

March 2, 2005

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ex Parte Notice

Re: BellSouth Telecommunications, Inc. Request for Declaratory Ruling That State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth To Provide Wholesale or Retail Broadband Services to CLEC UNE Voice Customers, WC Docket No. 03-251

Dear Ms. Dortch:

On March 2, representatives of Comcast Corporation (“Comcast”) met with Christopher Libertelli, Senior Legal Advisor to Chairman Powell, to discuss the above captioned proceeding. Comcast was represented by Ryan Wallach and the undersigned, both of Willkie Farr & Gallagher LLP.

The discussion centered on points covered in Comcast’s February 20, 2004 *ex parte* letter in the above captioned proceeding and the attached handout. In addition, we emphasized that number portability is vitally important to competition.¹ Moreover, noting that the statute and the Commission’s rules require local exchange carriers to port numbers “to the extent technically feasible,”² we pointed out that no ILEC has argued, let alone substantiated, that it is not technically feasible promptly to port the telephone number of a customer who also happens to be a DSL customer. We observed that any such contention would be difficult to prove given that other ILECs do in fact promptly port the telephone

¹ Very soon after passage of the Telecommunications Act of 1996, the Commission noted that “the record developed . . . confirms the congressional findings that number portability is essential to meaningful competition in the provision of local exchange service.” *In re Telephone Number Portability*, First Report & Order & FNPRM, 11 FCC Rcd. 8352, 8367 ¶ 28 (1996). The Commission concluded “that number portability provides consumers flexibility in the way they use their telecommunications services and promotes the development of competition among alternative providers of telephone and other telecommunications services.” *Id.* The Commission also observed that, “[t]o the extent that customers are reluctant to change service providers due to the absence of number portability, demand for services provided by new entrants will be depressed. This could well discourage entry by new service providers and thereby frustrate the pro-competitive goals of the 1996 Act. See also H.R. Commerce Comm. Rep. No. 104-204, pt. 1, at 72 (1995) (to accompany H.R. 1555) (stating that “[t]he ability to change service providers is only meaningful if a customer can retain his or her local telephone number”), reprinted in 1996 U.S.C.C.A.N. 10, 37.

² 47 U.S.C. § 251(b)(2).

Marlene H. Dortch, Secretary

March 2, 2005

Page 2

numbers of phone customers who also subscribe to DSL upon receiving a number portability request from a new phone service provider chosen by the customer.³

Please let me know if you have any questions.

Respectfully submitted,

/s/ James L. Casserly_____

James L. Casserly

Willkie Farr & Gallagher LLP

1875 K Street, N.W.

Washington, D.C. 20006

(202) 303-1119

cc: Christopher Libertelli

³ Cf. *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report & Order, 11 FCC Rcd. 15,499, 15,606 ¶ 204 (1996) (“We further conclude that successful interconnection or access to an unbundled element at a particular point in a network, using particular facilities, is substantial evidence that interconnection or access is technically feasible at that point, or at substantially similar points in networks employing substantially similar facilities. . . . We also conclude that previous successful interconnection at a particular point in a network at a particular level of quality constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, at that level of quality.”); 47 C.F.R. § 51.311 (c) & (d)(same).

NUMBER PORTABILITY AND DSL SERVICE

Problem in a Nutshell: Although local exchange carriers (“LECs”) are required to provide number portability -- subject only to the constraints of technical feasibility -- some incumbent local exchange carriers (“ILECs”) have adopted policies that impede the porting of telephone numbers of subscribers who also subscribe to Digital Subscriber Line (“DSL”) services. Regardless of what the Commission decides with respect to the ability of state commissions to require ILECs to provide DSL services to customers who choose a non-ILEC supplier for phone service, *the Commission should clarify that ILECs may not delay in porting telephone numbers when the customer has chosen a new voice service provider.*

Governing Statute: Section 251(b)(2): Each LEC has the “duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.”

Governing Rule: 47 C.F.R. § 52.23: Each LEC must implement a number portability method and provide number portability in compliance with criteria established by the FCC. All of the criteria are affirmative obligations on LECs when porting numbers. *The FCC’s rules do not allow a LEC to refuse to port numbers except where it is not technically feasible.*

FCC Guidance: In interpreting the definition of “number portability” under the Communications Act and FCC rules, the FCC has stated that “consumers must be able to change carriers while keeping their telephone number as easily as they may change carriers without taking their telephone number with them. . . . Accordingly, we conclude that carriers may not impose non-porting related restrictions on the porting out process.” 10/7/03 Number Portability Order ¶ 11. To the same effect, in the context of wireless number portability, the FCC’s website states:

Consumers should contact their prospective new carrier, who will start the porting process. The new carrier will first confirm the consumer’s identity and then make a porting request of the old carrier. . . . *Once a valid porting request has been made, the old carrier cannot refuse to port a number.* (emphasis added)

Porting a number should not be time-consuming. Back in 1997, when number portability was new and unfamiliar, the FCC adopted the North American Numbering Council’s recommendation of a four business day interval for wireline ports. More recently, in discussing *wireless* local number portability, the FCC has said that a wireless-to-wireless port should take a *few hours*, and a wireless-to-wireline port should take *no more than a few days*. At this point, wireline-to-wireline porting has become routine and should require the *shortest* intervals to effectuate.

Details: Verizon, citing company “policy,” has refused to port a customer’s local phone number if it is on a phone line that is also used to provide DSL. Rather, Verizon automatically rejects a valid porting request from the new provider, and requires that the customer first disconnect her DSL service before the number is ported, even where the new provider does not need to use Verizon’s phone line (loop). (SBC has a similar “policy” but in practice does not currently refuse to port numbers.) Thus, in contrast to the FCC’s description quoted above, Verizon will

only initiate the porting process *after* the customer requests that her DSL service be disconnected, and *after* that service has in fact been disconnected. This requires the new carrier to contact the customer after receiving a refusal from Verizon, the customer to contact Verizon to disconnect her DSL service, the customer then to contact the new carrier to inform it that she has cancelled her DSL service, and then the new carrier to make another porting request. (Moreover, on some occasions, Verizon continues to keep the DSL indicator on the customer's account and in the billing system for days after the customer has requested disconnection.)

These practices violate the statute and the Commission's rules. They prevent the customer from using the phone service provider of her choice for many days longer than can be justified by considerations of technical feasibility. They also give the ILEC another opportunity to try to persuade the customer not to change phone service providers, even after she has in fact authorized that change.

This adversely affects competition and consumers. Due to the automatic port rejection where a customer has DSL, and the complicated process that follows in order to successfully port a number, Comcast is forced to cancel the orders of significant numbers of consumers who have affirmatively chosen Comcast as their phone provider.

Comcast has encountered this problem with Verizon for over four years, and has made extensive efforts to resolve the problem without FCC involvement. For example, when Verizon raised concerns about porting telephone numbers of customers that purchase DSL from competitive LECs and data LECs other than Verizon, Comcast and these competitive LECs and data LECs proposed solutions in Verizon's CLEC User Forum to resolve any porting issues that may arise. Verizon, however, has refused to implement the proposals and continues to automatically reject porting requests for customers who also have DSL service. Comcast has even attempted mediation with Verizon before the Massachusetts DTE, but has been unsuccessful in securing Verizon's cooperation in porting numbers.

Comcast brought this issue to the FCC's attention in a February 20, 2004 letter filed in WC Docket No. 03-251, a proceeding in which BellSouth asks the Commission to affirm an ILEC's right to refuse to provide DSL service to customers who are not the ILEC's voice customers. Time Warner and Bright House Networks also raised this issue in the same proceeding. No ILEC has yet placed on the record any legal argument that provides even colorable support for this practice.

The Bottom Line: Comcast takes no position on the question of whether ILECs are permitted to require their consumers to be voice customers in order to obtain DSL service. But, whatever the Commission decides on that issue, *it should leave no doubt that refusing to port a phone number based on company "policy" is in direct contravention of the statute and the Commission's rules.*