

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

In the Matter of)
)
Telephone Number Portability) CC Docket No. 95-116
)
Initial Regulatory Flexibility Analysis)

**REPLY COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
AND THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION AND SUMMARY

The National Telecommunications Cooperative Association (“NTCA”) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) (jointly, “the Associations”)¹ hereby submit these reply comments in response to the Initial Regulatory Flexibility Analysis (IRFA)² prepared for the Intermodal Local Number Portability (LNP) Order.³ In its initial comments, the Associations demonstrated that it is technically infeasible for carriers with less than two percent of the subscriber lines nationwide (“two percent carriers”) to comply with the rating and routing requirements of the Intermodal LNP Order in the absence of established points of

¹ The Associations are national membership organizations that collectively represent the majority of rural incumbent local exchange carriers (ILECs) providing service in the United States. Individual Association members each serve less than two percent of the Nation’s subscriber lines.

² *Federal Communications Commission Seeks Comment on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding*, CC Docket No 95-116, Public Notice, 20 FCC Rcd 8616 (2005) (IRFA).

³ *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 (2005) (Intermodal LNP Order).

interconnection (POI) with wireless carriers. The Intermodal LNP Order disregards the fact that two percent carriers' transport responsibilities and capabilities are restricted to their service territories. In addition, the high per-subscriber costs of deploying intermodal LNP, coupled with low demand for wireline-to-wireless porting, imposes significant economic burdens on two percent carriers that the Commission must address. The Associations urged the Commission to extend the stay of the Intermodal LNP Order⁴ for all two percent carriers⁵ until the issues related to the rating and routing of calls to ported numbers and two percent carriers' transport responsibilities are resolved. If the Commission determines that it must move forward with intermodal porting for two percent carriers, it should require that wireless carriers either establish a POI within the service areas of two percent carriers or require wireless carriers to pay the transport and termination costs for traffic outside of those service areas.

These reply comments both reiterate the need to resolve the transport cost issue and refute the claims of wireless carriers, made without support, that current intermodal LNP rules result in little or no economic burden on two percent carriers. The Associations also underscore how the belated IRFA falls short of the Commission's responsibilities under the Regulatory Flexibility Act. The comments submitted by small carriers in this proceeding provide a considerable record detailing the compliance burdens and unresolved issues related to the Intermodal LNP Order. The Associations urge the Commission to utilize the substantial record in its preparation of a Final Regulatory Flexibility Analysis that accounts for the technical and factual limitations of two percent carriers' networks.

⁴ *U.S. Telecom Ass'n, v. FCC*, 400 F.3d 29, 43 (D.C. Cir. 2005).

⁵ There is Commission precedent in this docket for addressing the technical and operational limitations of two percent carriers. *See, Telephone Number Portability*, CC Docket No. 95-116, Order, 19 FCC Rcd 875 (2004).

II. THE RECORD CLEARLY DEMONSTRATES THAT THE UNRESOLVED TRANSPORT COST ISSUE IS A MAJOR BARRIER TO THE SUCCESSFUL IMPLEMENTATION OF INTERMODAL LNP BY TWO PERCENT CARRIERS

In its IRFA, the Commission recognized that porting numbers beyond wireline rate center boundaries may cause rural carriers to incur transport costs associated with the delivery of calls to ported numbers served by distant switches, and sought comment on the costs associated with these compliance burdens.⁶ A review of the vast majority of comments submitted in response to the IRFA clearly establishes that two percent carriers' transport responsibilities and capabilities are restricted to the geographical limitations of each ILEC's service area.⁷ As the Associations demonstrated in their initial comments, two percent carriers are limited to transporting traffic within their exchange boundaries and to POIs at their boundaries.⁸ Calls that are originated by customers of two percent carriers and destined to POIs beyond the originating carrier's network are both rated and routed by the customer's toll provider or interexchange carrier (IXC), not the originating ILEC.

A small number of wireless carriers, however, attempt to evade this fundamental issue by clinging to the fiction that the physical limitations of two percent carriers to transport calls outside of their service territories is somehow outside the scope of this

⁶ IRFA, 20 FCC Rcd 8621-8622, ¶10.

⁷ *Comments of the Rural Iowa Independent Telephone Association on the Initial Regulatory Flexibility Analysis*, CC Docket No. 95-116 (filed August 19, 2005) (RIITA), at 2-3; *Comments of the Nebraska Rural Independent Companies*, CC Docket No. 95-116 (filed August 19, 2005) (Nebraska Companies), at 5-6; *Comments of the Office of Advocacy, U.S. Small Business Administration, on the Initial Regulatory Flexibility Analysis*, CC Docket No. 95-116 (filed August 19, 2005) (SBA), at 5-6; *Response to the Initial Regulatory Flexibility Analysis of the South Dakota Telecommunications Association*, CC Docket No. 95-116, (filed August 19, 2005) (SDTA), at 2-5; *Comments of Montana Independent Telecommunications Systems*, CC Docket No. 95-116, (filed August 19, 2005) (MITS), at 9; *Comments of the Missouri Small Telephone Company Group*, CC Docket No. 95-116, (filed August 19, 2005) (MoSTCG), at 6-7.

⁸ *Comments of the National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies*, CC Docket No. 95-116, (filed August 19, 2005) (The Associations), at 6-10.

proceeding.⁹ Not a single piece of evidence is offered to refute the substantial factual record brought forth in this proceeding by two percent carriers and their representatives. In addition to ignoring the factual record that two percent carriers have established in regard to transport costs, these carriers fail to address how calls from a two percent carrier's customer to a ported number outside the rate center associated with the originating customer will be rated or routed. The claims that the disposition of transport costs are determined by interconnection rules¹⁰ ignore the fact that the concerns about transport costs are related to situations where two percent carriers do not have direct interconnection with wireless carriers. The wireless carriers utterly fail to account for this fundamental fact. As the "Rural Carriers" point out, the Intermodal Order appears to require local rating of ported numbers, regardless of the presence or lack of common tandem interconnection, and without any consideration of how a rural telephone company is to comply, and without regard to the cost of compliance.¹¹

Furthermore, contrary to the assertions of Sprint Nextel,¹² NTCA does not concede that for land-to-mobile calls, rural LECs are responsible for paying the costs of transporting their calls to wireless networks. In effect, that is what may occur by default because of the lack of defined compliance policies and rules. NTCA's position is that two percent carriers are not and should not be required to pay for the cost to transport a competitor's traffic to a distant POI outside their service area **or** to a distant POI located within its own network but

⁹ *Sprint Nextel Comments in Response to the Initial Regulatory Flexibility Analysis*, CC Docket No. 95-116 (filed August 19, 2005) (Sprint Nextel), at 6-9; *Comments of CTIA-The Wireless Association*, CC Docket No. 95-116 (filed August 19, 2005) (CTIA), at 8-10; *Verizon Wireless' Comments on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding*, CC Docket No. 95-116 (filed August 19, 2005) (Verizon Wireless), at 4-5.

¹⁰ Sprint Nextel, at 6-9; CTIA, at 8-10.

¹¹ *Rural Carriers Comments Regarding Initial Regulatory Flexibility Analysis*, CC Docket No. 95-116 (filed August 19, 2005) (Rural Carriers), at 8.

beyond a carrier's local calling area.¹³

The issue of transport costs remains unresolved and will continue to be a major barrier to the implementation of intermodal LNP for two percent carriers until addressed by the Commission. For example, one small remote company estimated its monthly transport costs would be \$1,500 as it would have to transport a call hundreds of miles to a wireless POI.¹⁴ The Intermodal LNP Order fails to account for this fundamental issue and any Regulatory Flexibility Analysis must address these considerations. The Associations reiterate their argument that the related issues of rating, transport, and interconnection must be resolved before successful intermodal LNP implementation is possible.

¹² Sprint Nextel, at 7.

¹³ Two percent carriers are not required by the Act to provide interconnection arrangements or interconnection services to Competitive Local Exchange Carriers (CLECs), Commercial Mobile Radio Service (CMRS) providers, or Regional Bell Operating Companies (RBOCs) that are greater than the quality of those services the ILEC provisions for itself. The Act only requires ILECs to provide interconnection services and arrangements "at least equal in quality to those provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." Requiring two percent carriers to provide extraordinary and costly transport to distant locations for local calls would represent an enhanced interconnection arrangement for competitors at the expense of rural ILECs. Such superior interconnection arrangements have been found by the U.S. Court of Appeals for the 8th Circuit as not required by ILECs under the Act. *Iowa Utilities Board v. Federal Communications Commission*, 219 F.3d 744 (8th Cir. 2000). The Act does not require ILECs to offer a new form of superior exchange service to competing carriers simply because a competitor has unilaterally chosen to interconnect with another carrier at a distant location and has decided not to interconnect directly within a two percent carrier's local calling area where the competitor's calls are completed. The Act also does not require a two percent carrier to be forced to incur costs to transport traffic to distant locations based on the sole desire of a competitor. A two percent carrier's obligation to direct CMRS traffic to distant POIs and to include this traffic in the two percent carrier's local calling service offering should depend on whether the requesting CMRS carrier or other competing carrier is willing to pay for the additional cost of such transport. The Commission should therefore require that all requesting wireless carriers are responsible for incurring the cost to a distant POI located outside a two percent carrier's service area or to a distant POI located within a two percent carrier's network but beyond the two percent carrier's local calling area. *See, In the Matter of Developing a Unified Inter-carrier Compensation Regime, NTCA Reply Comments*, CC Docket No. 01-92 (July 20, 2005), at 9-14; *see also, In the Matter of Developing a Unified Inter-carrier Compensation Regime, Rural Alliance Reply Comments*, CC Docket No. 01-92 (filed July 20, 2005), at 34-37.

¹⁴ *Comments of the Montana Small Rural Independents in Response to the FCC's Notice Seeking Comments on its Initial Regulatory Flexibility Analysis*, CC Docket No. 95-116, (filed August 19, 2005) (Montana Small Rural Independents), at 10.

III. THE RECORD IN THIS PROCEEDING DEMONSTRATES THAT INTERMODAL LNP REQUIREMENTS IMPOSE A SUBSTANTIAL ECONOMIC BURDEN ON TWO PERCENT CARRIERS

The wireless carrier comments in this proceeding argue that small ILECs' porting costs are "minimal"¹⁵ and the result of "preexisting" obligations.¹⁶ These arguments ignore the initial implementation costs that, but for the Intermodal LNP Order, many small carriers would not incur. Moreover, these arguments are presented without any supporting facts.

In stark contrast, ample data was submitted in this proceeding demonstrating the substantial cost the Commission's Intermodal LNP Order has or will impose on small carriers. In addition to aggregated data provided by the Associations, several other groups presented their own data. For example, the United States Telecom Association (USTelecom) estimate individual company initial implementation costs at between \$70,000 to \$327,000, with annual recurring costs of between \$30,000 to \$75,000.¹⁷ In Nebraska, the rural independent companies who requested state relief from the requirements estimated their aggregated non-recurring implementation costs at \$2,796,566, translating to a customer surcharge of between \$.64 to \$12.23 per month.¹⁸ The LNP surcharge for a company in rural Montana was estimated to be even higher at \$13.43 per month.¹⁹

The extraordinary implementation costs described by the small companies and their representatives are not exceptions; rather, they are the norm for carriers serving remote areas with few customers.²⁰ Therefore, the initial cost of implementation, combined with the

¹⁵ CTIA, at 5.

¹⁶ Sprint Nextel, at 6.

¹⁷ *Comments of USTelecom on the Initial Regulatory Flexibility Analysis*, at 8-9.

¹⁸ Nebraska Companies, at 4.

¹⁹ Montana Small Rural Independents, at 10.

²⁰ SDTA, at 7; RIITA, at 7; MITS, at 5-6; MoSTCG, at 2-8.

annual recurring cost, including the cost of transporting calls to a ported number, constitutes a substantial economic burden.

A two percent carrier has a limited ability to absorb and distribute new operating costs among its small customer base. Alexicon explains how, if even just one subscriber actually ports his or her number, the costs imposed on the remaining customers increase notably.²¹ The smallest of the Associations' members serve less than 100 subscribers, with one half of NTCA member companies having less than 1,500 subscribers. The cost per subscriber increases exponentially with each ported number. The IRFA fails to address this substantial economic burden.

IV. THE COMMENTS SUBMITTED IN THIS PROCEEDING DEMONSTRATE THAT THE IRFA IS DEFICIENT

The record demonstrates that the Commission failed to prepare an IRFA that fully accounts for the costs and burdens faced by small entities and considers the alternatives that could mitigate these burdens.²² SBA notes that the IRFA was not sufficient to meet the requirements of the Regulatory Flexibility Act:

The Commission does not provide any estimates on the costs associated with handling additional ports, such as price of automation, personnel training, and software upgrades. The annual costs for porting beyond carrier boundaries were not discussed, such as the transport fees and other carriage costs. Furthermore, there is no discussion of projected recordkeeping or other compliance requirements that intermodal number portability would impose on small businesses, or the professional skills necessary to comply with the requirement.²³

SBA accurately states that the relevant information was available to the Commission,

²¹ *Comments of Alexicon Telecommunications Consulting*, CC Docket No. 95-116, (filed August 19, 2005) (Alexicon), at 3.

²² USTelecom, at 11; Nebraska Companies, at 5-6.

²³ SBA, at 3-4; *see also*, USTelecom, at 4-15.

and should have been used in formulating the IRFA.²⁴ SBA wisely suggests that the Commission issue a supplemental IRFA that would utilize the data already provided by two percent carriers.

The commenting parties have identified several alternatives to the Intermodal LNP Order that the Regulatory Flexibility Act requires the Commission to consider.²⁵

1) The Commission should lift the intermodal porting requirement on small entities that are not otherwise required to implement number portability in the absence of a bonfide request for number porting.²⁶ This proposal takes into account that that the Intermodal Order required some small carriers to implement number portability for the first time, something that the Commission initially overlooked. The Associations support this proposal as it is a rational alternative given the fact that the costs of incremental intermodal competition in rural areas where number portability is not yet available are outweighed by the substantial implementation costs.

2) The Commission should maintain a stay of the intermodal porting requirement for two percent carriers until the Commission resolves the rating/transport/interconnection issues in the Intercarrier Compensation proceeding.²⁷ This approach, advocated by the Associations in their initial comments, anticipates intermodal porting being available nationwide after such time as the Commission resolves some of the most contentious and costly issues in this proceeding.

3) The Commission should require wireless carriers seeking to port customers to

²⁴ SBA, at 4.

²⁵ 5 U.S.C. §§601-612.

²⁶ See, USTelecom, at 15.

²⁷ The Associations, at 18-19. See also RIITA, at 5; SBA, at 8; Nebraska Companies, at 8; Montana Small Rural Independents, at 13.

their service to interconnect with the two percent carrier directly or pay for the additional cost of transporting ported calls outside of the ILEC's local calling area.²⁸ This approach at least recognizes that there are recurring costs associated with intermodal porting. This reasonable alternative requires the party causing the costs, rather than the remaining customers of the ILEC, to bear those costs.

If the Commission rejects these well-reasoned alternatives to its Intermodal Order, it must explain its rationale for doing so as required by the Regulatory Flexibility Act. The Associations believe that given the circumstances surrounding implementation, including the associated costs and minimal public demand, a thorough regulatory flexibility analysis leads to the inescapable conclusion that the adoption of alternative intermodal LNP regulation for two percent carriers is not only appropriate, it is essential.

IV. CONCLUSION

The comments submitted in this proceeding demonstrate that the transport costs associated with intermodal LNP constitute a significant, unresolved issue for two percent carriers. No commenting party has offered evidence to the contrary. Similarly, commenters have provided voluminous data demonstrating significant economic burdens on two percent carriers which wireless carriers have been unable to refute. In addition, commenters demonstrate that the IRFA fails to meet the requirements of the Regulatory Flexibility Act. Therefore, the Commission should fulfill its obligations under the Regulatory Flexibility Act by giving careful consideration to the economic impacts of its Intermodal LNP Order and each of the alternative regulatory proposals offered by two percent carriers and their representatives.

²⁸ The Associations, at 19; SBA, at 7-8; Montana Small Rural Independents, at 12; MoSTCG, at 13.

Respectfully submitted,

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Certificate of Service

I, Brian Ford, hereby certify that copies of the Associations' comments were sent on this, the 6th day of September, 2005 by first class United States mail, postage prepaid, or via electronic mail, to those listed on the attached sheet.

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