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Federal Communications Commission
Office of the Secretary

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

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INTRODUCTION

The comments before the Commission in the above-captioned proceeding show that several stars have aligned: Advances in technology have made the reduction of porting intervals possible and less expensive; consumers' experience with wireless service has led them to expect faster porting times; and growing competition for wireline customers has created the need for a clear and simple set of rules to govern the porting process.

The comments in this proceeding generally support the Commission's tentative conclusions and are consistent with the reforms advocated by Charter Communications, Inc. ("Charter"). Charter submits these reply comments to address those comments claiming that porting reform is unnecessary or too costly. Such claims are to be expected from incumbent LECs who have an interest in slowing the migration of their customers to competitors. But the benefits to consumers and competition of efficient number porting plainly outweigh the costs, as discussed below.

ARGUMENT

I. THE COMMISSION SHOULD ADOPT A 48-HOUR PORTING INTERVAL.

In response to the Commission's tentative conclusion to adopt a 48-hour interval, many commenters have joined Charter in recognizing the benefits that a reduced interval will bring to consumers[1] and competition,[2] and the technological[3] and economic[4] feasibility of the proposal. A few commenters, however, have opposed the proposal. As explained below, Charter believes that these opponents have drastically understated the proposal's significant benefits, while at the same time overstated the burden of compliance. The 48-hour period – which is neither the

[1] Charter Comments at 2; Sprint-Nextel Comments at 1.
[2] Charter Comments at 2-3; Comcast Comments at 8.
[3] Charter Comments at 4; Comcast Comments at 6-10.
[4] Charter Comments at 4; Sprint-Nextel Comments at 22-24.

shortest nor the longest interval urged by commenters – is a reasonable and pro-competitive compromise that Charter strongly encourages the Commission to adopt.

Tellingly, the opponents' primary argument is not that 48-hour porting would be burdensome, costly or anti-consumer, but that it merely "would have little effect."[5] Verizon, for example, argues at length that although a 48-hour interval is "possible," it is not needed because *some* porting-in providers would not avail themselves of it *some* of the time.[6] This argument fails at multiple levels. *First*, the record before the Commission shows that porting-in providers *do* avail themselves of the earliest-possible porting-in date with great frequency. That of course is why Charter is seeking to reduce the porting interval in this proceeding. Other commenters agree with Charter: Comcast, for example, explains that the "vast majority" of its new subscribers are ported in through e-bonding arrangements within a single business day of receiving the request.[7]

Second, Verizon and other incumbent LECs, such as Embarq, do not explain why the Commission's default interval should be set to accommodate the slowest porting-in providers. Charter believes that competition and the consumer are best served by setting a short but reasonable interval as a default, and then letting porting-in providers who seek more time to do so as necessary in specific cases.[8] That is precisely what the Commission's proposed 48-hour rule does.

Third, opponents of the proposal have adopted an indefensibly static view of the porting process. Verizon is incorrect when it asserts that "[n]othing has changed" since the Commission last reviewed the rule four years ago, let alone since the Commission adopted the rule as an

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[5] *E.g.*, Verizon Comments at 3; Windstream Comments at 4.
[6] Verizon Comments at 3.
[7] Comcast Comments at 7-8.
[8] *See also* Sprint Nextel Comments at 12 n.35

interim measure 10 years ago.[9] The comments make clear that there is currently no technical limitation that would prevent providers from processing simple ports within 48 hours.[10] Indeed, new technologies are further reducing the time needed by porting-in providers to accomplish porting. The Commission should not be swayed by those who ask it to ignore the obvious improvements in technology that support a 48-hour interval.

Likewise, the Commission should reject the argument that porting-*out* providers will not comply with a 48-hour rule. Opponents of the rule rest this claim on an assertion that porting out providers often fail to comply with the current deadline.[11] To the extent that the opponents' complaint is that porting-out providers will *choose* not to comply with a 48-hour rule, a clear statement from the Commission that the porting interval is binding will alleviate this problem and prevent porting-out providers from gaming the system. To the extent that the complaint is that porting-out providers will be *unable* to comply with the rule, that claim cannot be squared with the facts. In Canada, wireline providers been operating successfully under a two-day porting interval since 2003.[12] Indeed, as early as 2004, NANC found that the four-day interval could easily be cut to 53 hours (in a proposal that, as discussed below, Verizon and other incumbent LECs *endorsed*). For its part, Charter can and will comply with a 48-hour period, and other providers have made the same pledge.[13]

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[9] Verizon Comments at 3.
[10] Comcast Comments at 9; Time Warner Comments at 3; NCTA Comments at 3;
[11] Verizon Comments at 5-6; Embarq Comments at 2.
[12] *See Incumbent Local Exchange Carrier Service Intervals for Various Competitor Services*, Telecom Decision CRTC 2003-48, ¶¶ 33-34 (July 18, 2003), *located at*: http://www.crtc.gc.ca/archive/ENG/Decisions/2003/dt2003-48.htm. *See also* Comcast Comments at 9.
[13] Comcast Comments at 9.

Unsurprisingly, Verizon and other opponents also argue that reducing the porting interval will cost too much money.[14] This argument is meritless. Tellingly, incumbent LECs *endorsed* a NANC proposal in 2004 that would have cost $50 million and reduced the interval to 53 hours, a period comparable to the one that the Commission proposes today.[15] Indeed, Verizon concedes that the costs it faced under the NANC proposal are "roughly the same" as what it would cost to comply with the Commission's current 48-hour proposal.[16] The rule's opponents do not explain why a reduced porting period was acceptable then, but not today, especially given that consumer expectations have only risen and the costs of compliance fallen.

Embarq asserts that the changes required to comply with the shortened interval will run as much as a $1 billion.[17] This inflated figure is absurd. The $1 billion estimate comes from a 2004 NANC proposal that provided for a 49-hour porting interval. The billion-dollar proposal was presented along side the $50 million proposal cited above that drew the support of Verizon and other opponents of the 48-hour period today. That billion-dollar estimate is not credible because it implies a cost of $950 million to move from a 53-hour porting interval to a 49- (or 48-) hour interval. Certainly the commenters who cite the $1 billion figure do not reconcile the proposals. And in any case, their claims are belied by Verizon's admission noted above that the

[14] *E.g.*, Verizon Comments at 8-9; Embarq Comments at 7-8.
[15] Intermodal Porting Interval Issue Management Group, *NANC Report & Recommendation on Intermodal Porting Intervals* at 4, 30 (May 3, 2004), attached to Letter from Robert C. Atkinson, Chairman, North American Numbering Council, to William Maher, Chief, Wireline Competition Bureau, FCC, CC Docket No. 95-116 (filed May 3, 2004).
[16] Verizon Comments at 8
[17] *E.g.*, Embarq Comments at 3.

cost of moving to a 48-hour interval will be "roughly the same" as moving to a 53-hour interval, which Verizon estimates would cost it $10 million.[18]

In the final analysis, the cost arguments of the incumbent LECs are to be expected, as every time the Commission has sought to promote number portability, carriers with the most to lose have complained.[19] But such complaints cannot outweigh the sizeable benefits to consumers and competition that a reduced porting interval would bring. Porting technology has improved, and consumers have grown to expect quick porting in light of their wireless experiences. The impetus to reduce porting times in the wireline arena is thus greater than it has ever been before. Even AT&T concedes that "reducing current porting levels . . . can produce benefits for consumers and strengthen competition among service providers."[20] Just as the Commission properly concluded with respect to wireless carriers that it was "not persuaded that the costs of LNP will outweigh the benefits consumers will experience," the same cost-benefit calculation holds true here.

Finally, Charter asks that the Commission treat the 48-hour rule as a true 48-hour period, rather than define it in terms of business days or any other measure. Based on their experience with wireless providers, consumers expect that porting should be completed in a matter of hours. And the reality in the marketplace is that many consumers choose to port their numbers on weekends. They should not be forced to wait additional days before the task is accomplished. Moreover, many wireline-to-wireline ports require that the customer be at home to complete the

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[18] Verizon Comments at 7. Verizon's market capitalization is over $100 billion. *See* http://finance.yahoo.com/q?s=vz (showing a market capitalization of $104 billion as of April 18, 2008).

[19] *See, e.g., In re Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability*, Memorandum Opinion and Order, 17 FCC Rcd 14972, ¶ 29 (2002).

[20] AT&T Comments at 2.

porting process. A business-hour only rule would be an extreme inconvenience to customers who work, or are otherwise outside the home, during those hours. In short, undercutting the 48-hour rule by making it in effect a 96-hour rule on weekends, (or more, depending on holidays) is not in the public interest.

II. THE PORTING PROCESS SHOULD BE STREAMLINED.

The comments before the Commission demonstrate beyond a doubt that the porting process has been grievously slowed by the failure of porting-out providers to identify all known errors in an LSR at the same time, and to convey the nature of those errors to the porting-in provider. Echoing Charter's comments, comments from Time-Warner, Sprint-Nextel, and others reveal the tremendous delays and consumer dissatisfaction occasioned where the porting-out provider identifies errors one at a time.[21] Those comments also demonstrate that identifying all errors at once is entirely feasible as technological matter, especially in light of the Commission's decision to limit LSRs to four fields.

Although it is difficult to see what legitimate basis could exist for defending needlessly delaying porting requests for days as they are submitted and resubmitted, a handful of commenters attempt to argue that the consumer is actually better served by such a system.[22] These commenters assert – and it is nothing but bare assertion – that it will take longer to identify all the errors in a request than it would to reject and resubmit (and reject and resubmit) a request, and that unspecified "technical difficulties" will hinder checking for all errors at once.[23] But an LSR will now contain at most four simple fields, and any delay or difficulty caused by checking them all will be trivial. In contrast, resubmission typically takes a day or more for each

[21] Time Warner Comments at 4; Sprint Nextel Comments at 12-13; T-Mobile Comments at 6.
[22] *E.g.*, Verizon Wireless Comments at 3.
[23] *Id.*

error – a substantial inconvenience to the customer who is seeking to move to his or her new service as quickly as possible. It is thus entirely possible to have speedy rejection while at the same time avoiding the need for re-rejection.

III. THE COMMISSION'S PROPOSED APPROACH TO VALIDATION IS CORRECT.

Many commenters seek to bypass the Commission's four-field approach to validation by arguing that additional fields should be required by providers before processing a port.[24] Although these commenters claim that the extra fields they seek to require are not validation fields, the reality is that they treat them as additional requirements to process the port. The Commission's position is clear: only four specific fields may be required to process a port.[25] Commenters who argue that they should have the unilateral right to require additional information are simply seeking validation by another name. The Commission should reject this attempt to undermine the efficiency of the porting process or to delay porting while negotiating such terms.

Charter understands that some carriers may want additional information beyond the four fields to process a port. The proper remedy for such situations is to allow the porting-in and porting-out carriers *mutually* to agree to share additional information.[26] The Commission should clarify that its four-field rule does not prohibit such mutual arrangements. At the same time, however, the Commission should reject any ability of carriers unilaterally to require additional information.

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[24] Embarq Comments at 6.

[25] Indeed, the Commission has made clear that the four fields are the most a carrier can ask for; a carrier is not prohibited from using less than the four fields the Commission has allowed. *See In re Telephone Number Requirements for IP-Enabled Services Providers*, Notice of Proposed Rulemaking, 22 FCC Rcd 19531, ¶ 47 (2007) ("no more than four fields").

[26] *See* GCI Comments at 4.

IV. THE COMMISSION CAN IMPROVE THE PORTING PROCESS BY ADDRESSING OTHER OPERATIONAL ISSUES.

Several other operational issues are worthy of the Commission's attention.

First, Charter notes that despite whatever other disagreements commenters may have, no one disputes Charter's assertion that a subscriber's dial tone should never be cancelled before the port is completed. Leaving a subscriber without a dial tone can never be justified, and Charter asks the Commission to affirmatively rule that carriers may not use policies that result in premature dial tone cancellation.

Second, Charter notes that no commenter has defended the practice of assessing number portability surcharges, such as so-called "administrative processing charges" or "LSR charges," on porting-in providers. As the Commission has recognized, in porting transactions with facilities-based providers like Charter, "incumbent LECs may not recover any number portability costs through interconnection charges or add-ons to interconnection charges to their carrier 'customers.'"[27] Assessing fees on porting-in carriers inhibits number porting and violates the statutory mandate that "The cost of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis."[28] Because Charter nevertheless continues to face demands for such charges, the Commission should reaffirm that they are flatly prohibited.

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[27] *In re Telephone Number Portability*, Memorandum Opinion and Order,17 FCC Rcd 2578, ¶ 62 (2002). Charter notes that certain companies today will assess an order processing charge (sometimes called an LSR charge) for every port request made by Charter on the basis that they are processing an order. This is regardless of whether a specific charge for port requests is included in an interconnection agreement. Likewise, certain companies will assess so-called switch port charges even where no resale occurs and no switch port is used that is related to processing a port request by a competitor.

[28] 47 U.S.C. § 251(e)(2); *see In re Telephone Number Portability*, Memorandum Opinion and Order, 17 FCC Rcd 2578, ¶¶ 62, 65 (2002).

Third, Charter continues to urge the Commission to require that carriers provide affirmative notice of all changes to their porting requirements. Such notice will help effectuate the Commission's stated goals of ensuring efficient and error-free porting. Little opposition was expressed concerning this proposal, and it should not dissuade the Commission. RCN, for example, opposes such a requirement, but notes that it already provides this information on its website, undermining its suggestion that such a requirement would be onerous.[29] Likewise, One Communications offers nothing but generalities in asserting that notification would be "constricting."[30] However, unless a carrier knows in advance what the porting requirements are, there are great risks of error and delay in porting a customer's number, which undermine customer confidence in switching providers. Indeed, changing porting requirements without advance notice is an easy means of anti-competitively thwarting customer migration. Fair and efficient porting cannot happen unless providers can know in advance what each expects. Charter's proposal does nothing more than help ensure that will happen.

Fourth, the Commission should make clear that an interconnection agreement is not a prerequisite for wireline-to-wireline number porting. Negotiating or arbitrating an interconnection agreement can be a lengthy process that is wholly unnecessary for the "minimal exchange of information" required for number porting.[31]

Windstream's assertion that sections 251 and 252 of the Communications Act require that there be an interconnection agreement before number porting can occur is simply incorrect.[32]

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[29] RCN Comments at 8

[30] One Communications Comments at 8.

[31] *In re Telephone Number Portability*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, ¶ 34 (2003).

[32] Windstream Comments at 6.

Interconnection agreements apply only to arrangements with incumbent LECs.[33] Yet the duty to provide number portability is a section 251(b) obligation that applies to all LECs (unlike the section 251(c) obligations applying specifically to incumbent LECs).[34] It thus makes no sense to require a number porting arrangement to be embodied in an interconnection agreement merely because one of the parties is an incumbent LEC. Indeed, this interpretation would mean that only those carriers with the greatest incentive to slow number porting have the right to insist on lengthy and sometimes cumbersome interconnection negotiations and arbitrations before their numbers can be ported. This would turn the pro-competitive purpose of sections 251 and 252 on its head.[35]

Similarly, Embarq's claim that interconnection agreements are a necessary prophylactic device to prevent certain compensation arrangements that Embarq characterizes as arbitrage misses the mark.[36] There is ample opportunity for the Commission to consider Embarq's intercarrier compensation concerns in other proceedings. It makes no sense to address them indirectly by erecting an artificial interconnection agreement requirement that will inhibit number porting. This is particularly the case given Embarq's acknowledgment that many number porting arrangements do not raise arbitrage concerns or require direct interconnection.[37]

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[33] *See* 47 U.S.C. § 252.
[34] *See id.* § 251.
[35] Windstream's reliance on the Qwest decision (*In re Qwest Communications International, Inc Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, Memorandum Opinion and Order, 17 FCC Rcd 19337 (2002)) is misplaced. That decision involved specific settlement agreements entered into by Qwest, and the Commission "decline[d] to address all the possible hypothetical situations presented." *Id.* ¶ 11.
[36] Embarq Comments at 11-18.
[37] *See id.* at 14-16.

CONCLUSION

For the foregoing reasons, Charter respectfully asks the Commission to adopt the proposals concerning porting described above.

Respectfully submitted,

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