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April 21, 2009

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

Re: ***Ex Parte*** in WC Docket No. 07-244, Local Number Portability Porting Interval and Validation Requirements; CC Docket 95-116, Telephone Number Portability

Dear Ms. Dortch:

Yesterday Eric Einhorn, Vice President – Federal Government Affairs, and I met with Julie Veach, Ann Stevens, Al Lewis, Bill Dever, and Randy Clarke, all of the Wireline Competition Bureau. We discussed various issues regarding local number portability, consistent with the attached documents that we presented to those in attendance.

We outlined Windstream's position that the costs of a reduced porting interval would significantly outweigh the benefits. We noted that adoption of the proposed porting interval rule would require Windstream to automate its porting systems and/or hire additional staff. If the Commission nonetheless decides to adopt a shorter interval, we recommended that the Commission (i) base any new porting interval on business days, rather than calendar days; (ii) allow all affected carriers to recover implementation costs (preferably by pooling carrier-specific costs); and (iii) afford carriers at least an 18-month transition period.

Please feel free to contact me if you require additional information.

Sincerely,

/s/

Jennie B. Chandra

Attachments

cc: Julie Veach, Ann Stevens, Al Lewis, Bill Dever, Randy Clarke

LOCAL NUMBERING PORTABILITY
Implementation Issues

WC Docket 07-244

Costs required to meet a shorter porting interval far outweigh any potential benefits.

- *The proposed porting interval rule would impose significant new costs.*
  - Each step of Windstream's current porting process requires human action.
  - To guarantee ports can be processed in 48 hours, Windstream expects it would need to devote significant resources to automating its systems and/or hiring staff.

- *Any benefits from reducing the porting interval would be minimal.*
  - Windstream's experience indicates that consumers have little desire for shorter intervals: The vast majority of port out requests submitted to Windstream asked for an interval of *more than* four days, and complaints referred to Windstream by federal and state agencies provide almost no evidence of consumer dissatisfaction with porting intervals.

***But if the FCC opts to require a shorter porting interval*:**

(1) Any new interval should be based on business days, rather than calendar days.

- Some ports may present special issues requiring manual intervention. To respond to these fallout issues, carriers subject to an interval based on calendar days would be forced to hire new staff for all hours of the night, and over weekends and holidays.

(2) The FCC must allow affected carriers to recover associated implementation costs.

- *The Communications Act and FCC precedent establish that carriers should be able to recover costs directly related to providing LNP.*
  - Section 251 requires portability costs to be borne on "a competitively neutral basis."
  - The FCC previously has permitted rate regulated carriers to recover costs that would not have been incurred but for implementation of LNP rules.

- *The FCC should pool all new LNP costs and allocate the costs among all voice providers.*
  - Pooling carrier-specific costs would ensure that customers of small and mid-size ILECs do not bear a disproportionate share of new LNP implementation costs.

- *The FCC should allow carriers to use a separate LNP line item if it opts to permit cost recovery through an end-user surcharge.*
  - It would be difficult or even impossible for many carriers – particularly those in rural areas – to recover new LNP costs through an end-user common line charge.

(3) Carriers should be afforded at least an 18-month transition period.

- A meaningful transition period is needed to (a) develop common practices for implementing the porting interval rule and (b) institute electronic systems and staffing to support a shorter porting interval. In particular, an industry forum, such as the North American Numbering Council, could help design specific parameters for implementing any new rule.

windstream

THE COMMUNICATIONS ACT AND FCC PRECEDENT REQUIRE LNP COST RECOVERY

I. Section 251(e) of the Communications Act mandates that number portability costs fall on carriers in a competitively neutral manner.

A. 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 competitively neutral basis . . . ."[1]

B. The FCC 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."[2]

II. Denying ILECs cost recovery would negatively impact voice competition.

A. Carriers that are not rate regulated, such as wireless, cable voice providers, and CLECs, may recover carrier-specific LNP costs "in any lawful manner" they desire.[3]

B. Although ILECs compete head-to-head with these carriers for the same customers, ILECs, without FCC action, would not have the same ability to recover the costs of such a mandate without FCC action.[4] ILECs instead 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.

C. Disparity in voice carriers' ability to recover LNP costs would "affect the ability of carriers to compete" – contrary to what Congress intended.[5]

III. Failure to permit cost recovery here would be an unjustified departure from prior FCC decisions permitting LNP cost recovery.

A. The FCC has applied a two-pronged test to determine whether cost recovery is warranted: Carriers can 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."[6]

B. According to FCC precedent, recoverable LNP costs are "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."[7] Such costs include "incremental overheads . . . incurred specifically in the provision of long-term number portability."[8]

C. When adopting the original LNP rules, the FCC allowed ILECs to recover their carrier-specific costs through a federal charge assessed on end-users.[9] ILECs could impose the charge for a maximum of five years, unless they could prove it "was not reasonable based on the information available at the time it was initially set."[10]

D. Subsequently the FCC has found that additional LNP cost recovery, above and beyond that initially permitted within the five-year window, may be necessary. The FCC has allowed further LNP cost recovery in several instances.[11]

[1] 47 U.S.C. § 251(e).

[2] *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*).

[3] *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.").

[4] According to the FCC, 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 FCC 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.

[5] *Id.* at ¶ *56* (finding that Section 251(e)(2) requires the FCC "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").

[6] *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, *aff'd*, Order on Reconsideration.

[7] *Third Report and Order* at ¶ 8.

[8] *Id*. at ¶ 74.

[9] *Id*. at ¶ 135.

[10] *Id*. at ¶ 144.

[11] *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) (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) (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).