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Washington, D.C. 20554

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Office of the Secretary

In the Matter of)
)
Local Number Portability Porting Interval and) WC Docket No. 07-244
Validation Requirements)
)

REPLY COMMENTS OF AT&T INC.

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I. INTRODUCTION AND SUMMARY

AT&T, Inc. and its affiliated companies (collectively, AT&T) respectfully submit the following reply comments in response to the Commission's November 2007 Notice of Proposed Rulemaking on local number portability (LNP) porting interval and validation requirements (2007 LNP NPRM).¹ AT&T believes that a shortened porting interval for simple ports would enhance competition and benefit consumers and we generally support the Commission's tentative conclusion to reduce the interval to approximately two days. To ensure that any such reduced porting interval is implemented in an orderly, technically appropriate manner, AT&T strongly recommends that, *before it adopts any final rules*, the Commission refer this matter to the North American Numbering Council (NANC) with directions to expeditiously update its 2004 recommendations for reducing the interval for simple ports.

In addition, AT&T urges the Commission not to impose mandatory porting intervals on wireless-to-wireless simple ports because the current 2.5 hour standard, which was developed by the industry without any government regulation, is serving consumers well and no commenter has offered a credible argument to the contrary. Similarly, the Commission should not impose additional N11 abbreviated dialing requirements on interconnected VoIP providers (beyond the existing 911 and 711 requirements) because those additional requirements (e.g., 511 access to travel and information services) do not involve critical public safety concerns and would place significant compliance burdens on interconnected VoIP providers. Finally, in the event the Commission adopts reduced porting intervals or other numbering obligations, it must enable providers to recover the reasonable costs of complying with those obligations.

¹ *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, FCC 07-188 (released Nov. 8, 2007).

II. DISCUSSION

A. AT&T Generally Supports the Commission's Tentative Conclusion to Adopt a Reduced Porting Interval, Subject to NANC's Expedited Review of that Conclusion.

In its comments, AT&T stated that a “sound case” could be made for reducing the current interval for simple ports from four days to approximately two days.² Speedier porting, we explained, would “produce benefits for consumers and further strengthen competition among service providers.”³ Other parties supporting a reduction in the porting interval echo these same pro-consumer and pro-competition sentiments.⁴ As NCTA observes, “[t]he ability of consumers to quickly and easily port their numbers to a new carrier is critical to preserving the competition that exists today, which has been remarkably beneficial for consumers . . . [because] the sooner the port can be processed, the sooner the customer is able to use its preferred provider.”⁵

Nonetheless, some commenters oppose a reduction in the interval for simple ports. These parties do not deny that consumers would benefit from a shortened porting interval (nor could they credibly do so). Instead, they argue that reducing the porting interval would impose undue costs and burdens on carriers that still rely on manual porting processes, particularly smaller, rural carriers that receive few port requests each month.⁶ AT&T is certainly mindful of the challenges that some carriers (including AT&T itself) will face in order to implement reduced porting intervals. We believe, however, that rather than creating a blanket exemption for rural

² AT&T at 6. *See also* AT&T at 1-2, and Attachment A (urging the Commission to explicitly distinguish between business hours and clock hours).

³ AT&T at 2.

⁴ *See* NCTA at 2; Ohio PUC at 6; Time Warner at 2.

⁵ NCTA at 2-3. *See also* Separate Statements of Chairman Martin and Commissioner Adelstein, 2007 LNP NPRM (asserting that a reduced porting interval will benefit consumers).

⁶ ITTA at 1-4; Minnesota Independent Coalition at 1-3; OPATSCO at 2-5; Windstream at 2-6;

carriers, as some commenters advocate,⁷ the Commission should provide a sufficient amount of time for providers to implement whatever reduced interval is adopted and should ensure that all providers, including incumbent LECs, have the ability to fully recover the reasonable costs of complying with any reduction in the porting interval.⁸ To the extent a particular provider faces unique hardships in achieving the reduced interval, such a provider would, of course, be free to seek a waiver from the Commission.⁹ As RCN suggests, however, any such interval waivers should be “narrowly tailored to allow for waiver only of those requirements found to be burdensome” and should be granted “for as short a period of time as possible.”¹⁰

This approach, moreover, is consistent with NANC’s 2004 Report & Recommendation on Intermodal Porting Intervals (*NANC Report*).¹¹ In that *Report*, NANC concluded it would be practicable to reduce the current 4-day porting interval to approximately 2 days (specifically, between 49 and 53 hours) and offered the Commission a variety of different options for achieving such a reduction.¹² NANC also recognized, however, that rural carriers may face particular challenges in meeting any reduced porting interval, given their smaller size and the potentially significant operational changes necessary to implement a shortened interval.¹³ With those concerns in mind, NANC opined that the costs of implementing a reduced interval would appear to be recoverable under precedent on LNP cost recovery and urged the Commission to

⁷ ITTA at 1; OPATSCO at 5.

⁸ See *infra* section II.E. (discussing cost recovery).

⁹ See 47 C.F.R. 1.3 (waiver of Commission rules may be granted for “good cause”). See also *Embarq Petition for Waiver of Deadline*, WC Docket No. 07-244, Order, FCC 08-31 (released Feb. 5, 2008) (granting waiver of deadline for implementing streamlined validation processes for simple ports).

¹⁰ RCN at 6.

¹¹ NANC Report & Recommendations on Intermodal Porting Intervals (May 3, 2004), available at http://www.nanc-chair.org/docs/nowg/May04_Intermodal_Porting_Report.doc

¹² *NANC Report* at 15-31.

¹³ *NANC Report* at 25.

expressly address the issue of cost recovery.¹⁴ NANC further pointed out that rural carriers would have the ability to “seek a waiver from LNP and[/]or shorter porting intervals under existing rules and regulations.”¹⁵

If the Commission nonetheless chooses to exempt rural carriers from a reduced porting interval requirement or chooses to waive such a requirement in specific cases, the Commission should make clear that other carriers who port-out a number to a non-compliant carrier will only be held to the same porting interval applicable to that non-compliant carrier. In the absence of such an express ruling from the Commission, compliant carriers could find themselves at a significant competitive disadvantage compared to their non-compliant counterparts. Indeed, a non-compliant carrier would potentially be able to port-in customers from a compliant carrier within the reduced interval (e.g., two days), but compliant carriers would have to wait up to four days (or longer) to port-in customers from the non-compliant carrier. To avoid this competition-distorting asymmetry, the Commission should clarify that ports from a compliant carrier to a non-compliant carrier will be governed by the interval applicable to the non-compliant carrier.

In all events, *before any final rules are adopted*, AT&T strongly urges the Commission to refer its tentative conclusion regarding a reduced porting interval to NANC for its recommendations on the procedures and process flows needed to efficiently implement that tentative conclusion, and for a reasonable timeline for the communications industry to achieve compliance (e.g., 12 to 18 months). NANC is the entity charged with “[a]dvising the Commission on policy matters relating to the administration of the [North American Numbering Plan] in the United States [and] [m]aking recommendations, reached through consensus, that

¹⁴ *NANC Report* at 24-25.

¹⁵ *NANC Report* at 25.

foster efficient and impartial number administration.”¹⁶ As such, NANC is uniquely situated to provide an expert evaluation of the Commission’s tentative conclusion on the porting interval. Accordingly, the Commission should direct NANC to update its 2004 report and recommendations on porting intervals to account for changes in technology, costs, diversity of market participants, and any other relevant factors that may affect the practicability of implementing the Commission’s proposal to shorten the interval for simple ports. The Commission should instruct NANC to prepare the updated report on an expedited basis (e.g., within 90 days) and the Commission should carefully consider those recommendations in formulating any final porting rules.

Finally, although AT&T supports a reduction in the interval for simple ports, we believe that any Commission-mandated timeframe should serve as a “backstop” or “ceiling” on the porting interval and should not prevent parties from voluntarily agreeing to even shorter intervals if they so choose. Indeed, some parties in this proceeding have suggested that they are capable of performing simple ports in less than two days.¹⁷ To the extent those parties (or any other providers) are willing to enter into reciprocal porting arrangements that specify shorter intervals than the intervals the Commission ultimately adopts, the Commission should encourage such arrangements because they will benefit the customers of the parties to the agreement by reducing unnecessary delays when the customers seek to switch service between those parties.

B. The Commission Should Clearly Publish Whatever Porting Interval it Adopts.

Although reducing the current interval for simple ports is an admirable Commission goal, merely adopting a new shortened interval will not, by itself, accomplish that goal. To ensure that

¹⁶ 47 C.F.R. § 52.11(a), (b).

¹⁷ See Comcast at 5-8; Metro PCS at 5-6; Sprint at 22-31; T-Mobile at 7-8.

consumers receive the benefits of any new, reduced porting interval, the Commission should publish that porting interval in its rules in a simple and clearly articulated fashion so that all parties will understand their general obligation to port within the interval.¹⁸ As Verizon points out, compliance with the existing porting interval requirements is spotty at best, with some carriers routinely failing to meet the 24-hour confirmation interval for returning a Firm Order Confirmation in response to a port request.¹⁹ AT&T has experienced similar difficulties with certain carriers, which undermines our ability to expeditiously activate service for customers who have made a competitive choice to select AT&T as their provider. Thus, if the Commission expects to see any consumer or competitive benefits from reducing the existing interval for simple ports, it must ensure that all parties are fully aware of their obligation to comply with whatever porting interval requirements it adopts.

C. The Commission Should Not Mandate Specific Intervals for Wireless-to-Wireless Porting.

As numerous commenters point out, wireless-to-wireless porting typically occurs in as little as 2.5 hours for simple ports (*i.e.*, 30 minute confirmation interval and 2 hour activation interval).²⁰ The promptness of this process is not the result not of regulation, however, as the Commission has not adopted *any* rules specifying the porting intervals for wireless-to-wireless ports. Rather, the wireless industry developed its own standardized interfaces, protocols, and data field specifications in order to streamline number porting among wireless carriers.²¹ As a result of those efforts and in the absence of government-mandated intervals, wireless consumers

¹⁸ In particular, the Commission should publish *general* porting interval requirements, while continuing to direct providers to implement those requirements through compliance with numbering guidelines issued by NANC. *See supra* section II.A. *See also* 47 C.F.R. 52.26.

¹⁹ Verizon at 7.

²⁰ Sprint at 4, 7; T-Mobile at 4 n.4.

²¹ *See* Sprint at 4.

typically have the ability to “walk into a new wireless provider’s store in the morning and change service providers – while keeping [their] telephone number[s] – by the afternoon of the same day.”²²

Despite this well-functioning wireless-to-wireless porting process, the Ohio PUC urges the Commission to adopt rules that would enshrine the 2.5 hour standard for wireless-to-wireless ports in the Code of Federal Regulations.²³ The Ohio PUC does not suggest that the 2.5 hour standard is not well-understood by wireless carriers, or that they are routinely failing to meet the standard, or that there is any type of market failure with respect to wireless-to-wireless porting. Instead, the Ohio PUC supports regulation here simply because it can think of “no reason for the FCC not to codify this standard for simple wireless-to-wireless ports.”²⁴

Imposing regulation on the wireless industry not to correct a market failure – but merely for the sake of having more regulation – is at odds with both the Communications Act and established Commission precedent. Indeed, Congress and this Commission have steadfastly maintained a minimalist regulatory environment for wireless communications, and this nation’s consumers have reaped tremendous benefits as a result.²⁵ As the Commission observed in its latest report on the wireless industry, consumers are enjoying “low prices, new technologies, improved service quality, and choice among providers” because of competition in the

²² T-Mobile at 8.

²³ Ohio PUC at 6.

²⁴ Ohio PUC at 6.

²⁵ See 47 U.S.C. § 332; *Truth-in-Billing and Billing Format*, Second Report and Order, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd. 6448 ¶ 35 (“The pro-competitive, deregulatory framework for CMRS prescribed by Congress and implemented by the Commission has enabled wireless competition to flourish, with substantial benefits to consumers.”).

marketplace.²⁶ That competition, moreover, is being driven in part by “significant” wireless number porting activity among carriers.²⁷ According to the Commission, more than 30 million wireless-to-wireless ports occurred between December 2003 and December 2006.²⁸ Thus, it should come as no surprise that a study from a leading consumer research organization found that “because of number portability[,] wireless service companies are working harder to retain customers.”²⁹ In fact, even the Ohio PUC admits that the current 2.5 hour standard for wireless-to-wireless porting, which was developed and implemented by the wireless industry without government intervention, has provided an “ultimate benefit [for] wireless consumers.”³⁰ Given the robust competition in the wireless marketplace, the Ohio PUC’s praise for the existing wireless-to-wireless porting process, and its inability to identify any market failure regarding that process, the PUC’s call for additional regulation of wireless-to-wireless porting is simply unfounded.³¹

D. The Commission Should Not Mandate Additional N11 Obligations for VoIP Providers Beyond the Existing 911 and 711 Requirements.

AT&T agrees with Qwest and the VON Coalition that the Commission should not expand the obligation of interconnected VoIP providers to implement N11 abbreviated dialing capability beyond the existing requirements for 911 and 711.³² In its prior decisions on 911 and

²⁶ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 07-71, Twelfth Report, FCC 08-28, ¶ 1 (released Feb. 4, 2008) (*Twelfth Wireless Competition Report*).

²⁷ *Twelfth Wireless Competition Report* ¶ 190.

²⁸ *Twelfth Wireless Competition Report* ¶ 190.

²⁹ *Twelfth Wireless Competition Report* ¶ 227 (citing American Customer Satisfaction Index).

³⁰ Ohio PUC at 6.

³¹ See MetroPCS at 5; T-Mobile at 7.

³² Qwest at 2-5; VON Coalition at 5-10.

711, the Commission emphasized that it was imposing those obligations on interconnected VoIP providers because 911 access “has become one of the Commission’s primary public safety responsibilities under the Act,”³³ and 711 access to TRS is critical for “the health, safety, and livelihood of individuals with disabilities.”³⁴ But unlike 911 and 711, the remaining N11 capabilities – 211 (information and referral services); 311 (non-emergency police and other governmental services); 511 (travel and information services); and 811 (state “One Call” excavation notification systems) – while generally beneficial, do not involve the same heightened public safety concerns raised by 911 and 711. Thus, applying *all* N11 dialing obligations (not just 911 and 711) to interconnected VoIP services would run counter to the Commission’s determination that IP-enabled services (such as interconnected VoIP) should exist “in an environment largely free of government regulation” and that a regulation should only be imposed if it is “tailored as narrowly as possible” and “applied only where needed.”³⁵

Moreover, even without the imposition of additional N11 obligations on interconnected VoIP providers, consumers will still have multiple methods to access the underlying information available through 211, 311, 511 and 811 services. Unlike 911 and 711, for which there typically are no close substitutes, consumers have a variety of alternatives for accessing and communicating with entities providing information and referral services, non-emergency police and other governmental services, travel and information services, and state “One Call” excavation notification systems. Those alternatives include local access numbers, 8YY numbers, directory assistance and directory listings (both online and printed), faxes, email, websites, and

³³ *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, FCC 05-116, ¶ 29 (released June 3, 2005) (*VoIP 911 Order*).

³⁴ *IP-Enabled Services*, WC Docket No. 04-36, Report and Order, FCC 07-110, ¶¶ 17, 42 (released June 15, 2007) (*VoIP TRS Order*).

³⁵ *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28, ¶ 35 (released March 10, 2004) (*IP-Enabled Services NPRM*).

search engines – many of which offer a greater amount of information in a more easily accessible and searchable format than is possible through N11 dialing.³⁶ Given these alternatives, there is simply no need to impose additional N11 obligations on interconnected VoIP providers.

Finally, even if the Commission believed there were public policy benefits to be gained from extending additional N11 obligations to interconnected VoIP providers, AT&T agrees with Qwest and the VON Coalition that the burdens of implementing those N11 obligations would far outweigh any such benefits. As the Commission is fully aware from its experience with 911 and 711, implementation of those abbreviated dialing codes by interconnected VoIP providers has posed significant “technical challenges.”³⁷ These challenges, as Qwest explains, stem from the wire-center-oriented nature of N11 call routing on the PSTN:

Unlike LECs whose customers calling N11 codes are associated with a particular wire center and whose calls are routed to some pre-determined city, county or state N11 agency or private organization, an interconnected VoIP call currently lacks either a geographic wire center “locus” for N11 call origination or the predetermination of the public/private service provider termination. Moreover, any nomadic-VoIP N11 calling architecture would require that both the locus origination and the service provider termination be “flexible,” adding an additional layer of complexity to such dialing and routing.³⁸

According to Qwest, the likely method of addressing these issues for interconnected VoIP providers would be the creation of “entirely new systems development, involving at a minimum geographic tables and routing guides,” which would further become “increasingly complex if nomadic N11 dialing were required.”³⁹

³⁶ Because an interconnected VoIP service “requires a broadband connection from the user’s location,” 47 C.F.R. § 9.3, the consumer of such a service will necessarily have access to a platform over which Internet access can also be provided.

³⁷ *IP-Enabled Services*, WC Docket No. 04-36, Order and Public Notice Seeking Comment, DA 07-4178, ¶ 2 (released Oct. 9, 2007); *VoIP 911 Order* ¶ 25.

³⁸ Qwest at 2-3.

³⁹ Qwest at 3.

In light of the daunting technical challenges and implementation burdens associated with imposing N11 dialing for interconnected VoIP providers and the questionable public policy benefits to be gained from doing so, AT&T urges the Commission not to adopt additional N11 obligations for such providers beyond the existing 911 and 711 requirements.

E. To the Extent the Commission Adopts Shortened Porting Intervals or Imposes Other Numbering Obligations on the Communications Industry, the Commission Must Permit Providers to Recover the Reasonable Costs of Any Such Regulatory Mandates.

In the event the Commission adopts any rules in response to the *2007 LNP NPRM* that impose additional obligations on service providers, such as shortened porting intervals, additional N11 requirements for interconnected VoIP providers,⁴⁰ or any other numbering obligations, the Commission must allow such providers to recover the reasonable costs of implementing any new regulatory obligations. As commenters have explained,⁴¹ shortening the porting interval will require providers to re-design their porting processes, which, for some providers, may involve hiring additional personnel to expedite the manual processing of port requests, or software and/or hardware upgrades to automate the processing of port requests, or some combination of both approaches. Similarly, ordering interconnected VoIP providers to implement additional N11 capabilities (beyond 911 and 711) would require those providers to develop new systems and routing architectures to ensure that N11 calls are delivered to the appropriate call recipient. As Qwest explains, the costs of this development would “not be trivial” and may be particularly significant for interconnected VoIP providers that offer nomadic

⁴⁰ As discussed above, AT&T opposes additional N11 obligations for interconnected VoIP providers.

⁴¹ See *Windstream* at 3-4.

services because they will be forced to adapt their IP-enabled infrastructure to work with the “wireline-LEC architecture” used for handling most N11 calls today.⁴²

With respect to costs incurred by providers to reduce porting intervals, section 252(e)(2) of the Act states that the costs of number portability “shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”⁴³ In implementing section 252(e)(2), the Commission has held that telecommunications carriers, as well as interconnected VoIP providers, are entitled to recover the “carrier-specific costs directly related to providing number portability,”⁴⁴ which include “not just the costs associated with the creation of the regional databases and the initial physical upgrading of the public switched telephone network for the provision of number portability, *but also the continuing costs necessary to provide number portability.*”⁴⁵ Thus, to the extent providers incur additional costs to implement a Commission-mandated reduction in porting intervals, those costs would also be “directly related” to providing number portability and the Commission must permit the recovery of such costs.⁴⁶

Regarding the costs incurred by interconnected VoIP providers to implement any additional N11 requirements or other numbering obligations, the Commission should follow its previously established practice of permitting those providers to recover their costs in any lawful manner they choose. As the Commission explained in the *VoIP 911 Order*, “there is no need to specify a cost recovery mechanism for interconnected VoIP providers because their rates are not

⁴² Qwest at 2-5. *See also* VON Coalition at 9 (expressing concerns about excessive regulatory burdens placed on VoIP providers with limited resources).

⁴³ 47 U.S.C. § 252(e)(2).

⁴⁴ *Telephone Number Portability*, CC Docket No. 95-116, Third Report and Order, FCC 98-82, ¶ 7 (released May 12, 1998) (*LNP Third Report and Order*); *2007 LNP NPRM* ¶ 38 n.124.

⁴⁵ *LNP Third Report and Order* ¶ 8 (emphasis added).

⁴⁶ *See NANC Report* at 24-25.

regulated, so they are fully able to recover their E911 costs by raising their rates.”⁴⁷ While the same logic should apply with equal force here to the recovery of costs for implementing additional N11 requirements or other numbering obligations, the Commission should remove any doubt by expressly confirming the ability of interconnected VoIP providers to recover those costs.

Respectfully Submitted,

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⁴⁷ *VoIP 911 Order* ¶ 53 n.164.