

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

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| In the Matter of |) | |
| |) | |
| Telephone Number Requirements for IP-Enabled Services Providers |) | WC Docket No. 07-243 |
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| Local Number Portability Porting Interval and Validation Requirements |) | WC Docket No. 07-244 |
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**REPLY COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”) hereby submits its reply comments in the above-captioned proceeding.¹ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation’s largest broadband provider of high-speed Internet access after investing over \$100 billion since 1996 to build a two-way interactive network with fiber optic technology. Cable companies also provide voice service to millions of American homes and are rapidly making these services available nationwide.

INTRODUCTION

Congress and the Commission have long understood that competition in the voice market would never develop unless customers had the ability to port their numbers to a new provider. They also understood that an incumbent provider has no incentive whatsoever to process the porting request quickly and accurately and that, in the absence of regulation, an incumbent would

¹ *Local Number Portability Porting Interval and Validation Requirements, et al.*, WC Docket Nos. 07-244, *et al.*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, FCC 07-188 (rel. Nov. 8, 2007) (*Order and NPRM*).

have the incentive and the ability to delay the port and take other steps to encourage customers to change their mind about switching providers.

To combat the poor incentives of incumbent LECs, Congress mandated that all local exchange carriers provide number portability and directed the Commission to establish a regulatory regime to govern the porting process. The number portability regime established by the Commission includes a number of features designed to counter the negative incentives of incumbent providers, including a mandatory porting interval.

The Commission has an obligation to consumers to enforce its existing number portability rules and to make changes in those rules as needed to ensure that numbers are ported as quickly and accurately as possible. The Commission took a strong step in that direction in the *Order and NPRM* by limiting the number of fields that a porting out carrier can require, but more needs to be done. In these reply comments, NCTA explains that the Commission should adopt its tentative conclusion to reduce the porting interval to 48 hours and it should clarify that a porting out carrier may not require a Section 251 interconnection agreement as a precondition to porting.

**THE RECORD CONFIRMS THAT A SHORTER
PORTING INTERVAL WOULD BENEFIT CONSUMERS**

NCTA's opening comments expressed support for the Commission's tentative conclusion that it should reduce the porting interval for simple port requests to 48 hours.² The ability of consumers to quickly and easily port their numbers to a new carrier is critical to preserving the competition that exists today, which has been remarkably beneficial for consumers.³ As the

² NCTA Comments at 3, citing *Order and NPRM* at ¶ 60.

³ See Michael Pelcovits and Daniel Haar, *Consumer Benefits of Cable-Telco Competition*, at 11, available at http://www.micradc.com/news/publications/pdfs/Updated_MiCRA_Report_FINAL.pdf (finding that consumer benefits from competition exceed \$23 billion over the last four years).

Commission recognized, it is important “to ensure the efficiency and effectiveness of LNP, which ‘eliminates one major disincentive to switch carriers’ and thus facilitates ‘the successful entrance of new service providers.’”⁴

A number of other parties also recognize that the Commission’s proposal to adopt a shorter porting interval will be beneficial for consumers.⁵ As Charter explains, “[c]onsumers are beginning to expect seamless transitions when moving from one provider to another. Guided by their experience with wireless services, many consumers expect ports to occur very quickly, no longer than a single day or so.”⁶ AT&T echoes this point, noting that “reducing current porting intervals . . . can produce benefits for consumers and further strengthen competition among service providers.”⁷

While the consumer benefits of a shorter porting interval are obvious to most companies, a number of providers, mostly incumbent LECs, oppose any change in the porting interval. Verizon, in particular, makes the bizarre argument that there would be no consumer benefit from a shorter interval because competitors usually do not request ports on the first available date.⁸ According to this theory, the fact that the average requested port date is longer than the current four-day porting interval means that neither customers nor competitors actually would benefit from a shorter interval.⁹

⁴ *Order and NPRM* at ¶ 55, quoting *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8434, ¶ 157 (1996).

⁵ See, e.g., AT&T Comments at 2; Charter Comments at 3; Comcast Comments at 4; Time Warner Cable Comments at 2-3.

⁶ Charter Comments at 3.

⁷ AT&T Comments at 2.

⁸ Verizon Comments at 3-4.

⁹ *Id.* Windstream makes a similar argument and notes that it receives very few consumer complaints about porting intervals. Windstream Comments at 4. This is a meaningless statistic because customers are likely to attribute delays in receiving service to the new provider and are unlikely to register those complaints with Windstream. It

Verizon's theory is completely divorced from reality. The porting interval establishes the first date that a provider can offer to install a potential customer's service. The evidence cited by Verizon purports to demonstrate that, on average, there is a lag between the first available date for installation and the date chosen by customers. Given the busy lives that most Americans lead, it is neither surprising nor significant that many customers are not available to have service installed on the earliest date offered by a new provider.

But Verizon misses the mark when it relies on that data to suggest that customers would not take earlier appointments if offered. Nothing about the date selected when the earliest installation date is 4 days after an order is placed suggests that customers would choose the same date if installation was available only 2 days after service is ordered. To the contrary, common sense suggests that, on average, the earlier the date offered by the provider, the earlier the date a customer is likely to choose for the installation. Some customers undoubtedly will choose to take advantage of earlier installation dates and there is no benefit whatsoever associated with subjecting those customers to a longer waiting period before the change is processed.¹⁰ Rather, the sooner the port can be processed, the sooner the customer is able to use its preferred provider.

None of the other proffered reasons for maintaining the current interval withstand scrutiny. Most of these comments are from ILECs suggesting it is either premature to adopt new rules or that it would be too burdensome. But these comments make clear that the real problem is that ILECs have no interest in facilitating number portability and the systems they have in place often are inadequate to the task. Windstream, for example, describes a highly complex process in which “[e]ach step . . . requires human action” and “[n]o single piece . . . is

is precisely because consumers will attribute delays to the new provider that the Commission imposed a mandatory porting interval.

¹⁰ *Id.* at ¶ 55 (“[I]t is critical that customers be able to port their telephone numbers in an efficient manner in order for LNP to fulfill its promise.”).

automatically managed by an electronic system.”¹¹ The effect of these procedures is to make it more difficult for customers to leave the ILEC. But now that cable operators and others are offering facilities-based alternatives, the Commission must move to a regime that does a better job of meeting the consumer need for quick and accurate transitions.

THERE IS NO BASIS FOR REQUIRING AN INTERCONNECTION AGREEMENT AS A PRECONDITION TO NUMBER PORTING

NCTA’s comments also explained why the Commission should clarify that an interconnection agreement should not be a prerequisite for wireline-to-wireline porting to occur.¹² The Commission long ago made such a finding with respect to wireless carriers¹³ and NCTA explained that such a policy should be equally applicable to wireline carriers, which often exchange traffic without negotiating or entering into interconnection agreements.¹⁴

Two incumbent LECs oppose the requested clarification, but here too their arguments do not withstand scrutiny. Embarq suggests that not requiring an interconnection agreement will “exacerbate an already dysfunctional intercarrier compensation regime” and encourage providers to port numbers to customers that move outside the rate center associated with the customer’s telephone numbers.¹⁵ The Commission considered and rejected similar concerns about the interplay between number portability and intercarrier compensation in the wireless context and it should take the same approach here.¹⁶ The Commission has a separate rulemaking where it already is considering the myriad compensation issues that have developed as competitors with

¹¹ Windstream Comments at 3.

¹² NCTA Comments at 3-4.

¹³ *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23711-12, ¶¶ 35-37 (2003) (*Intermodal Number Portability Order*).

¹⁴ *Id.* at 4.

¹⁵ Embarq Comments at 15-16.

¹⁶ *Intermodal Number Portability Order*, 18 FCC Rcd at 23713, ¶ 40 (“We recognize the concerns of these carriers, but find that they are outside the scope of this order.”).

different technologies and different services areas exchange traffic.¹⁷ But until the Commission acts in that proceeding, Embarq's concerns provide no basis for denying or delaying the ability of a competitor to port a customer's number.

Windstream also argues that ILECs should be permitted to require an interconnection agreement as a precondition to porting numbers. It relies on a Commission decision finding that agreements that include number porting obligations must be filed as interconnection agreements pursuant to Section 252(a)(1).¹⁸ Windstream's argument ignores the fact that the number portability obligation arises under Section 251(b) and therefore it applies to all LECs independent of the ILEC obligation to negotiate interconnection agreements under Section 251(c).¹⁹ While some parties may choose to include number portability provisions in their interconnection agreements, the fact that the obligation arises under a provision that applies to all LECs, not just ILECs, means that alternative means of implementing the obligation also must exist.

Furthermore, as GCI notes,²⁰ entering into a comprehensive interconnection agreement is a drain on resources if all a carrier wants to do is port numbers. NCTA agrees with GCI that the Commission should free carriers to provide the seamless porting options intended by the Act by declaring that interconnection agreements are not a necessary predicate, or precondition, to wireline-to-wireline porting.

¹⁷ *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4696-97, ¶ 22 (2005).

¹⁸ Windstream Comments at 6, *citing Qwest Communications Int'l*, WC Docket No. 02-89, Memorandum Opinion and Order, FCC 02-276 at ¶ 8 (rel. Oct. 4, 2002). Windstream's observation that the Commission granted forbearance from Section 252 filing requirements with respect to wireline-to-wireless ports, but that it has not done so for wireline-to-wireline ports, is accurate but of no significance. Nothing prevents the Commission from extending its forbearance decision to wireline-to-wireline ports in this proceeding, and all the reasons cited for such forbearance in the wireless context also apply with respect to wireline-to-wireline ports. *Intermodal Number Portability Order*, 18 FCC Rcd at 23711-12 ¶¶ 35-37.

¹⁹ 47 U.S.C. §§ 251(b)(2), 251(c)(1).

²⁰ GCI Comments at 6.

CONCLUSION

For the reasons explained above, NCTA urges the Commission to adopt a shorter porting interval for all simple ports and to clarify that an interconnection agreement is not required before an ILEC is obligated to process porting requests.

Respectfully submitted,

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