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
	)	

REPLY COMMENTS OF RCN TELECOM SERVICES, INC.

RCN Telecom Services, Inc. ("RCN"), by its attorneys, submits these reply comments in response to the Commission's *Notice of Proposed Rulemaking* ("*NPRM*") in the above-captioned proceedings.[1] As emphasized by RCN and many other commenters, the Commission should maintain the current porting timeframes, as the processes and time intervals have proven to be efficient and manageable.

RCN takes this opportunity to respond to the suggestion made by some companies that "a next day porting interval would … limit the opportunity for anti-competitive activities by the porting out provider."[2] While RCN appreciates the goal of preventing porting-out carriers from obstructing or delaying the porting process, RCN does not agree that shortening the porting interval for simple ports will address the anticompetitive

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[1] *Telephone Number Requirements for IP-Enhanced Services Providers, Local Number Portability Porting Interval and Validation Requirements, IP-Enabled Services, Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, and Number Resource Optimization*, WC Docket No. 07-243, WC Docket No. 07-244, WC Docket No. 04-36, CC Docket No. 95-116, CC Docket No. 99-200, *Report and Order, Declaratory Ruling, Order on Remand and Notice of Proposed Rulemaking*, FCC 07-188 (rel. Nov. 8, 2007) ("*NPRM*").

[2] *See, e.g.*, Comments of Comcast Corporation, WC Docket No. 07-243 *et al*., at 8 n.13 (filed Mar. 24, 2008) ("Comcast Comments").

effects associated with retention marketing campaigns. A shorter porting interval for simple ports does not address effectively the anticompetitive impact of retention marketing and fails to prevent all the other retention marketing opportunities that can arise outside of simple ports. If the Commission does not prohibit retention marketing outright, it would encourage executing carriers to "game" the porting process (for instance, by coming up with contrived "errors" to justify rejecting otherwise valid port requests) to bypass the shortened porting interval for simple ports. As suggested in this proceeding, the Commission "must examine the entire porting process and not simply focus on the end result of imposing a 48-hour interval on the industry."[3] Accordingly, even if the Commission shortens the porting interval, it should maintain its prohibition on retention marketing.

I. THERE IS AMPLE SUPPORT IN THE RECORD FOR MAINTAINING THE CURRENT PORTING INTERVALS

At the outset, it must be noted that RCN was hardly alone in suggesting that the Commission retain the current porting timeframes.[4] For providers like RCN that use a hybrid manual and electronic port processing system as described in its Comments, a

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[3] Comments of One Communications Corp., WC Docket No. 07-243 *et al*., at 4 (filed Mar. 24, 2008) ("One Communications Comments").

[4] *See, e.g.*, One Communications Comments at 4 ("One Communications submits that the 48-hour interval would be too aggressive a timeframe for the industry to meet without major changes to both companies' internal systems as well as industry practices."); Comments of the Voice on the Net ("VON") Coalition, WC Docket No. 07-243 *et al*., at 3 (filed Mar. 24, 2008) ("Additional changes in rules at this time, before the Commission is able to assess the success of its only recently adopted LNP rules for Interconnected VoIP providers and without evidence of any problem, will likely result in costs far exceeding the benefits afforded to consumers."); Comments of Windstream Corporation, WC Docket No. 07-243 *et al*., at 3 (filed Mar. 24, 2008) ("Windstream Comments") ("Windstream strongly opposes the proposed 48-hour porting interval rule.").

shorter mandatory timeframe would require a costly transition to a highly automated porting system requiring the commitment of substantial personnel and capital.[5] For other providers whose porting process is largely manual, "[t]he proposed 48-hour requirement would overwhelm … existing resources and require significant new expenditures."[6] Moreover, as Verizon Wireless aptly noted, "[t]he tighter forty-eight hour deadline may not necessarily improve the process for both the old service provider (OSP) and the new service provider (NSP); both carriers may legitimately need the time to, respectively, disconnect the customer's service in the OSP's systems and to execute the port in the NPAC and the NSP's systems."[7]

If the Commission were to go against this record and adopt a shorter porting interval, it must recognize that a significant amount of time and effort is required for the industry to implement such changes. As One Communications points out, "[i]t would defeat the purpose of accelerating the porting interval to mandate such a change without giving individual carriers, and the industry as a whole, the chance to engage in adequate evaluation and planning activities prior to implementation."[8] RCN therefore reiterates its request that if the Commission were to implement a shortened porting interval, it should provide a minimum of 12 months between the effective date of any new porting interval rules and the date of required compliance. This 12-month implementation time period is

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[5] *See* Comments of RCN Telecom Services, WC Docket No. 07-243 *et al*., at 2 n.13 (filed Mar. 24, 2008) ("Comments").

[6] Windstream Comments at 3.

[7] Comments of Verizon Wireless, WC Docket No. 07-243 *et al*., at 2 (filed Mar. 24, 2008) ("Verizon Wireless Comments").

[8] One Communications Comments at 4.

absolutely critical to RCN and other carriers to update and automate their porting processes to meet tighter deadlines.[9] Moreover, a 12-month implementation period will give industry working groups ample time to confer during this period to address any inter-carrier issues that arise in the implementation process.[10]

II. SHORTENING THE PORTING TIMEFRAME DOES NOT PREVENT ANTI-COMPETITIVE ACTIVITIES BY PORTING-OUT PROVIDERS

RCN agrees with One Communications that "the Commission must examine the entire porting process and not simply focus on the end result of imposing a 48-hour interval on the industry."[11] Applying an abbreviated time period only to simple ports does not address the porting-out carrier's ability to abuse their position as the underlying carrier to unfairly send retention marketing aimed at porting requests that have been rejected, and at complex ports. In addition, losing carriers have the incentive to "game" the system by manufacturing "errors" or other discrepancies in the port request, thereby removing the request from the proposed reduced simple port interval.

For carriers such as RCN and others, virtually the *only* way to acquire new customers is to attract them from existing incumbent telecommunications providers.

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[9] Similarly, other commenters urge the Commission to provide ample time to comply with any shortened porting interval. *See, e.g.*, Comcast Comments at 9-10 ("the Commission should adopt a schedule for gradually reducing the interval for manually-processed port requests from two days to next-day within two years."); Comments of the Nebraska Public Service Commission, WC Docket No. 07-243 *et al*., at 4 (filed Mar. 24, 2008) ("Any guideline adopted by the Commission should balance consumer interest with the practicalities of smaller carriers' ability to comply with porting interval requirements."); One Communications Comments at 4 ("One Communications recommends the Commission allow carriers at least twelve months after the effective date of any rule requiring a 48-hour interval to implement the interval.").

[10] *See* One Communications Comments at 4.

[11] *Id*.

Thus, under the Commission's rules, for every new customer RCN attracts from an incumbent who also desires to port his or her telephone number, RCN must, in advance of the port, submit a Local Service Request ("LSR") to the incumbent. This advance notice is necessary to avoid double-billing the customer, to ensure that the customer's service is not degraded or interrupted, to ensure continued access to emergency services during the porting process, and to make number portability work. The LSR serves as both a request to cancel the customer's current service and a request to port the customer's telephone number to RCN.

The LSR, *inter alia*, identifies RCN as the recipient of the port, and the account number, name and location of the customer whose service is being switched. As the Commission has recognized in various contexts, where a service provider has no choice but to share proprietary information with a competitor, the receiving carrier may opportunistically use that proprietary information for its own marketing purposes and possibly persuade the customer not to switch carriers.[12] For example, the Commission found that "competition is harmed if *any* carrier uses carrier-to-carrier information, such as switch

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[12] *See Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes in Consumers Long Distance Carriers*, CC Docket No 94-129, *Second Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 1508, 1572 (1998); *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information; and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115, 96-149, *Order on Reconsideration and Petitions for Forbearance*, 14 FCC Rcd 14409, 14449-50 (1999) ("*CPNI Reconsideration Order*"); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket Nos. 96-115, 96-149, and 00-257, *Third Report and Order and Third Further Notice of Proposed Rulemaking*, 17 FCC Rcd 14860, 14918-19 (2002) ("*CPNI Third Report and Order*"); *Third Slamming Reconsideration Order*, 18 FCC Rcd at 5110.

or PIC change orders, to trigger retention marketing campaigns, and [we] prohibit such actions accordingly."[13]

In no other competitive marketplace is the current provider of products or services given this amount of information about a customer when that customer decides to switch providers; in most instances, the current provider is given no notice. For example, if an owner of a Chevrolet car decides to sell his or her car to purchase a Ford, Ford would not have to provide Chevrolet with the name and location of that customer. Ford only has to make its cars attractive enough to entice the Chevrolet customer to switch. Here, RCN has made its services attractive enough so that the losing carrier's customer decides to switch service providers. But for technical reasons related to the network architecture of the Public Switched Telephone Network, RCN must share its new customer's information with the executing carrier to the detriment of RCN if retention marketing is not prohibited by the FCC's rules.

A. Incumbents Can Still Unfairly Use Retention Marketing For Porting Requests That Have Been Rejected

Even a porting interval of zero for simple ports would not preclude retention marketing based on porting requests that have been rejected by the losing carrier. If an LSR is incomplete or inaccurate, a reject will be sent back to the winning carrier. At this point in the process however, the name and address of the porting customer will already be known by the losing carrier. The rejection effectively takes the losing carrier out of any porting time period requirement (two-day or otherwise), and since the number will not be ported because of the rejection, the executing carrier then has the chance to use

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13 *CPNI Reconsideration Order*, 14 FCC Rcd at 14449 (emphasis in original).

that proprietary information contained in the LSR for its own marketing purposes and to possibly persuade the customer not to switch carriers unless the Commission prohibits retention marketing. The Commission should recognize that customer information gathered this way is not obtained through normal channels and is derived by the carrier exclusively from its status as the underlying carrier. Losing carriers should therefore be prevented from using proprietary customer data obtained from a rejected LSR for retention marketing purposes.

To allow a losing carrier to use proprietary customer information in this manner also provides incentive for the losing carrier to "game" the system by manufacturing "errors" or other discrepancies when receiving an LSR, thereby causing the port request to be rejected. Consistent with past findings that that a telecommunications carrier violates Section 222(b) when it "exploits advance notice of a customer change by virtue of its status as the underlying network-facilities or service provider to market to that customer,"[14] the Commission should therefore deem this proprietary customer information as confidential that cannot be disclosed to any third-party, and cannot be used by the losing carrier for retention marketing purposes.

B. Losing Carriers Can Still Unfairly Use Retention Marketing For Complex Ports

Reducing the time interval for simple ports does nothing to preclude the losing carrier from employing retention marketing for numbers related to complex ports. The Commission has defined "simple port" as "those ports that: do not involve unbundled

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[14] *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information; and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115, 96-149, *Order on Reconsideration and Petitions for Forbearance*, 14 FCC Rcd 14409, 14450 (1999).

network elements, involve an account for a single line (porting a single line from a multi-line account is not a simple port), do not include complex switch translations (*e.g.*, Centrex or Plexar, ISDN, AIN services, remote call forwarding, multiple services on the loop), may include CLASS features such as Caller ID, and do not include a reseller. All other ports are considered 'complex' ports."[15] Because simple ports involve accounts for a single line only, simple ports tend to be associated with individuals and single-families. Complex ports, on the other hand, tend to be associated with businesses, larger customers, or residential customers that subscribe to additional or bundled service offerings, like DSL, generating more revenue.[16] Losing carriers have an even greater incentive to use unfair retention marketing to keep those customers associated with complex ports, since businesses and large customers typically generate more revenue per billing cycle than individuals or single families.

C. Losing Carriers Can Still Engage in "Winback" Marketing

As discussed above, reducing the porting interval for simple ports does not address the anticompetitive issues associated with retention marketing. As such, the Commission should not rely on such a reduction to address these concerns. Moreover, the Commission need not relax its retention marketing rules out of any concern that competitive choice would be impaired, because the losing or executing carriers still may market to customers that have left their service. Specifically, as the Commission has recognized, a losing carrier is free to rely on its *own* information regarding carrier changes in winback

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[15] *Telephone Number Portability*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, n.112 (2003).

[16] In this manner, complex ports also encompass higher revenue residential customers.

marketing efforts, so long as the information is not derived exclusively from its status as an executing carrier.[17] The Commission has found that under these circumstances, the potential for anti-competitive behavior by an executing carrier is curtailed because competitors have access to equivalent information for use in their own marketing and winback operation.

RCN agrees with this position and submits that winback marketing does not raise the same issues as retention marketing because the customer is no longer enticed to stay by an unilateral offer that is the hallmark of a retention marketing campaign. Without the benefit of a competing bid by the winning carrier, the losing carrier has an unfair advantage in a retention marketing campaign.

III. CONCLUSION

The Commission should not reduce the simple porting interval as it will impose substantial costs on those carriers that have not automated their porting process. Should

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[17] *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, *Second Report and Order and Further Notice of Proposed Rule Making*, 14 FCC Rcd 1508, 1573-74 (1998). This is also consistent with the Commission's findings regarding winback in its CPNI proceeding. *See CPNI Third Report and Order*, 17 FCC Rcd at 14917-18 ("[w]e reaffirm our existing rule that a carrier executing a change for another carrier is prohibited from using such information to attempt to change the subscriber's decision to switch to another carrier. However, because we recognize that a carrier's retail operations may, without using information obtained in violation of section 222(b), legitimately obtain notice that a customer plans to switch to another carrier or contact a defecting customer in the ordinary course of business, we decline to impose a presumption that all retention efforts are illegal, . . . we agree with BellSouth's argument that deeming any "winback or retention effort[s], including those based on information learned through the carrier's retail operations, . . . presumptively unlawful would deprive customers of . . . pro-consumer, pro-competitive benefits.").

the Commission reduce the porting interval, it must provide a minimum of 12 months from the effective date of the Order to allow companies to update their porting systems.

Moreover, even if the Commission does reduce the porting interval, it should continue to prohibit retention marketing. Relying on a reduced porting interval to address the anticompetitive impact of retention marketing campaign is not sufficient to protect the public interest as it will lead to carriers rejecting simple port requests to escape the shorter interval requirements and does not address the anticompetitive harm caused by retention marketing targeted at complex ports.

Respectfully submitted,

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