section 251(b)(2) that requires the Commission to impose restructuring of wireline network facilities and services in order to emulate the services of other telecommunications carriers to whom they port numbers.¹² The simple point behind the LNP statutory obligation is to remove a perceived deterrent to competition in the

⁵ BellSouth, p. 16; SDTA, p. 3.

⁶ BellSouth, p. 19; TSTCI, p. 2.

⁷ Verizon, p. 4. (“While the question of what constitutes ‘the same location’ when discussing CMRS user may not always be clear, one thing, at least, should be clear — when a user wants to take a CMRS number associated with Arlington[, Virginia] and use it with a fixed physical location in Manassas[, Virginia], that user is, in fact, not at ‘the same location.’”) See 47 U.S.C. §153(30).

⁸ BellSouth, p. 15; Verizon, p. 9.

⁹ ORTC, p. 4.

¹⁰ NENA, pp. 2-3.

¹¹ BellSouth, p. 18; ORTC, p. 3; Qwest, p. 2; SDTA, pp. 4-5; Verizon, p. 11.

¹² *E.g.*, SDTA, p. 3..

local exchange market by alleviating consumers' fears that they will need to change their telephone number when switching carriers. The hope was, and remains, that carriers would compete in a free market on "the quality, price, and variety of telecommunications services,"¹³ not that they would be forced by regulations to emulate each other's services. Nothing in section 251(b)(2) of the Act provides grounds for the Commission's reconfiguring the local exchange market.

Some commenters argue that wireline carriers should be required to restructure their networks and associated systems in order to allow *porting in* of numbers regardless of where the wireline service would terminate; that is, regardless of a mismatch between the number to be ported in and the customer's wireline service location.¹⁴ The reasoning behind this argument appears to be that because it is "technically feasible" to make these expensive changes, carriers are obligated by law to do so.¹⁵ This argument is false.

First, while it may be technically feasible to port numbers to China, it does not stand to reason that the Act requires it. The focus of the analysis should be on whether number portability as conceived by Congress requires these changes and whether these changes are in the public interest. In either case, the answer would be no.

Second, such reasoning runs afoul of the point of number portability, which is to facilitate competition within the *local exchange market*. While wireless carriers are competitors in that market, they simultaneously provide service beyond that market.¹⁶ These proposals — to match local calling scopes, to use FX service to emulate the services between disparate carriers, *etc.* — seek nothing less than redefining the local exchange market. Putting aside the question of the

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

¹⁴ T-Mobile, pp. 4-5.

¹⁵ "Each local exchange carrier has . . . [t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." 47 U.S.C. §251(b)(2).

¹⁶ See SDTA, pp. 4-5 ("[Requiring wireline calling areas to match wireless calling areas] is not possible, . . . , since the wireless Cellular Geographic Service Area . . . oftentimes spans the service territory of multiple incumbent LECs and sometimes multiple states.")

Commission's authority to do so, the fact remains that the regulatory environment has not progressed to the point where this sort of change makes sense.¹⁷

Third, as shown above and in SBC's initial comments, the proposed technical solutions to the rate-center issue are not in the public interest. The projected costs — the full extent of which have not yet been calculated — far exceed any benefit to the public. In the end, these costly changes to the wireline network would not improve service to wireline customers, make wireline service more competitive, or, on the whole, make the local market more competitive. Moreover, as demonstrated by the undisputed evidence in the record in this proceeding, the costs and impact of these proposals on 911 services would in all likelihood be harmful to the public good.

B. Porting Interval

In its initial comments, SBC urged the Commission not to adopt regulations that would mandate a shorter porting interval. SBC pointed out that the industry is capable of addressing the porting interval issue without Commission intervention. Many commenters, however, see no need at all for the existing porting interval to be changed.¹⁸ These commenters point out the following:

- There is no evidence that the existing porting interval is anticompetitive or otherwise detrimental to competition or, said another way, there is no evidence that a shorter porting interval is in the public interest.¹⁹

¹⁷ Communications may be moving toward a time where concepts such as “telephone numbers” and “local versus long-distance markets” will be either redefined or rendered meaningless. Today, however, these concepts are still critical.

¹⁸ AT&T, p. 10; BellSouth, p. 20; Qwest, pp. 7-11; SDTA, p. 5; TSTCI, p. 2-3; USTA p. 5; Verizon, p. 12-17. Their rationale is consistent with SBC's position in its initial comments wherein SBC noted that there is no evidence to support the contention that a shorter interval is in the public interest or that the existing interval has had an adverse impact on competition. SBC, pp. 13-14.

¹⁹ AT&T, p. 10; BellSouth, p. 23; Qwest, p. 9, 11; USTA, p. 6.

- The existing porting interval promotes accurate, problem-free porting and allows all carriers sufficient time in which to update call-related databases, including the E911 databases.²⁰
- Changing the existing porting interval would impose needless expense on carriers.²¹

Sprint cites a JP Morgan report for the proposition that there are benefits to reducing the present four-day porting interval.²² This report is highly suspect, however. The report suggests that, in the United Kingdom and the Netherlands, where the porting interval is greater than a week, the churn rate in those countries “showed little increase,” leading JP Morgan to speculate that “the porting period was a concern for consumers.” The Commission need not rely on this speculative report about consumer experiences in the UK and the Netherlands — where there may be countless other factors unrelated to the porting interval to explain the churn rate figures — when the Commission has seven years of experience with the existing porting interval in the United States to rely on. It is beyond dispute that the existing porting interval has been a boon to competition by guaranteeing sure and accurate porting. Consumer experience with porting in the United States has been a positive success. No commenters have proffered any evidence to the contrary. Moreover, no commenter has provided evidence in support of the proposition that consumers are willing to pay more for shorter porting intervals or risk accurate porting for the sake of speed.

While Sprint is positively predisposed to working out the porting interval within the contexts of the NANC, it recommends imposing an arbitrary four-month (“until June 1, 2004”) deadline.²³ Considering the complexity of the issue, Sprint’s recommendation is ill-advised.

²⁰ Qwest, p. 9; SDTA, p. 6; USTA, p. 6; Verizon, p. 16.

²¹ BellSouth, p. 24; Verizon, p. 13.

²² Sprint, p. 8.

²³ *Id.*, pp. 4-6. Obviously, Sprint’s position is based on Sprint’s having already decided that the intermodal porting interval must be shortened no matter what. As stated in many comments, there is simply no evidence in the record to support Sprint’s position and there is considerable evidence in the record that changing the porting interval will have negative implications for both consumers and carriers alike — especially if there is not a general industry consensus reached in the NANC.

SBC admits that allowing the industry to work through these issues can be time consuming; however, in the long run it is better to allow the industry to set the pace for porting because all carriers must meet whatever standard is created. It is in the vested interest of all carriers to work out appropriate and achievable porting mechanisms.²⁴

T-Mobile proposes that the Commission adopt a two-day porting interval, but fails to explain why the interval should be two days instead of any other length of time and gives no consideration whatsoever to how this might impact other carriers.²⁵ T-Mobile offers no evidence that a two-day porting interval would be appreciably better than the existing four-day interval; that is, there is no evidence that the two-day interval would demonstrably increase competition or better safeguard the accuracy of number porting or better guarantee the reliability of call-related databases. And there is no reason to believe that T-Mobile has any insight into how changing the porting interval would affect other carriers.

Conclusion

The problems with the technical solutions proposed in the Further Notice of Proposed Rulemaking are legion. The central problem, however, is that they fail to address the real issue; *i.e.*, the rate center structure and pricing controls at the state level. SBC urges the Commission to abandon these unnecessary and costly regulations in favor of completing the wholesale reform of the current regime of implicit subsidies, universal service, and retail rates. Only by working toward pricing freedom can the rate-center issue and its inherent competitive disparity be remedied.

The record in this matter does not support Commission action to shorten the existing porting interval. The industry should be encouraged to continue its dialogue and to explore ways that the existing systems and processes can be improved for both carriers and customers alike.

²⁴ It appears as if the Cellular Telecommunications & Internet Association (CTIA) is willing to give the NANC process a chance, as well. CTIA, pp. 4-5. Admittedly, CTIA's position is best characterized as "wait and see."

²⁵ T-Mobile, pp. 5-6.

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CERTIFICATE OF SERVICE

I, Regina Ragucci, do hereby certify that on this 4th day of February 2004, Reply Comments of SBC Communications Inc. in CC Docket No. 95-116, were served via served first class mail - pre-paid postage to the parties attached.

/s/ Regina Ragucci
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