

**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)	

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

OPASTCO
Stuart Polikoff
Stephen Pastorkovich
Brian Ford
21 Dupont Circle, NW
Suite 700
Washington, DC 20036
202-659-5990

NTCA
Daniel Mitchell
Jill Canfield
4121 Wilson Boulevard
10th Floor
Arlington, VA 22203
(703) 351-2000

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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 comments in response to the Initial Regulatory Flexibility Analysis (IRFA)² in connection with the Intermodal Local Number Portability (LNP) Order.³ On March 11, 2005, the United States Court of Appeals for the District of Columbia Circuit ruled that the Commission had failed to follow the Regulatory Flexibility Act when it chose not to prepare a Regulatory Flexibility Analysis as

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).

part of the Intermodal LNP Order.⁴ The Regulatory Flexibility Act requires federal agencies to prepare an Initial and a Final Regulatory Flexibility Analysis whenever it crafts new regulations, which is supposed to explore alternatives designed to minimize the economic impact of its rules on small entities, and if such alternatives are rejected, to explain why.⁵ The Commission's response to the D.C. Circuit ruling is an IRFA that ignores the network capabilities of small carriers and fails to address the significant compliance burdens these providers face.

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 interconnection (POI) with wireless carriers. Two percent carriers are limited to transporting traffic within their exchange boundaries and to POIs at their boundaries. 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. In the absence of a technically factual and legally sound resolution to these 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 they were prior to the port. Any attempt to complete a Regulatory Flexibility Analysis in this docket must fully account for this fundamental issue.

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. Were the Commission to conduct a

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

rational cost-benefit analysis, it would find that the costs of imposing the existing intermodal LNP requirement on two percent carriers far outweigh the perceived benefits that consumers in these areas derive from the availability of the service.

Moreover, the Commission should not offload its responsibilities under the Regulatory Flexibility Act to the states by continuing to rely on them to address the burdens placed on small carriers through the suspension and modification provision of the Telecommunications Act of 1996 (1996 Act). The suspension and modification mechanism was not intended to address rules that have an adverse impact on virtually all two percent carriers.

The Associations therefore urge the Commission to extend the stay of the Intermodal LNP Order⁶ for all two percent carriers⁷ until the issues related to the rating and routing of calls to ported numbers and two percent carriers' transport responsibilities are resolved. However, should the Commission determine that it must move forward with intermodal porting for two percent carriers at this time, 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.

II. THE IRFA FAILS TO CONSIDER THAT THE COMPLIANCE REQUIREMENTS OF THE INTERMODAL LNP ORDER ARE NOT CONSISTENT WITH THE OPERATIONS AND CHARACTERISTICS OF TWO PERCENT CARRIERS

At the outset, it is important to note that the Associations have not sought, and do not now seek, a permanent exemption from intermodal LNP requirements for two percent

⁵ Regulatory Flexibility Act, 5 U.S.C. §§ 601-612.

⁶ *U.S. Telecom Ass'n*, 400 F.3d at 43.

⁷ 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).

carriers. The Associations only seek the adoption of clear rules that take into account the realities of two percent carriers' networks. In order to implement intermodal LNP, two percent carriers must be provided with details about how intermodal LNP will actually work; how certain costs – notably transport – will be recovered, and by whom. The lack of such vital specifics has plagued this proceeding from its inception.

The Commission's IRFA recognizes that requiring porting beyond wireline rate center boundaries could impose compliance burdens on small entities. Further, it recognizes that porting 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 seeks comment on the costs associated with these compliance burdens.⁸ However, the IRFA then notes that the Intermodal LNP Order concluded that concerns about these very transport costs that it had just sought comment on "were outside the scope of the number portability proceeding."⁹

In any event, as the extensive record in this proceeding demonstrates,¹⁰ the transport cost issue is to a large degree the crux of two percent carriers' concerns about how intermodal portability is being implemented. The IRFA, by correctly seeking comment on the transport cost issue, constitutes an implicit recognition that the Intermodal LNP Order was flawed in its assertion that transport costs were outside the scope of this proceeding. The Commission should state so explicitly, and take corrective measures as described in Section V, *infra*.

⁸ IRFA, 20 FCC Rcd 8621-8622, ¶10.

⁹ *Id.*, 20 FCC Rcd 8622, ¶13.

¹⁰ *See*, the following filings in CC Docket No. 95-116: OPASTCO comments (Feb. 26, 2003); OPASTCO comments (June 13, 2003); NTCA reply comments (June 24, 2003). *See also*, the following *ex parte* notices: NTCA, *et al.* (July 31, 2003); NTCA (Sept. 4, 2003); NTCA (September 9, 2003); NTCA (Sept. 17, 2003); NTCA (Sept. 29, 2003); National Telecommunications Cooperative Association, *et al.* (Oct. 21, 2003).

A. It is Technically Infeasible for Two Percent Carriers to Comply Fully with the Requirements of the Intermodal LNP Order with Respect to the Rating and Routing of Calls to Ported Numbers

It is technically infeasible for two percent carriers to comply generally with the rating and routing requirements established by the Intermodal LNP Order. Specifically, the Intermodal LNP Order requires that:

“[C]alls to the ported number will continue to be rated in the same fashion as they were prior to the port. As to the routing of calls to ported numbers, it should be no different than if the wireless carrier had assigned the customer a new number rated to that rate center.”¹¹

This reflects an apparent assumption by the Commission that a wireless carrier has a right to “associate” a number with a rate center and thereby automatically ensure that calls to that number will be treated by an originating LEC as a “local exchange service” call.¹² While the Commission’s assumption may or may not be correct in the areas served by larger carriers that have deployed network facilities throughout a Local Access Transport Area (“LATA”) or region, this assumption is most definitely not correct with respect to two percent carriers.

Neither interconnection between two carriers nor the establishment of an Extended Area Service (“EAS”) route between two carriers occurs automatically or by regulatory fiat. Interconnection occurs within the framework of Section 251 of the 1996 Act and is initiated by a request of one carrier to another; interconnection is not a product of spontaneous

¹¹ Intermodal LNP Order, 18 FCC Rcd 23708-23709, ¶28.

¹² The Associations note with concern that this assumption regarding the treatment of traffic from a wireline carrier to a wireless carrier appears to prejudge issues pending before the Commission in other proceedings, specifically intercarrier compensation. *See, Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, Sprint Petition for Declaratory Ruling*, CC Docket No. 01-92 (filed July 18, 2002); *see also, Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4744-4748, ¶¶134-143 (2005).

generation.¹³ Similarly, the establishment of an EAS route does not occur in the absence of negotiation and agreement regarding the exchange of traffic between the two carriers.

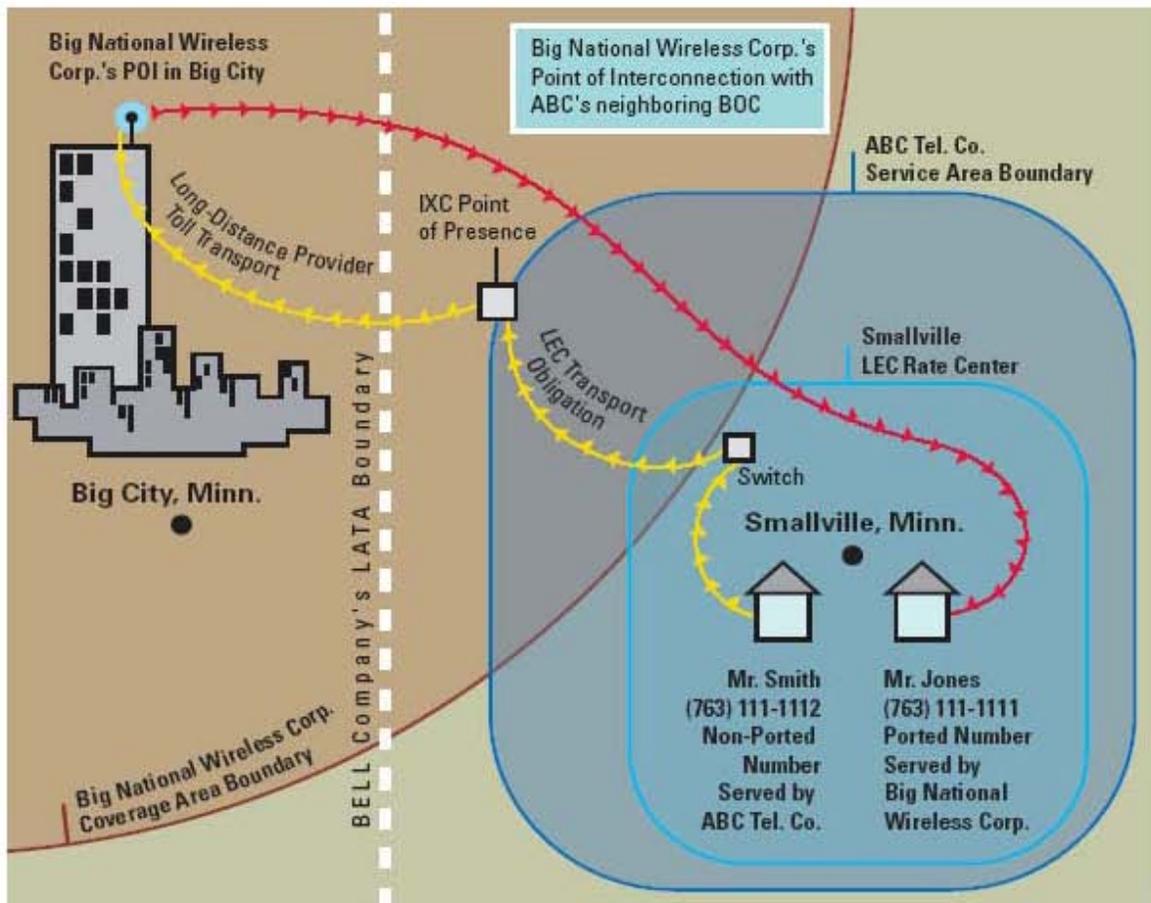
Irrespective of the factual assumptions implicit in the Intermodal LNP Order, the fact is that if a telephone number is ported to a wireless carrier that has no established interconnection arrangement with a two percent carrier, the “calls to the ported number” cannot be rated “in the same fashion as they were prior to the port.” No evidence has been entered into the record of this proceeding to suggest otherwise. The Commission should be aware that two percent carriers do not “rate” calls within a local exchange service calling scope. “Rating” is a function performed by IXC’s or toll carriers. In the absence of an established interconnection arrangement, calls from the customers of two percent carriers to a wireless carrier’s customer are generally carried by the originating end user’s choice of toll carrier or IXC.

B. The Intermodal LNP Order Disregards the Fact That Two Percent Carriers’ Transport Responsibilities and Capabilities are Restricted to Limited Geographic Areas

The Associations are concerned by the Intermodal LNP Order’s disregard for the specific operational and network characteristics of two percent carriers and of the factual realities regarding the existing exchange of traffic between two percent carriers and wireless carriers. Specifically, two percent carriers do not provision local exchange services that involve transport responsibility or network functions beyond their own networks within their respective service areas. This fact is in stark contrast to the networks of the Regional Bell

¹³ The Order makes an assumption that “number portability, by itself, does not create new obligations with regard to exchange of traffic between the carriers involved in the port.” Intermodal LNP Order, 18 FCC Rcd 23712, ¶37. The Commission should be aware that this statement is not factually sustainable in the instance of most two percent carriers which do not have an established relationship with wireless carriers that have elected to transport traffic to the customers of small carriers via a third party carrier.

Operating Companies (RBOCs). It is particularly disheartening to the Associations that the Intermodal LNP Order acknowledges the limitations of the RBOCs “to route calls outside of LATA boundaries,”¹⁴ but fails to acknowledge and recognize that two percent carriers are physically and technically limited to transporting traffic within their exchange boundaries and to POIs at their boundaries. The following diagram¹⁵ illustrates the problems inherent with the FCC’s current rules.



In the above diagrammed scenario, Mr. Jones is a customer of ABC Telephone Company (ABC), the wireline telecommunications provider for his town of Smallville,

¹⁴ Intermodal LNP Order, 18 FCC Rcd 23709, n.75.

¹⁵ Jeffrey Smith, *A Port in a Storm: The Financial Implications of Wireless Local Number Portability for Rural*

Minn. Mr. Jones decides to switch his local telephone service from ABC to Big National Wireless Corporation (Big Corp.), whose coverage area happens to overlap a rate center served by ABC. In response to Mr. Jones' request, Big Corp. contacts ABC, and requests that it port Mr. Jones' telephone number, (763) 111-1111, over to Big Corp. ABC complies with the wireless LNP request, even though Big Corp. does not have an interconnection agreement with it, does not maintain its own numbering resources in ABC's service area, and also does not have a POI within ABC's service area. Although Big Corp. has a POI with ABC's neighboring RBOC, ABC does not have an established routing path to this POI. As a result, ABC will have to transport the call via the originating customer's IXC and deliver this call to Big Corp.'s POI in Big City. This POI is outside the BOC LATA in which ABC is located.

The problem associated with this scenario, from the perspective of the small ILEC (ABC) comes when calls are made to the ported number from within the area served by ABC's Smallville switch. For instance, Mr. Jones' neighbor, Mr. Smith, places a call to Mr. Jones' telephone number. Because Mr. Smith and Mr. Jones live on the same street, Mr. Smith assumes that the call continues to be local. The call will travel from Mr. Smith's house, to the switch of his local telephone company, ABC. The switch will perform a database query and determine that the destination number has been reassigned to Big National Wireless Corporation. The switch will look for a trunk to switch the call to, but will not find a direct connection, since Big Corp. does not have an established interconnection arrangement with ABC. At this point, Mr. Smith's call will likely be completed as dialed, but will be routed via a tandem switch or directly to Mr. Smith's presubscribed IXC, who

Telcos, OPASTCO Roundtable, January/February 2004, at 46, 48.

will, in turn, bill him the associated toll charges for transporting the call to Big Corp. This situation would also apply to customers who had been able to call ABC's Smallville area by virtue of an EAS agreement.

Unlike the RBOCs that transport traffic throughout a LATA over their established network facilities, the interconnection obligations and technical capabilities of two percent carriers are limited to their local exchange networks which are geographically limited by the bounds of their incumbent service territory. Telecommunications services provided to end users that involve transport responsibility to the networks of other carriers at points beyond a two percent carrier's service area network are provided by toll providers or IXCs, and not by a two percent carrier.

Accordingly, calls that are originated by customers of two percent carriers and destined to network POIs beyond the originating carrier's network are both "routed" and "rated" not by the originating ILEC, but by the customer's chosen toll carrier or IXC which, in fact, is the retail service provider for such calls. The functional involvement of the two percent carrier with respect to such calls is limited to the provision of interexchange access services on an equal basis to IXCs that compete to provide interexchange services to the end user.

In the absence of a technically factual and legally sound resolution to these specific network issues, there is no basis for requiring the routing and billing of calls ported outside of the two percent carrier's local exchange "in the same fashion as they were prior to the port." The Commission must recognize the fact that calls from customers of a two percent carrier to a wireless carrier, in the absence of an interconnection arrangement, are routed and billed by the originating customer's toll carrier or IXC. Any attempt to complete a

Regulatory Flexibility Analysis in this docket must fully account for this fundamental issue.

III. THE COMPLIANCE BURDENS OF THE INTERMODAL LNP ORDER ARE DISPROPORTIONATELY HEAVY ON TWO PERCENT CARRIERS BECAUSE OF THE HIGH PER-SUBSCRIBER COSTS AND THE LACK OF DEMAND FOR PORTABILITY

The requirement that ILECs port numbers to wireless carriers that do not have a physical POI in the rate center where the subscriber is located places a disproportionately heavy cost burden on two percent carriers, while the demand for wireline-to-wireless porting in these service areas is minimal at best. Were the Commission to conduct a rational cost-benefit analysis, it would find that the costs of imposing the existing intermodal LNP requirement on two percent carriers far outweigh the perceived benefits that consumers in these areas derive from the availability of the service.

The compliance burdens imposed on two percent carriers are highlighted by membership surveys conducted by both NTCA and OPASTCO, undertaken to better understand the burdens of, and the demand for, wireline-to-wireless porting. In an informal survey, NTCA collected data from its membership related to the cost of intermodal LNP implementation. Reported total intermodal LNP implementation costs ranged from \$16,000 to more than \$209,000. Most companies reported costs of between \$80,000 and \$140,000. The respondent carriers ranged in size from approximately 100 lines to more than 29,000 lines, and the cost per line to provide wireline-to-wireless LNP ranged from just over \$4.00 to in excess of \$40.00.

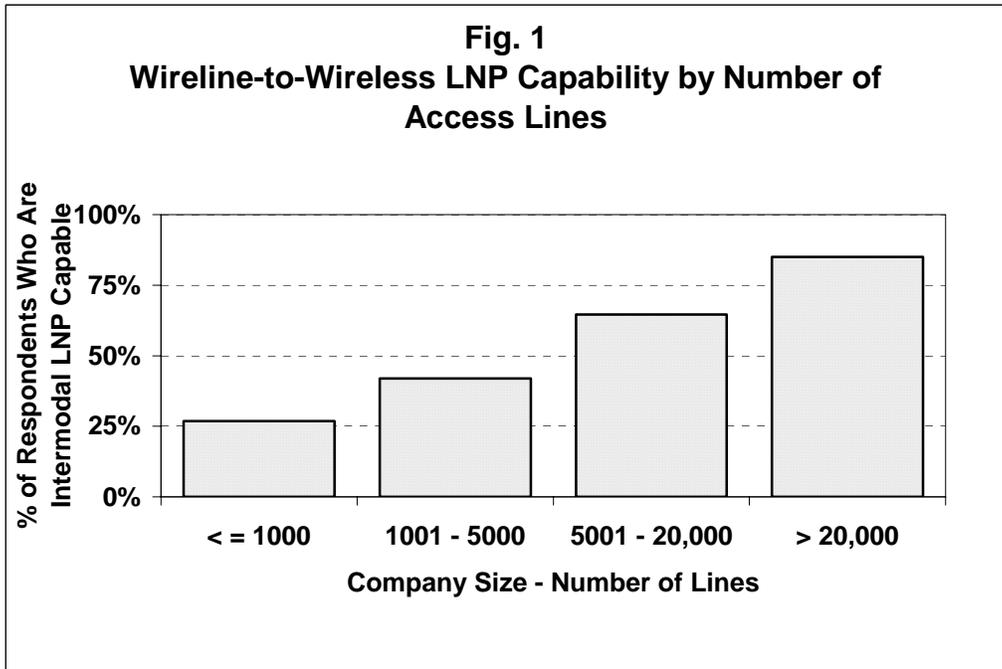
There was an inverse relationship between company size and the per-line costs of providing intermodal LNP. This is because the total cost of becoming intermodal LNP capable did not vary much by the size of the responding carrier. Therefore, as the number of access lines served by the carrier declined, the cost per-line impact increased. For example,

all of the respondent carriers with per line LNP costs of \$10.00 or greater serve fewer than 7,000 lines.¹⁶

In a separate and more formal survey,¹⁷ NTCA collected data from its member companies regarding the number of requests they received from customers for wireline-to-wireless porting. More than 350 member companies responded to the survey, corresponding to a 63 percent response rate. The average respondent serves approximately 6,800 access lines. Just under half of the respondents – 49 percent – were capable of providing wireline-to-wireless LNP. Seventy-one percent of those who were intermodal LNP capable had been so since July 2004 or earlier; the remaining 29 percent became intermodal LNP capable in the six months prior to the survey. The relatively larger rural companies were more likely to be wireline-to-wireless LNP capable than smaller companies – see Figure 1.

¹⁶In another example, one OPASTCO member in Nebraska has 5,995 access lines and estimates the non-recurring costs of implementing intermodal LNP to be \$327,000 and the ongoing monthly cost to be \$6,300. (See *In the Matter of the Application of Consolidated Telephone Co., et al.*, Before the Nebraska Public Service Commission, Application No. C-3111, ¶¶49, 56 (Feb. 14, 2004)). Another group of OPASTCO members in Iowa estimated that the cost of hardware upgrades for switches is a minimum of \$10,000, but may exceed \$100,000. The costs of the additional software needed to make a switch capable of providing intermodal LNP is approximately \$5,000. The recurring costs for service order administrator services and LNP query services is between \$600 and \$1,500 per month. In addition, there are costs related to staff training and set up. (See *In Re Rural Iowa Independent Telephone Associations and Iowa Telephone Associations, Joint Petition for Suspension of Intermodal Numbering Portability Requirements for Iowa 2% Carriers*, Before the Iowa Utilities Board, SPU-04-3, at 5-6 (Feb. 18, 2004)).

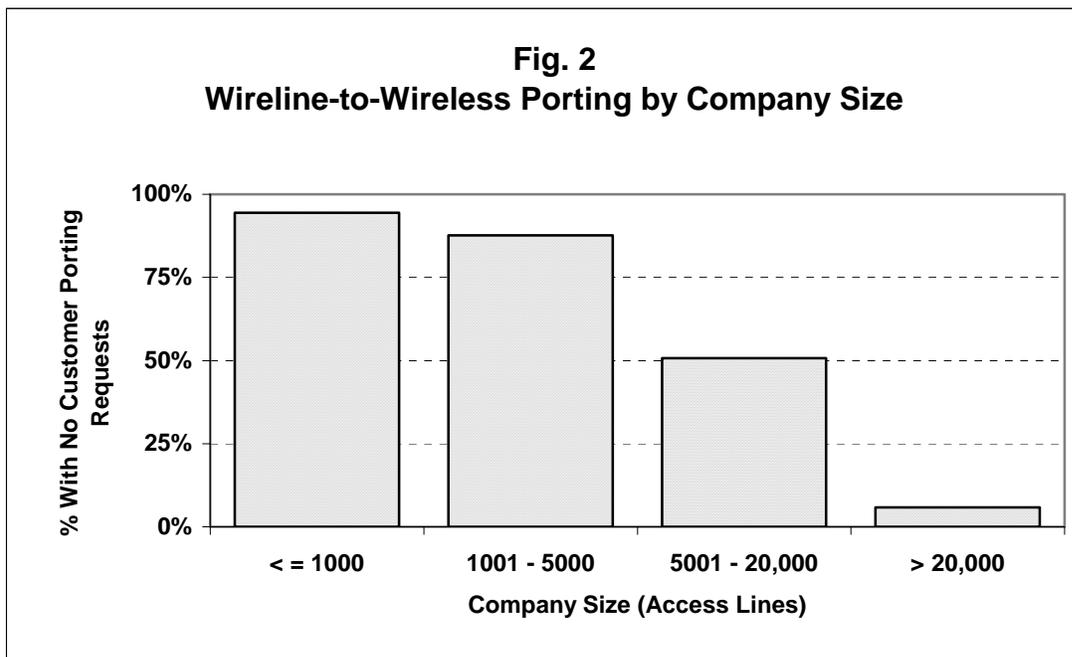
¹⁷Press Release, National Telecommunications Cooperative Association, NTCA Survey Reveals Little Rural Demand for Wireline-to-Wireless Number Porting (Feb. 28, 2005), available at http://www.ntca.org/ka/ka-3.cfm?content_item_id=3020&folder_id=522.



Despite having undertaken the expense and difficulty of becoming capable of porting wireline numbers to wireless phones, respondents to NTCA’s survey reported that customer demand had not materialized. Nearly two-thirds (64 percent) of those respondents with intermodal LNP capability indicated that they had not performed even a single wireline-to-wireless port. An additional 10 percent had only ported one such number. In other words, approximately three out of four of the reporting rural ILECs who, at the unilateral request of a wireless carrier, spent roughly \$100,000 to become LNP capable had, at most, a single customer who was interested in taking advantage of the service. That is a lot of financial capital expended for the benefit of perhaps one subscriber – money that would have been far better utilized for network upgrades and service offerings that benefit a larger portion of the subscriber base.

Figure 2 illustrates the percentage of carriers within various size strata that have received no customer requests for intermodal LNP. Intermodal LNP take rates – calculated

as the total number of intermodal ports divided by the total number of access lines served by wireline-to-wireless LNP capable carriers – were extremely low for each company size stratum. For responding companies serving 1,000 access lines or fewer, the overall take rate was 0.01 percent; for those serving between 1,000 and 5,000 lines, 0.03 percent; for those serving between 5,000 and 20,000 lines, 0.02 percent; and for those serving more than 20,000 lines, 0.04 percent. Thus, it was the smallest companies – those for whom the expense of providing wireline-to-wireless porting is the greatest on a per-customer basis – that were more likely to have not received any porting requests.



In short, the NTCA survey demonstrates that the customers of rural ILECs are not demanding the ability to port their wireline number to a wireless carrier in significant numbers.¹⁸ The extremely low demand for intermodal porting in the areas served by rural

¹⁸ OPASTCO also conducted an informal survey of its members, to which 87 companies responded. Forty-nine of the 87 respondents had not received a single request for wireline-to-wireless porting, and 15 had

carriers needs to be carefully considered as the Commission determines how to best implement such a requirement.

Collectively, the surveys conducted by the Associations illustrate the mismatch between the costs imposed on two percent carriers by the Intermodal LNP Order and the benefits derived by their customers. The per-customer costs of intermodal LNP capability are disproportionately high for two percent carriers, while the demand for this type of porting borders on the non-existent. This translates into significant investment by two percent carriers that benefits a very small number of their customers. The IRFA prepared by the Commission not only fails to account for the compliance burdens placed on small carriers by the Intermodal LNP Order, but also fails to provide any cost-benefit analysis.

It is imperative that the Commission fulfill its responsibilities under the Regulatory Flexibility Act and conduct a thorough and reasoned analysis of the costs and benefits of intermodal LNP for small carriers and their customers before the Intermodal LNP Order is given final effect for these providers. Such an analysis should find that an extension of the stay of the Intermodal LNP Order for two percent carriers is justified. In the alternative, until the rating and routing issues are resolved, the Commission should require wireless carriers to either establish a POI within the service areas of two percent carriers, or assume responsibility for the transport costs associated with traffic outside these carriers' service areas (see Section V, *infra*).

IV. PETITIONING STATES FOR SUSPENSIONS AND MODIFICATIONS OF THE INTERMODAL LNP REQUIREMENT IS AN INAPPROPRIATE MECHANISM FOR ADDRESSING THE WIDESPREAD BURDENS IMPOSED ON TWO PERCENT CARRIERS

The Commission correctly notes that pursuant to section 251(f)(2) of the

received only one request.

Communications Act of 1934, as amended, carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide may petition a state commission to suspend or modify the LNP requirements. The IRFA notes that numerous petitions have been filed with state commissions since the release of the Intermodal LNP Order, and in many cases, states have granted relief to small carriers from the LNP requirements. The Commission seeks comment on the effectiveness of this mechanism for addressing any potential burdens on small carriers.¹⁹

The suspension and modification provision of section 251(f)(2) is intended to address discrete, extraordinary situations where the application of a requirement would impose an unexpectedly adverse economic impact on that particular carrier and its customers. It is not intended to address rules that impose such adverse impacts on virtually all two percent carriers across the board. As the Commission is well aware, hundreds of petitions have been filed with state commissions since the release of the Intermodal LNP Order. More than 700 companies have requested state relief and the majority of such petitions have been granted at least in part. Nearly all of the small and rural carriers who were not already LNP capable needed some form of relief from the Commission's rules.

The requirements of the Regulatory Flexibility Act were designed to address situations where a proposed regulation would adversely affect a large number of small entities. The goal is for federal agencies to develop alternatives that would minimize the impact on such small entities. Rather than fulfilling its responsibilities under the Regulatory Flexibility Act to draft rules that consider the circumstances of small carriers, the Commission instead has relied on the states to account for their operational limitations and

¹⁹ IRFA, 20 FCC Rcd 8623, ¶15.

marketplace differences. However, forcing hundreds of small companies to seek state commission relief from a federal regulatory requirement is inefficient and an abdication of the Commission's responsibility under the Regulatory Flexibility Act. Small companies had virtually no alternative other than to hire consultants to perform cost studies, and to hire attorneys to file petitions to request relief from their state commission. These small companies were forced to absorb the costs associated with filing for suspensions and modifications with no guarantee that they would be granted. Moreover, state commissions were compelled to consider dozens, and in some instances, hundreds of individual petitions.

In short, the suspension and modification mechanism is intended to address economic burdens that are the exception and not the rule. The Intermodal LNP Order imposes significant compliance burdens and unresolved technical problems for all small carriers that were not addressed by the IRFA. Rather than addressing these issues, the Commission has instead left it to the state commissions to pick up the pieces and determine the appropriate remedy for the two percent carriers in their state. The Commission must fulfill its responsibility under the Regulatory Flexibility Act and address the compliance burdens the Intermodal LNP Order imposes on small carriers.

V. THE IRFA IS DEFICIENT AS IT FAILS TO ACKNOWLEDGE THE OPERATIONAL DIFFERENCES OF SMALL CARRIERS AND FAILS TO EXPLORE VIABLE ALTERNATIVES FOR THEM

The Commission's IRFA in this proceeding is inadequate. The description of projected reporting, recordkeeping, and other compliance requirements for small entities does nothing more than acknowledge that small carriers may need to add personnel, or upgrade software.²⁰ There is a mention of the fact that small or rural carriers may incur

²⁰ IRFA, 20 FCC Rcd 8621-8622, ¶10.

transport costs,²¹ but no description of the disparate impact the Commission's rules have on small carriers is provided.

The "analysis" in this IRFA is nothing more than a perfunctory recapping of what has already occurred in the proceeding. When the Commission determined that it would not limit the scope of intermodal porting, or that it would not address the rating and routing issues since they are before the Commission in other proceedings, it did not do so in the context of a Regulatory Flexibility Analysis. The Commission was not, as the Regulatory Flexibility Act requires, attempting to reduce the burdens on small carriers, or explain why alternative rules were inappropriate. The statements were nothing more than explanations of the rules adopted. The rules must now be re-considered in the context of how they affect small carriers and whether an alternative approach is appropriate.

The Commission's determination that small carrier concerns did not justify denying wireline consumers in these service areas the benefit of being able to port their numbers to wireless carriers was bereft of any cost-benefit analysis. The Commission claims that it took small carriers' concerns into account by extending the implementation deadline for carriers operating outside of the 100 largest Metropolitan Statistical Areas (MSAs).²² However, the relief provided was uncertain and minimal at best,²³ and as explained in Section IV *supra*, left small carriers to petition their state commissions for relief *en masse*.

In order to comply with the Regulatory Flexibility Act and recognize the unique operating conditions faced by two percent carriers, the Commission should maintain a stay of

²¹ *Id.*

²² IRFA, 20 FCC Rcd 8622-8623, ¶14.

²³ See, *Emergency Joint Petition for Partial Stay and Clarification*, filed by the Independent Telephone and Telecommunications Alliance, NTCA, and OPASTCO, CC Docket No. 96-116, pp 5-10 (filed November 21, 2003).

the Intermodal LNP Order for these carriers until it resolves the rating and routing issues discussed above. In the alternative, the Commission should require wireless carriers to either establish POIs within the service areas of two percent carriers or require wireless carriers to pay for the transport and termination of traffic outside of two percent carriers' service areas.

A. The Court's Stay of the Intermodal LNP Order Should Remain in Place for Two Percent Carriers Until the Rating and Routing Issues are Resolved

To date, the Commission has failed to explain how calls involving two percent carriers are to be routed. Neither the Commission nor the industry has determined who pays for the transport of traffic to a transiting carrier's facilities when a two percent carrier's customer calls a person physically located in the same rate center, but who has ported his or her number to a wireless carrier without a point of presence in that rate center. Until these issues are resolved, intermodal porting cannot be implemented successfully in the areas served by two percent carriers. Therefore, a stay of the Intermodal LNP Order should be maintained for two percent carriers until well-considered, equitable, and fully compensatory solutions to these problems are achieved.

The Commission claims to have addressed the rating and routing concerns and "considered" the transport problems in its Intermodal LNP Order.²⁴ However, the Intermodal LNP Order's declarations about how traffic is to be handled are inconsistent with the operational realities of two percent carriers. The conclusion that concerns about the transport of traffic are outside the scope of the number portability proceeding is unacceptable, and as noted in Section II, *supra*, contradicts the questions asked in the belated IRFA. While some of these issues are before the Commission in its intercarrier compensation proceeding, their resolution is central to the successful implementation of

intermodal portability by two percent carriers. Given also the fact that the per-subscriber cost of implementation for two percent carriers is great, but consumer demand in these service areas is minimal (see Section III, *supra*), a stay of the Intermodal LNP Order should remain in place for two percent carriers pending resolution of these issues.

B. Alternatively, until the Rating and Routing Issues are Resolved, the Commission Should Require Wireless Carriers to Either Establish a Point of Interconnection Within Two Percent Carriers' Service Areas, or Pay for the Transport and Termination of Traffic Outside of Two Percent Carriers' Service Areas

While the Associations strongly advocate maintaining a stay for all two percent carriers until the rating and routing issues are resolved, if the Commission determines that it must move forward with intermodal porting for two percent carriers at this time, it should do so in a way that minimizes the negative financial impact on them. Specifically, if the Commission determines that continuing the stay is inappropriate, it should require the wireless carriers to either establish a direct interconnection with two percent carriers, or institute enforceable mechanisms to require wireless carriers to pay for all costs associated with the transport of traffic outside of the two percent carriers' networks incurred due to intermodal porting.

Other than maintaining a stay for two percent carriers until all rating and routing issues are resolved, this alternative makes the most sense. It alleviates carrier confusion while the Commission determines how best to handle the outstanding issues in other proceedings. Although two percent carriers will be forced to incur the initial expense of upgrading to become capable of intermodal LNP, this alternative prevents ongoing financial harm.

²⁴ Intermodal LNP Order, 18 FCC Rcd 23713, ¶¶39-40.

VI. CONCLUSION

The Commission's response to the D.C. Circuit Court's determination that it had failed to prepare a Regulatory Flexibility Analysis was an IRFA that is completely deficient.

The IRFA fails to address the compliance burdens that two percent carriers will face as a result of the Intermodal LNP Order, including issues related to the transport of calls to wireless carriers in the absence of an interconnection agreement. Instead of a well-reasoned analysis of the burdens that wireline-to-wireless porting would place on two percent carriers, the Commission chose to offload its responsibilities onto the states to deal with the repercussions of the Intermodal LNP Order. The Associations urge the Commission to extend the stay of the Intermodal LNP Order for two percent carriers until such time as the rating and routing issues are resolved. In the alternative, the Commission should require wireless carriers to either establish a POI within the service areas of two percent carriers or require them to pay the transport and termination costs for traffic outside of those service areas.

Respectfully submitted,

**NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION**

By: /s/ Daniel Mitchell

Daniel Mitchell

Vice President, Legal and Industry

Jill Canfield

Senior Regulatory Counsel

4121 Wilson Boulevard

10th Floor

Arlington, VA 22203

(703) 351-2000

**ORGANIZATION FOR THE PROMOTION
AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES**

By: /s/ Stuart Polikoff

Stuart Polikoff

Director of Government Relations

Stephen Pastorkovich

Business Development Director/

Senior Policy Analyst

Brian Ford

Policy Analyst

21 Dupont Circle, NW

Suite 700

Washington, DC 20036

(202) 659-5990

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Certificate of Service

I, Brian Ford, hereby certify that copies of the Associations' comments were sent on this, the 19th day of August, 2005 by first class United States mail, postage prepaid, or via electronic mail, to those listed on the attached sheet.

By: /s/ Brian Ford
Brian Ford

Service List
CC Docket No. 95-116
FCC 05-87

Jennifer Salhus
Attorney Advisor
Spectrum and Competition Policy
Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Pam Slipakoff
Attorney Advisor
Telecommunications Access Policy
Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Eric Malinen
Senior Legal Advisor
Office of Communications
Business Opportunities
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Eric Menge
Assistant Chief Counsel for
Telecommunications
Office of Advocacy
U.S. Small Business Administration
409 Third Street, SW
Suite 7800
Washington, D.C. 20416

Via E-mail

Judith Herman
Federal Communications Commission
Judith-B.Herman@fcc.gov

Kristy L. LaLonde
OMB Desk Officer
Kristy_L._LaLonde@omb.eop.gov

Best Copy and Printing, Inc.
fcc@bcpiweb.com