

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)
)
Telephone Number Portability) CC Docket No. 95-116

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION™

Michael F. Altschul
Senior Vice President, General Counsel

CTIA – THE WIRELESS ASSOCIATION™
1400 16th St., N.W.
Suite 600
Washington, DC 20036
(202) 785-0081

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and publishes” a final regulatory flexibility analysis.⁴ In all other respects, the court upheld the *Intermodal Order*,⁵ and it made no finding that the rules adopted in the order were unduly burdensome on small entities.

Under the RFA, as amended, the Commission is under a procedural obligation to 1) engage in an inquiry to determine the impact of proposed rules on small entities, 2) explain its final decision, and 3) describe how the significant economic impact of the Commission’s rules have been “minimize[d] ... consistent with the stated objectives of applicable statutes.”⁶ The RFA does not require a particular outcome, nor does it permit the Commission to ignore the policy objectives of the applicable statute;⁷ in this case, the number portability provisions in the Communications Act adopted for the purpose of promoting competition to wireline carriers.⁸

The Commission explained in the *Intermodal Order* that “under the Act and the Commission’s rules, wireline carriers must port numbers to other telecommunications carriers, to

⁴ *Id.* at 43.

⁵ *Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*; CC Docket No. 95-116, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 23697 (2003) (“*Intermodal Order*”).

⁶ 5 U.S.C. §604(a).

⁷ *See Assoc. Fisheries of Maine v. Daley*, 127 F.3d 104, 114 (1st Cir. 1997) (“[S]ection 604 does not command an agency to take specific substantive measures, but, rather only to give explicit consideration to less onerous options.”).

⁸ *See Telephone Number Portability*, CC Docket No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, ¶ 2 (1996) (“Number portability is one of the obligations that Congress imposed on all local exchange carriers, both incumbents and new entrants, in order to promote the pro-competitive, deregulatory markets it envisioned. Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace.”) (“*LNP Order*”).

the extent that it is technically feasible to do so ... [and that] there is no persuasive evidence in the record indicating that there are significant technical difficulties [to intermodal porting].”⁹ The court did not take issue with this legal determination and nothing in the RFA process requires, nor permits, the Commission to exempt small entities from the statutory requirements of Section 251(b)(2) of the Communications Act. Rather, the RFA is about ways and means: it contemplates only that the agency describe its efforts to minimize the burdens on small entities consistent with the competitive objectives of the Act.

As discussed below, the obligations specifically associated with number portability have been made as undemanding as possible. The industry, the North American Numbering Council and its working groups, as well as third party experts have all undertaken significant efforts to minimize the economic impact of number portability.¹⁰ They have adopted procedures specifically designed to streamline the number portability processes and to reduce the burdens associated with porting a number. Almost two years of experience makes clear that intermodal porting is feasible, that it can be done in an efficient and uncomplicated fashion if carriers are committed to the process, and that complaints about the burdens of porting are merely a contrivance to try to make this market-opening requirement seem more difficult than it actually is or need be.

⁹ *Intermodal Order* ¶ 23.

¹⁰ The Commission has also minimized the economic impact of number portability on local exchange carriers by permitting them to recover their number portability implementation costs from their subscribers. *See* 47 C.F.R. § 52.33.

II. THE INTERMODAL PORTING PROCESS IMPOSES LITTLE ECONOMIC IMPACT ON CARRIERS.

A. This Inquiry Is Limited To The Potential Economic Impact On Small Entities Resulting From The Decisions In The *Intermodal Order*.

As an initial matter, this inquiry is not a review of the economic impact of local number portability on small entities.¹¹ The decision was made almost ten years ago¹² to require all LECs, regardless of size, to “make a long-term database method for number portability available within six months after a specific request by another telecommunications carrier....” 47 C.F.R. § 52.23(c). Nor is this an inquiry about the costs a small entity might incur to route calls to ported numbers. That too was resolved over eight years ago,¹³ and recently affirmed by the Commission when it issued a Notice of Apparent Liability to CenturyTel for forfeiture in the amount of \$100,000.¹⁴

Plainly, the Commission determined long ago that the economic impact to small entities of number portability is required by the Act (and presumably absorbable) when it directed all LECs to take the steps necessary to port within six months of receiving a telecommunications

¹¹ The FCC considers carriers with less than 1500 employees as “small entities” under the RFA. *See Notice* ¶¶ 7-8. According to the Commission, there are approximately 1,300 local exchange carriers in the nation, of which 1,025 qualify as “small entities.” *Id.*

¹² *See generally LNP Order.*

¹³ *See Telephone Number Portability*, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, ¶ 69 (1997) (concluding that “a carrier operating a non-portability-capable switch must still properly route calls originated by customers served by that switch to ported numbers. When the switch operated by the carrier designated to perform the number portability database query is non-portability-capable, that carrier could either send it to a portability-capable switch operated by that carrier to do the database query, or enter into an arrangement with another carrier to do the query.”).

¹⁴ CenturyTel, Inc. et al., File No. EB-04-IH-0012, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 8543 (2004).

carrier's request. As it explained in the final regulatory flexibility analysis accompanying that decision, the Commission "attempted to keep burdens on local exchange carriers to a minimum. ... The regulatory burdens [it] imposed are necessary to ensure that the public receives the benefit of the expeditious provision of service provider number portability in accordance with the statutory requirements."¹⁵

The Commission must focus its review in this proceeding on whether the economic impact to small entities of the *Intermodal Order's* determination of precisely when a request by a wireless carrier triggers the LEC's longstanding obligations to port numbers to wireless carriers can be minimized, in light of the prior determination that "... [the number portability] burdens [the Commission] imposed are necessary to ensure that the public receives the benefit of the expeditious provision of service provider number portability."¹⁶ The recognition that a wireless carrier is present within a rate center if its signal is usable there expands the possibility that the triggering event will occur and will occur sooner. The Commission appreciated that fact when it made the underlying decision. In fact, that is what the decision was about. Thus, the possibility that a wireless carrier may request portability is increased by some indeterminate amount, and the request may be made sooner by some indeterminate amount of days. But nothing in the RFA requires the Commission to change this fundamental decision.

B. The Economic Impact On Small Entities Is Minimal And Necessary To Meet The Objectives Of The Communications Act.

In the *Notice*, the Commission posits that the economic impact of this decision is largely administrative. It speculates that to handle the administrative burdens of the expanded porting

¹⁵ See *LNP Order*, Appendix C, Regulatory Flexibility Act Analysis, ¶ 10.

¹⁶ *Id.*

requirements a small carrier might have to “add additional personnel, update porting procedures, or upgrade software.”¹⁷ The process of porting a number, however, is rather straightforward and incorporates numerous functionalities carriers should already possess and for which very little additional resources should be required.

Essentially, a request to port a number is a request to cancel service with one carrier and a request that the original carrier release a number assigned to it to allow that number to be ported to a new carrier by the Number Portability Administrative Center (“NPAC”). In order to process a request for porting, a carrier must 1) receive the request, 2) validate the request to prevent fraud, and 3) notify NeuStar that the request is valid.¹⁸ The industry has worked hard to allow the vast majority of ports to be accomplished efficiently and with little economic cost.¹⁹ The wireless industry has proven that ports can be accomplished within hours where the incentive (either market-based or regulatorily-imposed) exists for all parties to process ports expeditiously.

With respect to the first requirement, all carriers already have the ability to properly cancel a customer’s service upon the customer’s request. Accordingly, all carriers should effectively possess the ability to receive number portability requests as part of their ongoing operations. Whether this process is conducted by telephone, fax, or e-mail, or is completely automated, every carrier should have a process for receiving a request to cancel service, which could also be used to receive requests to port a number. Admittedly, the internal protocols may have to change some, but receiving a request to port a number does not require an elaborate or

¹⁷ Notice ¶ 10.

¹⁸ NeuStar maintains the NPAC pursuant to Commission and industry oversight.

¹⁹ This is especially true with regard to intermodal ports, nearly all of which are considered “simple ports” (*i.e.*, only a single line is affected).

significant investment of money or time to establish new procedures which more likely than not are intended to forestall rather than assist the process.

Secondly, every carrier should also have a mechanism for validating customer requests. Whether it is confirming the customer's name, account number, address, and/or social security number, some mechanism should already exist to validate a customer's cancellation request (or other requests) to the carrier.²⁰ These same mechanisms could be implemented for porting as well with little additional economic impact on small entities.²¹

It is the third step, the duty to notify the NPAC of a customer's valid request, that might cause a carrier that has never received a bona fide request from another carrier to incur an additional cost outside of its normal business operations. Under Commission and industry oversight, this process has been made as unburdensome as possible. NeuStar, the current NPAC administrator, has established automated procedures that can be implemented for little more than

²⁰ Currently, there are no standardized validation requirements. Although not the subject of this inquiry, comments filed in response to the Commission's NPRM concerning the porting interval for intermodal ports make clear that Commission action is necessary to limit the number of validation criteria values LECs utilize and to standardize the validation process. *See* Comments of CTIA, CC Docket No. 95-116, at 2 (filed Nov. 17, 2004) (requesting the Commission direct LECs to implement a uniform and simplified LSR validation process by the end of 2005); Comments of Sprint, CC Docket No. 95-116, at 4-6 (filed Nov. 17, 2004).

²¹ Indeed, the Commission has prohibited carriers from imposing greater requirements on customers who want to port their number than they require customers to provide in order to disconnect a line. *See Telephone Number Portability*, CC Docket No. 95-116, *Memorandum Opinion and Order*, 18 FCC Rcd 20971, ¶ 11 (2003) ("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."); *see also* Letter from John B. Muleta, Chief, Wireless Telecommunications Bureau, to John T. Scott, III, Vice President and Deputy General Counsel, Verizon Wireless and Michael F. Altschul, Senior Vice President, General Counsel, CTIA, CC Docket No. 95-116, 18 FCC Rcd 13,110 (2003).

the cost of a desktop computer and a dial-up connection (high-speed connections are also available for carriers with higher porting volumes).²² Carriers can access the databases using a standard web browser and they do not have to maintain a dedicated server on their network and do not have an actual database to maintain. Alternatively, carriers with very small porting volumes that might not justify the purchase of a dedicated computer also have the option of simply calling into the NPAC's Help Desk and paying on a per-transaction basis.

Moreover, for carriers who do not wish to assume any direct involvement (or investment) in the porting process, third-party vendors will provide all of the necessary services to allow a carrier to take a completely hands-off approach to number portability.²³ This "make or take" environment presents an efficient alternative for carriers that would rather take the services of others than make the necessary changes themselves.

C. Costs Not Related To Number Portability Should Not Be Included In The Final Regulatory Flexibility Analysis.

In addition to the administrative costs identified in the *Notice*, the Commission suggests that "porting beyond wireline rate center boundaries may cause small or rural carriers to incur transport costs associated with delivering calls to ported numbers served by distant switches." The Commission, however, has already found this issue to be "outside the scope of" the *Intermodal Order*.²⁴ As the Commission later explained to the D.C. Circuit, "complaint[s] about

²² CTIA understands that carriers who elect to connect to the NPAC through a dedicated port may also have to pay a monthly service fee.

²³ CTIA is aware of at least five entities that provide, on a service-bureau basis, the services small carriers require to meet their statutory and regulatory obligations. In order to prevail in the marketplace, these service bureaus must offer readily available and competitively priced number portability services.

²⁴ *Intermodal Order* ¶ 40 ("our declaratory ruling with respect to wireline-to-wireless porting is limited to ported numbers that remain rated in their original rate centers. We

the[] obligation to transport traffic is in fact a grievance with an obligation that is imposed by the Commission's long standing interconnection rules, **not** by the [*Intermodal*] *Order* clarifying intermodal portability.”²⁵

Comments in the underlying proceeding made clear that wireline carriers have always had an obligation to deliver calls to wireless switches and to do so under the compensation regimes established by the Commission in other proceedings.²⁶ Nothing about porting changes this fact, nor is any discussion of transport costs related to number portability. Whether a wireless customer takes service from a wireless carrier with a ported number or a non-ported number makes no difference to the LEC's transport duties. A LEC's obligation has been, and continues to be, to deliver calls to a wireless carrier's interconnection point in the originating LATA. The wireless carrier, not the LEC, has the duty to then transport the call to its customers. As T-Mobile succinctly explained

[a]s LECs would have the FCC view it, plain old wireline calls suddenly must be transported by the LEC across the state, if not the nation, once the number is ported to a wireless service. This is simply not the case. The mobility of wireless is completely transparent to the wireline carrier's network and pocketbook.²⁷

make no determination, however, with respect to the routing of ported numbers, because the requirements of our LNP rules do not vary depending on how calls to the number will be routed after the port occurs.”).

²⁵ Brief for Fed. Communications Comm'n at 32, *United States Telecom Ass'n v. FCC*, (D.C. Cir. Sept. 1, 2004) (Case Nos. 03-141; 03-1443) (emphasis added); *see id.* at 35 (noting that complaints about transport concern “the intercarrier compensation regime established by Congress and implemented by the FCC through rules issued in other orders. The [*Intermodal*] *Order* in this case is not the cause of [these costs.]”).

²⁶ *See Atlas Tel. Co. v. Oklahoma Corp. Comm'n.*, 400 F.3d 1256, 1264 (10th Cir. 2005) (holding that ILECs have had, for almost ten years, “a mandatory duty to establish reciprocal compensation agreements with ... CMRS providers for calls originating and terminating within the same MTA.”).

²⁷ *Telephone Local Number Portability*, CC Docket No. 95-116, *Ex Parte Presentation of T-Mobile USA, Inc.*, at 3 (filed Aug. 26, 2003).

Because comments about transport costs are irrelevant to the porting obligation, they should not be part of the Commission's final analysis.

III. THE COMMISSION'S ANALYSIS IN THE *INTERMODAL ORDER* SATISFIES THE SUBSTANTIVE REQUIREMENTS OF THE RFA.

Setting aside the procedural omission the *Notice* seeks to correct, as a substantive matter, the Commission has largely already undertaken the review required under the RFA in the *Intermodal Order*. The Commission recognized the "stated objectives" of the Communications Act to promote competition, and considered the burdens associated with implementing number portability.²⁸ The D.C. Circuit has previously explained that, "[p]urely procedural ... RFA section 604 requires nothing more than that the agency file a FRFA demonstrating a reasonable good-faith effort to carry out RFA's mandate."²⁹ As discussed below, the Commission undertook several efforts which demonstrate "reasonable good faith" of complying with the RFA, and the final regulatory flexibility analysis does not require anything more from the Commission than to explain this clearly and in the format required by the RFA.³⁰

In looking into the specific requirements to support intermodal porting (and as shown above) the Commission has already concluded that "major system modifications are not required and that several wireline carriers [in 2003 had] already announced their technical readiness to

²⁸ See 5 U.S.C. §604(a)(5).

²⁹ See *US Cellular Corp. v. FCC*, 254 F.3d 78, 88 (D.C. Cir. 2001) (internal quotations omitted).

³⁰ See *Assoc. Fisheries of Maine*, 127 F.3d at 115 (holding "that an agency can satisfy section 604 as long as it compiles a meaningful, easily understood analysis that covers each requisite component dictated by the statute and makes the end product – whatever form it reasonably may take – readily available to the public.").

port numbers to wireless carriers without regard to rate centers.”³¹ However, in an effort to minimize the economic impact on small entities, the Commission provided smaller carriers outside the top 100 MSAs additional time to prepare themselves for intermodal porting.³² This decision is entirely consistent with and meets (or exceeds) the requirements of the RFA.

The Commission also took steps to minimize the economic impact of intermodal porting by requiring the rating of calls to the ported number to stay the same, addressing one of the major concerns of small carriers. Moreover, by expressly opening the door to carriers to avail themselves of the Commission’s waiver policies, the agency has clearly taken steps “to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes.”³³

In addition, the Commission expressly considered the arguments by some carriers that the requirements would create potentially unfair competitive advantages for wireless carriers. However, it concluded that these concerns did not justify denying wireline consumers the benefits of intermodal competition.³⁴ *Compare Alenco v. FCC*, 201 F.3d 608, 625 (5th Cir. 2000) (holding that the Commission was permitted under the RFA to “reject[] significant alternatives, which, in the Commission’s judgment, would not have achieved with equivalent success its ... statutory mandates.”). Rather, the FCC concluded that “[e]ach type of service offers its own advantages and disadvantages” and that “wireline customers will consider these attributes in

³¹ *Intermodal Order* ¶ 29 (citation omitted).

³² *See id.*

³³ 5 U.S.C. §604(a)(5).

³⁴ *Intermodal Order* ¶ 27.

