July 1, 2008

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EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Portals II, Room TW-A325
Washington, DC 20554

Re: Local Number Portability Porting Interval and Validation Requirements, WC Docket No. 07-244; Telephone Number Portability, CC Docket No. 95-116; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues.

Dear Ms. Dortch:

On behalf of its member companies, the United States Telecom Association (USTelecom) submits that the current state of the record will not support the adoption of a rule reducing the interval for wireline-to-wireline and intermodal simple ports to a 48-hour interval.[1] Carriers have provided record evidence with respect to the high costs of reducing the porting interval to 48 hours[2] and the disproportionate burden on small and mid-sized ILECs.[3] They have also provided persuasive record evidence that these costs would outweigh any putative benefits.[4] As such, the record does not support adoption of the FCC's tentative conclusion to reduce the porting interval.

The Costs of a Shortened Interval Outweigh the Benefits

Moving the bar for intermodal and wireline-to-wireline porting from the current four-day interval to 48 hours would come at considerable cost because it would require that all carriers upgrade to

[1] *See* Telephone Number Portability, Local Number Portability Porting Interval and Validation Requirements, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, *Report and Order, Declaratory Ruling, Order on Remand and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 19531 (2007) (*LNP Declaratory Ruling & NPRM*) (NPRM seeks comment on the tentative conclusion to reduce the porting interval to 48 hours).

[2] *See, e.g.*, Verizon Comments at 8 (estimating costs over $10 million to reduce interval to 53 hours).

[3] *See e.g.*, Windstream Comments at 2-6 (describing complexity and costs of upgrading manual porting system, provisioning wireline-to-wireline ports); Embarq Comments at 7-9 (detailing expenses projected by NANC Intermodal Working Group necessary to reduce intermodal porting interval); RCN Telecom Services, Inc. at 1-2 (hybrid manual and electronic port processing system would be costly to upgrade); One Communications Corp. Comments at 4 (A 48-hour interval would require major changes to companies' internal systems and industry practices.)

[4] *See, e.g.*, Windstream Comments at 5 ("95.8 percent of all Windstream's port out requests in 2007 asked for a number porting interval of more than four days."); Verizon Comments at 3 (only around 5 per cent of LSRs submitted to Verizon set due dates within the standard interval).

an expensive automated system and make significant adjustments to their Operations Support Systems (OSS), something that the Commission previously has declined to require. The change would adversely affect large, mid-size, and small carriers, and would be particularly difficult for any carriers that have not already implemented mechanized systems and processes to support LNP, including many of USTelecom's member companies.[5]

In declining to reduce the porting interval previously, the Commission rightly relied on the conclusions of its expert advisory body, the North American Numbering Counsel (NANC) which studied the issue and concluded that it would take significant technical changes to the current wireline carrier system as a prerequisite to a shortened interval:

> First, reducing the porting interval would require wireline carriers to automate and make uniform the Local Service Request (LSR)/Local Service Request Confirmation (LSC) Firm Order Confirmation (FOC) process. In addition, the report indicated that wireline carriers would likely have to eliminate or adjust their batch processing operations. The report noted that a change from batch processing to real time data processing would require in-depth system analysis of all business processes that use batch processing systems. Based on its analysis of these and other challenges, the working group concluded that because most wireline carriers already found their processes and systems challenged to meet the current porting interval it was not feasible to reduce the length of the wireline porting interval for simple ports.[6]

Apart from a very limited number of large carriers which adopted an automated porting process as part of the 271 process,[7] wireline voice providers have not instituted integrated automated systems. Thus, the impact of the proposed change is greatest on mid-sized and small carriers serving regional and rural markets. In the face of a competitive market, these carriers can ill afford to divert forward looking investments in needed infrastructure upgrades that will allow them to expand service areas and to offer broadband and a suite of advanced consumer services.

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[5] Compare Verizon Comments at 8-9 (costs would include modification of many automated order processing systems, networks, switches, and software to improve flow through rates for simple ports and to upgrade metric control systems) *with* Cleartalk of Idaho Comments at 1 (small wireless carrier serving 10,000 customers cannot meet the cost of changing manual system entirely and extending office hours to comply with a mandatory time interval).

[6] *See* Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 23,697, 23,715 ¶ 45, (*Memorandum Opinion and Order*) citing the North American Numbering Council (NANC) Local Number Portability Administration Working Group Third Report on Wireless Wireline Integration, Sept. 30, 2000 (filed Nov. 29, 2000) (*Third Report on Wireless Wireline Integration*) at 13.

[6] *Id.* A shortened porting interval will also require that carriers no longer use batch processing, a further burden, particularly on smaller carriers for whom this processing is especially important for cost and efficiency reasons.

[7] The BOCs automated their systems as part of the 271 checklist process. *See* Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region IntraLATA Services in Georgia and Louisiana, *Memorandum Opinion and Order*, 17 FCC Rcd 9018 (2002) (*BellSouth Georgia/Louisiana 271 Order*). Yet, despite this automated process, they, too, face steep costs if they were required to reduce the porting interval. *See* note 2, *supra*.

It is well documented that consumers desire these advanced services. In contrast, it is questionable whether there is real consumer demand for or competitive benefit in requiring the proposed reduction in the porting interval. In fact, few voice service providers currently take advantage of the four-day interval.[8]

In particular, the record evidence currently fails to demonstrate that the steep costs to small and rural carriers are outweighed (or even balanced) by the benefits. Rather, the evidence cuts the other way. Small carriers receive very few porting requests, so it makes no sense to require that these carriers change from a manual to an automated porting system.[9] Despite the general low volume of porting traffic, these carriers would still have to automate or keep extra staff on hand to ensure that they could meet a 48-hour deadline during an upsurge in porting requests.

In view of the documented burdens on small and mid-sized carriers that the proposed 48-hour porting interval would impose, it is especially troubling that the Commission's Initial Regulatory Flexibility Analysis (IRFA) fails to present the Commission's own analysis of the potential burden on small voice service providers to support its tentative conclusion in the NPRM. As required under 5 U.S.C. § 603, "Such analysis shall describe the impact of the proposed rule on small entities." The Commission's IRFA is devoid of analysis of the potential impact of the proposed change, and merely echoes the questions in the NPRM, asking for information on whether there are technical burdens associated with reducing the porting interval to 48 hours and whether the Commission should adopt differing rules for different kinds of simple ports or for small businesses. Nor is there even a rudimentary discussion of any alternatives that the Commission has considered, as is required by statute. As such, the IRFA fails to meet the statutory requirements.

While it is undisputed that porting brings real benefits in increased competition to the consumer, we submit that with respect to ports involving wireline carriers, what matters to consumers is that they have uninterrupted access to their phone number and the process occurs seamlessly and invisibly, as it does within the current porting interval. In fact, competition is thriving and the need for a reduction in the porting interval in the face of fierce intermodal competition is questionable. With the current four-day porting interval, wireline carriers are losing access lines steadily to cable and wireless. According to the latest statistics, 15.8 percent of all customers have cut the cord.[10]

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[8] Verizon Comments at 3 (only 5 percent of LSRs that Verizon receives from porting-in carriers select the first available date); Windstream Comments at 5 (only 4.2 percent of Windstream's port out requests in 2007 were for four days or less).

[9] OPASTCO Comments at 2-3.

[10] *See* Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2007, National Center for Health Statistics (May 14, 2008) available at CTIA website, http://www.ctia.org/consumer_info/service/index.cfm/AID/10323 (last visited on June 23, 2008).

Moreover, although the push to reduce the porting interval comes largely from cable and wireless service providers, only a very small percentage of ports are intermodal.[11] The service providers that are seeking a change have not documented either need or benefit. Wireline service providers, on the other hand, have put substantial evidence in the record respecting the costs of a reduced porting interval. They have also demonstrated that cable companies and other providers typically schedule ports for intervals longer than the current 4 days.[12]

Thus, the benefits of reducing the porting interval to 48 hours are unclear. In addition to the steep costs, consumer welfare may suffer. Consumers will be hurt if accuracy is sacrificed to speed. The wireline porting process, whether automated or manual, is inherently complex.[13] In particular, for carriers that currently have a manual system, porting requires multiple steps with many "hands-on" actions.[14] Consequently, there is a real trade-off between speed and accuracy. The port can "fall out" for any number of reasons. Unless there is the opportunity to check and verify the porting request at every step where the processing can go awry, there will be an increase in the number of consumers left without service and of inadvertent ports if the interval is shortened.

<u>It Is Premature to Reduce the Current Porting Interval</u>

At this time, it is premature to reduce the porting interval. Carriers have not yet had the opportunity to implement the Commission's recent declaratory ruling concerning the LSR/WPR data fields.[15] In that declaratory ruling, the Commission clarified that a carrier could only request the minimum information needed to validate a customer's request for porting: "In particular, we conclude that LNP validation should be based on no more than four fields for simple ports, and that those fields should be: (1) 10-digit telephone number; (2) customer account number; (3) 5-digit zip code; and (4) pass code (if applicable)."[16] However, there is some question whether the port can be *accomplished* using only the 4 fields and whether a carrier may request additional information to *accomplish* the port.[17] Therefore, it is unsettled whether this rule can be implemented as it stands and how it will operate in practice. Until such time as these issues are resolved, it will be impossible to determine what effects the declaratory ruling will have on the porting interval. But that information is essential for determining whether a

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[11] As of December 31, 2007, fewer than 3 per cent of all ports were intermodal. *See* Numbering Resource Utilization In the United States, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission (March 2008), at 35, Table 14.

[12] *See supra* n. 8 (citing Verizon and Windstream statistics indicating minimal demand for shorter porting intervals).

[13] *See* Verizon Comments at 1-2.

[14] *See* Windstream Comments at 3 (every step in Windstream's porting process "requires human action").

[15] *See LNP Declaratory Ruling & NPRM*, 22 FCC Rcd 19531.

[16] *Id.* at 22 FCC Rcd 19532 ¶ 2

[17] *See* Petition for Clarification and For Limited Waiver for an Extension of Time filed by One Communications Corp., WC Dkt No. 07-243 (Feb. 5, 2008). *See also* Letter from Sara F. Leibman to Marlene H. Dortch (Feb. 27, 2008) (*ex parte* presentation stating that T-Mobile believes that it will take more than 4 fields to accomplish the port and urging the Commission to develop standards for information necessary to accomplish the port).

shorter interval is feasible and how it could be achieved. Therefore, a shorter interval cannot properly be implemented until the outstanding questions surrounding the declaratory ruling have been settled and the 4-field validation process has been implemented.

Moreover, while evaluating the porting interval, it is important for the Commission to recognize that it can only determine what a reasonable interval is relative to the tasks that carriers are required to perform within that interval. To reduce the interval without any consideration of these requirements renders this exercise inherently arbitrary. In determining whether and by how much to reduce the interval, the Commission must find that the revised interval permits carriers to fulfill *all* regulatory obligations that the carrier is required to perform, as well as to permit carriers to port numbers accurately and reliably to minimize the disruption to end users. These findings would comprise a critical part of the factual record of this proceeding.

As such, before moving to shorten the current interval, the Commission should logically take the following preliminary steps: 1) benchmark the current customer demand for a shorter interval; 2) analyze the reasons for the current problems documented in the record in achieving a level playing field for the completion of ports within the current four day porting interval; and 3) if the Commission then decides any action is warranted, promulgate a rule that clearly requires a four-day porting interval is a regulatory requirement and enforce this provision prospectively. Benchmarking consumer demand is necessary because the evidence submitted in the record suggests that there are very few customer complaints about the duration of the current porting interval.[18] Before imposing costs in the millions of dollars the Commission should determine whether customers actually demand a shorter wireline-to-wireline and/or intermodal porting interval by, at the minimum, surveying the Commission's own customer complaint logs and demonstrating that they indicate a sufficient percentage of U.S. telecommunications consumers are complaining about the current 4-day porting interval to justify the cost.

In view of the current wide variation in following the current four-day porting interval, the Commission, if it decides to revise its porting rules, would better serve the goal of competition by ensuring that wireline, cable, and other VoIP providers are providing the consumer with a level playing field for *all* intermodal porting.[19] In fact, record evidence establishes that in a significant number of cases many voice service providers refuse even to target porting at the current porting interval, because it is not required.[20] They will only honor porting requests for intervals greater than the four days in accordance with their self-generated business practices.[21] This creates competitive asymmetry for the voice service providers that are working to meet a

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[18] Windstream notes that state and federal regulatory agencies have referred only 5 complaints to it with respect to the porting interval duration in all of 2007 out of approximately 117,898 completed ports. Windstream Comments at 4. In contrast, the assertions of consumer dissatisfaction are not quantified and thus provide little verifiable support for the need to reduce the porting interval.

[19] Several carriers have provided comprehensive evidence that carriers are not meeting the current porting interval. *See, e.g.*, Verizon Comments at 5-8; Verizon Reply Comments at 2-5; Embarq Comments at 10-11.

[20] Embarq Comments at 10.

[21] Verizon Comments at 5-6.

reasonable four-day porting interval.[22] To remedy this situation with respect to the provision of voice service, the Commission could adopt the four-day interval as mandatory for *all* voice service providers and take prospective enforcement action that will produce a level playing field. Thus, if it decides to make changes to its porting rules, the Commission should adopt a rule clearly requiring a four-day porting interval before creating a new regulatory regime based on an untested aspirational interval that is currently technically impossible for the majority of voice service providers.

Any change in the porting interval should be determined in consultation with the NANC and with voluntary industry standard-setting groups such as ATIS.[23] The NANC questions whether the costs of a 53 hour *intermodal* interval would outweigh the benefits for carriers that would have to radically retool in the face of minimal demand.[24] "In order to support a shorter porting interval," the NANC recognizes that "service providers will need to change internal operating software, business practices and implement mechanized systems and automated interfaces with other carriers."[25]

The NANC study is silent on the cost-benefit balance for wireline-to-wireline ports. Since there are inherent differences between intermodal and wireline to wireline ports, industry groups should work to establish what wireline to wireline porting interval best balances costs and benefits.[26] Working with the NANC and with voluntary industry groups such as the ATIS Ordering and Billing forum, the Commission can more precisely determine where the best cost/benefit balance will lie in a technically achievable porting interval at the most reasonable expenditure possible. Voluntary industry standards can dramatically aid in achieving the shorter porting interval, but there needs to be adequate time to develop these standards.

The Commission can thus best effectuate its policy goals by consulting with the recommendation of the NANC, the Commission's LNP advisory body, to gather data to help it to determine what would be the most technically, operationally, and cost efficient interval for wireline-to-wireline ports before acting further. Also, by giving voluntary industry groups such as ATIS the opportunity to develop industry-wide standards for the implementation of any proposed shortened porting interval, any change will be implemented more effectively. On the basis of its analysis of consumer demand; the recommendations of the NANC on the optimal interval for

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[22] We note that this is part of a larger problem of a lack of parity between intermodal competitors, which are vying to bring consumers the "triple play" of voice, data, and video services. Because of the lack of parity, competition can be skewed artificially.

[23] *See also* AT&T Reply Comments at 1 (recommending that the Commission consult the NANC before implementing any final rules).

[24] NANC Report and Recommendations on Intermodal Porting Intervals (2004) at 25, section 9. The NANC's concerns about whether "these costs may not be justified" apply to both small and mid-size carriers offering service to rural consumers. *Id.*

[25] *Id*.

[26] ATIS Comments at 1, 6 ("Due to the inherent complexity of the porting process and the differences between wireline, wireless and intermodal…porting, ATIS urges the Commission to carefully consider the impact that any new porting rules may have on the industry and on end users.); Windstream Comments at 5.

both intermodal and wireline-to-wireline simple ports; and the development of industry standards for a shortened porting interval; the Commission will have more data that will better enable it to decide whether the imposition of a shorter porting interval properly balances cost and benefit, and industry will have had a better opportunity to determine how best to implement any reduced porting interval.

The Commission Has Not Determined How the Proposed 48-Hour Porting Interval Should Be Measured

The 48-hour porting interval is too vague to be implemented as it stands in view of the fact that the Commission has not indicated how the 48-hour interval is to be measured. It is now standard to measure the porting interval in two parts, divided between the initial LSR and FOC return process (currently 24 hours) and the port implementation period (currently three days).[27] It is unclear whether the Commission is proposing to maintain the current 24-hour validation period and then require a 48-hour completion of the port or contemplates that the whole process would be completed within 48 hours. Because the Commission has failed to provide a rationale for its proposed choice of 48 hours, it is impossible to determine whether the Commission has tentatively concluded that 48 hours after validation of the port is reasonable or whether it is a total of 48 hours with some unspecified time to complete the initial LSR and FOC process is reasonable. The NANC should also be consulted both for purposes of determine the feasibility of this proposal, as well as to fill in the various details missing from the Commission's tentative conclusion.

US Telecom believes that the initial 24-hour time frame is necessary to prevent inaccuracies. Moreover, as several commentators have argued, the time for completion should be measured in business days. In particular, for many mid-sized and small voice service providers, it would be impossible, without incurring the added expense of moving to a 24/7 schedule, to meet a regulatory requirement that was not measured in business days.[28] Given the lack of specificity to support the tentative conclusion, the Commission cannot proceed without further fact-finding and opportunity to comment.

The Commission Must Phase In Implementation of Any Reduced Porting Interval

The wireline industry is currently geared to a 4-day porting interval. If read as requiring completion of the port from beginning to end in 48 hours, the Commission's proposed cut from 4

[27] As noted above, there is still a serious lack of clarity on the fields necessary *to accomplish* the port and that a Petition for Clarification is pending. In its February 27, 2007 *ex parte* T-Mobile acknowledged that "additional 'provisioning fields' are necessary to accomplish the port and urged the Commission to require prompt development of standardized 'provisioning fields' to effectuate simple intermodal and wireline-to-wireline ports." *Id.* at 1. This illustrates how much industry standardization work needs to be done to reduce the porting interval and how unclear it is whether a 48-hour schedule can realistically now be met. *See also* ATIS Comments at 5-6 (consensus that additional fields will be necessary); Windstream Reply Comments at 4, n. 12 (discussing the fields that may be needed); Sprint-Nextel Comments at 11.

[28] *See, e.g.*, Windstream Reply Comments at 4 ("Windstream is currently not equipped to respond to porting request in all hours of the night, and over weekends and holidays.").

days is draconian. If the Commission were to go ahead with this change by regulatory fiat, then there should be a reasonable phase in period to allow uniform technical standards to be developed and implemented and to enable voice service providers to make the necessary equipment upgrades, changes to OSS, and complete personnel training. Automatic waivers of that deadline for a reasonable time should be granted for voice service providers that demonstrate that they must accomplish significant infrastructure upgrades in order to meet the new porting interval.[29]

The Commission Must Provide Cost Recovery of Any Reduced Porting Interval

Most importantly, the Commission must, in lockstep with any new LNP mandate, clarify that the costs of meeting this regulatory mandate satisfy the Commission's cost recovery criteria and therefore are recoverable.[30] The Commission has stated that it will consider the applicability of cost recovery when it imposes a new regulatory requirement for which that recovery is sought, rather than as the subject of a declaratory ruling.[31] Therefore, this proceeding is the appropriate venue for determining whether the costs of upgrading are recoverable. It is USTelecom's position that they must be under current Commission precedent and sound policy.

The Commission has adopted the following "two-part test for identification of the carrier-specific costs that are directly related to the implementation and provision of telephone number portability, that is, eligible LNP costs."

> Under this test, to demonstrate that costs are eligible for recovery through the federal charges recovery mechanism, a carrier must show that these costs: (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.

The imposition of a 48-hour porting interval for simple intermodal and wireline-to-wireline ports would meet both parts of this test. It would require ILECs to make specific changes to their OSS and other systems, as well as require personnel training on the new systems, *for the provisioning of LNP* within a 48-hour porting interval. Because such costs would not occur *but for the Commission's imposition of a rule* requiring voice service providers to meet a shortened porting interval, these costs would meet the Commission's cost recovery test.

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[29] RCN Reply Comments at 3-4; NTCA Reply Comments at 3 (transition period and reasonable time frame for small carriers to comply and automatic waiver for small carriers for whom it is unduly burdensome); AT&T Reply Comments at 3 (reasonable time for implementation). *See also* Cablevision Reply Comments at 2-3 (supporting shorter interval subject to a reasonable transition period).

[30] Small and mid-sized carriers, which must move from a manual to automated system, cannot afford the cost of such systems without support. *See, e.g.*, Comments of Cleartalk of Idaho (manual wireless carrier servicing fewer than 10,000 customers cannot afford to upgrade manual system and cannot competitively pass these costs on to customers).

[31] Telephone Number Portability, Bell South Corporation Petition for a Declaratory Ruling and/or Waiver, *Order*, 19 FCC Rcd 6800, 6810 ¶ 19 (2004) (BellSouth Declaratory Ruling Order).

We note that the 1997 cost recovery mechanism did not account for changes to process flows or changes to implement a porting interval at a 48-hour interval. That was not the industry standard. Even if voice service providers had designed systems that could accomplish ports within 48 hours, these costs could not have been claimed at that time. They would have been forward-looking and speculative costs and, therefore, could not have been recovered. Now, if there were to be a change from the industry standard, new equipment and configurations would be required for which there has been no previous recovery and which have only a regulatory, not a business, justification in improving some aspect of the network. For those reasons, these changes would not be a normal network feature. Therefore, under the statute, the use of a cost recovery mechanism would be mandated, if a new regulatory requirement is instituted. Unless cost recovery is permitted, ILECs will have no method for collecting additional costs that are directly associated with the provision of LNP—precisely those costs that LNP cost recovery is designed to cover. Failure to provide cost recovery would not be competitively neutral in view of the ILEC's situation. This result would be contrary to Section 251(e)(2) of the Communications Act, which requires LNP costs to be borne on a competitively neutral basis.[32]

In order to ensure that number portability costs are borne by all providers on a competitively neutral basis, the Commission should pool the new costs of meeting the reduced porting interval and allocate those costs among all providers of voice service. By pooling costs and distributing them among all voice service providers, end users will be equally affected by the additional cost; rural consumers who are most often served by small and mid-sized carriers will not shoulder a disproportionate share of the cost; the cost recovery period will be shortened; and competitive neutrality will be maintained. If this system were adopted, the Commission could require carriers to submit LNP tariffs, which the Commission would review for compliance with cost recovery principles.

We note that it would also be appropriate to provide a waiver of the five-year cost recovery period because these charges could not be anticipated at the time that service providers initially filed for cost recovery. Just as in the Commission's *BellSouth* decision, carriers should be allowed to recover costs over the period that "best suits" the carrier's "own needs and those of its customers."[33] At a minimum, for carriers that have already begun or have completed cost recovery over the five-year interval, a new five-year interval should be allowed for cost recovery for the costs of implementing a reduced porting interval.

Interconnection Agreements

On a related matter, the Commission should reject the call of certain cable providers to unseat clear Commission precedent requiring an interconnection agreement for wireline-to-wireline porting. The argument rests on a misunderstanding of the Commission's rationale for exercising its forbearance authority in the context of wireless porting. In that situation, the Commission

[32] 47 U.S.C. § 251(e)(2); Windstream Comments at 5-8.

[33] *See* BellSouth Declaratory Ruling Order, 19 FCC Rcd at 13 (declaring that the Commission does not permit recovery of speculative costs, and, to the extent that any carrier sought such recovery in the LNP context, it was rejected).

reasoned, ports were not tied to a single rate center and a point of interconnection might not even exist. Therefore, the Commission determined that forbearance was warranted, because there was unlikely to be any effect on rates, any harm to consumers, or any countervailing public interest considerations.

In contrast, the cable operators seeking to apply that precedent have not made the case that forbearance is justified in this instance. The wireless analogy is faulty. Unlike the case of wireless interconnection, here a single rate center is involved and a point of interconnection must generally be created for carriers' customers to interconnect within the rate center. There is likely to be a significant exchange of traffic. This makes it imperative that carriers operate under an interconnection agreement. As USTelecom has noted in the context of phantom traffic, there has been a genuine problem of arbitrage when CLECs have refused to enter into interconnection agreements for the identification and rating of traffic. An interconnection agreement between carriers exchanging traffic is one of the underpinnings of the Telecommunications Act, and granting the CLECs' request here would merely serve to facilitate their ability to ignore this statutory responsibility. Because of this well-documented problem, it is clear that the public interest would not be served by forbearance. The Commission should, therefore, adhere to its prior precedent and steer clear of a result that likely would create new arbitrage opportunities.

Sincerely,

Genie Barton
Vice President & General Counsel

cc: Amy Bender
Scott Bergmann
Scott Deutchman
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