

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**REPLY COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES**

**I. Introduction**

The Nebraska Rural Independent Companies (the “Nebraska Companies”)<sup>1</sup> respectfully submit these reply comments in response to the request of the Federal Communications Commission (the “Commission”) for comments on the Initial Regulatory Flexibility Analysis (“IRFA”) accompanying the Public Notice (“Notice”) released by the Commission on April 22, 2005 in the above-captioned proceeding.<sup>2</sup> The Nebraska Companies reaffirm their initial comments in this proceeding, filed on August 19, 2005 (the “Initial Comments”), and wish to address several issues associated with the IRFA as set forth in initial comments submitted by other commenters on this subject.

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<sup>1</sup> Arlington Telephone Company; The Blair Telephone Company; Cambridge Telephone Company; Clarks Telecommunications Co.; Consolidated Telephone Company; Consolidated Telco, Inc.; Consolidated Telcom, Inc.; Dalton Telephone Company, Inc.; Eastern Nebraska Telephone Company; Elsie Communications, Inc.; Great Plains Communications, Inc.; Hamilton Telephone Company; Hartington Telecommunications Co., Inc.; Hershey Cooperative Telephone Company, Inc.; K&M Telephone Company, Inc.; Nebraska Central Telephone Company; Northeast Nebraska Telephone Company; Rock County Telephone Company; Southeast Nebraska Telephone Company; Stanton Telecom, Inc.; and Three River Telco.

<sup>2</sup> Federal Communications Commission Seeks Comment on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding, CC Docket No. 95-116, Public Notice, FCC 05-87 (rel, April 22, 2005) with IRFA attached as Appendix A.

In the Initial Comments, the Nebraska Companies provided evidence demonstrating the significant economic impact of the rules and policies set forth in the *Intermodal Order*<sup>3</sup> on small entities such as the Nebraska Companies, as well as the absence of any substantial benefit that would be realized by consumers from the implementation by small entities of intermodal LNP capability. Further, in the Initial Comments the Nebraska Companies addressed the impact of porting to a wireless carrier without a physical point of interconnection or numbering resources in the rate center associated with the ported number.

## **II. The *Intermodal Order* Imposes Significant Economic Impacts on Small Entities**

Sprint Nextel (“Sprint”) asserts that the *Intermodal Order* does not impose a significant economic impact on any small entity.<sup>4</sup> In contrast to the Initial Comments filed by the Nebraska Companies and comments filed by several other rural telephone companies or associations,<sup>5</sup> this assertion is made without any supporting data or evidence. Rather, Sprint argues that since rural LECs are already required by statute to provide number portability, the relevant economic impact inquiry involves a comparison of the impact of the rules adopted in the *Intermodal Order* with the requirements imposed by Congress. However, since Congress did not mandate location

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<sup>3</sup> *In the Matter of Telephone Number Portability*, CC Docket 95-116, Memorandum Opinion and Order and the Further Notice of Proposed Rulemaking, FCC 03-284 (rel. November 10, 2003) (the “*Intermodal Order*”).

<sup>4</sup> *In the Matter of Telephone Number Portability Initial Regulatory Flexibility Analysis*, CC Docket No. 95-116, Comments of Sprint Nextel Corporation (filed August 19, 2005) (“Sprint Comments”) at pages 1-2.

<sup>5</sup> See, *In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, Comments of the United States Telecom Association on the Initial Regulatory Flexibility Analysis (filed August 19, 2005) (“USTA Comments”); *In the Matter of Telephone Number Portability, CC Docket No. 95-116*, Comments of the National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies (filed August 19, 2005) (“NTCA/OPASTCO Comments”); *In the Matter of Telephone Number Portability, Initial Regulatory Flexibility Analysis*, CC Docket No. 95-116, Response to the Initial Regulatory Flexibility Analysis of the South Dakota Telecommunications Association, (filed August 19, 2005) (“SDTA Comments”); and *In the Matter of Federal Communications Commission Seeking Comments on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding*, CC Docket No. 95-116, Comments of Montana Independent Telecommunications Systems (filed August 19, 2005) (“MITS Comments”).

portability, the *Intermodal Order* created a requirement to port numbers that in most cases would not have occurred absent the *Intermodal Order*.

As USTA recognizes, the *Intermodal Order* required some small carriers to implement number portability for the first time, since for the first time, number portability obligations were not necessarily geographically congruent with its interconnections obligations.<sup>6</sup> The most salient comments by USTA on this subject are as follows:

Prior to the *Interim* [sic] *Portability Order*, a local exchange carrier (LEC) was required to implement number portability in a switch only after receiving a *bona fide* request from a local exchange competitor. In practice, therefore, number portability implementation was limited in areas served by small incumbent LECs (ILECs) because the rural exemption in section 251(f)(1) [footnote omitted] specifically protected these small ILECs from the costs of facilitating competition absent an affirmative determination by the state commission that competition from the requesting carrier was in the public interest.

As a general matter, therefore, many *small* carriers had not implemented number portability before the *Intermodal Portability Order*, and they were unlikely to be required to do so anytime soon. [footnote omitted]<sup>7</sup>

Consistent with the above-quoted portion of the USTA Comments, none of the Nebraska Companies had implemented number portability as of the date of entry of the *Intermodal Order*. Thus, Sprint's claim that the *Intermodal Order* does not impose a significant economic impact on small telephone entities is flawed and is not factually supported.

Similar to Sprint's assertion, CTIA argues that the intermodal porting process imposes minimal economic impact on carriers as the *First Order*<sup>8</sup> was entered almost ten years ago. Thus, according to CTIA, this inquiry is not about the economic impact of local number portability on small carriers or about the costs a small entity might incur to route calls to ported

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<sup>6</sup> See, USTA Comments at pp. 4-5.

<sup>7</sup> *Id.* at pp. 6-7.

<sup>8</sup> See, First Report and Order and Further Notice of Proposed Rulemaking, *Telephone Number Portability*, 11 F.C.C.R. 8352 (1996) ("*First Order*").

numbers.<sup>9</sup> Such an argument would have been valid if the *Intermodal Order* had not imposed a requirement for LECs to provide location portability. However, such is not the case.

CTIA also argues that the regulatory burdens the Commission imposed are necessary to ensure that the public receives the benefit of expeditious provision of service provider number portability in accordance with the statutory requirements.<sup>10</sup> Contrary to CTIA's argument, in its review of the *Intermodal Order*, the United States Circuit Court of Appeals for the District of Columbia found that the *Intermodal Order* requires wireline carriers "to port telephone numbers without regard to the physical location of the subscriber, the equipment, or the carrier, and thus effectively requires location portability – a requirement that the *First Order* had foresworn."<sup>11</sup> Thus, the effect of the *Intermodal Order* was not the same as the effect of the requirements imposed ten years ago as CTIA asserts. Further, as the Circuit Court found, it is simply wrong to say that the *First Order* "imposes no limitations" on a wireline carrier's duty to port numbers to a wireless carrier.<sup>12</sup> To the contrary, the *First Order* expressly limited that obligation by declaring that wireline carriers were not obligated to provide location portability. Thus, contrary to CTIA's assertion, the Commission could not have determined "long ago that the economic impact to small entities of intermodal number portability is required by the Act."<sup>13</sup>

According to CTIA, a LEC's obligation has been, and continues to be, to deliver calls to a wireless interconnection point in the originating LATA.<sup>14</sup> Although CTIA asserts that this issue has been resolved, the Commission itself has found that the issues relating to the location of the POI and the allocation of costs to transport traffic to the POI are some of the most

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<sup>9</sup> See, *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, Comments of CTIA-The Wireless Association (filed August 19, 2005) ("CTIA Comments") at pp. 4-5.

<sup>10</sup> *Id.* at p. 5.

<sup>11</sup> *United States Telecom Ass'n v. FCC*, 400 F.3d 29, 36 (D.C. Cir. 2005).

<sup>12</sup> 400 F.3d at 38.

<sup>13</sup> See CTIA Comments, at p. 4.

<sup>14</sup> *Id.* at p. 9.

contentious issues relating to intercarrier compensation, and that these disputes arise in part because of a lack of clarity among the various rules governing the allocation of costs of interconnection facilities and the relationship of such cost allocation to the single POI rule.<sup>15</sup>

The Nebraska Companies agree with the position of NTCA and OPASTCO that calls that are originated by customers of two percent carriers destined for POIs beyond the originating carrier's network are both rated and routed by the end user customer's toll provider or interexchange carrier, not the originating ILEC. Further, according to NTCA and OPASTCO, in the absence of a technically factual and legally sound resolution to the specific network issues, there is no basis for requiring the routing and billing of calls ported outside of two percent carriers' local exchange in the same fashion as such calls were routed and billed prior to the port, and any attempt to complete the Regulatory Flexibility Analysis ("RFA") in this docket must fully account for this fundamental issue.<sup>16</sup>

The Nebraska Companies further agree with the Office of Advocacy, U.S. Small Business Administration ("SBA"), that the Commission should waive the enforcement of the *Intermodal Order* until an order is issued in the *Intercarrier Compensation Docket* that addresses the rating and routing issue and the regulatory impacts on small entities.<sup>17</sup>

CTIA asserts that the Commission has largely already undertaken the review required under the RFA in the *Intermodal Order*, that the Commission considered the burdens associated with implementing intermodal porting, and that the Commission took steps to minimize the economic impact thereof by requiring the rating of calls to the ported number to stay the same.<sup>18</sup>

As NTCA and OPASTCO point out, the fact is that if a telephone number is ported to a wireless

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<sup>15</sup> See *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, FCC 05-33 (2005) at para. 91 ("*Intercarrier Compensation Docket*").

<sup>16</sup> See NTCA/OPASTCO Comments at p. 2.

<sup>17</sup> See SBA Comments at p. 8.

<sup>18</sup> See CTIA Comments at pp. 10-11.

carrier that has no established interconnection arrangement with a two percent carrier, the calls to the ported number cannot be rated in the same fashion as such calls were rated prior to the port, and no evidence has been entered into the proceeding to suggest otherwise.<sup>19</sup> Further, in *USTA v. FCC*, the Court found that the Commission’s focus on the “location” of the telephone number based solely on its rating point is at best “metaphysical” and certainly was not discussed in the *First Order*.<sup>20</sup> Thus, the Nebraska Companies disagree with CTIA’s position that the economic impact associated with the requirement of location porting in the *Intermodal Order* has been appropriately reviewed as required by the RFA.

### **III. Economic Impacts of the *Intermodal Order* are Significant While the Benefits are Slight Due to the Lack of Demand for Intermodal Porting**

Sprint argues that the “SBA has effectively conceded that rural LECs do not face a ‘significant economic effect’ from intermodal porting (because porting volumes are very low).”<sup>21</sup> Sprint is simply incorrect in this statement since many of the costs associated with intermodal porting must be incurred regardless of the volume of ports. As an example, West River Telecommunications Cooperative, a rural LEC operating in North and South Dakota, has spent approximately \$95,000 to date to become LNP capable, despite receiving no intermodal porting requests.<sup>22</sup> CC Communications, in Fallon Nevada, incurred over \$70,000 in initial, non-recurring implementation costs, and although CC Communication has over 13,000 access lines, it has ported only five numbers. Thus, CC Communications has incurred more than \$14,000 in initial costs for each ported number.<sup>23</sup> Thus, despite low porting volumes, rural LECs must

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<sup>19</sup> See NTCA/OPASTCO Comments at p. 6.

<sup>20</sup> 400 F.3d at 37.

<sup>21</sup> See Sprint Comments at pp. 9-10.

<sup>22</sup> See SDTA Comments at p. 7.

<sup>23</sup> See USTA Comments at pp. 8-9.

spend significant sums of money in order to create the capability to comply with the *Intermodal Order*.

The Nebraska Companies disagree with Verizon Wireless' unsubstantiated claims that any costs and burdens associated with offering LNP to requesting customers are reasonable and are far outweighed by the benefits<sup>24</sup> or Verizon's belief that the costs are not significant.<sup>25</sup> Although the costs that would be incurred for the Nebraska Companies to implement intermodal LNP may be perceived to be insignificant to a company such as Verizon with a market capitalization in excess of \$90 billion and with over 200,000 employees, the Nebraska Companies have demonstrated that such costs are significant for carriers serving a few hundred or a few thousand access lines and employing, in many cases, fewer than ten employees.<sup>26</sup> Further, the lack of demand for intermodal porting in rural areas as demonstrated by available demand data significantly undercuts the validity of the claim by Verizon Wireless that the benefits of such porting outweigh the costs of implementation. As the Nebraska Companies demonstrated in their Initial Comments, of the LNP capable companies that responded to a survey published by NTCA, 75% had, at most, ported one telephone number to a wireless carrier.<sup>27</sup> Based upon the CC Communications example above, it is difficult, if not impossible, to conclude that the public interest is served by incurring \$14,000 of initial costs for each number ported.

Verizon offers hypothetical scenarios for cost recovery of LNP implementation, such as through Federal and state universal service funds,<sup>28</sup> neither of which the Commission has

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<sup>24</sup> See, *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, Verizon Wireless' Comments on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding (filed August 19, 2005) ("Verizon Wireless Comments") at p. 1.

<sup>25</sup> *Id.* at p.2.

<sup>26</sup> See, Initial Comments at pp. 4-5.

<sup>27</sup> *Id.* at pp. 2-4.

<sup>28</sup> See, Verizon Comments at p. 3.

considered or allowed in its *Intermodal Order* nor in its LNP cost recovery rules. Verizon makes a further unsubstantiated claim that the rural LECs may recover their transport costs through federal and state universal service subsidies,<sup>29</sup> when in fact, there are no such subsidies designed to recover the cost of transport for rural carriers. As such, the transport costs referred to by Verizon would indeed impose a significant economic impact on small entities.

#### **IV. Demand for Intermodal LNP in Rural Areas is Low or Non-existent and the Public is Not Being Harmed During the Preparation Of a Final RFA**

Verizon claims that until this RFA is complete and the stay is lifted, wireline customers are being harmed.<sup>30</sup> Yet, as the Nebraska Companies have demonstrated, the public's interest in intermodal LNP is extremely low or non-existent in rural areas, and thus it would be difficult, at best, to reasonably conclude that wireline customers are being harmed during the Commission's consideration of the Final RFA. Further, as the NTCA/OPASTCO Comments point out, were the Commission to conduct a rational cost-benefit analysis, it would find that the costs of implementation of the requirements of the *Intermodal Order* for two percent carriers, which in many cases costs exceed thousands of dollars per ported number,<sup>31</sup> far outweigh the perceived benefits that consumers in these areas derive from the availability of the service.<sup>32</sup>

As SBA states, given that small carriers account for a small fraction of the overall lines in the nation and have received very few intermodal porting requests, the Commission could exempt small carriers from the intermodal porting requirements, adversely impact very few customers, preserve the Commission's goal to maximize number portability, and at the same time minimize the impact on small businesses.<sup>33</sup>

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<sup>29</sup> *Id.* at p. 4.

<sup>30</sup> *Id.* at pp. 5-6.

<sup>31</sup> *See*, USTA Comments at p. 10.

<sup>32</sup> *See*, NTCA/OPASTCO Comments at pp. 2-3.

<sup>33</sup> *See*, SBA Comments at p. 8.

## V. Conclusion

The Nebraska Companies agree with the NTCA/OPASTCO comments that when the Commission determined that it would not address the rating and routing issues since such issues are before the Commission in other proceedings, it did not do so in the context of a Regulatory Flexibility Analysis and did not attempt to reduce the burdens on small carriers or explain why alternative rules were inappropriate.<sup>34</sup> The Nebraska Companies therefore recommend to the Commission that for the reasons set forth hereinabove and pursuant to 5 U.S.C. § 603(c)(4) the Commission make the finding in its Final Regulatory Flexibility Analysis that small entities such as the Nebraska Companies be exempted from the coverage of the requirements of the *Intermodal Order* and any rules promulgated pursuant thereto at least until such time as the Commission has resolved the separate rating and routing issue through its *Intercarrier Compensation Docket* and the Commission has determined that there is significant demand for intermodal porting in rural areas served by small entity LECs.

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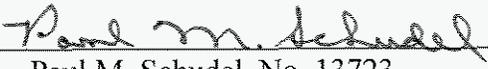
<sup>34</sup> See, NTCA/OPASTCO Comments at p. 17.

Date: September 6, 2005.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 6, 2005, a true and correct copy of the foregoing **Reply Comments of the Nebraska Rural Independent Companies** was transmitted for filing with the Federal Communications Commission by way of its Electronic Comment Filing System, with photocopies of the same being sent via regular U.S. Mail, first class postage fully prepaid, to all parties to the within proceeding as set forth below:

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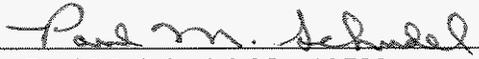
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