

Jennie B. Chandra
Director, Federal Government Affairs
Windstream Communications, Inc.
1101 17th Street, N.W., Suite 802
Washington, DC 20036

(202) 223-7667
jennie.b.chandra@windstream.com



April 28, 2008

Electronic Filing

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***Erratum In the Matter of Telephone Number Requirements for IP-Enabled Services Providers (WC Docket 07-243); Local Number Portability Porting Interval and Validation Requirements (WC Docket 07-244); IP-Enabled Services (WC Docket 04-36); Telephone Number Portability (CC Docket 95-116); CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis; and Numbering Resource Optimization (CC Docket 99-200)***

Dear Ms. Dortch:

On April 21, 2008, Windstream Communications, Inc., timely filed Reply Comments in the above referenced proceedings. Due to non-substantive typographical errors on the cover page and on Page 1, the word "Comments" should be replaced by the word "Reply Comments." Please substitute the attached version for the version filed on April 21, 2008.

Thank you for your attention in this matter. If you have any questions, feel free to contact me.

Sincerely,

/s/

Jennie B. Chandra

Enclosure

**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 |

REPLY COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

Eric N. Einhorn
Jennie B. Chandra
Windstream Communications, Inc.
1101 17th St., N.W., Suite 802
Washington, DC 20036
(202) 223-7664 (phone)
(202) 223-7669 (fax)

Dated: April 21, 2008

Its Attorneys

TABLE OF CONTENTS

I. THE PROPOSED 48-HOUR PORTING INTERVAL RULE IS UNDULY VAGUE AND INADEQUATELY CONSIDERED. 2

II. IF IT NONETHELESS DECIDES TO ADOPT NEW LNP RULES, THE COMMISSION SHOULD ALLOW CARRIERS TO RECOVER ASSOCIATED IMPLEMENTATION COSTS. 5

A. THE COMMUNICATIONS ACT AND COMMISSION PRECEDENT PROVIDE THAT CARRIERS MUST BE ABLE TO RECOVER COSTS DIRECTLY RELATED TO PROVIDING LNP..... 5

B. THE COMMISSION SHOULD POOL NEW CARRIER-SPECIFIC PORTING COSTS AND ALLOCATE THESE COSTS AMONG ALL VOICE PROVIDERS. 9

C. IF THE COMMISSION ELECTS TO APPLY AN END-USER SURCHARGE, IT SHOULD ALLOW A SEPARATE LNP LINE ITEM FOR COST RECOVERY..... 11

III. THE COMMISSION SHOULD CONTINUE TO REQUIRE INTERCONNECTION AGREEMENTS FOR WIRELINE-TO-WIRELINE NUMBER PORTING. 12

IV. CONCLUSION 13

**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 |

REPLY COMMENTS OF WINDSTREAM

Windstream Corporation, on behalf of its incumbent local exchange carrier (“ILEC”) and competitive local exchange carrier (“CLEC”) subsidiaries (collectively “Windstream”), submits these reply comments in response to the Federal Communications Commission (“Commission”) request for comment on whether the agency should adopt rules specifying the length of the local number porting intervals or other details of the porting process.¹

¹ *In the Matter of Telephone Number Requirements for IP-Enabled Service 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, Final Regulatory Flexibility Analysis, Numbering Resource Optimization, FCC 07-188, 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, and Notice of Proposed Rulemaking (rel. Nov. 8, 2007).*

Windstream urges the Commission to refrain from making changes to its porting requirements. As noted in its opening comments, Windstream expects that it would have to devote significant financial resources to upgrade its systems and/or increase staffing to comply with a 48-hour porting interval rule.² These implementation burdens would greatly outweigh any public benefits from the proposed regulation. From Windstream's experience, consumers and carriers have shown little or no interest in shorter porting intervals for wireline numbers.³

If it decides to move forward with a new porting interval rule, the Commission, under any event, should clarify and better consider the impact of its 48-hour porting interval proposal. A reduced porting interval will impose significant costs on carriers, like Windstream, that currently rely on manual systems to process port requests. The Commission should account for these additional expenses by instituting a new local number portability ("LNP") cost recovery mechanism.

I. THE PROPOSED 48-HOUR PORTING INTERVAL RULE IS UNDULY VAGUE AND INADEQUATELY CONSIDERED.

Windstream supports AT&T's position that "the Commission should withhold adoption of any specific implementation deadline," "pending receipt of specific recommendations on changes to the porting interval."⁴ As recognized by AT&T, "evaluating the value of that modification to the LNP process requires an assessment of numerous complex technical and operational issues, as well as a determination of their potential impact on any countervailing regulatory and public policy obligations."⁵

² Windstream Comments at 4.

³ *Id.*

⁴ AT&T Comments at 7.

⁵ *Id.* at 2.

Windstream agrees with AT&T's assessment that "the Commission's proposed reduction in the porting interval stated in the *November 8 NPRM* is seriously lacking in the necessary detail to allow such an evaluation by . . . interested parties."⁶

The Commission does not adequately weigh costs of reducing the porting interval against anticipated benefits of this reform. Indeed, the Commission's consideration of implementation costs is altogether lacking. Although these expenses will be significant,⁷ the Commission fails to describe or account for costs that carriers must incur to establish compliance with a reduced porting interval. The words "cost" and "expense" appear nowhere in the Commission's Notice of Proposed Rulemaking. Likewise, although it is not included in the class of carriers covered by the Initial Regulatory Flexibility Analysis ("IRFA"), Windstream observes that the Commission's IRFA further indicates that the agency has not adequately analyzed the costs of the 48-hour porting interval proposal.⁸

The Commission's description of the reduced porting interval is unduly vague in other key aspects as well. The lack of detail with respect to two features is particularly disconcerting. First, the Commission "fails even to state whether the proposed 48 hour interval covers both confirmation of a porting order and activation of the ported number,

⁶ *Id.*

⁷ Windstream anticipates that it would have to expend a significant amount of money to guarantee it could grant requests for a 48-hour porting interval. To ensure compliance with the proposed rule, Windstream expects it would have to invest in new systems to automate its porting process. Windstream Comments at 4. Windstream, alternatively or perhaps in conjunction with system upgrades, would need to hire a number of new staff members across multiple departments. *Id.*

⁸ See OPASTCO Comments at 6 (stating the "IRFA impermissibly shifts the burden of providing required estimated compliance descriptions and compliance cost projections to commenting parties" – although "it is the Commission's responsibility to describe the burdens that proposed new rules would impose on small entities, and to project what the costs would be"). OPASTCO references obligations imposed by the Regulatory Flexibility Act of 1980, as amended. See 5 U.S.C. § 603 (stipulating elements that must be included in an initial regulatory flexibility analysis).

or only the latter activity.”⁹ Second, the Commission’s proposal does not clarify whether the 48-hour porting interval would apply to business days or calendar days.¹⁰ This distinction is critical for carriers, like Windstream, that currently are not equipped to respond to porting requests in all hours of the night, and over weekends and holidays.¹¹

If it is determined to adopt a shortened porting interval, the Commission, at a minimum, should put forth a proposal that provides the specific details necessary for carriers to offer educated comments on associated implementation. An industry forum, such as the North American Numbering Council, may help the Commission establish the specific parameters of any new porting interval rule. A more detailed proposal then should be released for comment. These additional steps are critical to ensuring the Commission has a concrete, specific record on which to base implementation of any new porting interval rule.¹²

⁹ AT&T Comments at 2, n.6.

¹⁰ *Id.*

¹¹ Even with an automated system, additional personnel could be needed to comply with a 48-hour porting interval rule based on calendar days, as some ports may present special issues that require manual intervention.

¹² Similar steps are needed if the Commission, for example, intends to mandate a list of “provisioning fields” like the list of customer validation fields. Sprint correctly acknowledges that provisioning information should include due date and the service provider identification. Sprint Nextel Comments at 11. The list of provisioning fields, however, should not end there. Other important fields include those for identifying the type of port request (e.g., original or amended); reason for an amended request (to help the porting out carrier quickly identify the reason for change); and a customer’s preference for whether the porting out carrier should retain the customer’s directory listing. These and other fields require further discussion among industry experts.

II. IF IT NONETHELESS DECIDES TO ADOPT NEW LNP RULES, THE COMMISSION SHOULD ALLOW CARRIERS TO RECOVER ASSOCIATED IMPLEMENTATION COSTS.

If it nevertheless decides now to revise its number portability rules in a manner recommended by CLECs and wireless carriers,¹³ the Commission should revisit cost recovery for carriers incurring additional expenses to comply with the new number portability rules. Section 251(e) of the Communications Act mandates that number portability costs be borne on a “competitively neutral” basis.¹⁴ To fulfill this directive, Windstream recommends that the Commission pool new carrier-specific costs directly related to reducing the porting interval and allocate these costs among all voice providers.

A. THE COMMUNICATIONS ACT AND COMMISSION PRECEDENT PROVIDE THAT CARRIERS MUST BE ABLE TO RECOVER COSTS DIRECTLY RELATED TO PROVIDING LNP.

The Commission should give ILECs a reasonable opportunity to recover costs incurred to implement any reduced LNP porting interval. Cost recovery would be needed not only to fulfill the statutory requirement of competitive neutrality, but also to avoid an unjustified departure from prior Commission decisions affording LNP cost recovery. A shorter porting interval rule would require ILECs like Windstream to incur significant new implementation costs, similar to those giving rise to the recovery mechanism adopted after the original rules were enacted in 1998.

Section 251(e)(2) of the Communications Act directs that “the cost of establishing . . . number portability shall be borne by all telecommunications carriers on a

¹³ See, e.g., Charter Communications Comments at 2-4 (supporting a 48-hour porting interval rule based upon calendar days).

¹⁴ 47 U.S.C. § 251(e).

competitively neutral basis. . . .”¹⁵ The Commission has interpreted this provision to require it “to ensure all telecommunications carriers bear in a competitively neutral manner the costs of providing long-term number portability.”¹⁶ Accordingly, the Commission stated that all carriers are eligible to recover costs that “(1) would not have been incurred by the carrier ‘but for’ the implementation of number portability; and (2) were incurred ‘for the provision of’ number portability service.”¹⁷ Recoverable LNP costs include “not just the costs associated with the creation of the regional databases and the initial physical upgrading of the public switched telephone network, but also the ongoing costs.”¹⁸

When the original LNP rules were adopted, the Commission allowed ILECs to recover their carrier-specific LNP costs through a federal charge assessed on end-users.¹⁹ ILECs could impose the federal charge for a maximum of five years, unless they could prove the charge “was not reasonable based on the information available at the time it was initially set.”²⁰ CLECs, in contrast, were allowed to recover carrier-specific LNP costs “in any lawful manner” they desired.²¹ The Commission held that this cost recovery scheme was consistent with the statute’s competitive neutrality requirement.²²

¹⁵ *Id.*

¹⁶ *Telephone Number Portability*, FCC 98-82, CC Docket No. 95-116, RM 8535, Third Report and Order (rel. May 12, 1998) (*Third Report and Order*), ¶ 8, *aff’d*, *Telephone Number Portability*, FCC 02-16, CC Docket No. 95-116, Memorandum Opinion and Order on Reconsideration and Order on Application for Review (rel. Feb. 15, 2002) (*Order on Reconsideration*).

¹⁷ *Telephone Number Portability Cost Classification Proceeding*, DA 98-2534, CC Docket No. 95-116, RM 8535, Memorandum Opinion And Order (Common Carrier Bureau, rel. Dec. 14, 1998) (*Cost Classification Order*), ¶ 10, *aff’d*, Order on Reconsideration.

¹⁸ *Third Report and Order* at ¶ 8.

¹⁹ *Id.* at ¶ 135.

²⁰ *Id.* at ¶ 144.

²¹ *Id.* at ¶ 136.

²² *Id.*

Subsequently the Commission has found that additional LNP cost recovery, above and beyond that initially permitted within the five-year window, may be necessary. The Commission has allowed further LNP cost recovery in several instances.²³ It also has recognized that the issue of cost recovery for a proposed LNP rule “should be considered in conjunction with the proposed mandate.”²⁴ “The cost of complying,” according to the Commission, “is directly relevant to whether such proposals should be adopted and, accordingly, should be part of the decision-making process.”²⁵

Consistent with this cost recovery framework, the Commission should allow carriers to recover costs incurred to establish compliance with any new porting interval rule. As explained in its comments, Windstream would have to devote significant financial resources to upgrade its systems and/or increase staffing to support shorter porting demands.²⁶ These expenses would satisfy the Commission’s two-part test for determining whether costs may be recovered: The costs (1) would not have been incurred by the carrier “but for” the implementation of number portability; and (2) would

²³ See *Petition of AT&T Inc. for Waiver of the Commission’s Rules to Treat Certain Local Number Portability Costs as Exogenous Costs Under Section 61.45(d)*, FCC 06-97, CC Docket No. 95-116 (rel. July 10, 2006) (*AT&T Order*) (permitting recovery of LNP costs outside of the original five-year recovery period); *Telephone Numbering Portability; BellSouth Corporation Petition for Declaratory Ruling and/or Waiver*, FCC 04-91, CC Docket No. 95-116, Order (rel. April 13, 2004) (*BellSouth Order*) (same for BellSouth and other similarly situated ILECs); *Verizon’s Petition for Waiver of the Commission’s Rules to Treat Unrecovered Local Number Portability Costs as Exogenous Costs under Section 61.45(d)*, DA 06-1859, CC Docket No. 95-116 (Wireline Competition Bureau, rel. Sept. 14, 2006) (same); *Telephone Number Portability; Sprint Local Telephone Companies Petition for Waiver*, DA 04-3881, CC Docket No. 95-116 (Wireline Competition Bureau, rel. Dec. 13, 2004) (same).

²⁴ *Matter of Telephone Number Portability*, FCC 04-217, CC Docket No. 95-116, Second Further Notice of Proposed Rulemaking (rel. Sept. 16, 2004), ¶ 17.

²⁵ *BellSouth Order* at ¶ 19. See also NANC Report and Recommendation on Intermodal Porting Intervals (filed May 3, 2004), 24-25 (finding that “[s]hortening the porting interval . . . should meet the ‘but for LNP’ rule” and “explicit cost recovery for incremental intermodal porting costs for ILECs is an issue which should be resolved by the Commission . . .”).

²⁶ Windstream Comments at 4.

be incurred “for the provision of” number portability service.²⁷ Such expenses would be “incremental overheads . . . incurred specifically in the provision of long-term number portability” – the very type of costs previously deemed eligible for recovery.²⁸ If the shorter interval was adopted in 1998, there is no doubt that ILECs would have been eligible to recover these additional costs directly related to LNP implementation.

Failure to allow additional LNP cost recovery at this time would thwart the statutory requirement of competitive neutrality. Non-ILEC voice providers, which are not rate regulated, would continue to be able to collect LNP costs in any lawful manner they desire.²⁹ ILECs, in contrast, would have no remedy for collecting additional carrier-specific LNP costs.³⁰ Instead, ILECs would have to cover new costs associated with the 48-hour porting interval proposal by redirecting funds, which otherwise might have been used for developing new products or services, or improving prices and terms of their offerings. This disparity would “affect the ability of carriers to compete” – contrary to what Congress intended.³¹

²⁷ Telephone Number Portability Cost Classification Proceeding, DA 98-2534, CC Docket No. 95-116, RM 8535, Memorandum Opinion and Order (Common Carrier Bureau, rel. Dec. 14, 1998), ¶ 10.

²⁸ *Third Report and Order* at ¶ 74.

²⁹ *See id.* at ¶ 136 (“Carriers not subject to rate regulation – such as competitive LECs, CMRS providers, and non-dominant IXCs – may recover their carrier-specific costs directly related to providing number portability in any lawful manner consistent with their obligations under the Communications Act.”).

³⁰ According to the Commission, it “has only two sources from which it may allow carriers to recover costs in the federal jurisdiction: charges IXCs pay LECs for exchange access, and end-user charges.” *Id.* at ¶ 135. The Commission already concluded that it would violate the statutory requirement of competitive neutrality to allow recovery via access charges. *Id.* Thus, refusing to allow ILECs to recover costs via end-user charges is tantamount to prohibiting ILECs from recovering their costs.

³¹ *Id.* at ¶ 56 (finding that Section 251(e)(2) requires the Commission “to ensure that the costs of number portability do not affect the ability of carriers to compete”). *See also id.* at ¶ 53 (finding that “the way carriers bear the costs of number portability . . . must not disparately affect the ability of competing service providers to earn a normal return”).

B. THE COMMISSION SHOULD POOL NEW CARRIER-SPECIFIC PORTING COSTS AND ALLOCATE THESE COSTS AMONG ALL VOICE PROVIDERS.

The best approach to distributing any new LNP costs among carriers is to pool the costs and distribute them among all voice providers. Pooling costs would ensure that small and mid-size ILECs are not disproportionately burdened with new LNP expenses. It also would recognize that any further changes to LNP rules would impact all end-users, not just those receiving service from carriers requiring further LNP upgrades.

The Commission's original cost allocation method reflects the different circumstances of carriers in 1998. When the rules were adopted, the Commission found that requiring each carrier to bear its own LNP costs would "not disadvantage any telecommunications carrier."³² The Commission expected that carriers' costs would be proportional to the number of customers they serve, so it concluded that "pooling carrier-specific number portability costs [was] not necessary to achieve competitive neutrality."³³

The same cannot be said for a new rule reducing the porting interval. Indeed, carriers' incremental implementation costs, to a great extent, could be *inversely related* to the number of customers they serve. As noted by Comcast and the National Association of Regulatory Utility Commissioners, the largest ILECs now employ automated LNP systems capable of supporting a consistently rapid response to a large number of porting requests, so their incremental compliance costs will be minimal, if any.³⁴ Small and mid-

³² *Id.* at ¶ 139.

³³ *Id.* at ¶ 140.

³⁴ Comcast Comments at 5; NARUC Comments at 6. "Currently, Verizon, AT&T, and Qwest offer e-bonding solutions, including Electronic Data Interchange ('EDI') and eXtensible Markup Language ('XML') gateways. The computer-to-computer interface established by e-bonding is distinct from a graphical user interface (GUI), which exists between a computer and a user. . . . When porting requests are submitted via an e-bonded solution, the fields in the request are automatically populated and electronic

size ILECs, however, have not had sufficient cause to invest in automated systems capable of consistently processing requests in 48 hours.³⁵ These carriers only needed a LNP process sufficient to support a four-day porting interval for a smaller customer base. If a small or mid-size ILEC tried to recover costs for systems above and beyond those required in 1998, the Commission most likely would have deemed these charges to be speculative and unrecoverable. The Commission has made it clear that it “does not permit recovery of speculative costs, and, to the extent that any carrier sought such recovery [in the LNP context], it was rejected.”³⁶

These changed carrier conditions warrant use of a different cost allocation mechanism for LNP. In accordance with the statutory requirement of competitive neutrality, the Commission should pool and allocate carrier-specific LNP expenses among all voice providers. This measure will ensure that the burden of the new rules do not fall disproportionately on the customers of small and mid-size ILECs, while the rules are intended to benefit all voice customers.³⁷ Pooling costs will not “disadvantage any telecommunications carrier” over another.³⁸

exchange of order information occurs without the need for human intervention.” NARUC Comments at 6, n.14 (internal citation omitted).

³⁵ Windstream, in particular, would have no reason to expect it would need to automate its port processes in 1998. Ten years ago, the company did not exist. What is Windstream today was seven separate operating entities in 1998. These entities – ranging in size from approximately 5,000 access lines to 1.8 million access lines – could not justify automated systems at that time.

³⁶ *BellSouth Order* at ¶ 13.

³⁷ *See Matter of Telephone Number Portability*, FCC 96-286, CC Docket No. 95-116, RM 8535, First Report and Order and Further Notice of Proposed Rulemaking (rel. July 2, 1996), ¶ 30 (“Number portability promotes competition between telecommunications service providers by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers. The resulting competition will benefit all users of telecommunications services.”).

³⁸ *See id.* at ¶ 139 (finding that regulation of the recovery of number portability costs by ILECs, but not by CLECs, CMRS providers, and IXCs, should will not place any carrier “at a competitive disadvantage”).

The Commission could design the pooling mechanism in a manner to minimize costs, without imposing significant new accounting mechanisms. All carriers would be required to submit LNP tariff filings. The Commission, as before, could review these filings to ensure that only legitimate portability costs are recovered.³⁹ The time frame over which these costs would be recovered likely would be shorter than one year, if the costs are spread across all carriers engaged in ports. A subsequent Commission proceeding could determine further details of pool administration.

C. IF THE COMMISSION ELECTS TO APPLY AN END-USER SURCHARGE, IT SHOULD ALLOW A SEPARATE LNP LINE ITEM FOR COST RECOVERY.

If it concludes an end-user surcharge is best suited for further recovery, the Commission should allow a separate LNP line item for cost recovery. This form of end-user surcharge would be most appropriate for two reasons. First, a separate LNP line item would best inform customers of the reason for the temporary increase in their monthly charges. Second, this type of end-user charge is capable, without further Commission action, of ensuring adequate LNP cost recovery. If recovery instead is effectuated through an end-user common line charge like the subscriber line charge (“SLC”), some carriers – particularly those in rural areas, like Windstream – would have difficulty recovering all their new LNP implementation costs. Many rural carriers have little or no room between their SLC and the \$6.50 SLC cap.

To establish a LNP line item surcharge, the Commission could invite ILECs incurring new LNP compliance costs to present individualized tariff plans for recovery of additional LNP costs. This approach was previously adopted by the Commission in

³⁹ See *id.* at ¶ 142 (requiring tariffs as an enforcement mechanism to ensure carriers bear the shared costs of providing number portability on a competitively neutral basis).

response to the BellSouth Corporation's Petition for a Declaratory Ruling and/or Waiver. In that petition, BellSouth asked the Commission to extend the permissible period to recover LNP costs, in order to account for delay and uncertainties associated with implementing wireless LNP.⁴⁰ The Commission responded to this request by allowing BellSouth and all other like ILECs "the flexibility to propose its own recovery period . . . that best suits its own needs and those of its customers."⁴¹ The Commission held that otherwise "precluding carriers subject to rate regulation from recovering their intermodal LNP costs, while allowing other carriers to recover such costs, would not be competitively neutral and thus would violate the statutory mandate."⁴²

III. THE COMMISSION SHOULD CONTINUE TO REQUIRE INTERCONNECTION AGREEMENTS FOR WIRELINE-TO-WIRELINE NUMBER PORTING.

The Commission should reject cable providers' request for a declaration that interconnection agreements are not required for wireline-to-wireline number porting.⁴³ Section 251 of the Communications Act establishes that a wireline-to-wireline port is central to carrier interconnection. Section 251(b) provides that all ILECs have, among other obligations, a duty to provide technically feasible number portability.⁴⁴ In accordance with Section 252, ILECs and requesting parties must negotiate in good faith about these terms. If parties to the negotiation arrive at an agreement, Section 252 then

⁴⁰ BellSouth Corporation Petition for Declaratory Ruling and/or Waiver, CC Docket No. 95-116 (filed Nov. 14, 2003).

⁴¹ *BellSouth Order* at ¶ 18.

⁴² *Id.* at ¶ 15.

⁴³ See Charter Communications Comments at 8 (making this request); General Communication, Inc. Comments at 6 (same); National Cable and Telecommunications Association Comments at 3 (same).

⁴⁴ 47 U.S.C. § 251(b). In addition to the duty to provide number portability, these obligations include duties related to resale of services, dialing parity, access to rights-of-way, and establishing reciprocal compensation arrangements.

stipulates that they file the agreement with the appropriate state commission.⁴⁵ As Windstream previously noted, the Commission has explicitly recognized this duty to file an interconnection agreement when carriers engage in a wireline-to-wireline port.⁴⁶

Congress could have placed the duty to provide number portability outside of the Section 251 interconnection process, but it did not. By explicitly linking the number portability duty with the other duties in Sections 251(b) and 251(c)(1), Congress signaled its intent that telecommunications carriers seeking number portability follow all the processes and requirements set out in Section 251, which include, for example, the requirement in Section 251(b)(5) to establish arrangements for reciprocal compensation. This grouping of interconnection obligations indicates that Congress concluded it is good public policy to include wireline-to-wireline number porting in interconnection agreements. Indeed, such interconnection agreements are public, can be adopted by other carriers, provide a process for dispute resolution, and establish a basis for compensation arrangements.

IV. CONCLUSION

The Commission should not modify its porting rules or its practice of requiring an interconnection agreement for wireline-to-wireline ports. If it nevertheless decides to move forward with the 48-hour porting interval proposal, the Commission, for the

⁴⁵ 47 U.S.C. § 252(a)(1) (“Upon receiving a request for . . . services . . . pursuant to section 251 . . . , an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers. . . . The agreement . . . shall be submitted to the [applicable] State commission.”).

⁴⁶ See *Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Agreements under Section 252(a)(1)*, FCC 02-276, WC Docket No. 02-89, Memorandum Opinion and Order, ¶ 8 (rel. Oct. 4, 2002) (issuing a declaratory ruling that held an “agreement that creates an ongoing obligation pertaining to . . . number portability . . . is an interconnection agreement that must be filed pursuant to section 252(a)(1)”).

reasons discussed herein, should clarify how the rule would be implemented and solicit further industry comment on these provisions. The Commission also should ensure that affected ILECs would be able to recover all costs directly related to implementing any new porting interval rule.

Respectfully submitted,

/s/ Jennie B. Chandra

Eric N. Einhorn
Jennie B. Chandra
Windstream Communications, Inc.
1101 17th St., N.W., Suite 802
Washington, DC 20036
(202) 223-7664 (phone)
(202) 223-7669 (fax)

Dated: April 21, 2008

Its Attorneys