

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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

**REPLY COMMENTS OF TIME WARNER TELECOMMUNICATIONS INC.**

Time Warner Telecom Inc. (“TWTC”), by its attorneys, hereby submits these reply comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup>

**I. Introduction And Summary**

In the *NPRM*, the FCC seeks comment on, among other things, whether it should require wireline local exchange carriers (“LECs”) to divert substantial amounts of scarce resources to enable their networks to accept ported wireless numbers associated with rate centers that are different from the wireline LEC rate centers to which the numbers would be ported (*i.e.*, wireless-to-wireline location portability). The Commission should only adopt such a requirement if it would yield benefits in terms of advancing the relevant statutory goals, such as, ensuring just, reasonable, and not unjustly or unreasonably discriminatory service offerings through increased competition, that are clearly greater than any associated costs. That is assuredly not the case.

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<sup>1</sup> See In the Matter of Telephone Number Portability, CTIA Petition for Declaratory Ruling on Wireline-Wireless Porting Issues, Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, ¶ 43 (2003) (“NPRM”).

As the record in this proceeding demonstrates, the benefits of location portability would be minimal, most obviously because there is *de minimis* demand for such porting. The costs of location portability, however, would be substantial. The comments indicate that comprehensive upgrades to billing, provisioning, and operations support systems needed to accommodate location portability would cost wireline LECs in excess of \$1 billion. Other approaches, such as merging rate centers or utilizing foreign exchange service for customers served by numbers ported from one rate center to another, are either impractical or would increase the price and further reduce the demand for location portability. Accordingly, the minimal benefits associated with intermodal location portability are substantially outweighed by the associated costs. The FCC should not therefore require landline LECs to implement wireless-to-wireline, location portability.

## **II. Discussion**

The Communications Act defines number portability as the ability of end users “to retain, *at the same location*, existing telecommunications numbers” when changing service providers. 47 U.S.C. § 153(30) (emphasis added). The requirement that all LECs provide number portability under Section 251(b)(2) does not therefore include an obligation to ensure that end users may retain their telephone numbers when they change providers *and locations*. The Commission has expressly held that so-called “location portability” is not mandated under Section 251(b)(2).<sup>2</sup> The Commission has given specific meaning to this holding by ruling that any porting requirements for numbers exchanged between wireless and wireline carriers apply

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<sup>2</sup> *Telephone Number Portability*, First Report and Order, 11 FCC Rcd 8352, ¶ 181 (1996) (“The 1996 Act’s requirement to provide number portability is limited to situations when users remain ‘at the same location,’ and ‘switch[] from one telecommunications carrier to another,’ and thus does not include service and location portability.”) (“*LNP First Report and Order*”).

only to numbers that continue to be associated with their original rate center designations following a port.<sup>3</sup> These decisions demonstrate that Section 251(b)(2) does not require that LECs offer the capability to port numbers from one rate center to another. Accordingly, even if wireless-to-wireline, location portability were technically feasible (which it is not), that fact alone would not trigger a requirement that LECs provide that functionality.<sup>4</sup>

The Commission has nonetheless in the past asserted that it may require telecommunications carriers to provide location number portability “if it would be in the public interest.” *LNP First Report and Order* ¶ 182. The Commission did not specify the particular statutory provision it would rely on for such an approach. In fact, it would be more appropriate for the Commission to assess whether it should require location portability based on the extent to which such a requirement would advance the specific requirements in the Communications Act, such as ensuring just and reasonable rates (Section 201(b)) and preventing unreasonable rate discrimination (Section 202(a)) by reducing barriers to intermodal competition.<sup>5</sup> The

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<sup>3</sup> See Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, Memorandum Opinion and Order, 18 FCC Rcd 23697, ¶ 28 (2003).

<sup>4</sup> Parties, such as Nextel, that assert that landline LECs should provide wireless-to-wireline location portability based on the assertion that the technical obstacles associated with location portability are no greater than the obstacles that were associated with service provider portability miss this basic point. *See* Nextel Comments at 2-3. Even if the obstacles were equivalent (and it is not clear how one could make the comparison), the legal obligation to provide location and service provider portability are not equivalent. The Commission has a higher evidentiary hurdle to clear before mandating location portability, since technical feasibility is not by itself a sufficient basis to mandate this kind of portability. Instead, the Commission must demonstrate that, when all of the costs and benefits (including, but not limited to, the limits of technical feasibility) are considered, location portability is an appropriate exercise of agency discretion to advance the specific goals of the Communications Act.

<sup>5</sup> Even if the “public interest” inquiry were appropriate under a particular statutory provision, that inquiry would in turn be based on whether the specific goals established in the Communications Act are advanced by a particular outcome. *See Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and American Online, Inc. Transferors, to AOL Time Warner Inc., Transferee*, Memorandum Opinion and Order, 16 FCC Rcd 6547, ¶¶ 19-26 (2001); *Application of GTE Corporation, Transferor, and, Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Lending License*, Memorandum Report and Order, 15 FCC Rcd 14032, ¶¶ 20-25 (2000).

information provided in response to the questions raised in the *NPRM* regarding the costs and benefits of mandating wireless-to-wireline location portability should be analyzed within this framework.

Of course, it is also important to emphasize that the Commission has previously considered the merits of mandating location portability and concluded that the “disadvantages” outweighed the “benefits.” *LNP First Report and Order* ¶ 184. The Commission could identify few benefits because, among things, there was no indication that a significant demand existed for location portability. *Id.* ¶ 185. In addition, the Commission concluded that mandating location portability would “not foster the development of competition to the same extent as service provider portability.” *Id.* As the Commission explained, “whereas having to change numbers deters users from switching service providers, . . . a customer’s decision to move to a new residential or business location generally would not be influenced significantly by the availability of number portability.” *Id.* On the other hand, the Commission concluded that imposing location portability would be affirmatively harmful because severing the traditional link between telephone numbers and geographic location “would create consumer confusion and result in consumers inadvertently making, and being billed for, toll calls.” *Id.*

If anything, there is more extensive support for these conclusion today than there was when the Commission reached them in 1996. Most obviously, there is no indication that the absence of wireless-to-wireline location portability constitutes a barrier to the development of further competition. Sprint and Verizon, for example, both asserted that only about one percent of the porting requests have been from wireless to wireline service. *See Verizon Comments* at 1; *Sprint Comments* at 11. It is hard to imagine that the volume of requests for wireless-to-wireline location portability would be even that significant.

Nor is there any evidence that a residential and business customer's decision as to whether to move locations would be materially affected by the availability of location portability. It is intuitively obvious that customers' decisions as to whether to move from one location to another are based on numerous factors that are much more significant than whether they can retain their telephone numbers. Even if customers valued retaining their numbers when changing locations, there is no evidence that they would seek to move their wireless numbers to wireline service. Indeed, any attempt to address an increased demand for retaining numbers when changing locations would most logically begin with an analysis of *intra-modal* location portability, an issue that is not even raised in the *NPRM* except to note the incongruity of treating intermodal and intramodal location portability differently. *See NPRM* ¶ 43.

Moreover, demand for intermodal wireless-to-wireline porting of any kind is likely to be especially low among customers of competitive carriers like TWTC that serve only medium-sized and large business customers. While TWTC has not conducted a targeted study of the issue, it is safe to assume that larger business customers are even less likely to seek intermodal wireless-to-wireline porting than other types of customers (for example residential customers). The functionalities performed by wireline connections used by large businesses (*e.g.*, retention of reliable landline connections, call-in centers, etc.) are markedly different from the functionalities that wireless connections perform for large businesses (*e.g.*, providing salespeople and executives mobile connectivity). It is highly unlikely, therefore, that large businesses would seek to port numbers currently used for wireless service to wireline service.

Furthermore, the benefits of location portability would be especially small because the changes required for this kind of porting could not be implemented any time soon. For example, Qwest estimates that the industry-wide changes needed to accommodate location portability,

could take more than three years. *See* Qwest Comments at 5. Rate center reform would also take years to implement. Thus, those few subscribers who have an interest in porting wireless numbers from one rate center to wireline service in a different rate center would not even be able to take advantage of that capability for years to come.

The minimal demand and substantial delay associated with wireless-to-wireline location portability indicate that mandating this kind of intermodal porting would yield very modest increases in consumer welfare. Such modest benefits could only outweigh the relevant costs where the costs are *de minimis*. But this is simply not the case. The record in this proceeding indicates that the costs associated with accommodating location portability would be very substantial. For example, in terms of dollar values, Verizon estimates the relevant costs at \$750 million for upgrades to Verizon's own network;<sup>6</sup> BellSouth estimates its costs as, at a minimum, \$440 million<sup>7</sup> (apparently reflecting the smaller size of BellSouth's network); and Qwest estimates the cost at "hundreds of millions" of dollars.<sup>8</sup>

The necessary upgrades begin with substantial changes to landline LEC billing systems. Absent changes to billing systems, landline LECs would incorrectly rate calls, resulting in violations of service agreements, relevant tariff provisions, and customer confusion. In particular, if the existing billing systems remain unchanged, calls from a wireline customer using a number ported from a wireless service associated with a distant rate center to a wireline customer physically located in the same rate center as the calling party would be rated as toll calls. Conversely, long distance calls from a wireline customer to a wireline customer physically

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<sup>6</sup> *See* Verizon Comments at 8 (citing 1998 NANC Report).

<sup>7</sup> *See* Bellsouth Comments at 9 n.16.

<sup>8</sup> *See* Qwest Comments at 5.

located in a distant rate center using a telephone number ported from a wireless service associated with the rate center of the calling party would be rated as a local call. To remedy this problem, carrier billing system databases would need to be overhauled to keep track of the physical location of ported numbers. *See Verizon Comments at 5-6.* Moreover, carriers would need to be able to exchange this database information between their systems, a functionality that does not exist today. *See id.*

Even if these billing problems were fixed, it would be nearly impossible for a customer to know whether the call made is local or long distance without creating a new mechanism for notifying the customer of the rating associated with a dialed number. *See id.* at 6. In the absence of such a change, the customer's reasonable expectation that a call to a next door neighbor would be rated as a local call, would be upset.

The record indicates that location portability would also make it necessary to implement significant upgrades in both the carrier and PSAP systems to enable 911 systems to function. As BellSouth explains, allowing ports across rate centers would eliminate the ability to route a call based on the presumed location of the calling party since many carriers' calling systems, including TWTC's, route calls using only the first 6 digits of the calling party's ten digit number. *See BellSouth Comments at 8.* Accordingly, PSAPs would need to be upgraded to handle additional digits and carriers' networks would need to undergo extensive additional upgrades. *See SBC Comments at 4-5.* SBC estimates the cost of upgrading its network to accommodate these changes to be in the tens of millions of dollars. *See id.* at 6.

Commenters also raise numerous other legitimate concerns implicated by location portability that would require serious study. For example, BellSouth points out that new methods of printing customer telephone directories would need to be implemented because

directories are currently printed based on the assumption that subscribers who are in adjoining rate centers are physically near each other. *See* BellSouth Comments at 7. Verizon states that business customers would need to change their CPE to accommodate new network addressing, least cost routing, local toll determination at the PBX, local calling requirements, facilities resale and telemarketing databases. *See* Verizon Comments at 8 (quoting 1998 NANC Report). BellSouth observes further that repair center systems would need to be upgraded since they currently depend on the assumed association between a rate center and the physical location of the telephone number to diagnose problems. *See* BellSouth Comments at 8.

Rather than performing all of these needed changes to landline LEC networks, some carriers suggest eliminating the rate center concept entirely or merging rate centers to create new, larger rate centers that are co-extensive with wireless calling areas. But neither of these approaches makes sense. As Verizon explains, eliminating or merging rate centers would be costly because of the necessary network and OSS upgrades. *See* Verizon Comments at 10. Eliminating or merging rate centers would also cause landline LECs to lose toll revenues for calls between customers in different rate centers, an issue that by itself creates difficult regulatory problems that should not be addressed until comprehensive inter-carrier compensation reform is adopted. *See id.* Eliminating or merging rate centers could also create legal problems. Rate center boundaries are, at least in the first instance, subject to state jurisdiction as part of the states' authority over intrastate rates. It may be that the FCC could in some or all cases preempt the states in this area, but this issue is open to debate and any approach that relies on a federally mandated change in rate centers is likely to face controversy, court appeals, and substantial delay.

As an alternative to comprehensive network upgrades or changes to industry rating practices, it has been suggested that wireline carriers could provide wireless-to-wireline ported subscribers with FX service (thereby making the ported number appear to be located in the rate center of the landline connection). But providing FX service to every customer with a wireless-to-wireline inter-rate center ported number is also not feasible. If landline carriers were required to absorb the costs of providing FX service and recover those costs from porting customers, the price of such service would be well above non-ported landline LEC service. Such a price premium would likely diminish even further the demand for this type of offering.

But reliance on FX service could also create new problems. For example, BellSouth asserts that, under an FX arrangement, the PSAP serving a carrier's switch may not be the same PSAP serving the customer's location, delaying the 911 response times. *See* BellSouth Comments at 16. AT&T goes further, stating that an FX solution might not support E911 or other calling features at all. *See* AT&T Comments at 5.

All of this demonstrates that the limited (and likely substantially delayed) benefits of wireless-to-wireline location portability are still far exceeded by the costs of mandating such porting. This is likely to be especially true for competitive carriers such as TWTC that serve only medium-sized and large business customers. As mentioned, TWTC's business customers are likely to demand wireless-to-wireline porting even less than other types of customers. Yet if wireless-to-wireline location portability were to be mandated, TWTC would be forced to incur the full panoply of network upgrade costs for a wireline LEC network. In fact, TWTC might even experience higher costs per customer for such an upgrade than incumbent LECs because TWTC does not have the economies of scale possessed by the incumbent LECs. With regard to

TWTC and others similarly situated, therefore, it is particularly clear that the costs of mandating location portability far outweigh the benefits.

### **III. Conclusion**

The Commission should adopt wireless-to-wireline number portability rules in accordance with the recommendations made in these comments.

Respectfully submitted,

/s/

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