WILTSHIRE & GRANNIS LLP

January 18, 2011

Ex Parte

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

Re: *In the Matter of Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability*, Petition for Clarification and/or Reconsideration of Qwest Communications International Inc., WC Docket No. 07-244 and CC Docket No. 95-116

Dear Ms. Dortch:

Qwest Communications International Inc. has filed a petition for reconsideration of the Commission's *2010 Porting Interval Report and Order*,[1] arguing that the Commission's new rule clarifying that a four-day interval applies to non-simple ports is contrary to NANC's recommendations and industry practice. Level 3 Communications LLC ("Level 3") disagrees and opposes Qwest's petition for reconsideration. Qwest's petition misstates the existing rules on non-simple ports.

Non-simple ports—like simple ports until the Commission's *2009 Porting Interval Order*[2]—have always been subject to a default four-day interval.[3] And the Commission has long indicated that it believes four days to be the longest acceptable interval for all ports.[4]

The Commission's new rule does nothing more than codify NANC's recommendation and its own long-held belief that four days is sufficient to complete all ports. Nor does the new

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1 *In the Matters of Local Number Portability Porting Interval and Validation Requirements*, Report and Order, WC Docket No. 07-244, CC Docket No. 95-116, FCC 10-85 (rel. May 20, 2010) ("*2010 Porting Interval Report and Order*").

2 *Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability*, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd. 6084, 6084 (2009) ("*2009 Porting Interval Order*").

3 *See* North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, Appendix B to Appendix E, Figure 1, step 7 (rel. Apr. 25, 1997), available at http://www.fcc.gov/wcb/cpd/Nanc/flowdesc.doc ("1997 Inter-Service Provider LNP Operations Flows").

4 *In the Matter of 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. 23697, 23712, ¶ 38 (2003) ("*2003 Porting Issues Opinion and Order*").

rule prevent service providers from continuing to negotiate longer porting intervals, as has been the industry practice. It does, however, place the responsibility for requesting a longer interval on the customer or the new service provider—a provision that is entirely consistent with the Commission's interpretation of the local number portability requirements.

Non-simple ports have always been subject to a default four-day interval. NANC's original recommendations did not distinguish between simple and non-simple ports and provided a four-day interval for all ports:

> The minimum expectation is that the [Firm Order Confirmation] is returned within 24 hours...unless otherwise defined by inter-company agreements....The FOC due date is no earlier than three (3) business days after the FOC receipt date.[5]

That recommendation does not say that service providers need not *begin* a port until four days have elapsed as Qwest claims; rather, it says that a port need not be completed any sooner than four days.

In 2003, when the Commission asked for comment on reducing the porting interval for *simple* ports, it noted that the then-current four-day interval was the outside limit of what it considered acceptable for a porting interval.[6] NANC's subsequent report specifically noted it did not investigate reducing the four-day porting interval for non-simple ports.[7] The implication is that non-simple ports would continue to be subject to the four-day porting interval and to the industry practice of negotiating for longer porting intervals.[8]

The Commission's new rule codifies that understanding. The porting interval for non-simple ports remains four days, the default since 1997.[9] And the rule allows service providers to negotiate a longer porting interval where necessary.[10] The new rule does place the responsibility for requesting that longer interval on the new service provider or the customer. But that provision is entirely consistent with the pro-consumer and pro-competitive underpinnings of local number portability.

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5 1997 Inter-Service Provider LNP Operations Flows, Figure 1, step 7.

6 *2003 Porting Issues Opinion and Order*, 18 FCC Rcd at 23712, ¶ 38.

7 Letter from Robert C. Atkinson, Chairman, North American Numbering Council, to William Maher, Chief, Wireline Competition Bureau, FCC, CC Docket No. 95-116, at 12 (filed May 7, 2004).

8 *See id.* at 32.

9 A recent status report to NANC by the LNPA Working Group confirmed that the default interval has been four days since 1997. *See* LNPA Working Group Status Report to NANC, December 16, 2010, at 2.

10 *See 2010 Porting Interval Report and Order*, Appendix B at ¶ 3; to be codified at 47 C.F.R. 52.35(d) ("All telecommunications carriers required by the Commission to port telephone numbers must complete a non-simple wireline-to-wireline or non-simple intermodal port request within four business days unless a longer period is requested by the new provider or by the customer.").

All of NANC's recommendations have allowed for intervals exceeding four days when the service providers agreed to those longer intervals. The key difference in the Commission's new rule is that the old service provider cannot hijack the porting process by refusing to negotiate a longer porting interval with a new service provider. The new service provider and the customer may request longer porting intervals when they are needed without fear that the old service provider will complete a port in four days, whether the new service provider is ready or not. Absent their request, new service providers are assured the port will be completed within four days; if new service providers want more time, they may request it.

AT&T argues that old service providers will be put at a disadvantage by this rule.[11] In fact, this rule preserves the pro-competitive intent of local number portability. New service providers can rely on the default four-day interval; they can also depend on old service providers accommodating their requests for longer porting intervals.

NANC also has always provided an exception to the default—that the first telephone number ported in an NPA-NXX would not be ported until five days after the FOC receipt date.[12] Qwest points to that exception as proof that all ports need not be begun for at least four days,[13] though AT&T correctly identifies the recommendation as an exception.[14] Both claim that the rule is inconsistent with the exception as described by NANC.[15]

Level 3 believes that the FCC has been consistent—and in any event the former limited exception need not swallow the new rule. The Commission's new rule provides for negotiation of longer porting intervals on request of the new service provider or customer. Where a port involves the first TN ported in an NPA-NXX and the new service provider or customer believes an interval of more than four days is needed, they may negotiate for that longer interval, consistent with NANC's recommendation.[16]

The Commission has long interpreted the number portability obligation "to mean that consumers must be able to change providers while keeping their telephone number as easily as they may change providers without taking their telephone number with them."[17] The new rule for non-simple ports advances that goal by codifying the existing default interval while providing

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11 Comments and/or Written Ex Parte Presentation of AT&T Inc., WC Docket No. 07-244 and CC Docket No. 95-116 (filed September 13, 2010) ("AT&T Ex Parte").

12 1997 Inter-Service Provider LNP Operations Flows, Figure 1, step 7.

13 Petition for Clarification and/or Reconsideration of Qwest Communications International, Inc., WC Docket No. 07-244 and CC Docket No. 95-116, at 4-5 (filed July 22, 2010) ("Qwest Petition").

14 AT&T Ex Parte, at 3.

15 *Id.*; Qwest Petition at 5.

16 NANC considered abolishing the five-day exception as it prepared its 2009 Recommendations. LNPA Working Group Status Report to NANC, July 16, 2009, at 6.

17 *2009 Porting Interval Order*, 24 FCC Rcd. at 6085 ¶ 2 n.4.

flexibility to allow customers and new service providers to request an interval longer than four days when necessary. Accordingly, the Commission should deny Qwest's petition for reconsideration.

Please contact me if you have any questions.

Sincerely,

John T. Nakahata
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cc: Ann Stevens
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