

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Local Number Portability Porting Interval and Validation Requirements)	WC Docket No. 07-244
)	
Telephone Number Portability)	CC Docket No. 95-116

COMMENTS OF TIME WARNER CABLE INC.

Time Warner Cable Inc. (“TWC”) submits these comments in response to the Commission’s Public Notice in the above-captioned dockets.¹ The Public Notice seeks comment on codification of a best practice recommended by the North American Numbering Council (“NANC”) that would limit the information a transferring service provider may require when the new service provider requests a customer service record (“CSR”) to enable its submission of a number port request.² In light of continued evidence that transferring carriers are misusing the CSR process to delay or impede number ports, TWC urges the Commission to adopt the NANC’s recommendation as a rule.

DISCUSSION

As a leading competitive provider of voice services to nearly 5 million residential and business customers, TWC depends on efficient number portability. TWC thus commends the Commission for its proactive efforts to ensure that number ports are completed promptly and effectively. For instance, the Commission now requires that simple ports be completed within

¹ *Comment Sought on North American Numbering Council Proposal for Customer Service Record Requests*, Public Notice, DA 11-1954 (rel. Nov. 29, 2011) (“Public Notice”); 76 Fed. Reg. 246 (Dec. 22, 2011).

² *See* Attachment to Letter from Betty Ann Kane, Chairman, North American Numbering Council, to Sharon Gillett, Chief, Wireline Competition Bureau, FCC, WC Docket No. 07-244, CC Docket No. 95-116 (filed Oct. 3, 2011) (“NANC Report”).

one business day after the submission of a local service request (“LSR”),³ and it has adopted rules specifying what information a transferring service provider may require the new service provider to include in the LSR.⁴ Through such actions, the Commission has sought to advance the important procompetitive goal of giving customers “flexibility in the quality, price, and variety” of their services.⁵

In the same vein, the Commission also has addressed some problems in connection with CSRs, observing that its “efforts to streamline and make the porting process more efficient by reducing the porting interval may be frustrated by the CSR process, which is often a prelude to porting.”⁶ Accordingly, the Commission adopted as a rule another NANC recommendation that CSRs be returned within twenty-four hours, citing record evidence that “the time interval for return of a CSR is often longer than the Commission’s one-business day interval, which can make the overall time to port seem longer for a consumer.”⁷ In addition, the Commission cautioned carriers against misusing the CSR process for their own competitive advantage, “remind[ing] carriers that in the number porting context, service providers may only request and

³ *Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability, Report and Order and Further Notice of Proposed Rulemaking*, 24 FCC Rcd 6084 ¶ 1 (2009) (“*Porting Interval Order and FNPRM*”).

⁴ *Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability, Report and Order*, 25 FCC Rcd 6953 ¶ 9 (2010); *see also id.* ¶ 10 (“As we have stated before, ‘the porting-out provider may not require more information from the porting-in provider than is actually *reasonable* to validate the port request and accomplish the port.’”) (quoting *Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; Numbering Resource Optimization, Report and Order and Declaratory Ruling*, 22 FCC Rcd 19531 ¶ 43 (2007)).

⁵ *Id.* ¶ 25 (citation and internal quotation marks omitted).

⁶ *Id.* ¶ 19.

⁷ *Id.* ¶ 19 & nn.66-67 (citing comments from various parties describing delays and variance in CSR return times).

provide CSRs for the purpose of transferring a number and not for the sole purpose of gaining customer or carrier information.”⁸ And, most pertinent to the Public Notice, the Commission expressly reserved the right to limit the information a transferring service provider can require to verify the existence of a port request before it will disclose a CSR, committing to undertake further review if that issue were to “become[] a concern.”⁹

The Commission should not delay any further in taking additional action in connection with CSRs. Notwithstanding the Commission’s prior efforts to improve the efficiency of the porting process in general and the CSR process in particular, TWC has experienced ongoing difficulty obtaining CSRs in a timely manner.¹⁰ Perhaps most troubling, several transferring carriers have attempted to use the CSR process as an opportunity for unlawful retention marketing. Indeed, TWC is aware of at least one carrier that contacted customers who had signed up for TWC’s service immediately after receiving the associated CSR request, exploiting the advance notice of an impending change in an attempt to persuade customers to cancel their pending service orders. Such conduct has occurred even though the Commission has ruled, and the D.C. Circuit agreed, that this precise type of conduct violates Section 222(b) of the Communications Act.¹¹ Some transferring carriers have tried to justify such direct

⁸ *Id.* ¶ 20.

⁹ *Id.* ¶ 21; *see also Porting Interval Order and FNPRM* ¶ 19 (“We ask parties to address whether there are additional ways to streamline the number porting process or improve efficiencies for simple and non-simple ports.”).

¹⁰ Because the following incidents reflect commercial disputes that are still pending or that pertain to ongoing commercial relationships, TWC does not identify the transferring carriers in question here.

¹¹ *Bright House Networks, LLC v. Verizon California, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 10704 ¶ 22 (2008) (ruling that such retention marketing contravenes “the fundamental objective” of Section 222(b): “to protect from anti-competitive conduct” service providers that “have no choice but to reveal proprietary information to a competitor”), *aff’d*, *Verizon California, Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. 2009).

communications with their departing customers under the guise of seeking verification that the customers desire to switch services (or, in at least one instance, instruction on how the customer wished to handle the remaining service in a bundled offering). But the Commission has long restricted carriers' efforts to verify carrier change requests, precisely to prevent this sort of abuse and to protect consumers.¹²

In some cases, transferring providers have simply delayed or refused to provide CSRs, relying on specious or unlawful grounds to do so. For example, in just the past few months, one transferring carrier refused to provide CSRs for two customers who had decided to switch to TWC's service, on the stated basis that the customers' service contracts remained in effect. Of course, nothing in Commission precedent relieves a transferring carrier of its obligation to provide CSRs in a timely manner where a customer is under contract. Rather, the carrier must resolve any purported contractual dispute without holding the customer hostage by preventing a validly requested number port. Another carrier refused to supply the requested information until TWC provided the customer's account number, corroborating the NANC's observation that "some providers are requiring information such as the customer's Account Number (AN), before they will honor a CSR request," which in turn "add[s] delay in obtaining the necessary CSR and therefore, is adding delay to the customer's ability to port their telephone number."¹³ And when TWC sought to initiate discussions with yet another transferring carrier that refused to provide CSRs, the carrier refused, claiming that TWC was not in a position to complain because the CSRs had been requested not by TWC directly but by the competitive local exchange carrier on

¹² *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 ¶ 6 (1998).

¹³ NANC Report at 1.

which TWC relied for interconnection and number portability. That view completely disregards the Commission’s consistent acknowledgement that interconnected voice over Internet Protocol (“VoIP”) providers are entitled to rely on such wholesale carriers for precisely those purposes.¹⁴

Although TWC has attempted to resolve the matters described above without regulatory intervention, it is clear that such anticompetitive conduct will continue absent decisive Commission action. Adopting NANC’s recommended Best Practice 70 as a rule will clarify carriers’ obligations and enable enforcement action to punish and deter violations. As the Commission observes in the Public Notice, “there is currently no industry-wide standard on what information the transferring service provider may require from a new service provider when the new provider requests a [CSR].”¹⁵ As a result, transferring carriers can invent their own prerequisites before responding to a CSR request. Best Practice 70 addresses this gap, providing that a transferring service provider may only require the following information when a new service provider requests a CSR: (1) any working telephone number associated with the customer’s account, (2) a positive indication that the new service provider has the authority from the customer, and (3) the date the customer gave that authority.¹⁶

Adopting NANC Best Practice 70 as a Commission rule would benefit competition and consumers. As with the Commission’s earlier reforms in connection with LSRs and CSRs,

¹⁴ See, e.g., *Bright House Networks*, 23 FCC Rcd 10704 ¶ 3 (explaining that retail VoIP providers “rely[] on wholesale competitive local exchange carriers (‘Competitive Carriers’) to interconnect with incumbent LECs and to provide . . . local number portability (‘LNP’) functions”); *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (WCB 2007).

¹⁵ Public Notice at 1.

¹⁶ *Id.*

standardization of the data required for inclusion in the CSR request will facilitate efficient, effective number porting, while still allowing transferring providers to collect all of the information necessary for provision of CSRs. In addition, the NANC recommendation would eliminate the opportunity for transferring carriers to request information—such as direct verification of the customer’s desire to switch services—that might require communications between the customer and the transferring provider, thus reducing delay as well as the opportunity for unlawful retention marketing.¹⁷ Finally, such a requirement would be consistent with long-standing statutory requirements mandating the provision of CSRs,¹⁸ as well as the provision of number portability.¹⁹ In short, giving NANC Best Practice 70 the force and effect of a Commission rule will help to avoid delays in the porting process and reduce opportunities for conduct the Commission already has deemed to be anticompetitive and unlawful.

¹⁷ *Porting Interval Order and FNPRM* ¶ 8 n.31 (stating that reducing the porting interval may have the “added benefit of reducing the potential for retention marketing in violation of the Act and the Commission’s rules”).

¹⁸ 47 U.S.C. § 222(c)(2) (providing that “[a] telecommunications carrier shall disclose customer proprietary network information [CPNI], upon affirmative written request by the customer, to any person designated by the customer”). The Commission has stated that “a carrier’s failure to disclose CPNI to a competing carrier that seeks to initiate service to that customer who wishes to subscribe to a competing carrier’s service, may well constitute an unreasonable practice in violation of section 201(b), depending on the circumstances.” *Implementation of the Telecommunications Act of 1996: Telecommunication Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 ¶ 86 (1999).

¹⁹ 47 U.S.C. § 251(b)(2) (imposing a “duty” on telecommunications carriers “to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission”).

CONCLUSION

For these reasons, TWC supports the immediate adoption of a rule limiting the information that can be required before providing a CSR as recommended in Best Practice 70. TWC further urges the Commission to continue to monitor technological and marketplace developments so that it can determine whether further changes are appropriate over time.

Respectfully submitted,

TIME WARNER CABLE INC.

Steven N. Teplitz
Terri B. Natoli
TIME WARNER CABLE INC.
901 F Street, NW
Suite 800
Washington, DC 20004

Julie P. Laine
TIME WARNER CABLE INC.
60 Columbus Circle
New York, NY 10023

By: /s/ Matthew A. Brill
Matthew A. Brill
Brian W. Murray
Patricia C. Robbins
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004-1304

Its Attorneys

January 23, 2012