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

In the Matter of	)	
	)	
Telephone Number Requirements for IP-Enabled Services Providers	)	WC Docket No. 07-243
	)	
Local Number Portability Porting Interval and Validation Requirements	)	WC Docket No. 07-244
	)	
IP-Enabled Services	)	WC Docket No. 04-36
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues	)	
	)	
Final Regulatory Flexibility Analysis	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200

REPORT AND ORDER, DECLARATORY RULING, ORDER ON REMAND, AND NOTICE OF PROPOSED RULEMAKING

Adopted: October 31, 2007 **Released: November 8, 2007**

Comment Date: (30 days after Federal Register publication)
Reply Comment Date: (60 days after Federal Register publication)

By the Commission: Chairman Martin and Commissioners Copps, Tate and McDowell issuing separate statements; Commissioner Adelstein approving in part, concurring in part and issuing a statement.

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I. INTRODUCTION

1. In this Order, we take a series of steps designed to ensure that consumers benefit from local number portability (LNP). First, we extend LNP obligations to interconnected voice over Internet Protocol (VoIP) providers to ensure that customers of such VoIP providers may port their North American Numbering Plan (NANP) telephone numbers when changing telephone providers.[1] Consumers will now be able to take advantage of new telephone services without losing their telephone numbers, which should in turn facilitate greater competition among telephony providers by allowing customers to respond to price and service changes. Additionally, we extend to interconnected VoIP providers the obligation to contribute to shared numbering administration costs. We believe that these steps we take to ensure regulatory parity among providers of similar services will minimize marketplace distortions arising from regulatory advantage.

2. Second, we address the petition for declaratory ruling filed jointly by T-Mobile USA, Inc. and Sprint Nextel Corporation (collectively, Petitioners) seeking clarification regarding certain LNP obligations.[2] Specifically, we clarify that no entities obligated to provide LNP may obstruct or delay the porting process by demanding from the porting-in entity information in excess of the minimum information needed to validate the customer's request. In particular, we conclude that LNP validation should be based on no more than four fields for simple ports, and that those fields should be: (1) 10-digit telephone number; (2) customer account number; (3) 5-digit zip code; and (4) pass code (if applicable).

[1] 47 U.S.C. § 251(b)(2); 47 C.F.R. §§ 52.20 *et seq.* The NANP is the basic numbering scheme that permits interoperable telecommunications service within the United States, Canada, Bermuda, and most of the Caribbean. *See Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588, 2590, para. 3 (1995) (*NANP Order*).

[2] Petition for Declaratory Rulemaking filed by T-Mobile USA, Inc. and Sprint Nextel Corporation, CC Docket No. 95-116 (filed Dec. 20, 2006) (T-Mobile/Sprint Nextel Petition).

3. Third, we respond to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) stay of the Commission's 2003 *Intermodal Number Portability Order*[3] as applied to carriers that qualify as small entities under the Regulatory Flexibility Act (RFA) by preparing a Final Regulatory Flexibility Analysis (FRFA) on the impact of the wireline-to-wireless intermodal LNP rules on wireline carriers qualifying as small entities under the RFA.[4] After considering information received from commenters in response to an Initial Regulatory Flexibility Analysis (IRFA), we find, consistent with the Commission's 2003 *Intermodal Number Portability Order*, that wireline carriers qualifying as small entities under the RFA should be required to port to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port. We find that this approach best balances the impact of the costs that may be associated with the wireline-to-wireless intermodal porting rules for small carriers and the public interest benefits of those requirements.

4. Fourth, we seek comment in a Notice of Proposed Rulemaking (Notice) on whether the Commission should address other LNP and numbering obligations. Specifically, we seek comment on whether the Commission should extend other LNP requirements and numbering-related rules, including compliance with N11 code assignments, to interconnected VoIP providers. We also seek comment on whether the Commission should adopt rules specifying the length of the porting intervals or other details of the porting process. We also tentatively conclude that the Commission should adopt rules reducing the porting interval for wireline-to-wireline and intermodal simple port requests, specifically, to a 48-hour porting interval.

II. BACKGROUND

A. Local Number Portability and Numbering Administration

5. *Statutory Authority*. Section 251(e) of the Communications Act of 1934, as amended (Act), gives the Commission plenary jurisdiction over the NANP and related telephone numbering issues in the United States.[5] Further, section 251(e)(2) states that "[t]he cost of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[6] Section 251(b)(2) of the Act requires local exchange carriers (LECs) to "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[7] The Act and the Commission's rules define number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[8] As discussed below, the Commission adopted LNP rules and cost recovery mechanisms to implement these congressional mandates.

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[3] *See Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 96-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697 (2003) (*Intermodal Number Portability Order* or *Intermodal Number Portability FNPRM*).

[4] *United States Telecom Ass'n v. FCC*, 400 F.3d 29, 43 (D.C. Cir. 2005); *see* 5 U.S.C. §§ 601 *et seq.* (Regulatory Flexibility Act).

[5] 47 U.S.C. § 251(e).

[6] 47 U.S.C. § 251(e)(2).

[7] 47 U.S.C. § 251(b)(2).

[8] 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(l). The Commission has interpreted this language to mean that consumers must be able to change carriers while keeping their telephone number as easily as they may change carriers without taking their telephone number with them. *See Telephone Number Portability; Carrier Requests for Clarification of*

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6. *LNP Orders*. In 1996, the Commission required all carriers, including wireline carriers and covered commercial mobile radio service (CMRS) providers, operating in the 100 largest Metropolitan Statistical Areas (MSAs) to provide service provider portability according to a phased deployment schedule.[9] The Commission found that LNP provided end users options when choosing among telecommunications service providers without having to change their telephone numbers.[10] In that order, the Commission established obligations for porting between wireline carriers, porting between wireless providers, and intermodal porting (*i.e.*, the porting of numbers from wireline carriers to wireless providers, and *vice versa*), and directed the North American Numbering Council (NANC) to make recommendations regarding specific LNP implementation issues.[11]

7. On August 14, 1997, the Commission adopted the NANC's recommendations for the implementation of wireline-to-wireline LNP.[12] Among other things, the NANC guidelines limited wireline-to-wireline number porting to carriers with facilities or numbering resources in the same rate center.[13] On October 7, 2003, the Commission released the *Wireless Number Portability Order*, offering

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Wireless-Wireless Porting Issues, CC Docket No. 95-116, Memorandum Opinion and Order, 18 FCC Rcd 20971, 20975, para. 11 (2003) (*Wireless Number Portability Order*), *aff'd*, *Cent. Tex. Tel. Coop. v. FCC*, 402 F.3d 205 (D.C. Cir. 2005).

[9] *See Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8393, para. 77 (1996) (*First Number Portability Order*); *see also Telephone Number Portability*, CC Docket No. 95-116, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7272, para. 59 (1997) (*First Number Portability Order on Reconsideration*) (concluding that LECs and covered CMRS providers were required only to deploy LNP to switches for which another carrier has made a specific request for the provision of LNP). "Service provider portability" is synonymous with the definition in section 3(30) of the Act for number portability, that is "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." *First Number Portability Order*, 11 FCC Rcd at 8366-67, para. 27 (citing 47 U.S.C. § 153(30)). The Commission also defined two other forms of portability in the *First Number Portability Order*: (1) service portability; and (2) location portability. *See id.* at 8443-44, paras. 173-74. "Service portability" is the switching of telephone numbers because a particular service may be only available through a particular switch. *See id.* at 8443, para. 173. "Location portability" is "the ability of users of telecommunications services to retain existing telecommunications numbers . . . when moving from one physical location to another." *Id.* at 8443, para. 174. The Commission determined that it was not in the public interest at that time to require LECs to offer service or location portability. *See id.* at 8447-49, paras. 181-87.

[10] *See First Number Portability Order*, 11 FCC Rcd at 8368, para. 30.

[11] *See id.* at 8401, 8431, 8433, 8440, paras. 93, 152, 155, 166. Although the Act excludes CMRS providers from the statutory definition of "local exchange carrier," the Commission extended the LNP obligations to CMRS providers under its independent authority in sections 1, 2, 4(i) and 332 of the Act. *See id.* at 8431, para. 153. The Commission found that sections 2 and 332(c)(1) of the Act allow the Commission to regulate CMRS providers as common carriers. Further, section 1 of the Act requires the Commission to "make available . . . to all people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service," and thus the Commission has an interest in a uniform number portability framework. *See id.* Additionally, section 4(i) of the Act grants the Commission authority to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Act] as may be necessary in the execution of its functions." *Id.* Thus, the Commission concluded that requiring covered CMRS providers to adhere to LNP obligations was in the public interest because it promoted competition between providers of local telephone services, and thereby promoted competition between providers of interstate access services. *See id.* at 8432, 8434-37, paras. 153, 157-60.

[12] *See Telephone Number Portability*, CC Docket No. 95-116, RM-8535, Second Report and Order, 12 FCC Rcd 12281 (1997) (*Second Number Portability Order*).

[13] *See Second Number Portability Order*, 12 FCC Rcd at 12283, para. 3; North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, App. D at 6 (rel. Apr. 25, 1997). A "rate center" is a geographic area that is used to determine whether a call is local or toll. *See FCC*
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further guidance on wireless LNP. In particular, the Commission prohibited provisions in consumer contracts that purport to limit porting between carriers.[14] It also found that in terms of the validation process for wireless-to-wireless number porting, absent an agreement setting additional terms, carriers only had to share basic contract and technical information with each other sufficient to perform the port.[15] The Commission also declined to limit wireless-to-wireless porting based on wireline rate centers because it would limit a consumer's ability to port numbers among wireless carriers.[16]

8. In its 2003 *Intermodal Number Portability Order*, the Commission provided guidance on porting between wireline and wireless carriers.[17] Specifically, the Commission decided that wireline carriers must port numbers to wireless carriers where the requesting wireless carrier's coverage area overlaps with the geographic location of the customer's wireline rate center so long as the porting-in wireless carrier maintained the number's original rate center designation following the port.[18] Additionally, the Commission reaffirmed that wireless carriers must port numbers to wireline carriers within a number's originating rate center.[19] Further, the Commission clarified that wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting because the porting process "can be discharged with a minimal exchange of information."[20] On appeal, the D.C.

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Clears Way for Local Number Portability Between Wireline and Wireless Carriers, CC Docket No. 95-116, News Release (rel. Nov. 10, 2003).

[14] *See Wireless Number Portability Order*, 18 FCC Rcd at 20976, para. 15.

[15] *See id.* at 20978, para. 24.

[16] *See id.* at 20978, para. 22. The Commission declined to address rating and routing issues raised by rural wireless carriers, finding that they were outside the scope of the order because the requirements of the Commission's wireless LNP rules on wireless carriers do not vary depending on how calls to the number will be rated and routed after the port occurs. *See id.* at 20978, para. 23.

[17] *See Intermodal Number Portability Order*, 18 FCC Rcd at 23706, para. 22, *remanded, U.S. Telecom Ass'n v. FCC*, 400 F.3d 29 (D.C. Cir. 2005) (finding that the *Intermodal Number Portability Order* was a legislative rule, remanding the order to prepare a FRFA, and staying future enforcement of the order against small entities until the Commission published a FRFA). On April 22, 2005, the Commission issued a Public Notice seeking comment on an IRFA of the *Intermodal Number Portability Order*. *See 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 Public Notice*); 70 Fed. Reg. 41655 (July 20, 2005). In the *IRFA Public Notice*, the Commission described and sought comment on the potential compliance burdens associated with the wireline-to-wireless intermodal LNP rules and discussed the significant alternatives it had considered before adopting the *Intermodal Number Portability Order*. *See IRFA Public Notice*, 20 FCC Rcd 8616.

[18] *See Intermodal Number Portability Order*, 18 FCC Rcd at 23706, para. 22. A wireless carrier's coverage area is the "area in which wireless service can be received from the wireless carrier." *Id.* at 23698, para. 1. The Commission rejected the argument that it imposed a location portability duty on carriers because the number must retain its original rate center designation, *i.e.*, the number remains at the same location despite the fact that a wireless subscriber may travel outside a rate center and make calls without incurring toll charges. *See id.* at 23708-09, para. 28; *Cent. Tex. Tel. Coop. v. FCC*, 402 F.3d at 207. The Commission also found that nothing in its rules requires a wireless carrier to have a physical point of interconnection or numbering resources in the rate center where the number is assigned. *See Intermodal Number Portability Order*, 18 FCC Rcd at 23698, para. 1.

[19] *See Intermodal Number Portability Order*, 18 FCC Rcd at 23706, para. 22.

[20] *Id.* at 23711-12, paras. 34-37. The Commission also sought comment on how to facilitate wireless-to-wireline porting where there is a mismatch between the rate center associated with the wireless number and the rate center in which the wireline carrier seeks to serve the customer. *Id.* at 23714, para. 42.

Circuit remanded the *Intermodal Number Portability Order* and stayed its enforcement against small entities until the Commission published a FRFA.[21]

9. In a parallel set of orders, the Commission adopted rules governing LNP cost recovery under section 251(e)(2). Such costs include the industry-wide costs that make it possible to route calls to customers who have switched carriers as well as the costs individual providers incur to make it possible to transfer a telephone number to another carrier. In the *Cost Recovery Order*, the Commission determined that all telecommunications carriers should bear certain costs of creating and supporting LNP on a competitively neutral basis under the mandate of section 251(e)(2).[22] The Commission found that because all carriers – including interexchange carriers and CMRS providers – incur LNP costs, it was reasonable to interpret section 251(e)(2) as requiring that LNP costs should be borne on a competitively neutral basis by all carriers, rather than just a subset of the industry.[23]

10. To allocate shared costs, the Commission directed the LNP regional database administrator (LNPA) to distribute the shared costs of each LNP regional database among all telecommunications carriers in proportion to each carrier's intrastate, interstate, and international end-user telecommunications revenues attributable to that region.[24] In the *Cost Recovery Reconsideration Order*, the Commission recognized that national and multi-regional carriers may face some inherent difficulties in determining end-user revenue by regional database area and thus adopted a proxy mechanism by which such carriers may allocate their revenues among the seven LNPA regions.[25] For carrier-specific costs, the Commission regulated the specific manner in which incumbent LECs could recover certain LNP costs and permitted other telecommunications carriers to recover such costs in any lawful manner.[26]

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[21] *See U.S. Telecom Ass'n v. FCC*, 400 F.3d at 43.

[22] *See Telephone Number Portability Order*, CC Docket No. 95-116, Third Report and Order, 13 FCC Rcd 11701, 11706, para. 8 (1998) (*Cost Recovery Order*), *aff'd*, *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002) (*Cost Recovery Reconsideration Order*). The Commission divided the costs produced by number portability into three categories: (1) shared costs; (2) carrier-specific costs directly related to providing number portability; and (3) carrier-specific costs not directly related to providing number portability. *See Cost Recovery Order*, 13 FCC Rcd at 11738-41, paras. 68-77. Carriers are permitted to recover costs for shared costs and carrier-specific costs directly related to providing number portability through federal LNP charges, but are not so permitted to recover carrier-specific costs not directly related to providing number portability. *See Cost Recovery Order*, 13 FCC Rcd at 11740, para. 74; *see also Telephone Number Portability Cost Classification Proceeding*, CC Docket No. 95-116, RM 8535, 13 FCC Rcd 24495, 24499, para. 6 (WCB 1998) (stating that the *Cost Recovery Order* expressly specified that some of the costs LECs incur as a consequence of number portability are not "eligible" for recovery through the federal LNP charges established in that order, as the ordinary cost recovery mechanisms already generally provide LECs with the opportunity to recover costs incurred in modernizing their networks to keep pace with technological and market developments).

[23] *See Cost Recovery Order*, 13 FCC Rcd at 11723-24, para. 36.

[24] 47 C.F.R § 52.32. The Commission applied its two-part competitive neutrality test to determine that shared costs should be spread among the carriers based on each carrier's intrastate, interstate, and international end-user telecommunications revenues for the different regional database regions. *See Cost Recovery Order*, 13 FCC Rcd at 11745-46, 11754-57, 11759, 11761, 11763, paras. 87-92, 105-10, 113-14, 116-17, 119. The Commission adopted its competitive neutrality test in the *First Number Portability Order*, determining that the way the carriers bear the costs of number portability: (1) must not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber; and (2) must not disparately affect the ability of competing service providers to earn a normal return. *See First Number Portability Order*, 11 FCC Rcd at 8419-21, paras. 131-35.

[25] *See Cost Recovery Reconsideration Order*, 17 FCC Rcd at 2597-98, paras. 37-38.

[26] *See Cost Recovery Order*, 13 FCC Rcd at 11725-26, 11773-80, paras. 39, 135-49; 47 C.F.R. § 52.33.

11. *Numbering Administration Orders.* Similar to the LNP cost recovery mechanisms established under section 251(e)(2), the Commission also established a cost recovery mechanism for the NANP administration.[27] The Commission determined that the NANP administration costs should be borne by those that benefit from numbering resources.[28] This cost recovery system is also based on end-user telecommunications revenues because the Commission determined that doing so satisfied section 251's directive that cost recovery should be competitively neutral.[29] For thousands block number pooling costs, a subset of numbering administration costs, the Commission divided costs into three different types, similar to the LNP cost recovery mechanism, finding that shared costs should be allocated to all telecommunications carriers in proportion to each carrier's interstate, intrastate, and international telecommunication end-user revenues, and that related carrier-specific costs of carriers not subject to rate regulation could be recovered in any lawful manner.[30]

B. Interconnected VoIP Services

12. Interconnected VoIP service enables users, over their broadband connections, to receive calls that originate on the public switched telephone network (PSTN) and to terminate calls to the PSTN.[31] In order to have this capability, an interconnected VoIP service must offer consumers NANP telephone numbers.[32] Interconnected VoIP providers generally obtain NANP telephone numbers for their customers by partnering with a local exchange carrier (LEC) through a commercial arrangement rather than obtaining them directly from the numbering administrator, which provides numbers only to entities that are licensed or certificated as carriers under the Act.[33] Consumers and telecommunications carriers

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[27] *See Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588, 2627-28, para. 94 (1995) (*NANP Order*); *see also Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7662, para. 192 (2000) (finding that thousands-block number pooling is a numbering administration function that is subject to the Commission's authority under section 251(e)(2)) (*First Numbering Order*).

[28] *See NANP Order*, 11 FCC Rcd at 2628, para. 95.

[29] *See 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Report and Order, 14 FCC Rcd 16602, 16630-31, paras. 59, 61 (1999).

[30] *See First Numbering Order*, 15 FCC Rcd at 7665-70, paras. 201-11; *Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability*, CC Docket Nos. 99-200, 96-98, 95-116, Third Report and Order and Second Order on Reconsideration, CC Docket Nos. 96-98 and 99-200, 17 FCC Rcd 252, 264-65, 268, paras. 24-25, 32 (2001) (*Third Numbering Order*). The Commission found that carrier-specific costs not directly related to thousands-block pooling implementation, the third category of costs, are not subject to the competitive neutrality requirements in section 251(e)(2). As such, carriers are not allowed to recover carrier-specific costs not directly related to thousands-block number pooling implementation and administration through the cost recovery mechanism established by the Commission. *See First Numbering Order*, 15 FCC Rcd at 7670, para. 211.

[31] *See* 47 C.F.R. § 9.3 (defining "interconnected VoIP service" as "a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network"); *see also IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257-58, para. 24 (2005) (*VoIP 911 Order*), *aff'd*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); 47 C.F.R. § 54.5 (defining "interconnected VoIP provider").

[32] *See, e.g.*, Comcast Comments, WC Docket No. 04-36, at 7; SBC Comments, WC Docket No. 04-36, at 84.

[33] *See* 47 C.F.R. § 52.15(g)(2)(i); *see also Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7615, para. 97 (2000) (*NRO First Report and*

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have complained to the Commission on numerous occasions regarding an inability to port in or port out a NANP telephone number to or from an interconnected VoIP provider.[34]

13. On March 10, 2004, the Commission initiated a proceeding to examine issues relating to Internet Protocol (IP)-enabled services – services and applications making use of IP, including, but not limited to, VoIP services.[35] In the *IP-Enabled Services Notice*, the Commission sought comment on, among other things, whether to extend the obligation to provide LNP to any class of IP-enabled service provider.[36] The Commission also sought comment on whether the Commission should take any action to facilitate the growth of IP-enabled services, while at the same time maximizing the use and life of the NANP numbering resources.[37]

14. On four occasions, the Commission has extended certain Title II obligations to interconnected VoIP providers.[38] On May 19, 2005, the Commission asserted its ancillary jurisdiction under Title I of the Act and its authority under section 251(e) to require interconnected VoIP providers to

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Order) (requiring carriers seeking direct access to numbering resources to provide evidence that they are authorized to provide service, such as by submitting a state certification as a carrier).

[34] *See, e.g.*, Marvin Nicholson Comments, WC Docket No. 04-36, at 1; Minnesota Commission Comments, WC Docket No. 04-36, at 3; Brief Comment of Syed Faisal Afzaal, WC Docket No. 04-36 (filed Mar. 27, 2006); Brief Comment of Rich Robins, WC Docket No. 04-36 (filed Mar. 14, 2006); Brief Comment of Bryan Miller, WC Docket No. 04-36 (filed Nov. 11, 2005); Letter from John T. Nakahata, Counsel for Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 95-116, 96-98, WC Docket No. 04-36, at 1 (filed Feb. 23, 2007) (Level 3 Feb. 23, 2007 *Ex Parte* Letter); *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection under Section 251 of the Communications Act of 1934, as amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513, 3521-22, para. 16 (WCB 2007) (*Time Warner Cable Order*) (finding that it is consistent with Commission policy that when a LEC wins back a customer from a VoIP provider, the number should be ported to the LEC that wins the customer). *But see* Vonage Reply, WC Docket No. 04-36, at 24 (disputing the Minnesota Commission's contention that Vonage will not port numbers out).

[35] *See IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) (*IP-Enabled Services Notice*). Comments were filed by May 28, 2004 and reply comments were filed by July 14, 2004. *See Pleading Cycle Established for Comments in IP-Enabled Services Rulemaking Proceeding*, WC Docket No. 04-36, Public Notice, 19 FCC Rcd 5589 (2004); *Wireline Competition Bureau Extends Reply Comment Deadlines for IP-Enabled Services Rulemaking and SBC's "IP Platform Services" Forbearance Petition*, WC Docket Nos. 04-29, 04-36, Public Notice, 19 FCC Rcd 10474 (2004); *see also* Appendix A (List of Commenters).

[36] *IP-Enabled Services Notice*, 19 FCC Rcd at 4911-12, para. 73.

[37] *See id.* at 4914, para. 76. As the Commission observed in seeking comment on the numbering implications of IP-enabled services, those issues had been raised and discussed before the NANC through industry meetings and white papers. *See id.* at 4914, para. 76 n.226 (citing, among other things, BellSouth *et al.*, *VoIP Numbering Issues*, http://www.nanc-chair.org/docs/Nov/Nov02_VoIP_White_Paper.doc (visited Feb. 7, 2004) (discussing numbering issues related to VoIP, including LNP)).

[38] Additionally, on August 5, 2005, the Commission determined that providers of interconnected VoIP services are subject to the Communications Assistance for Law Enforcement Act (CALEA). *See Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 14991-92, para. 8 (2005) (*CALEA First Report and Order*), *aff'd*, *Am. Council on Educ. v. FCC*, 451 F.3d 226 (D.C. Cir. 2006). Under its Title I ancillary jurisdiction, the Commission has also required interconnected VoIP providers to pay Fiscal Year 2007 regulatory fees based on revenues reported on the FCC Form 499-A at the same rate as interstate telecommunications service providers. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-140, paras. 11-13 (rel. Aug. 6, 2007).

supply 911 emergency calling capabilities to their customers.[39] On June 21, 2006, the Commission in the *2006 Interim Contribution Methodology Order*, among other things, established universal service contribution obligations for interconnected VoIP providers based on its permissive authority under section 254(d) and its ancillary jurisdiction under Title I of the Act.[40] On March 13, 2007, the Commission extended section 222's customer proprietary network information obligations to interconnected VoIP providers using its Title I authority.[41] Most recently, on June 15, 2007, the Commission, using its Title I authority, extended the disability access requirements under section 255 to providers of interconnected VoIP services and to manufacturers of specially designed equipment used to provide these services.[42] The Commission also extended the Telecommunications Relay Services (TRS) requirements to providers of interconnected VoIP services, pursuant to section 225(b)(1) of the Act and its Title I jurisdiction, including requiring interconnected VoIP providers to contribute to the Interstate TRS Fund under the Commission's existing contribution rules and offer 711 abbreviated dialing for access to relay services.[43]

C. T-Mobile USA, Inc. and Sprint Nextel Petition

15. On December 20, 2006, the Petitioners filed a petition for declaratory ruling, pursuant to section 1.2 of the Commission's rules, requesting that the Commission make clear that carriers obligated to provide LNP may not obstruct or delay the porting process by demanding information from requesting carriers beyond that required to validate the customer request.[44] Petitioners maintain that some carriers request excessive amounts of information as part of the porting process, creating significantly longer times for ports and a correspondingly higher number of intermodal port request cancellations.[45] To improve the validation process, the Petitioners recommend validating port requests using just four data

[39] *See VoIP 911 Order*, 20 FCC Rcd at 10246, para. 1.

[40] *See Universal Service Contribution Methodology*, WC Docket No. 06-122; CC Docket Nos. 96-45, 98-171, 90-571, 92-237; NSD File No. L-00-72; CC Docket Nos. 99-200, 95-116, 98-170; WC Docket No. 04-36, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7538-43, paras. 38-49 (2006) (*2006 Interim Contribution Methodology Order*), *aff'd in part, vacated in part, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1244 (D.C. Cir. 2007).

[41] *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6954-57, paras. 54-59 (2007) (*CPNI Order*).

[42] *See IP-Enabled Services*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, Report and Order, 22 FCC Rcd 11275, 11283-291, paras. 17-31 (2007) (*TRS Order*).

[43] *See id.* at paras. 32-43. TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables a person with a hearing or speech disability to access the nation's telephone system to communicate with voice telephone users through a relay provider and a Communications Assistant. *See* 47 U.S.C. § 225(a)(3); *see also* 47 C.F.R. § 64.601(14) (defining TRS).

[44] *See* T-Mobile/Sprint Nextel Petition at 1.

[45] *See id.* at 3-6; *see also, e.g.*, CTIA Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007) (stating that customers frequently cancel port requests after needless delays); Iowa Utilities Board Comments, CC Docket No. 95-116, at 2-3 (filed Feb. 8, 2007) (arguing that LEC validation procedures may be contributing to number exhaust because customers are forced to request new telephone numbers rather than be able to port); MetroPCS Comments, CC Docket No. 95-116, at 5 (filed Feb. 8, 2007) (stating that many customers are abandoning their landline numbers rather than porting to avoid porting process delays); PCIA Comments, CC Docket No. 95-116, at 1 (filed Feb. 7, 2007) (stating that the efficiency of the process is critical to its success).

fields: (1) 10-digit telephone number; (2) customer account number; (3) 5-digit zip code; and (4) pass code (if applicable).[46] The Commission issued a public notice seeking comment on the petition.[47]

III. DISCUSSION

16. In this Order, we undertake several steps to help ensure that consumers and competition benefit from LNP as intended by the Act and Commission precedent. First, we extend LNP obligations and numbering administration support obligations to encompass interconnected VoIP services. Second, we clarify that no entities obligated to provide LNP may obstruct or delay the porting process by demanding from the porting-in entity information in excess of the minimum information needed to validate the customer's request. In particular, we conclude that LNP validation should be based on no more than four fields for simple ports, and that those fields should be: (1) 10-digit telephone number; (2) customer account number; (3) 5-digit zip code; and (4) pass code (if applicable). Third, we issue a FRFA in response to the D.C. Circuit's stay of the Commission's *Intermodal Number Portability Order* and find that wireline carriers qualifying as small entities under the RFA should be required to port to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port. Fourth, as discussed below, we seek comment in the Notice on the need for Commission action regarding other LNP and numbering obligations.

A. Interconnected VoIP Services

17. We find that the customers of interconnected VoIP services should receive the benefits of LNP. Such action is fundamentally important for the protection of consumers and is consistent with the authority granted to the Commission under section 251(e) and sections 1 and 2 of the Act. Moreover, as described below, by requiring interconnected VoIP providers and their numbering partners to ensure that users of interconnected VoIP services have the ability to port their telephone numbers when changing service providers to or from an interconnected VoIP provider, we benefit not only customers but the interconnected VoIP providers themselves.[48] Specifically, the ability of end users to retain their NANP telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of services they can choose to purchase. Allowing customers to respond to price and service changes without changing their telephone numbers will enhance competition, a fundamental goal of section 251 of the Act, while helping to fulfill the Act's goal of facilitating "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service."[49] Additionally, we extend to interconnected VoIP providers the obligation to contribute to shared numbering administration costs. We believe that the steps we take today to ensure regulatory parity among providers of similar services will minimize marketplace distortions arising from regulatory advantage.

1. Scope

18. Consistent with our previous decisions in the *IP-Enabled Services* proceeding, we limit our decision to interconnected VoIP providers, in part because, unlike certain other IP-enabled services, we

[46] *See* T-Mobile/Sprint Nextel Petition at 7.

[47] *See Pleading Cycle Established for Comments on T-Mobile USA, Inc. and Sprint Nextel Corporation's Petition for Declaratory Ruling Regarding Number Portability*, WC [sic] Docket No. 95-116, Public Notice, 22 FCC Rcd 190 (2007). A list of the commenters to the Public Notice is attached as Appendix A to this Order.

[48] By "numbering partner," we mean the carrier from which an interconnected VoIP provider obtains numbering resources. *See generally infra* at para. 20.

[49] 47 U.S.C. § 151.

continue to believe that interconnected VoIP service "is increasingly used to replace analog voice service," including, in some cases, local exchange service.[50] Indeed, as interconnected VoIP service improves and proliferates, consumers' expectations for these services trend toward their expectations for other telephone services. Thus, consumers reasonably expect interconnected VoIP services to include regulatory protections such as emergency 911 service and LNP.[51]

19. These characteristics of interconnected VoIP service support a finding that it is appropriate to extend LNP obligations to include such services, in light of the statute and Commission precedent. Congress expressly directed the Commission to prescribe requirements that all LECs must meet to satisfy their statutory LNP obligations.[52] In doing so, the Commission has required service providers that have not been found to be LECs but that are expected to compete against LECs to comply with the LNP obligations set forth in section 251(b)(2).[53] In extending LNP rules to such providers, the Commission concluded, among other things, that imposing such obligations would "promote competition between providers of local telephone services and thereby promote competition between providers of interstate access services."[54] Specifically, the Commission found that the availability of LNP would "eliminat[e] one major disincentive to switch carriers," and thus would facilitate "the successful entrance of new service providers" covered by the LNP rules.[55] Indeed, the Commission determined that LNP not only would facilitate competition between such new service providers and wireline telecommunications carriers, but also would facilitate competition among the new service providers themselves.[56] The Commission anticipated that the enhanced competition resulting from LNP would "stimulate the development of new services and technologies, and create incentives for carriers to lower prices and costs."[57] The Commission further concluded that implementation of long-term LNP by these providers would help ensure "efficient use and uniform administration" of numbering resources.[58] For these same policy reasons, we extend the LNP obligations to interconnected VoIP providers.

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[50] *See CPNI Order*, 22 FCC Rcd at 6956, para. 56; *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7541, para. 44; *see also VoIP 911 Order*, 20 FCC Rcd at 10256, para. 23. As noted above, in the *IP-Enabled Services Notice*, the Commission sought comment on whether to extend the LNP obligations to any class of IP-enabled service providers. *See IP-Enabled Services Notice*, 19 FCC Rcd at 4911-12, para. 73. We continue to consider whether interconnected VoIP services are telecommunications services or information services as those terms are defined in the Act, and we do not make that determination today. *See* 47 U.S.C. § 153(20), (46) (defining "information service" and "telecommunications service").

[51] *See, e.g.*, *VoIP 911 Order*, 20 FCC Rcd at 10246, para. 1 (extending 911 obligations to interconnected VoIP providers); *CPNI Order*, 22 FCC Rcd at 6956, para. 56 (finding it is "reasonable for American consumers to expect that their telephone calls are private irrespective of whether the call is made using the services of a wireline carrier, a wireless carrier, or an interconnected VoIP provider"). A service offering is an "interconnected VoIP service" if, among other things, it offers the *capability* for users to receive calls from and terminate calls to the PSTN, regardless of whether access to the PSTN is directly by the interconnected VoIP provider itself or through arrangements with a third party. *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7537, para. 36.

[52] 47 U.S.C. § 251(b)(2).

[53] *See First Number Portability Order*, 11 FCC Rcd at 8431-32, para. 153 (extending LNP obligations to CMRS providers under sections 1, 2, 4(i), and 332 of the Act); *First Number Portability Order on Reconsideration*, 12 FCC Rcd at 7315-17, paras. 140-42 (affirming the Commission's decision to impose number portability obligations on CMRS providers).

[54] *First Number Portability Order*, 11 FCC Rcd at 8431-32, para. 153.

[55] *Id.* at 8434, para. 157.

[56] *Id.*

[57] *Id.* at 8435, para. 158.

[58] *Id.* at 8431-32, para. 153.

20. To effectuate this policy, we must address both the obligations of interconnected VoIP providers as well as the obligations of telecommunications carriers that serve interconnected VoIP providers as their numbering partners. Thus, we take this opportunity to reaffirm that only carriers, absent a Commission waiver,[59] may access numbering resources directly from the North American Numbering Plan Administrator (NANPA) or the Pooling Administrator (PA). Section 52.15(g)(2) of the Commission's rules limits access to the NANP numbering resources to those applicants that are (1) "authorized to provide service in the area for which the numbering resources are being requested"; and (2) "[are] or will be capable of providing service within sixty (60) days of the numbering resources activation date."[60] It is well established that our rules allow only carriers direct access to NANP numbering resources to ensure that the numbers are used efficiently and to avoid number exhaust.[61] Thus, many interconnected VoIP providers may not obtain numbering resources directly from the NANPA because they will not have obtained a license or a certificate of public convenience and necessity from the relevant states.[62] Interconnected VoIP providers that have not obtained a license or certificate of public convenience and necessity from the relevant states or otherwise are not eligible to receive numbers directly from the administrators may make numbers available to their customers through commercial arrangements with carriers (*i.e.*, numbering partners).[63] We emphasize that ensuring compliance with the Commission's numbering rules, including LNP requirements, in such cases remains the responsibility of

[59] *See Administration of the North American Numbering Plan*, CC Docket No. 99-200, Order, 20 FCC Rcd 2957, 2959, 2961-62, paras. 4, 9 (2005) (*SBCIS Waiver Order*). In this Order, we reiterate the Commission's existing rule of general applicability regarding eligibility for direct access to numbering resources. We note that petitions seeking waivers similar to the relief granted in the *SBCIS Waiver Order* are pending. *See, e.g.*, *Wireline Competition Bureau Seeks Comment on Qwest Communications Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, CC Docket No. 99-200, Public Notice, 20 FCC Rcd 8765 (2005). This Order does not in any way prejudge the outcome of the Commission's consideration of those petitions.

[60] 47 C.F.R. § 52.15(g)(2).

[61] *See NRO First Report and Order*, 15 FCC Rcd at 7615, para. 97 (stating that carriers must provide evidence demonstrating that they are licensed and/or certified to provide service prior to accessing numbering resources); *see also, e.g.*, BellSouth Comments, WC Docket No. 04-36, at 53 (stating that an increase in the use of telephone numbers could accelerate number exhaust); Citizens Utility Board Comments, WC Docket No. 04-36, at 29-30 (arguing that IP-POTS service provider access to numbering resources will increase the demand on a strained numbering system); New Jersey Commission Comments, WC Docket No. 04-36, at 11-12 (arguing that the Commission should consider sufficient limits against self-selection of area codes, and should monitor efficient use of numbering resources); Ohio Commission Comments, WC Docket No. 04-36, at 41-42 (believing that if IP-enabled companies gained access to numbering resources it might frustrate the ability of the commission to enforce numbering conservation requirements); Letter from Carole J. Washburn, Secretary, Washington Utilities and Transportation Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-36 (filed Oct. 2, 2006) (raising concern about the conservation of numbering resources).

[62] As noted *supra* note 50, we continue to consider the appropriate regulatory classification of interconnected VoIP services in the *IP-Enabled Services* proceeding. Pending a classification decision by the Commission, many interconnected VoIP providers maintain that they are information service providers and not telecommunications carriers under the Act. *See, e.g.*, Vonage Reply Comments, WC Docket No. 04-36, at 19-20. To the extent that an interconnected VoIP provider is licensed or certificated as a carrier, that carrier is eligible to obtain numbering resources directly from NANPA, subject to all relevant rules and procedures applicable to carriers, including LNP requirements. Under these circumstances, the interconnected VoIP provider would not have a numbering partner, and would thus be solely responsible for compliance with the Commission's rules at issue here.

[63] *See, e.g.*, AT&T Comments, WC Docket No. 04-36, at 25 (arguing that interconnected VoIP providers are not having any trouble obtaining numbers through partnerships with LECs). We note that these commercial arrangements may not include selling numbers. *See, e.g.*, *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 22 FCC Rcd 651, 653, para. 7 (2007) ("Telephone numbers are a public resource and neither carriers nor subscribers 'own' their telephone numbers."); *StarNet, Inc.*, 355 F.3d 634, 637 (7th Cir. 2004).

the carrier that obtains the numbering resource from the numbering administrator as well as the responsibility of the interconnected VoIP provider.[64]

2. Authority

21. In this Order, we conclude that the Commission has ample authority to extend LNP obligations and numbering administration support obligations to interconnected VoIP providers. Specifically, we conclude that we have authority to extend LNP obligations and numbering administration support obligations to interconnected VoIP providers and their numbering partners under the Commission's plenary numbering authority pursuant to section 251(e) of the Act.[65] We further find Commission authority in section 251(b)(2) of the Act for the obligations we extend to numbering partners that serve interconnected VoIP providers. Separately, we analyze the extension of our rules to interconnected VoIP providers under our Title I ancillary jurisdiction.[66]

22. *Plenary Numbering Authority.* Consistent with Commission precedent, we find that the plenary numbering authority that Congress granted this Commission under section 251(e)(1) provides ample authority to extend the LNP requirements set out in this Order to interconnected VoIP providers and their numbering partners.[67] Specifically, in section 251(e)(1) of the Act, Congress expressly assigned to the Commission exclusive jurisdiction over that portion of the NANP that pertains to the United States.[68] The Commission retained its "authority to set policy with respect to all facets of numbering administration in the United States."[69] To the extent that an interconnected VoIP provider provides services that offer its customers NANP telephone numbers, both the interconnected VoIP provider and the telecommunications carrier that secures the numbering resource from the numbering administrator subject themselves to the Commission's plenary authority under section 251(e)(1) with respect to those numbers.

23. *Section 251(b)(2) Authority over Telecommunications Carriers.* We find that section 251(b)(2) provides an additional source of authority to impose LNP obligations on the LEC numbering partners of interconnected VoIP providers.[70] Section 251(b)(2) states that all LECs have a "duty to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission."[71] The Commission has long held that it has "authority to require that

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[64] Additionally, with this Order, we clarify that LECs and CMRS providers have an obligation to port numbers to interconnected VoIP providers and their numbering partners subject to a valid port request.

[65] 47 U.S.C. § 251(e).

[66] *See, e.g., VoIP 911 Order*, 20 FCC Rcd at 10261-65, paras. 26-32.

[67] *See VoIP 911 Order*, 20 FCC Rcd at 10265, para. 33 (relying on the Commission's plenary authority over U.S. NANP numbers, particularly Congress's direction to use that authority regarding 911, to impose 911 obligations on interconnected VoIP providers, given interconnected VoIP providers' use of NANP numbers to provide service).

[68] *See* 47 U.S.C. § 251(e)(1) (providing that "[t]he Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States").

[69] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas, Administration of the North American Numbering Plan, Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, CC Docket No. 96-98, CC Docket No. 95-185, NSD File No. 96-8, CC Docket No. 92-237, IAD File No. 94-102, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19512, para. 271 (1996) (explaining that by retaining exclusive jurisdiction over numbering policy the Commission preserves its ability to act flexibly and expeditiously).

[70] *See* 47 U.S.C. § 251(b)(2).

[71] *Id.*

number portability be implemented 'to the extent technically feasible' and that our authority under section 251(b)(2) encompasses all forms of number portability."[72] Our application of this authority is informed by the Act's focus on protecting consumers through number portability. Section 3 of the Act defines "number portability" as "the ability of *users* of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[73] In this Order, we prescribe requirements that expand number portability to include ports to and from interconnected VoIP providers, and therefore find that section 251(b)(2) grants us authority to impose obligations on the interconnected VoIP providers' LEC numbering partners to effectuate those requirements. By holding the LEC numbering partner responsible for ensuring a porting request is honored to the extent technically feasible, we thus abide by this statutory mandate. We interpret section 251(b)(2) to include a number porting obligation even when the switching of "carriers" occurs at the wholesale rather than retail level. Given Congress's imposition of the number portability obligations on all such carriers and the broad terms of the obligation itself, we believe that ours is a reasonable interpretation of the statute. To find otherwise would permit carriers to avoid numbering obligations simply by creating an interconnected VoIP provider affiliate and assigning the number to such affiliate. Further, to ensure that consumers retain this benefit as technology evolves, we continue to believe that Congress's intent is that number portability be a "dynamic concept" that accommodates such changes.[74] The Commission previously has found that it has the authority to alter the scope of porting obligations due to technological changes in how numbers are ported.[75] Similarly, the Act provides ample authority for the logical extension of porting obligations due to technological changes in how telephone service is provided to end-user customers. We exercise our authority under the Act to ensure that consumers' interests in their existing telephone numbers are adequately protected whether the customer is using a telephone number obtained from a LEC directly or indirectly via an interconnected VoIP provider. In either case, the LEC or LEC numbering partner must comply with the Commission's LNP rules.

24. *Ancillary Jurisdiction over Interconnected VoIP Services.* We further conclude that we have a separate additional source of authority under Title I of the Act to impose LNP obligations and numbering administration support obligations on interconnected VoIP providers. Ancillary jurisdiction may be employed, in the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated[76] and the assertion of jurisdiction is "reasonably

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[72] *Telephone Number Portability*, CC Docket No. 95-116, Fourth Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 16459, 16466-67, para. 12 (1999).

[73] 47 U.S.C. § 153(30) (emphasis added).

[74] *See, e.g.*, *Intermodal Number Portability Order*, 18 FCC Rcd at 23708, para. 27 (discussing the reasonableness of differences in porting obligations due to differences in the technological feasibility of different types of porting).

[75] *See id.*

[76] *See United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (*Southwestern Cable*). *Southwestern Cable*, the lead case on the ancillary jurisdiction doctrine, upheld certain regulations applied to cable television systems at a time before the Commission had an express congressional grant of regulatory authority over that medium. *See id.* at 170-71. In *Midwest Video I*, the Supreme Court expanded upon its holding in *Southwestern Cable*. The plurality stated that "the critical question in this case is whether the Commission has reasonably determined that its origination rule will 'further the achievement of long-established regulatory goals in the field of television broadcasting by increasing the number of outlets for community self-expression and augmenting the public's choice of programs and types of services.'" *United States v. Midwest Video Corp.*, 406 U.S. 649, 667-68 (1972) (*Midwest Video I*) (quoting *Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals*, Docket No. 18397, First Report and Order, 20 FCC 2d 201, 202 (1969) (*CATV First Report and Order*)). The Court later restricted the scope of *Midwest Video I* by finding that if the basis for jurisdiction over cable is that the authority is

(continued....)

ancillary to the effective performance of [its] various responsibilities."[77] Both predicates for ancillary jurisdiction are satisfied here.

25. First, as we concluded in previous orders, interconnected VoIP services fall within the subject matter jurisdiction granted to us in the Act.[78] Section 1 of the Act, moreover, charges the Commission with responsibility for making available "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service."[79] Thus, section 1, in conjunction with section 251, creates a significant federal interest in the efficient use of numbering resources.[80] Second, we find that requiring interconnected VoIP providers to comply with LNP rules and cost recovery mechanisms is reasonably ancillary to the effective performance of the Commission's fundamental responsibilities. As noted above, section 251(b)(2) of the Act requires LECs to provide number portability in accordance with the requirements prescribed by the Commission to the extent technically feasible.[81] Further, section 251(e)(2) requires all carriers to bear the costs of numbering administration and number portability on a competitively neutral basis as defined by the Commission, and thereby seeks to prevent those costs from undermining competition.[82] The Commission has interpreted section 251(e)(2) broadly to extend to all carriers that utilize NANP telephone numbers and benefit from number portability.[83] In addition, as discussed above, section 1 of the Act charges the Commission with responsibility for making available "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service."[84] Because interconnected VoIP service operates through the use of NANP telephone numbers and benefits from NANP administration and because this service is "increasingly used to replace analog voice service"[85] – a trend that we expect to continue – it is important that we take steps to ensure that interconnected VoIP service use of NANP numbers does not disrupt national policies adopted pursuant to section 251. As the Commission previously has stated, we "believe it is important that [the Commission] adopt uniform national rules regarding number portability implementation and deployment to ensure efficient and consistent use of number portability methods and numbering resources on a nationwide basis. Implementation of number portability, and its effect on numbering resources, will have an impact on

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ancillary to the regulation of broadcasting, the cable regulation cannot be antithetical to a basic regulatory parameter established for broadcast. *See FCC v. Midwest Video Corp.*, 440 U.S. 689, 700 (1979) (*Midwest Video II*).

[77] *Southwestern Cable*, 392 U.S. at 178.

[78] *See, e.g.*, *CPNI Order*, 22 FCC Rcd at 6955-56, para. 55; *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, para. 47; *VoIP 911 Order*, 20 FCC Rcd at 10261-62, para. 28 ("[I]nterconnected VoIP services are covered by the statutory definitions of 'wire communication' and/or 'radio communication' because they involve 'transmission of [voice] by aid of wire, cable, or other like connection . . .' and/or 'transmission by radio . . .' of voice. Therefore, these services come within the scope of the Commission's subject matter jurisdiction granted in section 2(a) of the Act.").

[79] 47 U.S.C. § 151.

[80] *See, e.g.*, *First Number Portability Order on Reconsideration*, 12 FCC Rcd at 7315-16, para. 141.

[81] 47 U.S.C. § 251(b)(2).

[82] *See* 47 U.S.C. § 251(e)(2); *see also Telephone Number Portability*, CC Docket No. 96-116, RM-8535, Third Report and Order, 13 FCC Rcd 11701, 11723, para. 35 (1998) (*Third Portability Order*).

[83] *See NANP Order*, 11 FCC Rcd at 2628, para. 95 (finding that the costs of NANP administration should be borne by those that benefit from number resources); *Cost Recovery Order*, 13 FCC Rcd at 11723-24, paras. 35-36 (concluding that the costs of establishing number portability include the LECs' costs, as well as the costs of other telecommunications carriers, such as interexchange carriers and CMRS providers).

[84] 47 U.S.C. § 151.

[85] *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542-43, para. 48 (citing *CALEA First Report and Order*, 20 FCC Rcd at 15009-10, para. 42).

interstate, as well as local, telecommunications services."[86] Additionally, the Commission has found that those providers that benefit from number resources should also bear the costs.[87]

26. Extending LNP obligations to interconnected VoIP providers is "reasonably ancillary" to the performance of the Commission's obligations under section 251 and section 1 of the Act. If we failed to do so, American consumers might not benefit from new technologies because they would be unable to transfer their NANP telephone numbers between service providers and thus would be less likely to want to use a new provider.[88] As a result, the purposes and effectiveness of section 251, as well as section 1, would be greatly undermined. The ability of end users to retain their NANP telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of services they can choose to purchase.[89] Allowing customers to respond to price and service changes without changing their telephone numbers will enhance competition, a fundamental goal of section 251 of the Act, while helping to fulfill the Act's goal of facilitating "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service."[90]

27. Further, if we failed to exercise our ancillary jurisdiction, interconnected VoIP providers would sustain a competitive advantage against telecommunications carriers through the use and porting of NANP telephone numbers without bearing their share of the costs of LNP and NANP administration, thus defeating the critical requirement under section 251(e) that carriers bear such costs on a competitively neutral basis. Additionally, we extend the LNP obligations to interconnected VoIP providers because doing so will have a positive impact on the efficient use of our limited numbering resources.[91] The Commission avoids number waste by preventing an interconnected VoIP provider from porting-in a number from a carrier (often through its numbering partner) and then later refusing to port-out at the customer's request by arguing that no such porting obligation exists.[92] Failure to extend LNP obligations

[86] *First Number Portability Order*, 11 FCC Rcd at 8371, para. 37.

[87] *See NANP Order*, 11 FCC Rcd at 2628, para. 95.

[88] *See, e.g.*, AARP Comments, WC Docket No. 04-36, at 2 (stating that consumers have come to expect LNP and that LNP promotes local competition); NASUCA Comments, WC Docket No. 04-36, at 33-34 (arguing that if consumers are unable to port their telephone numbers between providers then consumers are much less likely to change providers); SBC Comments, WC Docket No. 04-36, at 83 (asserting that it can warp competition if interconnected VoIP providers are not subject to LNP obligations); Letter from William B. Wilhelm, Jr. and Ronald W. Del Sesto, Jr., Counsel for Vonage Holdings Corp., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 95-116, 99-200, WC Docket Nos. 04-36, 03-251 (filed Mar. 28, 2005) (stating that porting benefits consumers); Comment from Gerrit Weining, WC Docket No. 04-36 (filed Apr. 3, 2006) (arguing that competition is restricted without porting); Letter from Adam Kupetsky, Regulatory Counsel, Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 95-116, 96-98, WC Docket No. 04-36 (filed May 1, 2006) (stating that LNP is a fundamental tenet of the Act's goal of promoting competition); Letter from Amy Wolverton, Senior Corporate Counsel, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 95-116, 96-45, WC Docket No. 04-36, at 1 (filed Oct. 5, 2006) (discussing how porting fosters industry competition).

[89] *First Number Portability Order*, 11 FCC Rcd at 8368, para. 30. We note that some interconnected VoIP providers currently offer number porting but we find it appropriate to ensure this capability for all customers using NANP-based telephone numbers by explicitly extending our LNP obligations to interconnected VoIP providers. *See, e.g.*, Vonage Reply, WC Docket No. 04-36, at 24.

[90] 47 U.S.C. § 151.

[91] *See, e.g.*, Level 3 Feb. 23, 2007 *Ex Parte* Letter at 1 (arguing that porting fosters a competitive marketplace while encouraging conservation of a scarce resource).

[92] *See Time Warner Cable Order*, 22 FCC Rcd at 3521-22, para. 16 (finding that it is consistent with Commission policy that when a LEC wins back a customer from a VoIP provider that the number should be ported to the LEC that wins the customer, and thus such a requirement is an explicit condition to the section 251 rights provided for in that order).

to interconnected VoIP providers and their numbering partners would thwart the effective and efficient administration of our numbering administration responsibilities under section 251 of the Act. Therefore, extending the LNP and numbering administration support obligations to interconnected VoIP providers is "reasonably ancillary to the effective performance of [our] responsibilities"[93] under sections 251 and 1 of the Act and "will 'further the achievement of long-established regulatory goals'"[94] to make available an efficient and competitive communication service.[95]

28. We believe that the language in section 251(e)(2), which phrases the obligation to contribute to the costs of numbering administration as applicable to "all telecommunications carriers," reflects Congress's intent to ensure that no telecommunications carriers were omitted from the contribution obligation, and does not preclude the Commission from exercising its ancillary authority to require other providers of comparable services to make such contributions. Thus, the language does not circumscribe the class of carriers that may be required to support numbering administration. The legislative history of the Telecommunications Act of 1996 (1996 Act) supports this view and indicates that Congress desired that such costs be borne by "all providers."[96] Because interconnected VoIP services are increasingly being used as a substitute for traditional telephone service, we find that our exercise of ancillary authority to require contributions from interconnected VoIP providers is consistent with this statutory language and Congressional intent. The statutory construction maxim of *expressio unius est exclusio alterius* – the mention of one thing implies the exclusion of another – does not require a different result. This maxim is non-binding and "is often misused."[97] "The maxim's force in particular situations depends entirely on context, whether or not the draftsmen's mention of one thing, like a grant of authority, does really necessarily, or at least reasonably, imply the preclusion of alternatives."[98] Here, we believe that the relevant language in section 251(e)(2) was designed to ensure that no telecommunications carriers were omitted from the contribution obligation, and not to preclude the Commission from exercising its ancillary authority to require others to make such contributions.[99] Absent any affirmative evidence that Congress intended to limit the Commission's judicially recognized ancillary jurisdiction in this area, we find that the *expressio unius* maxim "is simply too thin a reed to support the conclusion that Congress has clearly resolved [the] issue."[100]

29. We also note that our actions here are consistent with other provisions of the Act. For example, we are guided by section 706 of the 1996 Act, which, among other things, directs the

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[93] *Southwestern Cable*, 392 U.S. at 178.

[94] *Midwest Video I*, 406 U.S. at 667-68 (quoting *CATV First Report and Order*, 20 FCC 2d at 202).

[95] 47 U.S.C. § 151; *see also, e.g.*, Ohio Commission Comments, WC Docket No. 04-36, at 39 (stating that LNP is important for customer choice in a competitive market). Further, the Commission relied on its ancillary jurisdiction when it first sought comment on LNP prior to the enactment of section 251. *See Telephone Number Portability*, CC Docket No. 95-116, RM-8535, Notice of Proposed Rulemaking, 10 FCC Rcd 12350, 12361, para. 29 (1995).

[96] S. Conf. Rep. No. 104-230 at 122 (1996) ("The costs for numbering administration and number portability shall be borne by all providers on a competitively neutral basis.").

[97] *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 132 F.3d 775, 782 (D.C. Cir. 1998) (*Shook*).

[98] *Id.*

[99] *See, e.g.*, *Shook*, 132 F.3d at 782 (noting that Congress sometimes "drafts statutory provisions that appear preclusive of other unmentioned possibilities–just as it sometimes drafts provisions that appear duplicative of others–simply, in Macbeth's words, 'to make assurance double sure'").

[100] *Mobile Communications Corp. v. FCC*, 77 F.3d 1399, 1405 (D.C. Cir. 1996); *see also Martini v. Federal Nat'l Mortgage Ass'n*, 178 F.3d 1336, 1342-43 (D.C. Cir. 1999) (noting that the *expressio unius* principle is particularly unhelpful in addressing issues of administrative law).

Commission to encourage the deployment of advanced telecommunications capability to all Americans by using measures that "promote competition in the local telecommunications market."[101] The extension of the LNP obligations to interconnected VoIP providers may spur consumer demand for their service, in turn driving demand for broadband connections, and consequently encouraging more broadband investment and deployment consistent with the goals of section 706.[102]

3. Local Number Portability Obligations

30. As we discuss in detail above, imposing LNP and numbering administration support requirements on interconnected VoIP providers and their numbering partners is consistent with both the language of the Act and the Commission's policies implementing the LNP obligations. To ensure that consumers enjoy the full benefits of LNP and to maintain competitively neutral funding of numbering administration, we impose specific requirements to effectuate this policy.

31. *Porting Obligations of an Interconnected VoIP Provider and its Numbering Partner.* As discussed above, section 3 of the Act defines local "number portability" as "the ability of *users* of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[103] We find that the "user" in this context is the end-user customer that subscribes to the interconnected VoIP service and not the interconnected VoIP provider.[104] To find otherwise would contravene the LNP goals of "allowing customers to respond to price and service changes without changing their telephone numbers."[105] Thus, it is the end-user customer that retains the right to port-in the number to an interconnected VoIP service or to port-out the number from an interconnected VoIP service.[106]

32. As discussed above, both an interconnected VoIP provider and its numbering partner must facilitate a customer's porting request to or from an interconnected VoIP provider. By "facilitate," we mean that the interconnected VoIP provider has an affirmative legal obligation to take all steps necessary to initiate or allow a port-in or port-out itself or through its numbering partner on behalf of the

[101] 47 U.S.C. § 157 nt. The Act necessarily has many goals. One is the development of the Internet, set forth in section 230 of the Act, which provides that "[i]t is the policy of the United States – to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. § 230(b)(2). But the Act specifies other important goals, discussed *supra*, including the preservation of an efficient numbering administration system that fosters competition among all communications services in a competitively neutral and fair manner. Especially here, where extending LNP obligations is likely to encourage consumers to use interconnected VoIP services as a result of our facilitation of porting, we find no conflict between our actions and the underlying goals expressed in the Act.

[102] *See Availability of Advanced Telecommunications Capability in the United States*, Fourth Report to Congress, GN Docket No. 04-54, 19 FCC Rcd 20540, 20578 (2004) ("[S]ubscribership to broadband services will increase in the future as new applications that require broadband access, *such as VoIP*, are introduced into the marketplace, and consumers become more aware of such applications.") (emphasis added).

[103] 47 U.S.C. § 153(30) (emphasis added).

[104] *See, e.g.*, ALTS Reply, WC Docket No. 04-36, at 10 (claiming that an interconnected VoIP provider may attempt to prevent porting by claiming that it is the end user associated with the number); *see also Time Warner Cable Order*, 22 FCC Rcd at 3517-20, paras. 9-14 (affirming that wholesale providers of telecommunications services are telecommunications carriers for purposes of sections 251(a) and (b) of the Act); *id.* at para. 16 (agreeing that a number should be ported to the LEC that wins the customer at the customer's request).

[105] *First Number Portability Order*, 11 FCC Rcd at 8368, para. 30.

[106] *See, e.g.*, *NANP Order*, 11 FCC Rcd at 2591, para. 4 (finding that numbers are a public resource and not the property of carriers).

interconnected VoIP customer (*i.e.*, the "user"), subject to a valid port request, without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the number. We recognize that when an interconnected VoIP provider obtains NANP telephone numbers and LNP capability through a numbering partner, the interconnected VoIP provider does not itself execute the port of the number from a technical perspective. In such situations, the interconnected VoIP provider must take any steps necessary to facilitate its numbering partner's technical execution of the port.[107]

33. We also find that interconnected VoIP providers and their numbering partners may not enter into agreements that would prohibit or unreasonably delay an interconnected VoIP service end user from porting between interconnected VoIP providers, or to or from a wireline carrier or a covered CMRS provider.[108] Because LNP promotes competition and consumer choice, we find that any agreement by interconnected VoIP providers or their numbering partners that prohibits or unreasonably delays porting could undermine the benefits of LNP to consumers. Additionally, because we determine that the carrier that obtains the number from the NANPA is also responsible for ensuring compliance with these obligations, such porting-related restrictions would contravene that carrier's section 251(b)(2) obligation.[109] If an interconnected VoIP provider or its numbering partner attempts to thwart an end user's valid porting request, that provider or carrier will be subject to Commission enforcement action for a violation of the Act and the Commission's LNP rules.[110] Further, no interconnected VoIP provider may contract with its customer to prevent or hinder the rights of that customer to port its number because doing so would violate the LNP obligations placed on interconnected VoIP providers in this Order.[111] To the extent that interconnected VoIP providers have existing contractual provisions that have the effect of unreasonably delaying or denying porting, such provisions do not supersede or otherwise affect the porting obligations established in this Order.[112]

34. *Scope of Porting Obligations.* The Commission's porting obligations vary depending on whether a service is provided by a wireline carrier or a covered CMRS provider.[113] As described above, interconnected VoIP providers generally obtain NANP telephone numbers through commercial arrangements with one or more traditional telecommunications carriers. As a result, the porting

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[107] *See, e.g.*, Letter from Ann D. Berkowitz, Associate Director – Federal Regulatory Advocacy, Verizon, to Marlene Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket No. 04-36, at 2 (filed Oct. 23, 2007) (Verizon Oct. 23, 2007 *Ex Parte* Letter) (stating that a VoIP provider's refusal to unlock a ported number from the 911 database until 90 days after the customer cancelled the VoIP service effectively obstructed the number port because the winning carrier could not provide service to its customer using the former VoIP provider's number unless the 911 database was updated to reflect the service provider change).

[108] *Cf. Intermodal Number Portability Order*, 18 FCC Rcd at 23711-12, para. 36 (finding that requiring interconnection agreements between wireless and wireline carriers solely for the purposes of porting numbers could undermine the benefits of LNP).

[109] To the extent that carriers with direct access to numbers do not have an LNP obligation, that exemption from LNP only extends to the exempt service and not to that carrier's activities as a numbering partner for an interconnected VoIP provider.

[110] *See, e.g.*, *Wireless Number Portability Order*, 18 FCC Rcd at 20975, para. 11 (interpreting the Act's number portability definition to mean that "customers 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").

[111] *See, e.g.*, *id.* at 20975-76, paras. 13-17 (finding that any contract provisions that consumers may not port their numbers are to be without effect on the carrier's porting obligation).

[112] *See, e.g.*, *id.*; *see also* Letter from Lawrence E. Strickling, Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, at 2 (filed Mar. 13, 2006) (observing that the Commission has expressly stated that contract disputes are not a basis for refusing to port a number).

[113] *See supra* Part II.A (discussing the LNP obligations for wireline carriers and covered CMRS providers).

obligations to or from an interconnected VoIP service stem from the status of the interconnected VoIP provider's numbering partner and the status of the provider to or from which the NANP telephone number is ported.[114] For example, subject to a valid port request on behalf of the user, an interconnected VoIP provider that partners with a wireline carrier for numbering resources must, in conjunction with its numbering partner, port-out a NANP telephone number to: (1) a wireless carrier whose coverage area overlaps with the geographic location of the porting-out numbering partner's rate center; (2) a wireline carrier with facilities or numbering resources in the same rate center; or (3) another interconnected VoIP provider whose numbering partner meets the requirements of (1) or (2).[115] Similarly, subject to a valid port request on behalf of the user, an interconnected VoIP provider that partners with a covered CMRS provider for numbering resources must, in conjunction with its numbering partner, port-out a NANP telephone number to: (1) another wireless carrier; (2) a wireline carrier within the telephone number's originating rate center; or (3) another interconnected VoIP provider whose numbering partner meets the requirements of (1) or (2).[116]

35. We also clarify that carriers have an obligation under our rules to port-out NANP telephone numbers, upon valid request, for a user that is porting that number for use with an interconnected VoIP service.[117] For example, subject to a valid port request on behalf of the user, a wireline carrier must port-out a NANP telephone number to: (1) an interconnected VoIP provider that partners with a wireless carrier for numbering resources, where the partnering wireless carrier's coverage area overlaps with the geographic location of the porting-out wireline carrier's rate center; or (2) an interconnected VoIP provider that partners with a wireline carrier for numbering resources, where the partnering wireline carrier has facilities or numbering resources in the same rate center as the porting-out wireline carrier.[118] Similarly, subject to a valid port request on behalf of the user, a wireless carrier must port-out a NANP telephone number to: (1) an interconnected VoIP provider that partners with a wireless carrier; or (2) an interconnected VoIP provider that partners with a wireline carrier for numbering resources, where the partnering wireline carrier is within the number's originating rate center.[119]

36. We decline to adopt new porting intervals that apply specifically to ports between interconnected VoIP providers and other providers through a numbering partner.[120] The intervals that

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[114] We note that because interconnected VoIP providers offer telephone numbers not necessarily based on the geographic location of their customers – many times at their customers' requests – there may be limits to number porting between providers. The Act only provides for service provider portability and does not address service or location portability. *See First Number Portability Order*, 11 FCC Rcd at 8447, para. 181. Thus, for example, if an interconnected VoIP service customer selects a number outside his current rate center, or if the interconnected VoIP service customer selects a number within his geographic rate center and moves out of that rate center, and then requests porting to a wireline carrier in his new rate center, the customer would not be able to port the number. *See* 47 C.F.R. § 52.26(a). We expect interconnected VoIP providers to fully inform their customers about these limitations, particularly limitations that result from the portable nature of, and use of non-geographic numbers by, certain interconnected VoIP services.

[115] *See supra* Part II.A (providing a summary of the various porting obligations).

[116] *See id.*

[117] To the extent that an interconnected VoIP provider is certificated or licensed as a carrier, then the Title II LNP obligations to port-in or port-out to the carrier are already determined by existing law. *See, e.g.*, 47 C.F.R. § 52.26(a).

[118] *See id.*

[119] *See id.* We clarify that carriers must port-out NANP telephone numbers upon valid requests from an interconnected VoIP provider (or from its associated numbering partner).

[120] We seek comment, however, on whether the Commission should adopt rules regarding porting intervals in the Notice adopted with this Order. *See infra* para. 59.

would be applicable to ports between the numbering partner and the other provider, if the port were not related to an interconnected VoIP service, will apply to the port of the NANP telephone number between the numbering partner and the other provider (or the other provider's numbering partner) when the end user with porting rights is a customer of the interconnected VoIP provider.[121]

37. We take seriously our responsibilities to safeguard our scarce numbering resources and to implement LNP obligations for the benefit of consumers. Consumers, carriers, or interconnected VoIP providers may file complaints with the Commission if they experience unreasonable delay or denial of number porting to or from an interconnected VoIP provider in violation of our LNP rules.[122] We will not hesitate to enforce our LNP rules to ensure that consumers are free to choose among service providers, subject to our LNP rules, without fear of losing their telephone numbers.

38. *Allocation of LNP Costs.* Section 251(e)(2) provides that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[123] Because interconnected VoIP providers benefit from LNP, we find that they should contribute to meet the shared LNP costs.[124] Further, similar to the Commission's finding in its *Cost Recovery Reconsideration Order*, we also believe that interconnected VoIP providers may find it costly and administratively burdensome to develop region-specific attribution systems for all of their end-user services, and thus we allow these providers to use a proxy based on the percentage of subscribers a provider serves in a particular region for reaching an estimate for allocating their end-user revenues to the appropriate regional LNPA.[125]

4. Numbering Administration Cost Requirements

39. Although interconnected VoIP providers do not have any specific numbering administration requirements (*e.g.*, pooling requirements),[126] they do require the use of NANP numbering resources to provide an interconnected VoIP service, and thereby benefit from and impose costs related to

[121] For example, if the interconnected VoIP provider's numbering partner is a wireline carrier and the porting-in provider is a wireline carrier, the wireline-to-wireline porting interval would apply to the port between the two carriers.

[122] *See* 47 U.S.C. § 208; *see also* 47 U.S.C. § 503(b)(5) (granting the Commission authority to assess a forfeiture penalty against any person who is not a common carrier).

[123] 47 U.S.C. § 251(e)(2).

[124] In the Commission's *Cost Recovery Order*, the Commission determined that carriers not subject to rate regulation (*e.g.*, competitive LECs and CMRS providers) may recover their carrier-specific costs directly related to providing number portability in any lawful manner consistent with obligations under the Act. *See Cost Recovery Order*, 13 FCC Rcd at 11774, para. 36; *Cost Recovery Reconsideration Order*, 17 FCC Rcd at 2609-10, para. 64. We find that this same recovery method is appropriate for interconnected VoIP providers. Further, the numbering partner may exclude revenues derived from providing numbering resources to interconnected VoIP providers (regardless of whether they hold themselves out as telecommunications carriers) in the numbering partner's revenue calculation on FCC Form 499-A pursuant to the carrier's carrier rule. *Cf. 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7547-48, paras. 58-59. In any case, we do not expect both the interconnected VoIP provider and its numbering partner to contribute on the same revenues.

[125] *See Cost Recovery Reconsideration Order*, 17 FCC Rcd at 2598, para. 37. Providers that submit an attestation certifying that they are unable to divide their traffic and resulting end-user revenue among the seven LNPA regions precisely will be allowed to divide their end-user revenue among these regions based on the percentage of subscribers served in each region. Providers may use their billing databases to identify subscriber location.

[126] *See supra* Part II.A.

numbering administration. Thus, we require interconnected VoIP providers to contribute to meet the shared numbering administration costs on a competitively neutral basis.[127]

5. Implementation

40. The LNP obligations adopted in this Order for interconnected VoIP providers and their numbering partners become effective 30 days after Federal Register publication. The reporting requirements for determining interconnected VoIP providers' contribution to the shared costs of numbering administration and LNP require interconnected VoIP providers to file an annual FCC Form 499-A.[128] To ensure that interconnected VoIP providers' contributions for numbering administration and LNP are allocated properly, interconnected VoIP providers should include in their annual FCC Form 499-A filing historical revenue information for the relevant year, including all information necessary to allocate revenues across the seven LNPA regions (*e.g.*, January 2007 through December 2007 revenue information for the April 2008 filing). The Commission will revise FCC Form 499-A at a later date, consistent with the rules and policies outlined in this Order.[129] Interconnected VoIP providers, however, should familiarize themselves with the FCC Form 499-A and the accompanying instructions in preparation for this filing.[130] Based on these filings, the appropriate administrators will calculate the funding base and individual contributions for each support mechanism, and provide an invoice to each interconnected VoIP provider for its contribution to the shared costs of the respective support mechanism. We find that USAC should be prepared to collect this information with the next annual filing, and that the LNPA and the NANP billing and collection agent should be prepared to include interconnected VoIP provider revenues in their calculations for the 2008 funding year based on the next annual FCC Form 499-A filings.

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[127] Further, as the Commission determined for carrier-specific costs directly related to thousands block number pooling of carriers not subject to rate regulation, interconnected VoIP providers may, to the extent that any costs exist, recover them in any lawful manner. *See Third Numbering Order*, 17 FCC Rcd at 264, para. 25. Additionally, as explained above in note 124, numbering partners may exclude revenues derived from providing wholesale inputs to interconnected VoIP providers that do not hold themselves out as telecommunications carriers on FCC Form 499-A pursuant to the carrier's carrier rule. *Cf. 2006 Interim Contribution Methodology* Order, 21 FCC Rcd at 7547-48, paras. 58-59.

[128] Interconnected VoIP providers not meeting the *de minimis* standard for contributing to the federal Universal Service Fund (USF) already are required to file FCC Form 499-A on an annual basis. *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7548, para. 60.

[129] *See Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telephone Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24972 n.103 (2002).

[130] Form 499-A and its instructions are located on the Commission's form page at http://www.fcc.gov/formpage.html and on the Universal Service Administrative Company's (USAC) form page at http://www.usac.org/fund-administration/forms/default.aspx.

B. Intermodal Local Number Portability

41. We next adopt measures to facilitate intermodal number portability.[131] As discussed above, the Commission adopted requirements for porting numbers from wireline carriers to wireless carriers and *vice versa*. However, we find that additional steps are appropriate to ensure that consumers more fully benefit from these requirements as intended by the Commission. First, we seek to clarify existing intermodal LNP requirements in response to concerns that certain carriers are unduly hindering the number porting validation process. Second, we respond to the D.C. Circuit's stay of the Commission's *Intermodal Number Portability Order* to ensure that customers of carriers qualifying as small entities under the RFA likewise receive the benefits of LNP.

1. Validating Local Number Portability Requests

42. We grant the request of T-Mobile and Sprint Nextel (Petitioners) to clarify that the porting-out provider may not require more information than is a minimal but reasonable amount from the porting-in provider to validate the port request and accomplish the port. As noted above,[132] the Petitioners filed a petition for declaratory ruling requesting that the Commission make clear that carriers obligated to provide LNP may not obstruct or delay the porting process by demanding information from requesting carriers beyond that required to validate the customer request.[133] Generally speaking, the porting interval comprises two elements: the Confirmation Interval and the Activation Interval.[134] In order to begin the porting interval and trigger the Confirmation Interval during which a port request is validated, a new service provider first must provide certain information to the old service provider.[135] The record in this proceeding indicates that many requesting porting-in providers experience difficulties with this process, which in turn ultimately delays the port itself.[136] While the record reveals a variety of potential

[131] In addition, as discussed below, we find it more appropriate to seek comment on other issues in the accompanying Notice.

[132] *See supra* para. 15.

[133] *See* T-Mobile/Sprint Nextel Petition at 1.

[134] *See Telephone Number Portability*, CC Docket No. 95-116, Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 18515, 18516-17, para. 4 (2004) (*Intermodal Number Porting Interval Second Further Notice*).

[135] *See id.* This Order does not address the intermodal porting intervals themselves, but rather clarifies the information necessary for the validation process as a prelude to the Confirmation Interval. *See, e.g.*, T-Mobile/Sprint Nextel Reply, CC Docket No. 95-116, at 8 (filed Feb. 23, 2007) (stating that their petition is not about the porting intervals). In the accompanying Notice, we seek comment on the porting intervals. *See infra* paras. 59-65 (seeking comment on the porting intervals themselves).

[136] *See, e.g.*, Charter Comments, CC Docket No. 95-116, at 5, 9 (filed Feb. 8, 2007); Comcast Comments, CC Docket No. 95-116, at 4, 7 (filed Feb. 8, 2007); CTIA Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); Leap Wireless Comments, CC Docket No. 95-116, at 6-7 (filed Feb. 8, 2007); Integra Reply, CC Docket No. 95-116, at 2-5 (filed Feb. 23, 2007). In particular, the Petitioners and other commenters point out that in many instances there is a much higher cancellation rate for customers undergoing intermodal ports than for wireless-to-wireless ports. *See, e.g.*, T-Mobile/Sprint Nextel Petition at 5; CTIA Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007). *But see* Embarq Comments, CC Docket No. 95-116, at 5 (filed Feb. 8, 2007) (stating that the cancellation rate for wireless carrier porting requests in 2006 was only 5.5%); Qwest Comments, CC Docket No. 95-116, at 4 n.12 (filed Feb. 8, 2007) (stating that porting cancellations might be influenced by such factors as a realization by a customer that some incidental service associated with the wireline loop might be "lost" if the number is ported, or a customer intent on porting might change position after reviewing the contractual restrictions of the wireless carrier); Verizon Comments, CC Docket No. 95-116, at 5-6 (filed Feb. 8, 2007) (arguing that the fact that Petitioners are experiencing higher cancellation rates than other carriers indicates that Petitioners are responsible for their higher cancellation rates).

contributing causes,[137] we are persuaded by the record that burdensome porting-related procedures play a role in the difficulties providers experience when seeking to fulfill customers' desire to port their numbers, particularly given the incentives that providers have to obstruct the porting process.[138] Moreover, as discussed below, onerous port validation procedures are inconsistent with the Act and Commission precedent. To address these concerns regarding obstruction and delay in the porting process, we clarify that entities subject to our LNP obligations may not demand information beyond what is required to validate the port request and accomplish the port.[139]

43. We disagree with commenters who suggest, based on the Petitioners' reliance on the *Wireless Local Number Portability Order*, that boundaries on the range of acceptable port validation processes are limited to the context of wireless-to-wireless ports.[140] For one, we observe that the relevant analysis in the *Wireless Local Number Portability Order* does not depend on any unique factual or legal factors arising in the wireless context. For example, in holding in that order that carriers may not impose non-porting related restrictions on the porting-out process, the Commission based its decision on the definition of number portability under the Act and Commission rules "to mean that consumers must be able to change carriers while keeping their telephone number as easily as they may change carriers without taking their number with them."[141] Indeed, both the Act and Commission rules define number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[142] We find that limiting carriers to requiring a minimum but reasonable amount of information to validate a customer request and perform a port will ensure that customers can port their numbers without impairment of the convenience of switching providers due to delays in the process that can result when additional information is required. We also find support for our clarification in other Commission precedent. For example, in the *Intermodal Local Number Portability Order*, the Commission held that "carriers need only share basic contact and technical information sufficient to allow porting functionality and customer verification to be established."[143] Thus,

[137] *See, e.g.*, AT&T Comments, CC Docket No. 95-116, at 4 (filed Feb. 8, 2007) (stating that AT&T wireline requires 27 or fewer data fields); Embarq Comments, CC Docket No. 95-116, at 3-4 (filed Feb. 8, 2007) (stating that Embarq requires 20 fields); Verizon Comments, CC Docket No. 95-115, at 7 (stating that 26 fields on the LSR need to be completed for an intermodal number portability request under the industry guidelines for number portability).

[138] *See, e.g.*, Charter Comments, CC Docket No. 95-116, at 2, 7, 9-10 (filed Feb. 8, 2007); Comcast Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); CTIA Comments, CC Docket No. 95-116, at 3 (filed Feb. 8, 2007); MetroPCS Comments, CC Docket No. 95-116, at 5-6 (filed Feb. 8, 2007).

[139] *See, e.g.*, Charter Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); Comcast Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); CTIA Comments, CC Docket No. 95-116, at 3 (filed Feb. 8, 2007); Iowa Utilities Board Comments, CC Docket No. 95-116, at 2 (filed Feb. 7, 2007). We disagree with commenters that suggest that the Commission may not act on this petition because no controversy or uncertainty exists. *See, e.g.*, AT&T Comments, CC Docket No. 95-116, at 1 (filed Feb. 8, 2007); Qwest Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); TWTC *et al.* Comments, CC Docket No. 95-116, at 1-2 (filed Feb. 8, 2007). Section 1.2 of the Commission's rules states that "[t]he Commission may . . . on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty." 47 C.F.R. § 1.2; *see also* 5 U.S.C. § 554(e) (stating that an agency, "in its sound discretion, may issue a declaratory order to . . . remove uncertainty"); USCC Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007) (stating that a controversy exists as to whether the wireline practices are consistent with the FCC's number portability mandate). We find that there is uncertainty regarding the validation process under an entity's LNP obligations, and thus we adopt this Order to clarify those obligations.

[140] *See, e.g.*, TWTC *et al.* Comments, CC Docket No. 95-116, at 2-3 (filed Feb. 8, 2007).

[141] *Wireless Local Number Portability Order*, 18 FCC Rcd at 20975, para. 11.

[142] 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(l).

[143] *Intermodal Local Number Portability Order*, 18 FCC Rcd at 23711, para. 34.

we clarify that for all ports – whether intermodal, wireline-to-wireline, or wireless-to-wireless ports – the porting-out provider may not require more information from the porting-in provider than is actually reasonable to validate the port request and accomplish the port. However, we note that when we clarify that carriers may require information necessary to accomplish a port, that does not encompass information necessary to settle the customer's account or otherwise enforce any other provisions of the customer's contract.[144] Of course, as in the wireless-to-wireless LNP context, carriers are free to notify customers of the consequences of terminating service, but may not hold a customer's number while attempting to do so.[145]

44. We find that the Commission should adopt rules governing the LNP validation process. As stated above, to begin a port, a porting-in provider must first provide certain requested information to the porting-out provider as part of the port validation process.[146] Thus, even where the Commission has adopted specific porting intervals for ports, problems associated with LNP validation have the potential to lengthen significantly the overall porting process beyond the time period specified in those intervals. Commenters contend that this is responsible for the high cancellation rate for intermodal ports, at least in part.[147]

45. The record reveals that some difficulties in the validation process can arise due to the volume of information requested by providers. For example, incumbent LECs typically require port requests to be submitted using Local Service Request (LSR) forms.[148] However, the number of fields and specific information required can vary greatly from carrier to carrier.[149] In particular, commenters contend that delays are caused by the efforts they must undertake to complete the numerous fields in the

[144] While the Commission's determination to "prevent carriers from imposing restrictions on porting beyond necessary customer validation procedures" was based in part on the analysis of specific language from the Commission rule mandating LNP for CMRS providers, we observe that substantially the same language appears in the Commission's rules regarding wireline LNP. *Compare Wireless Local Number Portability Order*, 18 FCC Rcd at 20975-76, paras. 14-15 (quoting section 52.31 of the Commission's rules that "'CMRS providers must provide a long term database method for number portability, including the ability to support roaming . . . in switches for which another carrier has made a specific request for the provision of number portability . . . .'"), *with* 47 C.F.R. § 52.23(b)(1) ("LECs must provide a long-term database method for number portability . . . in switches for which another carrier has made a specific request for the provision of number portability . . . .").

[145] *Wireless Local Number Portability Order*, 18 FCC Rcd at 20975-76, paras. 14-16.

[146] *See, e.g.*, T-Mobile/Sprint Reply at 8-9 ("The clock does not even start ticking on the porting interval until the porting-in carrier submits an error-free port request."); CTIA Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007) (stating that carriers often prevent the clock from even starting on the intercarrier porting process by requiring unnecessary information such as "account category" and "line activity," and by rejecting Local Service Requests with incorrect or incomplete information).

[147] *See, e.g.*, T-Mobile/Sprint Nextel Petition at 5; Charter Comments, CC Docket No. 95-116, at 5, 9 (filed Feb. 8, 2007); Comcast Comments, CC Docket No. 95-116, at 4, 7 (filed Feb. 8, 2007); CTIA Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); Leap Wireless Comments, CC Docket No. 95-116, at 6-7 (filed Feb. 8, 2007); Integra Reply, CC Docket No. 95-116, at 2-5 (filed Feb. 23, 2007).

[148] *See, e.g.*, Verizon Comments, CC Docket No. 95-116, at 6-7 (filed Feb. 8, 2007); Leap Wireless Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007).

[149] *See, e.g.*, AT&T Comments, CC Docket No. 95-116, at 4 (filed Feb. 8, 2007) (stating that AT&T wireline requires 27 or fewer data fields); Embarq Comments, CC Docket No. 95-116, at 3-4 (filed Feb. 8, 2007) (stating that Embarq requires 20 fields); Verizon Comments, CC Docket No. 95-115, at 7 (stating that only 26 fields on the LSR need to be completed for an intermodal number portability request under the industry guidelines for number portability).

LSRs, and that errors are more likely the greater the number of fields that are required.[150] While some of these variations may arise due to differences in the legacy systems of different incumbent LECs,[151] commenters also indicate that some of the information requested appears designed to address issues unrelated to validation and completion of the port, such as information designed to facilitate the porting-out carrier's own process of disconnecting the customer's service.[152]

46. In response to these concerns, we find that it is appropriate for the Commission to adopt specific criteria governing the information required for port validation for simple ports.[153] As stated above, we clarify that, carriers may not require the submission of information for purposes of the LNP process other than a reasonable amount to validate and complete the port.[154] Nonetheless, we believe that the adoption of specific requirements will facilitate the enforcement of that general obligation and minimize disputes among carriers. Furthermore, while certain carriers' legacy systems might be designed to validate port requests on a range of different information, we agree with commenters who suggest that customers' porting experience would be improved with the standardization of the LNP validation criteria for simple ports.[155] Commenters point out that it is not uncommon today for incumbent LECs to make ongoing changes to their port validation process,[156] and that wireless carriers were able to readily implement a reduction in the number of data fields required to validate wireless-to-wireless port requests.[157] Moreover, many competitors point out that they have invested money to implement their own systems and processes in an effort to reduce the difficulties customers experience with intermodal porting.[158]

47. Based on the record before us, we conclude that the Commission should require LNP validation based on no more than four fields for simple ports, and should specify by rule those specific fields. The wireless industry has reached an agreement to require only three fields of information to

[150] *See, e.g.*, Charter Comments, CC Docket No. 95-116, at 5-6 (filed Feb. 8, 2007); MetroPCS Comments, CC Docket No. 95-116, at 6 (filed Feb. 8, 2007); USCC Comments, CC Docket No. 95-116, at 2-3 (filed Feb. 8, 2007).

[151] *See, e.g.*, Level 3 Reply, CC Docket No. 95-116, at 3-4 (filed Feb. 23, 2007); TWTC *et al.* Comments, CC Docket No. 95-116, at 2, 5 (filed Feb. 8, 2007).

[152] *See, e.g.*, Integra Reply, CC Docket No. 95-116, at 3-4 (filed Feb. 23, 2007); Embarq Comments, CC Docket No. 95-116, at 3 n.6 (filed Feb. 8, 2007).

[153] As the Commission previously has explained, simple ports are those ports that: (1) do not involve unbundled network elements; (2) involve an account only for a single line; (3) do not include complex switch translations (*e.g.*, Centrex, ISDN, AIN services, remote call forwarding, or multiple services on the loop); and (4) do not include a reseller. *See, e.g.*, *Intermodal Number Portability FNPRM,* 18 FCC Rcd at 23715, para. 45 n.112 (citing North American Numbering Council Local Number Portability Administration Working Group Third Report on Wireless Wireline Integration, Sept. 30, 2000, CC Docket No. 95-116 (filed Nov. 29, 2000)).

[154] *See supra* paras. 42-43.

[155] *See, e.g.*, NARUC Reply, CC Docket No. 95-116, at 5 (filed Feb. 23, 2007); Charter Comments, CC Docket No. 95-116, at 4-6 (filed Feb. 8, 2007); Comcast Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); CTIA Comments, CC Docket No. 95-116, at 1 (filed Feb. 8, 2007); MetroPCS Comments, CC Docket No. 95-116, at 8-9 (filed Feb. 8, 2007); Integra Reply, CC Docket No. 95-116, at 2 (filed Feb. 23, 2007).

[156] *See, e.g.*, Verizon Comments, CC Docket No. 95-116, at 9 (filed Feb. 8, 2007).

[157] *See, e.g.*, Leap Wireless Comments, CC Docket No. 95-116, at 3 (filed Feb. 8, 2007); T-Mobile/Sprint Nextel Petition at 4; California Commission Comments, CC Docket No. 95-116, at 4 (filed Feb. 8, 2007); CTIA Comments, CC Docket No. 95-116, at 2-3 (filed Feb. 8, 2007); MetroPCS Comments, CC Docket No. 95-116, at 5 (filed Feb. 8, 2007).

[158] *See, e.g.*, Letter from Mary McManus, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, Attach. at 3 (filed Apr. 16, 2007).