Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Telephone Number Requirements for IP-Enabled Service 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

REPLY COMMENTS OF EARTHLINK, INC.

EarthLink, Inc. ("EarthLink"), by its attorneys, files these reply comments in response to the above-captioned rulemaking proceeding[1] which considers Federal Communications Commission ("FCC" or "Commission") extension of numbering-related obligations to interconnected VoIP providers and the adoption of specific rules regarding the Local Number Portability ("LNP") porting and validation process. EarthLink here focuses on two issues: (1) the extension of additional N11 code assignments to interconnected VoIP providers; and (2) the porting intervals and port validation process for number ports to Unbundled Network Element Loop ("UNE-L") based providers. EarthLink opposes the imposition on

[1] Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd. 19531 (2007), Erratum, 23 FCC Rcd. 1647 (2008) ("NPRM").

interconnected VoIP providers of any additional N11 numbering obligations that do not provide an important public safety function. EarthLink also urges the Commission to declare that ports to facilities-based providers using UNE-L network components are subject to wireline porting intervals once UNE provisioning is completed to allow consumers to enjoy fully the benefits of UNE-based competitive services without delays.

DISCUSSION

I. The Commission Should Not Further Expand N11 Code Regulation to Interconnected VoIP Providers.

EarthLink agrees with commenters that urge the FCC not to impose N11 obligations beyond 711 and 911 on interconnected VoIP providers at this time.[2] While EarthLink supports 711 and 911 services, which implicate important public safety functions, other N11 services are primarily non-essential and deployed for consumer convenience. As noted by Qwest, other N11 services are "not so critical to the overall public welfare that the Commission needs to require interconnected VoIP providers to implement them."[3] Especially in light of the competing services features interconnected VoIP providers presently offer to their customers (with additional innovation likely on the horizon), the FCC should let market forces be the driving determinant for consumer services and reserve regulatory action for instances where there is evidence of a market failure.

Indeed, expanding N11 code requirements to interconnected VoIP providers is unnecessary and would likely be counterproductive given the range of applications and

[2] *See*, Comments of Qwest Communications Corporation, at 1 ("Qwest"); See Comments of the VON Coalition, at 2.

[3] *See*, Comments of Qwest, at 1; Comments of the VON Coalition, at 2.

services consumers can already access via competitive interconnected VoIP services.[4] Today's interconnected VoIP providers are already responding to consumer demand for new services by offering N11 dialing features and other customer-friendly services that in essence render N11 services archaic and obsolete. For example, VoIP.com, ITP, and Call Centric voluntarily offer access to 411 (directory assistance),[5] and Vonage voluntarily offers its users access to 211 (information and referral services), 311 (non-emergency police and other governmental services), 411, 511 (travel and information services), and 811 (state "One call" notification services).[6] VoIP customers also enjoy access to free voice-activated directory assistance service through several free VoIP-enabled directory services, as well as free directory assistance text messaging services.[7] These VoIP features and functions are all offered to consumers today without Commission regulation, and harness the potential of VoIP to bring consumers the services they desire.

The reason for this innovation is clear: competition is driving interconnected VoIP providers to develop new and improved services that exceed the functionality and service

[4] Id., at 3 (regulation would "stall and stifle the very competition that the Commission cited as justification for applying its LNP rules to Interconnected VoIP providers in the first place.").

[5] *See*, http://www.voip.com/voip_features.aspx (stating that voip.com provides "access to any listings in US, Canada & Puerto Rico for $.99 per call."); http://www.itp4you.com/features.aspx (describing ITP's 411 directory assistance service as "your direct line to phone numbers, restaurants, plumbers and so much more."); see also, http://www.callcentric.com/features/directory_assistance (noting that Call Centric's 411 directory assistance service is free of charge).

[6] *See*, http://www.vonage.com/features.php?feature=411&refer_id=WEBFT0706010001W1.

[7] *See*, Comments of the VON Coalition, at 6.

options of traditional N11 services found through PSTN services.[8] VoIP providers are also using service features (as well as price) as a differentiator in the marketplace in order to attract new customers and to retain their existing customer base in the face of open competition from other PSTN, cable, wireless, and VoIP providers.

FCC action to require interconnected VoIP providers to provision non-safety related N11 services at this time – despite a nearly total lack of any record evidence of even the least amount of consumer interest and demand – would be as counterproductive as woolen earmuffs in July.[9] First, such an additional regulatory overlay on competitive VoIP services would add significant costs to VoIP service provisioning, which would ultimately be borne by consumers, with no offsetting benefit since VoIP consumers already have access to a panoply of competitive services and options. The FCC should embrace competitive options, and reserve its regulatory resources and the limited compliance resources of VoIP providers, which often are new entrants, for public safety obligations that will not be sufficiently addressed by the marketplace. Second, such a mandate would likely undermine the current intense industry innovation by diverting resources and interfering with the services that would

[8] *See*, Id., at 6 (citing http://www.vonage.com/features.php?feature=411&refer_id=WEBFT0706010001W1). ("access to information about movie listings, airline flight times, ATM locations, weather, sports scores and news, stock quotes, lottery results, accurate time of day anywhere on earth, and even horoscopes.")

[9] The only commenters supporting additional N11 obligations for VoIP have provided no evidence that consumers actually want such non-essential services. See, Comments of the Nebraska Public Service Commission, at 2; Comments of the California Public Utilities Commission, at 4-5; Comments of the Public Utilities Commission of Ohio, at 3-4; Comments of the National Emergency Number Association ("NENA"), at 4.

otherwise be offered in the competitive marketplace. The pace of VoIP innovation underscores that the FCC should take a light hand on competitive services.

As such, the FCC should decline to expand N11 regulation beyond the public safety related parameters already established. If, however, the FCC is inclined to impose additional N11 mandates on interconnected VoIP providers, then it should examine each N11 service individually to ensure that it would enhance consumer interests and to ensure that the Commission possesses sufficient authority under Title I of the Act to impose such regulations on VoIP to deploy such features not essential to public safety and not in furtherance of a specific telephony mandate set forth in the Communications Act.[10]

II. The FCC Should Declare that Ports to a UNE-L CLEC Are Subject to the Wireline Porting Interval Once UNE Provisioning is Completed.

In the VoIP LNP Order, the FCC stated that its porting intervals and porting validation requirements are limited to simple ports, and exclude "non-simple" (or "complex") ports.[11] As a practical matter, this has meant that consumers that select services from providers that

[10] By contrast, the FCC's Title I authority is typically tied to a public safety or other significant mandate set forth expressly in the Communications Act. *See, e.g., Review of the Emergency Alert System*, Second Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 13276, ¶ 48 (2007) ("Moreover, requiring Wireline Video Providers to participate in EAS also will further our core public safety mission under Title I, which requires us to take steps to "promot[e] safety of life and property. . . "); *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Notice of Proposed Rulemaking, 19 FCC Rcd. 3373, n.2 (2004) (noting that the FCC has "broad responsibilities under Title I of the Communications Act of 1934, as amended to ensure that radio and wire communications effectively serve the public's interest in the safety of life and property and in the national defense.").

[11] *See*, *Telephone Number Requirements for IP-Enabled Service*, Report and Order, 22 FCC Rcd. 19531, ¶ 48 (2007) ("we conclude that LNP validation should be based on no more than four fields for simple ports (*i.e.*, wireline-to-wireline, wireless-to-wireless, and intermodal 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).") ("VoIP LNP Order").

utilize UNE-L to provision services, such as EarthLink's line-powered voice services ("LPV") which uniquely utilize DSL 2+ technology in the United States,[12] are denied the full benefits of speedy and efficient number porting, diminishing the customer experience and decreasing the attractiveness of such competitive offerings.[13] Given the importance the FCC has placed on these facilities-based competitive services, it should immediately declare that its porting and validation requirements extend to ports associated with customers supported by UNE-L provisioning once the UNE-L has been provisioned.

The distinction between "simple" and "non-simple" ports, developed in 2000 in a North American Numbering Council Local Number Portability Administration Working

[12] EarthLink's line powered ("LPV") bundle of voice/data services use Covad's underlying ADSL2+ transmission service and EarthLink's softswitches. This allows EarthLink to offer line-powered voice telephone service and Internet access of up to 8 Mbps in eleven markets nationwide. This is a true advanced service that – using existing copper loops – is capable of handling real-time standard definition video. As the Commission has recognized, competition over service quality and features is one of the key advantages of UNE-based competition over resale competition. By using UNEs, EarthLink and Covad are not wedded to the ILEC's technological choices. Access to UNE-L – as contemplated and specifically authorized by the Triennial Review Order ("TRO") – allows competitive providers such as EarthLink and Covad to use distinct, innovative alternatives to further the deployment of advanced telecommunications services to consumers, consistent with Section 706 of the Communications Act.

[13] As noted by the Commission in the VoIP LNP Order, simple ports have been defined by the Commission as "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*, VoIP LNP Order, n.153 (2003) (*citing Telephone Number Portability*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 23697, n.112 ("Intermodal Number Portability FNPRM") (*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)). The Commission has noted previously that "All other ports are considered "complex" ports." *See*, Intermodal Number Portability FNPRM, n. 112.

Group report,[14] was first adopted by the FCC in 2003.[15] While the FCC noted that non-simple ports "are ports that generally require more time for coordination due to factors such as number of lines, multiple geographic locations, multiple time zones, involvement of multiple service providers, or other similar factors,"[16] there is no indication that the FCC addressed or considered the impact of its distinction on the competitive landscape for UNE-based services beyond including UNE-based services in the "non-simple" category. Rather, it appears that consumer UNE-L based services were more future expectation than then-present reality when the simple/non-simple dichotomy was established, which allowed the FCC to sidestep, at that time, the competitive issues that this porting requirement would eventually present.

Since that time, however, the FCC stressed repeatedly the importance of UNE-L to bringing facilities-based competition to the consumer voice and broadband data services markets. For example, the FCC emphasized in its Triennial Review Order that unbundled access to the high frequency portion of the copper loop ("HFPL") (known as "line sharing") was not necessary because "allowing competitive LECs unbundled access to the whole loop ... creates better competitive incentives than the alternatives" since "the same physical loop is

[14] *See, North American Numbering Council, Local Number Porting Administration Working Group, Third Report on Wireless Wireline Integration*, 8 (Sept. 30, 2000).

[15] *See, Telephone Number Portability*, Memorandum Opinion and Order, 18 FCC Rcd. 20971, n.46 (2003) ("Complex ports are ports that generally require more time for coordination due to factors such as number of lines, multiple geographic locations, multiple time zones, involvement of multiple service providers, or other similar factors. Simple ports generally involve fewer complicating factors, e.g. single-line account port. ").

[16] *See, Id*., n.46.

used for multiple services,"[17] such as "voice, voice over XDSL (i.e., VoDSL), data, and video services."[18] Since then, the FCC has continued to underscore the important role of facilities-based UNE-L competition for consumers.[19] Indeed, the Commission has repeatedly touted the benefits of facilities-based competition, including advances in technological deployments, lower-prices, and creative services.[20] EarthLink and its CLEC vendor Covad have proved the Commission right and today provide consumers a facilities-based service utilizing UNE-L that is a prime example of the type of innovative competitive service that the FCC predicted in the TRO would arise out of its decision.

The lack of regulatory parity regarding the porting interval, however, sustains a regulatory imbalance and distortion in the marketplace that disfavors facilities-based UNE-L services. The Commission can and should end this regulatory distortion now, because

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[17] *See*, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978, ¶ 260 (2003) ("Triennial Review Order", or "TRO").

[18] *Id.*, ¶ 258.

[19] *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd. 2533, ¶ 3 (2005) ("By adopting this approach, we spread the benefits of facilities-based competition to all consumers, particularly small- and medium-sized enterprise customers.") (emphasis added).

[20] *See*, TRO, n.233 ("Facilities-based competition also increases the likelihood that new entrants will find and implement more efficient technologies, thus benefiting consumers."); *Commission Consideration of Applications under the Cable Landing License Act*, Report and Order, 16 FCC Rcd. 22167, ¶ 3 (2001) ("The streamlining procedures are designed to promote the expansion of capacity and facilities-based competition in the submarine cable market, which should increase innovation and lower prices for U.S. consumers of international communications services.") (emphasis added); *Promotion of Competitive Networks in Local Telecommunications Markets*, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd. 12673, ¶ 23 (1999) ("More fundamentally, however, in the absence of facilities-based competition the incumbents may lack incentives to rapidly develop and introduce innovative products.").

consumers should be entitled to enjoy these facilities-based services in the same manner they enjoy other facilities-based competitive service offerings – with reasonable assurance of speedy, predictable and efficient number porting. Failure to extend the benefits of streamlined porting intervals to UNE-based services, leaving consumers without any assured porting interval at all, serves only to tip the regulatory scale in favor of incumbent local exchange carriers ("ILECs"). Such a result is contrary to the interests of consumers, contrary to the thrust of the competitive policies of Congress and the FCC and contrary to common-sense. Especially given the very recent decision that incumbent LECs can engage in marketing activities during the number porting process,[21] it is even more important to facilities-based service competition that the FCC afford consumers the same porting intervals as for other facilities-based competitive services.

To be sure, EarthLink is aware that UNE provisioning can be a timely and complicated process that requires coordination and cooperation between competitive and incumbent carriers. This should not be the basis, however, to permit porting-in carriers to interfere with the consumer's service choices. Rather, the FCC should declare that the wireline porting interval requirements apply to ports involving UNE-L once UNE provisioning is complete. Such an approach is simple and fair-minded, and enables consumers to reap the benefits of the porting intervals even while they are served by facilities-based competitive carriers and VoIP providers that use UNE-L. Such an outcome best serves consumers and competition.

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[21] *See Bright House Networks, LLC, et al, v. Verizon California, Inc.*, Recommended Decision, DA 08-860 (rel. April 11, 2008).

CONCLUSION

For the foregoing reasons, EarthLink urges the Commission not impose on interconnected VoIP providers additional N11 numbering obligations absent a sound and demonstrated public safety function, and to declare that ports involving UNE-L are subject to wireline porting intervals as soon as UNE provisioning is completed.

Respectfully submitted,

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