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NUMBER PORTABILITY

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JULY 12, 2007

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ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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NUMBER PORTABILITY

THURSDAY, JULY 12, 2007

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10:06 a.m. in room SR–253, Russell Senate Office Building, Hon. Daniel K. Inouye, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Senator STEVENS [presiding]. Good morning.

Senator Inouye is stuck in traffic, and asked us to start the hearing.

Let me say that advances and innovations in communications technologies are changing the communications marketplace. These changes are very good for consumers. One of the changes is increased competition for voice services. Ten years ago, when Congress passed the Telecommunications Act of 1996, almost all consumers had was telecommunications from their local telephone company.

Today, consumers have many choices for voice services, from telephone companies, cable companies, wireless companies, and Internet-voice service companies. But, consumers are less likely to take advantage of the new choices if they cannot keep their phone numbers.

One problem is delay. We've heard instances from a number of ports taking 10 to 30 days. And we have heard some providers requiring more than 100 pieces of data to port a number. These are unnecessary hassles that consumers complain about, and that providers are slow to correct.

Another problem is that not all types of providers are covered under the FCC rules. When the FCC first promulgated its number portability rules, there were far fewer choices. It's time for the FCC to revisit those rules, and expand them to today's new voice service market. Consumers should not be limited in their choices, because they cannot risk losing key contacts or businesses as a result of having to change their phone numbers.

Senator Inouye and I have introduced the Same Number Act of 2007, to help consumers. And the bill requires the FCC to revisit its number portability rules, and extend them to all applicable voice communications services, not just telecommunications service. It does not advantage any one industry sector, instead it requires all services to port numbers on a reciprocal basis.

It also calls for a notice to consumers, so that consumers will know what to expect when they change their services.

We look forward to hearing today from the panel, and we'll try to find out how we can shape this bill to help consumers take advantage of new choices, and lower prices, available in today's communications marketplace.

Our witnesses this morning, Mr. Ted Schremp, Senior Vice President and General Manager of Charter Telephone. Mr. Jonathon Banks, Senior Vice President for Law and Policy, U.S. Telecom Association, Mr. Chris Guttman-McCabe, Vice President for Regulatory Affairs at CTIA, and Mr. Tony Clark, Commissioner of the North Dakota Public Service Commission, and Chairman of the Telecommunications Committee of the National Association of Regulatory Utility Commissioners.

I'm delighted that you gentlemen would join us, and Senator Inouye will be along, so I would appreciate it if you would start your statement, and keep them short, if you can. We'll print your full statements in the record, but we'll be pleased to listen to whatever you have to testify.

Mr. Schremp, will you start, please?

STATEMENT OF TED SCHREMP, SENIOR VICE PRESIDENT AND GENERAL MANAGER, TELEPHONE, CHARTER COMMUNICATIONS, INC.

Mr. SCHREMP. Certainly. Good morning, Vice Chairman Stevens, and my name is Ted Schremp, and I'm Senior Vice President and General Manager of Telephone at Charter Communications. From the company's headquarters in St. Louis, Missouri, I direct and oversee all operational and business matters concerning Charter's provision of residential and commercial voice services.

Thank you for the opportunity to appear before you to testify on an issue of real importance to millions of consumers and businesses across the United States. And one which is essential to the continued viability of competition in the local voice services market.

Charter believes that clear and consistent—as well as improved—number porting policies are essential to ensuring greater competition among providers of local voice services, and we greatly appreciate the Committee's efforts to review these issues in this hearing, and its ongoing efforts to enhance competition in the marketplace.

Charter is a broadband communications company, with over 16,000 employees, and approximately 5.7 million customers in 29 states. Our broadband network passes 11.7 million homes, which we offer a full range of advanced broadband services, including digital cable programming, broadband Internet access, advanced broadband cable services, and telephone service.

Charter telephone is delivered, primarily, using an Internet protocol-enabled platform, run over the cable company's privately managed hybrid fiber coax network. We serve nearly 600,000 phone customers, primarily residential phone customers, in 18 states, including 9 of the states before this Committee, and we will continue to roll out our competitive voice service in additional markets this year and next.

Our customers are different than those of most of the major cable operators, but as Senators on this Committee, you know them well. They're predominantly located in less densely populated regions of the country, including many that would be defined as suburban, exurban, and rural areas, for example, Worcester, Massachusetts; Kennewick, Washington; St. Cloud and Mankato, Minnesota; Greenville/Spartanburg; South Carolina; and Slidell, Louisiana.

Because many of these markets are in less densely populated regions, Charter is often the only competitive alternative. Charter also offers service, of course, in Eastern Missouri, including the Greater St. Louis area, which is the location of our corporate headquarters.

Because we're aggressively deploying our voice communication service, we rely heavily on the number porting process to compete with the incumbent providers. In fact, on a weekly basis, Charter engages in approximately 13,000 porting transactions. Unfortunately, in the course of these porting transactions, Charter experiences a fallout rate of approximately 15 percent, translating to over 150 rejected orders every day. As such, Charter is acutely aware of the value of efficient and effective porting procedures, and the very real costs incurred when porting procedures are undermined, or disregarded by other providers.

In addition, when ports take an unreasonably long time to complete, it's extremely difficult for Charter to compete in those carrier service territories, because a subscriber wishing to move to Charter service must sometimes wait for as long as 2 weeks before they can switch providers, causing many subscribers simply to decline to continue the process and instead remain with the incumbent provider.

Charter believes the implementation of additional porting principles would further enhance the competitive landscape, and ultimately benefit consumers. We're confident that these principles—if implemented—would further Congress's goal of reducing barriers, and accelerating competitive entry to the voice marketplace.

First, incumbent telephone companies often require requesting providers—including Charter—to complete complicated service order forms that require numerous data points, many having little, if anything, to do with the processes necessary to port a telephone number. As a result, Charter believes that the port requests must be validated and completed after the competitive provider supplies the minimum necessary information to complete the port—generally, the name, address, and telephone number of the subscriber.

In addition, although the FCC has established that all wireline providers must complete port requests within four business days, many providers do not. Many providers take well over 4 days to return a firm order commitment, resulting in a timeline of anywhere between 5 and 12 business days to complete a port request. Therefore, another important principle that could benefit competitors and consumers alike, is that all wireline carriers must complete wireline-to-wireline ports within four business days, or less.

Second, there are some instances when a port request is scheduled to occur, but for one reason or another, the request cannot be completed, because of an operational issue, or an issue related to the customer. When a port request cannot be completed before 5

p.m. on the day of the scheduled port, some incumbent providers will simply terminate service to the subscriber, rather than wait for the port to be completed successfully at a later time, resulting in the customer's dial tone being interrupted for one or more days. Thus, all providers should adopt a policy of not terminating numbers from their switch for at least 48 hours after the scheduled port request is completed, to ensure that customers do not lose service, access to 911, or access to their telephone number, in the event that a port cannot be completed on the scheduled date.

Finally, in addition to the practices described above, several carriers continue to attempt to impose carrier-to-carrier charges, fees, or add-ons to such charges for completing customer requests to port a number from the carrier's network to Charter's network. Although the FCC has repeatedly ruled that carriers must cover the cost of a number, of number portability via tariffed end-user charges, several incumbent carriers continue to ignore those rules, and act in blatant disregard of the FCC's directive. Some providers attempt to mask these charges, claiming that they're associated with the recovery of administrative costs related to porting.

Accordingly, another principle essential to continuing the competitive benefits of efficient number porting, is the notion that incumbent LECs may not recover any costs associated with porting, via any charge, fee or add-ons to interconnection charges to other providers.

In conclusion, implementation of these principles would further the establishment of fair and efficient number porting processes for competitive providers, resulting in increased consumer choice, and competitive voice alternatives.

Thank you, Mr. Chairman, for the opportunity to appear before you today, I'll be happy to answer any questions you or the other Committee members may have. Thank you.

[The prepared statement of Mr. Schremp follows:]

PREPARED STATEMENT OF TED SCHREMP, SENIOR VICE PRESIDENT AND GENERAL MANAGER, TELEPHONE, CHARTER COMMUNICATIONS, INC.

Introduction

Good morning, Chairman Inouye, Vice Chairman Stevens, and members of the Committee. My name is Ted Schremp and I am Senior Vice President and General Manager of Telephone at Charter Communications, Inc. ("Charter"). From the company's headquarters in St. Louis, Missouri, I direct and oversee all operational and business matters concerning Charter's provision of residential and commercial voice services.

Thank you for the opportunity to appear before you to testify on an issue of real importance to millions of consumers and businesses across the United States, and one which is central to the continued viability of competition in the local voice services market. As explained in greater detail below, Charter believes that clear and consistent, as well as improved, number porting policies are essential to ensuring greater competition among providers of local voice services. For that reason, Charter greatly appreciates the Committee's efforts to review these issues in this hearing, and its ongoing efforts to enhance competition in the marketplace.

Background on Charter and Its Voice Service Offerings

Charter is a broadband communications company with over sixteen thousand (16,000) employees and approximately 5.7 million customers in twenty-nine (29) states. Our broadband network passes 11.7 million homes, to which we offer a full range of advanced broadband services, including digital cable programming, broadband Internet access, advanced broadband cable services and telephone service. Charter Telephone® is delivered via Charter's subsidiary, Charter Fiberlink, pri-

marily utilizing an Internet Protocol-enabled platform run over the cable company's privately managed hybrid fiber coax network.

As of our last public filing, Charter Telephone® served nearly six hundred thousand (600,000) primarily residential customers in eighteen (18) states, including nine (9) before this committee: California, Massachusetts, Minnesota, Missouri, Nevada, South Carolina, Oregon, Texas, and Washington. Charter will continue to roll out our competitive voice service in additional markets this year. Expanding the reach and scope of our voice offerings throughout our service area is one of our highest priorities, and we have invested hundreds of millions of dollars to date. As a result, Charter Telephone® is currently available to over 7.3 million homes within our service territory, and we expect that number to continue to increase over the next 18 months.

Our customers are different than those of most of the other major cable operators, but as Senators on this Committee, you know them well. They are predominantly located in less densely populated regions of the country, including many suburban, exurban, and rural areas. Accordingly, many of the largest markets for Charter's voice services are what some people in the industry classify as "Tier II" and "Tier III" markets, for example: Worcester Massachusetts, Kennewick Washington, St. Cloud and Mankato Minnesota, Greenville/Spartanburg South Carolina, and Slidell Louisiana. Charter also offers service in eastern Missouri, including the greater St. Louis metropolitan area, the location of our corporate headquarters.

In these markets, we are aggressively rolling out voice services in competition with the incumbent local exchange carriers; often providing the first real facilities-based competitive alternative to many residential consumers. And, because many of these markets are in less densely populated regions, Charter is often the *only* competitive alternative.

Across all of our markets, the response to our offerings has been very positive, as consumers are attracted to Charter by the innovative product offering, cost savings, and the convenience of obtaining all of their communications services from a single provider. Our research indicates that we save the average consumer 20 percent or more on their monthly telephone bill. New customers can sign up for Charter's unlimited nationwide service for as low as $29.99 per month, which provides substantial savings to our customers as compared to most traditional telephone service providers. In addition, Charter provides meaningful value added services such as call waiting, caller ID, call forwarding, etc. And, of course, Charter's service has always provided full E–911 calling functionality. The savings and value of our service can be further enhanced by bundling with Charter's digital cable and broadband Internet services, for as low as $99.97 per month.

Because Charter is aggressively deploying its voice communications service to tens of thousands of potential new customers in new markets it relies heavily on the number porting process to compete with the incumbent providers in those markets. In fact, Charter engages in approximately thirteen thousand (13,000) number porting transactions *every week*. Unfortunately, in the course of those porting transactions Charter experiences a fall out rate of over fifteen percent (15 percent). This rate translates to over 150 rejected orders every day where the customer is at risk of losing dial tone when a port cannot be canceled or rescheduled as a result of lack of carrier cooperation. As such, Charter is acutely aware of the value of efficient and effective porting procedures, and the very real costs incurred (including operational costs, loss of revenue, and particularly customer frustration and dissatisfaction) when porting procedures are undermined or disregarded by other providers.

In addition, when ports take an unreasonably long time to complete, it is extremely difficult for Charter to compete in those carriers' service territories because a subscriber wishing to move to Charter's service, and port its numbers to Charter, must sometimes wait for as long as 2 weeks before they can switch providers. When faced with the response that "it will take 2 weeks before we can begin to provide you service using the same phone number" many subscribers simply decline to continue the process and remain with the incumbent provider.

Even despite these hurdles, our experience demonstrates that consumers are craving voice competition. Market research bears this out. For example, one recent study by Microeconomic Consulting and Research Associates, Inc. ("MICRA") estimates that 23.7 million households will subscribe to cable digital phone services by the year 2011. In addition, the MICRA study demonstrates that based on the competitive rates offered by many cable-telephony providers, the provision of competitive cable-provided voice services could result in annual benefits to the economy of $1.3 billion in 2007, climbing to $3.2 billion in 2011. The sum of these potential benefits,

according to the MICRA study, for the 5-year period is $11.2 billion.[1] And according to a 2006 J.D. Power report, cable voice customers are saving over $10 a month on their bills.[2] In short, cable-provided voice services are fulfilling Congress' original vision of a robust and competitive residential voice services market. It is no surprise, then, that the cable industry trade association, the NCTA, estimates that as of the first quarter of 2007 the cable industry is providing digital phone service to 10.8 million customers.

Number Portability is Vital to the Continued Expansion of Competitive Voice Service Offerings

But as our daily experience demonstrates, this progress could be so much better. Indeed, the emergence of a truly competitive market for local voice services is conditioned, in large part, on the continued development and implementation of a national number porting policy that is clear, effective, and applied consistently to all covered providers.

This is, of course, a well established fact that Congress has long recognized. But the devil is in the implementation details. Indeed, during its work leading up to enactment of the pro-competitive Telecommunications Act of 1996, Congress noted that the inability of consumers to retain their telephone numbers when changing local service providers undermines the development of local competition. Thus, by specifically imposing the statutory obligation on all local exchange carriers to "provide . . . number portability in accordance with requirements prescribed by the Commission"[3] in the 1996 Act, Congress has already recognized the critical importance of establishing a fundamental number porting duty on all LECs, both incumbents and new entrants.

As a result, Congress removed a significant barrier to competition by ensuring that consumers can change carriers without having to give up their existing telephone numbers. That simple function—the ability to retain your telephone number when moving from one provider to another—is a key feature for most consumers and an essential tool to any competitive provider. The FCC itself has noted that the absence of number portability functionality "likely would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers."[4] In implementing its rules to effectuate Congress' mandate of uniform number porting obligations, the FCC specifically cited evidence that customers would be reluctant to switch carriers if they were required to change telephone numbers. Specifically, the FCC found that to the extent that customers are reluctant to change service providers due to the absence of number portability, demand for services provided by new entrants will be depressed. That, in turn, would discourage entry by new competitive providers and thereby frustrate the pro-competitive goals of the 1996 Act.[5]

These findings illustrate the fact that effective number porting is critical because the ability to retain telephone numbers gives customers greater flexibility in evaluating the quality, price, and variety of services they choose to purchase. As a result, customers are empowered to respond to competitive price and service changes without having to change their telephone numbers.

Porting Principles That Will Enhance Competition and Further Benefit Consumers

While the policies established by Congress and the FCC to date have been beneficial, the implementation of additional principles would further enhance the competitive landscape, and ultimately benefit consumers. These principles revolve around the goal of ensuring timely and efficient porting processes for all providers. Specifically, Charter believes that implementation of the following principles would be critical steps to achieve that goal: (1) ensure that number porting occurs as quickly and efficiently as possible, based upon the delivery of only that information which is absolutely necessary to complete a porting request; (2) require all wireline providers to continue providing dial tone service if a port request is not, or cannot be, completed at the scheduled time; and (3) reaffirm that wireline providers may not recover any number portability costs via interconnection charges, administrative

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[1] See *http://www.micradc.com/news/publications/pdfs/MiCRA_Report_on_Consumer_Benefits_from_Cable.pdf.*

[2] Press Release, J.D. Power and Associates Reports: Cable Companies Dominate Customer Satisfaction Rankings for Local and Long Distance Telephone Service (July 12, 2006).

[3] 47 U.S.C. § 251(b)(2).

[4] *In re Telephone Number Portability,* First Report and Order & Further Notice of Proposed Rulemaking, 11 FCC Rcd. 8352, 8367–68 (1996).

[5] *Id.*

service order fees, port fees, or other "add-ons" to interconnection charges to other providers.

Based upon the practical experience Charter has gained by competing in multiple residential voice services markets, we are confident that these principles, if implemented, would further Congress' goal of reducing barriers to entry and accelerating competitive entry to the business and residential voice marketplaces. For that reason, Charter has already filed comments with the FCC urging the Commission to take actions necessary to implement these principles.

First, incumbent telephone companies often require requesting providers, including Charter, to complete complicated service "order forms" that require numerous data points, many having little—if anything—to do with the processes necessary to port a telephone number. This creates barriers to efficient porting and, by extension, obstructs facilities-based competition by entities like Charter. By requiring competitors to provide data that is often unrelated to porting, the incumbents have created a process which leads to an increase in the number of port requests that are rejected, not completed, or that require rescheduling. There is no reasonable explanation or justification for requiring all of the information in these order forms. Accordingly, when incumbent providers request such information it raises the question of whether they are simply using the porting process to delay, or deny, port requests by competitors in order to delay market entry by competitors like Charter. If so, such activity raises competitor and consumer costs, creating real barriers to effective facilities-based competition. For these reasons Charter believes that port requests must be validated, and completed, after the competitive provider supplies the minimum necessary information to complete the port, generally the name, address, and phone number of the subscriber.

In addition, although the FCC has established that all wireline providers must complete port requests within four business days, many providers do not. Those providers that are unable or unwilling to complete the porting interval within that window are often CLECs, non-RBOC incumbents, or CLECs associated with ILECs that operate in less densely populated areas of the country. Many carriers in this group take well over 4 days to return a firm order commitment date resulting in a timeline of anywhere between five and twelve business days to complete a port request. Therefore, another important principle that could benefit competitors and consumers is that all wireline carriers, no matter their size or position in the market, must complete wireline-to-wireline ports within four business days, when requested by another provider, consistent with existing FCC rules.

Second, there are some instances when a port request is scheduled to occur, but for one reason or another the request can not be completed because of an operational or customer issue. When a port request can not be completed before 5 p.m. on the day of the scheduled port, some providers will simply terminate service to the subscriber rather than wait for the port to be completed at a later time. When this happens Charter is able to provide service on an emergency basis to make sure that the subscriber will continue to have access to voice services while the port is completed; however, a new number must be assigned to that customer and dial tone is typically interrupted for one or more days. This policy of simply terminating service upon the scheduled port date, regardless of whether the number has actually been ported, and even with an emergency installation of service using an alternate phone number, creates significant problems for the affected subscribers. This entire process leaves the customer with the impression that Charter (rather than the incumbent who caused the issue) is to blame for a loss of service, and unnecessarily puts the subscriber in harms way by denying consumers access to basic local voice services for a period of time. Thus, all providers should adopt a policy of not terminating numbers from their switch for at least forty-eight (48) hours after the scheduled port request is completed. This would ensure that customers do not lose service, or access to their telephone number, in the event that a port can not be completed on the scheduled date.

Finally, in addition to the practices described above, several carriers continue to attempt to impose carrier-to-carrier charges, fees, or "add-ons" to such charges, for completing customer requests to port a number from the carrier's network to Charter's network. Although the FCC has repeatedly ruled that carriers must recover the costs of number portability via tariffed end-user charges, rather than via charges on competing carriers, several incumbent carriers continue to ignore those rulings and act in blatant disregard of the FCC's directives. Some providers attempt to mask these charges, and claim that they are associated with the recovery of "administrative costs" related to porting, despite the fact that these actions clearly cover costs associated with completing port requests. Accordingly, another principle essential to continuing the competitive benefits of efficient number porting is the notion

that incumbent LECs may not recover any costs associated with porting via any charge, fee, or add-ons to interconnection charges to other providers.

In conclusion, implementation of these principles would further the establishment of fair and efficient number porting processes for competitive providers. Such processes are necessary because there are essentially no market forces in place to provide incentives to incumbent providers to develop efficient porting practices. Because incumbent providers are currently losing far more customers than they are gaining, they have no market-based incentive to implement efficient processes to port numbers to competitive providers such as Charter.

Implementation of these principles will further enable competitive providers like Charter to increase existing efforts to provide competitive voice services in many smaller, and more rural markets, to the benefit of both consumers and businesses in such markets.

Thank you, Mr. Chairman for the opportunity to appear before you today. I will be happy to answer any questions you or the other committee members may have.

The CHAIRMAN [presiding]. I thank you very much, I'm sorry I'm late.

Our next witness is Mr. Jonathon Banks. Mr. Banks?

STATEMENT OF JONATHAN BANKS, SENIOR VICE PRESIDENT, LAW AND POLICY, USTELECOM ASSOCIATION

Mr. BANKS. Thank you, Chairman Inouye, and Vice Chairman Stevens. I'm pleased to be here to discuss USTelecom's perspective on the Same Number Act of 2007.

Number porting is hard in today's landscape of competition for consumers and the voice services they are looking for. Porting requirements began in the wireline world, and were extended in 2003 to wireless carriers. Since that time, there have been over 57 million ports, according to FCC statistics. Just over half of those ports have been between wireline carriers and under 3 percent have involved customers taking their number from a wireline carrier, to a wireless carrier.

The processes for porting have steadily improved over time, and this is certainly true for intermodal ports. One of our member companies reports that for all of 2006, the number of complaints they received, concerning intermodal ports, was nine, and that's out of 900,000 intermodal ports that that company performed.

USTelecom and its members have been very instrumental in bringing number portability to American consumers, and we've done this in a number of ways. One way, beginning in January of 2003, was getting together with CTIA, and putting together a group of technical experts, to look at some of the current—the problems in 2003—that were occurring in intermodal porting, and to work out solutions to those problems. That group worked well, there was a backlog for various reasons, it was eliminated due to the, kind of, inter-industry cooperation to improve the process.

The other area where our member companies and USTelecom has been very active, is with the industry standards bodies that are reviewing the porting process, and the ordering process. The leading group in this area is the North American Numbering Council, it's often referred to as NANC. NANC is a Federal Advisory Committee made up of representatives from carriers from across the industry, from trade associations, and consumer advocates and representatives of state public service commissions.

The other key industry group is the Ordering and Billing Forum, which looks at the ordering forms involved in this process, and in

ordering other services from our companies. Those two groups have worked long and hard on the number porting process, to develop the right ordering forms, and the right processes and procedures.

In fact, in 2003, the FCC asked NANC to review the intermodal porting process, and come up with suggestions. NANC appointed a working group that spent thousands of hours looking at the processes, and understanding them from the wireline side, and the wireless side, to come up with a range of potential solutions. NANC did that, and attached some cost estimates to solutions. Some of the solutions are extremely expensive and, according to NANC, would cost a billion dollars or more to implement.

Our members believe that the continued streamlining and improvements in porting processes are important. The efficiencies save them money. But we believe the best place for improvements to occur is in these industry standards bodies, where all the affected carriers can get together and work out solutions that serve consumers, and are implementable.

I'd like to make just a couple of quick points, about allegations that the process of porting is too complicated. First, as both competitive carriers on the wireline side, and incumbent wireline carriers have made clear, and as NANC has found, the wireline network is a complicated network, and it's different from the wireless network, and the two can't be treated the same.

In fact, on the wireline side, there's also a large number of smaller and rural carriers that do not have automated processes for porting numbers, and this can require flexibility on the part of carriers that have to deal with these smaller companies.

Second, the complexity of ordering ports has been substantially overstated. Although some wireless carriers have pointed to a generic ordering form that contains over 100 fields, they haven't been very forthright at clarifying that only about 25 of those fields have to be filled out to order a port.

Now, that form was developed by the Ordering and Billing Forum, as a generic form so that carriers could use it to order a broad range of services. Not all of those fields have to be filled out on any particular order, and as I said, roughly 25 need to be filled out to order a port. But a number of those fields can be automatically populated by the carrier ordering the port—fields that ask for the company's name and contact information at the company, in case something goes wrong.

Finally, allegations that 30 percent of requests for intermodal ports are canceled, appear to us to have no basis in fact. Some of our largest members operate both wireless and wireline networks, and have not noted a problem of that magnitude with cancellations. Some of our smaller members have tracked data on cancellations, and their data shows that the cancellation rate is about 5 percent, which is the same as it is among wireless carriers.

Mr. Chairman, we also appreciate the opportunity to comment on the Same Number Act of 2007. As I indicated in my written statement, there are two issues on which we would like to continue to work with the Committee, but our members do endorse the goal of this legislation, which is to further streamline the process of porting.

Thank you, again, for the opportunity to appear, and I look forward to working with the Committee on this issue.

[The prepared statement of Mr. Banks follows:]

PREPARED STATEMENT OF JONATHAN BANKS, SENIOR VICE PRESIDENT, LAW AND POLICY, USTELECOM ASSOCIATION

Chairman Inouye, Vice Chairman Stevens, members of the Committee: Thank you for this opportunity to appear before you today. I am Jonathan Banks, Senior Vice President for Law and Policy for the USTelecom Association. I am pleased to appear before this committee to discuss USTelecom's perspective on telephone number porting, as well as the provisions of the proposed "Same Number Act of 2007."

USTelecom represents innovative companies ranging from the smallest rural telecoms in the Nation to some of the largest corporations in the U.S. economy. Our member companies offer a wide range of services across the communications landscape, including voice, video and data over local exchange, long distance, Internet, and cable networks. USTelecom is the Nation's most established—and largest—association representing rural telecom providers.

USTelecom and its member companies have been instrumental in bringing number portability to American consumers and have made significant contributions toward making portability more efficient. For over a decade, our members have seen number portability become an increasingly important facet of a competitive telecommunications service marketplace. However, the introduction of communications platforms different from traditional wireline—including cable systems, fixed wireless, and mobile wireless—has made the process more complex. Our members have a strong interest in improving the efficiency of the number porting process, and we agree that inter-modal porting could be further streamlined.

To put number portability in perspective, since November 2003 when portability was extended to wireless carriers, there have been approximately 57 million ports. Fewer than 3 percent of these ports have involved customers moving from wireline to wireless. In addition, the Federal Communications Commission has been active on porting issues, and it is not an area over which the Federal Communications Commission lacks statutory authority. The Commission has the requisite authority, and has exercised it accordingly. Since 1997, the wireline local exchange carrier community has worked tirelessly—and with a high level of efficiency—to implement Federal mandates addressing local number portability. In 2003, the FCC issued an order mandating both wireless number portability and portability between wireline and wireless networks. Despite technical challenges, local exchange carriers have cooperated and contributed significant energy to support inter-modal number portability.

In January 2003, USTelecom and CTIA formed a joint working group to solve the early technical and implementation problems inherent in inter-modal porting. Experts from member companies worked together to investigate the cause of inter-modal porting failures and to come up with solutions to alleviate the backlog of consumer porting requests. The working group discovered that the clearinghouses used by the wireless carriers were not equipped to handle port request validation queries, so many requests were simply dropped without either side knowing why. The combined USTelecom-CTIA team determined the appropriate technical requirements for clearinghouses to meet. The group also decided that until the clearinghouses could automate inter-modal porting, protocols for manual porting should be implemented. These changes have resulted in substantial improvement. For example, one of our member companies reports that for all of 2006, the company received a total of nine porting complaints out of approximately 900,000 number ports.

On November 10, 2003, the FCC asked the North American Numbering Council (NANC) to offer suggestions for improving inter-modal porting. The NANC is a Federal Advisory Committee comprised of representatives from carriers, trade associations such as CTIA, USTelecom and NCTA, cable operators, VoIP providers, and consumer advocates. The committee advises the FCC and makes recommendations based on committee consensus. The Commission has identified the NANC's tasks and objectives in multiple Commission proceedings, and number portability is one of those tasks.

A NANC working group consisting of both USTelecom member companies and wireless carriers generated two proposals, and on May 3, 2004, the NANC sent William Maher, Chief of the FCC's Wireline Competition Bureau, a formal report. The "Report & Recommendation on Intermodal Porting Intervals" recommended a porting procedure that would shorten porting times and also identified additional issues that need to be addressed by industry and regulatory bodies.

USTelecom's members believe that porting is best addressed by the Commission, working in conjunction with the North American Numbering Council. Currently, the NANC and the Ordering and Billing Forum (OBF) have ongoing efforts to resolve issues of inter-modal porting. We believe that these two industry organizations are well-suited to address the streamlining of the porting process, and they will do so with consumer well-being in mind. Already, their ongoing evaluation of porting practices is geared toward reducing inter-modal porting intervals and making the porting process more satisfactory to consumers.

USTelecom encourages the continuation of joint government-industry working groups like the NANC, and its Local Number Portability Working Group sub-group. This working group has successfully resolved issue after issue and will continue to do so. At the end of my statement I have affixed a table summarizing the working group's results to date. We feel that these groups should remain the primary source for technical solutions. The communications industry has shown repeatedly that it can solve technical issues through innovation and market-driven solutions, and USTelecom supports the continuation of entrepreneurial problem-solving with respect to local number portability.

Mr. Chairman, we also appreciate the opportunity to comment on the "Same Number Act of 2007." Our members endorse the ostensible goal of this proposed legislation, which is to further streamline the number portability process. Furthermore, we agree with the content of Section 715(a) in the proposed bill, which establishes a duty of all voice service providers to provide number portability.

However, as the Committee continues to perfect this bill, let me offer two thoughts. First, while section 715(b) requires in paragraph (1) the establishment of "reciprocal number portability standards," subparagraphs (B) and (b)(2) permit discriminatory treatment of providers given the Commission's authority to "establish more flexible standards or delayed deadlines for different classes of providers." USTelecom members are invariably on the receiving end of these more onerous requirements.

Second, Section 715(c) would require voice service providers to report to the Commission on their porting activities for the 12 months preceding the date of issuance of Section 715(b) required porting rules. This is an overly onerous requirement. As I mentioned earlier, there have been more than 57 million ports since November of 2003. To report on this activity and explain why any given port fails would be an overwhelmingly burdensome undertaking.

Mr. Chairman, thank you again for the opportunity to appear today. USTelecom member companies have always cooperated in numerous industry fora for the improvement of telecommunications services, and we will continue to do so. USTelecom and its member companies look forward to our continued work with the Committee and will continue to work through the Commission and NANC to streamline the porting process.

North American Numbering Council—April 10, 2007

Local Number Portability Administration Working Group Status of Open Industry Issues and Issues Submitted and/or Resolved Since May 2004

Issues Submitted:	122
Issues Resolved:	96
Issues Remaining Open or Unresolved:	26
Percentage of Issues Resolved:	79%

The CHAIRMAN. Thank you very much, Mr. Banks.

And, may I now recognize Mr. Chris Guttman-McCabe, Vice President, Regulatory Affairs, CTIA—The Wireless Association®.

STATEMENT OF CHRISTOPHER GUTTMAN-MCCABE, VICE PRESIDENT, REGULATORY AFFAIRS, CTIA—THE WIRELESS ASSOCIATION®

Mr. GUTTMAN-MCCABE. Thank you. Good morning, Chairman Inouye and Vice Chairman Stevens. Thank you for the opportunity to appear before you today, to discuss the importance of streamlining the number porting process.

On behalf of CTIA—The Wireless Association®, I am Christopher Guttman-McCabe, Vice President of Regulatory Affairs. I am here to testify that the wireless industry has developed an efficient and simple porting process that should be the model for all porting. We believe that reform consistent with this model is necessary to ensure that consumers can take full advantage of the choices provided by emerging, intermodal competition.

In 1996, with the leadership of this Committee, Congress added section 251(b)(2) to the Communications Act, requiring all local exchange carriers to offer number portability. The Federal Communications Commission later extended that requirement to the wireless industry.

Wireless carriers responded to the porting requirement by adopting a limited, but standardized, set of criteria necessary to complete a simple porting request. This process has been further streamlined to include just a few elements—lowering the average time to complete a customer porting request to just two and a half hours.

During the second quarter of 2006, the most recent data available, wireless carriers successfully implemented 2.4 million intramodal ports, wireless-to-wireless, allowing wireless consumers to change carriers easily and efficiently, while keeping their telephone numbers.

CTIA member companies seek to grow, not just by taking customers from one another, but also by marketing their services as a replacement for traditional landline service. Unfortunately, the unnecessary complexity of wireline-to-wireless porting, often forces consumers to abandon their landline numbers, or give up on the process entirely. Neither outcome should be acceptable to policymakers.

In the *Wireless Porting Order,* the Commission unambiguously determined that consumers must be able to change carriers, while keeping their telephone numbers, as easily as they may change carriers without taking their numbers. The Commission also stated that carriers need only share basic contact and technical information sufficient to perform the port.

Unfortunately, despite clear direction from both Congress and the Commission, the benefits of speedy, efficient, and simple porting are not yet available to all consumers. Many local exchange carriers unnecessarily complicate the porting process, and frustrate consumers by requiring the porting-in carrier to provide information well beyond what is needed to effectuate a successful port.

While the Commission has allowed market forces to dictate specific procedures to be used for number portability, it must recognize that the incumbent local exchange carriers generally lack both the incentive to allow customers to switch seamlessly to a competitor, as well as the interest in remedying the situation expeditiously.

In fact, a number of local exchange carriers have urged the Commission to defer to the NANC, or the ATIS Ordering and Billing Formum, to resolve these measures. Unfortunately, the issue has been before these groups since July, 2004, and they have been unable to reach the consensus required to resolve these porting validation issues. It is time for the Commission to intervene.

The T-Mobile/Sprint petition filed last December provides the Commission with the timely opportunity for such intervention. Two facts from the petition suggest that action is warranted.

First, the inefficiency of the LEC process is starkly highlighted when it is compared to the intramodal wireless porting mechanism in use today. For simple wireless-to-wireless ports, numbers are usually ported in a matter of hours, whereas those involving the LECs often take days, or weeks.

In wireless-to-wireless ports, consumers are generally unable to detect any difference between changing carriers with porting, and changing carriers without porting.

Second, the difference in the amount of information required to finalize the two different types of ports also is stark. Wireless carriers initially required nine data fields to port a customer, then cut it to four, and now—at times—three. In contrast, Sprint and T-Mobile attached to their filing a sample form with multiple data fields, including fields requiring additional engineering, additional forms, additional labor, and account regrade. It is difficult to understand how this much information could be required to effectuate a simple port from one carrier to another, especially when T-Mobile and Sprint have limited the application of their requests solely to simple ports.

In wireless-to-wireless ports, a large number of ports are completed, less information is exchanged, yet the port takes less time, and is more successful. T-Mobile, Sprint, and others within CTIA's membership are not alone in recognizing the need for reform of the intermodal porting process.

A number of cable operators, public utility commissions, and NARUC have recognized the importance of pro-consumer reform in this area. Commission action on this matter is timely, as the Commission itself has repeatedly cited expectations of increased intermodal competition in approving recent mergers. Streamlining the simple porting process is critical to making robust intermodal competition a reality.

Before closing, let me note that CTIA appreciates the interest the Committee and its members—especially you, Mr. Chairman, and Vice Chairman Stevens—that you have shown in this issue. While CTIA believes the FCC has the authority it needs to streamline the simple porting process, Congressional action to facilitate a pro-competitive, pro-consumer, intermodal porting process may be necessary if the Commission fails to act in a timely manner. Should that be the case, we would look forward to working with the Committee to achieve those goals.

Thank you, and I look forward to any questions you may have.

[The prepared statement of Mr. Guttman-McCabe follows:]

PREPARED STATEMENT OF CHRISTOPHER GUTTMAN-MCCABE, VICE PRESIDENT, REGULATORY AFFAIRS, CTIA—THE WIRELESS ASSOCIATION®

Chairman Inouye, Vice Chairman Stevens, and members of the Committee, thank you for the opportunity to appear before you today to discuss the importance of streamlining the number porting process. On behalf of CTIA—The Wireless Association®, I am here to tell you that the wireless industry has developed an efficient simple porting process that should be a model for the entire industry. At CTIA, we view reform consistent with the wireless model as necessary to ensure that con-

sumers can take full advantage of the choices provided by emerging intermodal competition.

In 1996, with the leadership of this Committee, Congress added section 251(b)(2) to the Communications Act. That section requires all local exchange carriers to offer number portability. The Federal Communications Commission later determined that the public interest would be served by extending the number portability requirement to wireless carriers as well.

Wireless carriers responded to the Commission's call for wireless number portability by adopting a limited but standardized set of criteria necessary to complete a simple porting request. Over time, this process has evolved to include just a few elements, and with implementation of this streamlined process, the industry has lowered the average time to complete a customer porting request to just two and a half hours. During the second quarter of 2006 (the most recent quarter for which data is available), wireless carriers successfully implemented 2.4 million intramodal ports. This process enables wireless consumers to change carriers easily and efficiently while keeping their telephone numbers, thus empowering consumers to choose the carrier, pricing plan, and features that best serve their individual needs.

CTIA's member companies seek to grow not just by taking customers from one another, but also by marketing their services as a replacement for traditional landline service. Unfortunately, the unnecessary complexity of wireline to wireless porting often forces consumers to abandon their landline numbers or give up on the process entirely. Neither outcome should be acceptable to policymakers.

In the *Wireless Porting Order,* the Commission unambiguously determined that "consumers must be able to change carriers while keeping their telephone number as easily as they may change carriers without taking their number with them." The Commission also stated that carriers may not impose "restrictions on porting beyond necessary customer validation procedures" and that "carriers need only share basic contact and technical information sufficient to perform the port." Unfortunately, despite clear direction from both the Congress and the Commission, the benefits of speedy, efficient, and simple porting are not yet available to all consumers. Many local exchange carriers unnecessarily complicate the porting process and frustrate consumers by requiring the porting-in carrier to provide information well beyond what is needed to effectuate a successful port.

While the Commission has allowed market forces to dictate the specific procedures to be used for number portability, it must recognize that the incumbent local exchange carriers generally lack both any incentive to allow customers to switch seamlessly off their networks to wireless competitors, as well as an interest in remedying this situation expeditiously. In fact, in comments to the Commission a number of local exchange carriers have urged the Commission to defer to the North American Numbering Council ("NANC") or the Alliance for Telecommunications Industry Solutions ("ATIS") Ordering and Billing Forum to resolve these matters. Unfortunately, these industry groups have been unable to reach the consensus required to resolve these porting validation issues. The issue has been before the NANC and ATIS since July 2004, and the Ordering and Billing Forum ("OBF") is in the process of formally closing the matter. Given that these entities have been struggling with these issues for 3 years without resolution, it is time for the Commission to intervene.

The T-Mobile/Sprint petition filed last December provides the Commission with a timely opportunity for such intervention. Two undisputed facts from the T-Mobile/Sprint petition suggest some action is warranted with respect to intermodal porting procedures. First, the inefficiency of the incumbent LEC validation process is starkly highlighted when it is compared to the intramodal wireless porting mechanism in use today. For simple wireless-to-wireless ports, numbers are usually ported in a matter of hours with a nominal amount of information exchanged by the carriers. In such ports, wireless consumers are generally unable to detect any difference between changing carriers with porting and changing carriers without porting. Second, wireless carriers initially required nine data fields to port a customer, then—basically because that made the process less efficient and the additional fields were not needed to protect customers' choices—cut it to four, then three, data fields. This is clear evidence that a less burdensome and uniform process can work quickly to protect consumers and competition in a commercial environment.

Sprint and T-Mobile attached to their filing a sample form with more than 100 data fields, including fields requiring input of "additional engineering," "additional forms," "additional labor," and "account regrade." It is difficult to understand how this much information could be required to port a customer from one carrier to another—especially since T-Mobile and Sprint have recognized that additional information is often necessary for validation when undertaking "complex" porting, and have limited the application of their recommended four validation fields solely to

simple ports. Simple ports are those that: (i) do not involve unbundled network elements; (ii) involve an account only for a single line; (iii) do not include complex switch translations (*e.g.*, Centrex, ISDN, AIN services, remote call forwarding, or multiple services on the loop); and (iv) do not include a reseller.

T-Mobile, Sprint, and others within CTIA's membership are not alone in recognizing the need for reform of the intermodal porting process. A number of cable operators that are now offering telephony generally share our views, and public utility commissions from states as diverse as California and Iowa also have recognized the importance of pro-consumer reform in this area. In fact, in a resolution adopted this past February, NARUC endorsed the adoption of a "simple and uniform industry porting process." Even parties which oppose the T-Mobile/Sprint petition, like Embarq and AT&T, acknowledge that reform intended to eliminate obstruction or delay is "reasonable" (Embarq comments, at 1) and that "streamlining of the [porting process] may be useful and desirable" (AT&T comments, at 3).

Commission action on this matter is timely, as the Commission itself has repeatedly cited expectations of increased intermodal competition in approving several recent mergers. Streamlining the simple porting process is critical to making robust intermodal competition a reality, and the Commission now must rise to the challenge before it in a way that advances intermodal competition and, most importantly, the interests of consumers.

Before closing, let me note that CTIA appreciates the interest the Committee and its members, especially Senator Stevens, have shown in this issue. While CTIA believes that the FCC has the authority it needs to streamline the simple porting process, Congressional action to facilitate a pro-competitive, pro-consumer intermodal porting process may be necessary if the Commission fails to act in a timely manner. Should that be the case, we would look forward to working with the Committee to achieve those goals.

Thank you, and I look forward to any questions you may have.

The CHAIRMAN. Thank you very much.

Our next witness is Mr. Tony Clark, Commissioner of North Dakota Public Service Commission, and Chairman of the Telecommunications Committee of the National Association of Regulatory Utility Commissioners. Long title.

STATEMENT OF HON. TONY CLARK, COMMISSIONER, NORTH DAKOTA PUBLIC SERVICE COMMISSION; CHAIRMAN, TELECOMMUNICATIONS COMMITTEE, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS (NARUC)

Mr. CLARK. It is. That's why we say NARUC, usually.

Mr. Chairman, and Mr. Vice Chairman, thank you for the invitation to speak before you today on behalf of Utility Commissioners across the country. Thank you for the opportunity to present, again, our Association's views before this Committee.

Mr. Chairman, I would simply note that NARUC has been an early and persistent advocate for number portability. Over the years, we've filed numerous pleadings, agreeing with the FCC's assessment that the competition resulting from portability should foster lower local telephone prices, and consequently, stimulate demand for telecommunications services, and increase economic growth.

As this hearing suggests, there are some outstanding issues that need resolution. Most recently, in January of this year, the FCC noticed a comment on a December 2006 T-Mobile and Sprint/Nextel petition for declaratory ruling, asking the FCC to end an ongoing controversy regarding the Commission's requirement that only "necessary" validation procedures be utilized in the porting process.

The petitioners, citing unwarranted delays in the process, seek a ruling that all carriers be obligated to provide number portability,

may not obstruct or delay the porting process by demanding from the porting-in carrier information in excess of the minimum information needed to validate the requesting customer.

While portability has generally worked well to stave off exhaust, and to promote competition, some concerns raised by that petition highlight some problems with the current process and seem particularly relevant to the draft legislation we understand may be introduced on this issue.

In February of this year, our Association responded to the notice by passing a resolution addressing the Sprint/T-Mobile proceeding that specifically endorses a porting process that is uniform throughout the industry, and relatively simple to implement. A copy of that resolution is submitted with my testimony.

The ability of any carrier to effectively port in a customer is directly tied to the practices of the carrier that will be porting out the customer. Sprint and T-Mobile have told the FCC that some carriers have adopted practices that complicate and prolong the porting out process, and thus hinder the effectiveness of competition. They point out that these practices, in fact, delay a competitor's ability to activate the number—often for weeks or months—resulting in, in their words, a frustrating customer experience, and unnecessarily high port cancellation rate, and ultimately a barrier to competition.

The current statistics that are cited in that particular docket seem to bear out that there is some sort of problem. While the consumer cancellation rate for intramodal—that is to say, wireline-to-wireline ports—is about 5 percent, the cancellation rate for intermodal ports—that is wireless-to-wireline—is approximately 30 percent. They also argue that onerous and non-standard ILEC validation procedures are the root cause for the disparity in those rates.

NARUC has taken the position that, at a minimum, the FCC must investigate to see if a more streamlined process like that that works so well in the wireless-to-wireless environment, can work in the intermodal ports.

NARUC has urged the FCC to immediately act to prohibit onerous and non-standard porting practices as anti-competitive and anti-consumer. The statistics on porting cited in this open docket suggest both the Commission's, and Congress's primary purpose in establishing portability obligations is being frustrated. Something, we believe, must be causing almost a third of customers to cancel their wireline-to-wireless ports. We may not know what it is, but something must be happening.

We have urged the Commission to—at a minimum—clarify its 2003 ruling that carriers may not impose restrictions on porting, the unnecessary validation procedures. And while we took no specific stance on the specific T-Mobile/Sprint proposal, we also urged the FCC to establish a uniform industry porting process, to assure that all service providers comply with uniform industry porting guidelines, and work cooperatively with other carriers in resolving disputes.

We hope that Congress's interest in this issue will—at a minimum—provide additional information and incentives for FCC action.

That concludes my testimony, I'd be happy to answer any questions you might have.

[The prepared statement of Mr. Clark follows:]

PREPARED STATEMENT OF HON. TONY CLARK, COMMISSIONER, NORTH DAKOTA PUBLIC SERVICE COMMISSION; CHAIRMAN, TELECOMMUNICATIONS COMMITTEE, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS (NARUC)

Introduction

Chairman Inouye, Vice Chairman Stevens and members of the Committee, as always, we are extremely grateful to each of you for the opportunity to testify today on Number Portability.

I am Tony Clark, commissioner with the North Dakota Public Service Commission and a member of the National Association of Regulatory Utility Commissioners (NARUC). I serve as chairman of NARUC's Committee on Telecommunications. NARUC represents State utility commissioners in each of your States and the U.S. territories that have oversight responsibilities over telecommunications, energy, water and other utilities.

State Commissions Share Your Concerns and are a Valuable Source of non-biased Expert Advice on the Impact of Any Policy Choices on Constituents in your Respective States.

Some State commissioners, like me, stand for election as each of you do. Others are appointed by our Governors. *But every single State Commissioner, as a leader in each of your States, is, like you, ultimately accountable to the voters.* Your State commissioners share your commitment to assuring that each of *your constituents* receives the benefits of broadband convergence, new wireless technologies and competitive markets. In almost all cases, the Commissioners on your State commission will have an intense and almost complete identity of interest with you on policy goals for your respective States. *Perhaps of more significant to each of you, they will have a firm grasp on the markets in your State and informed and non-biased expert opinions on how your policy choices may impact constituents in your State.* Many of you know your State commissioners and all of us have worked hard, not just at our day jobs, but to be honest brokers on how national policies impact each of our States.

I know it is difficult to sort through the myriad of policy questions Congress routinely faces, but I would respectfully suggest that a continuing partnership with State-level colleagues that share your interests is key. And it's a key that both Congress and various Federal agencies have employed repeatedly and successfully in the past to address difficult policy issues.[1] *Certainly seeking the opinions of similarly situated, non-biased experts from your respective States can only assist you in addressing these problems.* That's only one of the reasons why we commend you and the committee for holding this hearing on number portability—which ultimately protects competition and area codes from premature exhaust—both goals States share with Congress and the Federal Communications Commission. We particularly appreciate your setting aside time to hear from your "beyond the Beltway" colleagues.

An Efficient Porting Process is Critical to Competition

An efficient Number Portability process is critical to both efforts to enhance intermodal and intramodal competition and also NARUC's State member efforts to constrain State-specific area code exhaust. There is at least one open and pending Federal Communications Commission proceeding on this issue.

Even if Congress is unable to move legislation on this issue, we recognize that this hearing alone will undoubtedly provide additional impetus for FCC action in that and any related dockets.

NARUC has been an Early and Persistent Advocate for Portability

In 1996, Congress added 47 U.S.C. § 251(b)(2) to the Communications Act. That section requires all local exchange carriers ("LECs") to offer number portability in compliance with FCC rules. That same year, the Commission determined that the public interest would be served by extending the portability requirement to wireless carriers as well as the incumbent LECs.[2] NARUC strongly supported this FCC initiative. We filed numerous pleadings agreeing with the FCC's assessment that the competition resulting from portability "should foster lower local telephone prices and, consequently, stimulate demand for telecommunications services and increase economic growth."[3]

Some Porting Issues Require Immediate Attention

As this hearing suggests, there are some outstanding issues that need resolution. Most recently, on January 9, 2007, the FCC noticed for comment a December 20, 2006, T-Mobile USA, Inc. ("T-Mobile"), and Sprint Nextel Corporation ("Sprint") Petition for Declaratory Ruling asking the FCC to end an ongoing controversy regarding the Commission's requirement that only "necessary" validation procedures be utilized in the porting process. The Petitioners, citing unwarranted delays in the process, seek a ruling ". . . that all carriers obligated to provide number portability may not obstruct or delay the porting process by demanding from the porting-in carrier information in excess of the minimum information needed to validate the requesting customer."

While portability generally has worked well to stave off exhaust and promote competition, some concerns raised by that petition highlight some problems with the current process and seem particularly relevant to the draft legislation we understand may be introduced on this issue.

NARUC Endorses Uniform Simple Porting Process

On February 21, 2007, NARUC responded to the notice by passing a resolution addressing the Sprint-T-Mobile proceeding that specifically endorses a porting process that is uniform throughout the industry and relatively simple to implement. A copy of that resolution is submitted with my testimony. Several individual NARUC members, including the California, Nebraska, and Iowa commissions also filed comments encouraging the FCC to establish ". . . a simple and uniform porting process."

The Time Frame for Porting

The ability of any carrier to effectively "port in" a customer is directly tied to the practices of the carrier that will be "porting out" the customer. Sprint and T-Mobile have told the FCC that some carriers have adopted practices which complicate and prolong the "porting out" process, thus hindering the effectiveness of competition. They point out that these practices, in fact, delay a competitor's ability to activate the number often for weeks or months ". . . resulting in a frustrating customer experience, an unnecessarily high port cancellation rate, and ultimately, a barrier to competition."

Two undisputed facts from the T-Mobile-Sprint petition suggest some immediate action is warranted with respect to at least LEC porting procedures.

First, T-Mobile-Sprint argue that the inefficiency of the incumbent LEC validation process is starkly highlighted when it is compared to the intramodal wireless porting mechanism in use today. For simple wireless-to-wireless ports, according to these carriers, numbers are usually ported in a matter of hours with a nominal amount of information exchanged by the carriers. In such ports, wireless consumers are generally unable to detect any difference between changing providers with porting and changing carriers without porting.

The Need for a Uniform Process

The second, pointed out later in the petition, is the fact that wireless carriers initially required nine data fields to port a customer, then, because that made the process less efficient and the additional fields were not needed to protect customers' choices, cut it to four, then three, data fields.

This is clear evidence that a less burdensome and uniform process can work quickly to protect consumers and competition in a commercial environment.

T-Mobile and Sprint also told the FCC that some LECs are insisting on "outdated and unnecessarily arduous procedures, such as completion of port request forms with more than 100 data fields." To back the allegation, they attached to their filing a sample form with more than 100 data fields, including fields requiring input of "additional engineering," "additional forms," "additional labor," and "account regrade."

It is difficult to understand how this much information could be required to port a customer from one carrier to another. If these allegations are true, they certainly support their argument that some LECs are imposing onerous and burdensome porting requirements simply to slow their churn rates by rendering the porting process complicated and time-consuming.

The churn statistics cited in that proceeding seem to bear this out. They point out that while the consumer cancellation rate for intramodal (*i.e.,* wireless-to-wireless) ports is about 5 percent, the cancellation rate for intermodal ports is approximately 30 percent. They also argue that onerous non-standard ILEC validation procedures are the root cause for the disparity in rates.

NARUC has taken the position that, at a minimum, the FCC must investigate to see if a more streamlined process, like the one that works in the wireless-to-wireless environment can work in intermodel ports.

The petition before the FCC also presents a simple solution for the Commission's consideration and suggests no new rules are needed. According to the T-Mobile-Sprint Petition, the FCC ". . . need only further clarify that porting-out carriers may not demand information from requesting providers beyond that required to validate the customer request and accomplish the port." The Petition suggests, based on the practices of the wireless industry, that LECs, should validate ports using no more than four customer validation fields, limiting the validation to those fields "necessary" to the process.

Conclusion

NARUC has urged the FCC to immediately act to prohibit onerous and non-standard porting practices as anti-competitive and anti-consumer. The statistics on porting cited in this open docket suggest both the Commission's and Congress's primary purpose in establishing portability obligations is being frustrated. *Something must be causing almost a third of customers to cancel their wireline-to-wireless ports.* We have urged the Commission to, at a minimum, clarify its 2003 ruling that carriers may not impose "restrictions on porting beyond necessary validation procedures" and, while we took no specific stance on the T-Mobile-Sprint specific proposal, we also urged the FCC to establish a uniform industry porting process to assure that ALL service providers comply with uniform industry porting guidelines and work cooperatively with other carriers in resolving disputes. We hope Congress' interest in this issue will, at a minimum, provide additional information and incentives for FCC action.

Thanks again for the opportunity to testify. I look forward to your questions.

Endnotes

[1] Indeed, Congress has frequently recognized in legislation the importance of Federal Agencies working in tandem with NARUC member commissions. *See* 47 U.S.C. § 410(c) (1971) (NARUC nominates members to FCC Joint Federal-State Boards which consider universal service, separations, and related concerns and provide formal recommendations that the FCC must act upon); *Cf.* 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). *Cf. NARUC, et al.* v. *ICC,* 41 F.3d 721 (D.C. Cir 1994) (where the Court explains ". . . Carriers, to get the cards, applied to . . . (NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.) There are also numerous examples of successful collaborations between the Federal Communications Commission (FCC) and NARUC's members on slamming, truth-in-billing, operator service requirements, telemarketing, customer privacy/Caller ID issues, and related consumer protection issues. Most reveal the same key elements. NARUC's July 2005 *Resolution Supporting FCC Slamming Rules* provides a perfect case study illustrating the practical benefits of leveraged/more effective enforcement and reduced consumer confusion inherent in this cooperative approach. That CC Docket No. 97–129 proceeding was premised on specific authority in 47 U.S.C. § 258 (1996). In its *First Order on Reconsideration* (FCC 00–135), the FCC recognized States should have the ability, if they choose, to mediate slamming complaints received from consumers within that State. It also acknowledged individual States have unique processes, procedures and rules regarding slamming complaints. Pursuant to the revised rules, States are now able to "opt-in" to become the primary forums for administering the slamming liability rules and resolving consumer's slamming complaints. Although Congress limited the FCC's flexibility somewhat, the agency did not take a "cookie cutter" approach to slamming regulations. Rather the FCC has provided needed flexibility to the States to address unique fraudulent activities by establishing the regulatory floor and allowing the States to establish more stringent rules or the regulatory ceiling—particularly in the area of enhanced penalties. Thirty-seven States opted-in to the FCC's approach. There is no question oversight of slamming issues has been enhanced through collaborative federalism as evidenced by: (i) more extensive information sharing on market practices and trends, (ii) decreases in complaints, (iii) better coordinated enforcement efforts, and (iv) the creation of a "common front" in opposition to abusive practices affecting consumers of telecommunications services established via the FCC's actions. Any other framework effectively removes cops from the beat.

[2] *See Telephone Number Portability,* First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 ¶ 153 (1996) (*"First Porting Order"*).

[3] *First Porting Order* ¶ 30.

[4] "Pleading Cycle Established for Comments on T-Mobile USA, Inc. and Sprint Nextel Corporation's Petition for Declaratory Ruling Regarding Number Portability", DA 07–39, (Jan. 9, 2007) Available online at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-39A1.doc*.

APPENDIX

FEBRUARY 21, 2007 RESOLUTION CONCERNING LOCAL NUMBER PORTABILITY

WHEREAS, The National Association of Regulatory Utility Commissioners ("NARUC") has strongly supported the implementation of Local Number Portability (LNP) as an important vehicle for consumer choice; *and*

WHEREAS, LNP provides the opportunity for consumers to easily move service between LNP-capable providers while retaining their telephone number; *and*

WHEREAS, Competition in all voice services has increased the need for LNP to realize customer choice between service providers; and therefore porting of telephone numbers used by all carriers, including LECs, CLECs, wireless carriers and VoIP service providers should comply with uniform industry porting guidelines; *and*

WHEREAS, NARUC supports policies which encourage the continued advancement of competition in telecommunications markets and the ability of consumers to take their telephone number with them when they opt for a new or different provider's products and services regardless of the type of service; *and*

WHEREAS, A simpler and more convenient process of porting numbers should be considered for adoption as the uniform industry porting process in order to accommodate further consumer ease, increase the rate of successful port completions and facilitate the further advancement of competition; *and*

WHEREAS, Various technical industry groups and bodies responsible for the setting of industry standards, such as the Alliance for Telecommunications Industry Solutions (ATIS), have been unable to resolve diverse order processing formats between providers for number porting; *and*

WHEREAS, The North American Numbering Council (NANC) has examined the wireless number portability issues on several occasions over the past 8 years, most recently, in response to a request from the FCC, including forming an Intermodal Porting Issue Management Group (IMG) that produced a report and recommendation in May 2004 setting forth a streamlined confirmation and activation process; however, its effective implementation has been hindered by the requirement to submit an "error-free" port request; *and*

WHEREAS, The ATIS Ordering and Billing Forum (OBF) has been unable to develop a more efficient and uniform process for porting between wireline and wireless providers through their approval process since assignment of the issue in July of 2005; *and*

WHEREAS, The challenges regarding number portability for VoIP service providers have become increasingly common recently and have been raised before a number of bodies including State commissions, both for the porting in of a number to a VoIP provider and the porting out of a number from a VoIP provider; *and*

WHEREAS, The adoption of a simple and uniform industry porting process will facilitate consumer choice by improving customers' ability to switch carriers when desired, as well as creating a uniform understanding, by all parties, of the steps required to port numbers; *and*

WHEREAS, There is pending before the Federal Communications Commission ("FCC"), in Docket CC 95–116, a Petition for Declaratory Ruling regarding LNP seeking clarification that carriers obligated to provide number portability may not obstruct or delay the porting process by demanding information from requesting carriers beyond that required to validate the customer request and accomplish the port ("Portability Petition"); *now, therefore, be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners convened in its 2007 Winter Meetings in Washington, D.C. expresses its support for the adoption of a simple and uniform industry porting process; *and be it further*

RESOLVED, That NARUC staff shall file comments with the FCC in CC 95–116, consistent with this resolution, encouraging the FCC to establish a uniform industry porting process; *and be it further*

RESOLVED, That NARUC also conveys its concerns to the FCC in the Number Portability Docket regarding the challenges created by having different types of service providers porting numbers to each other, and the need for all service providers to comply with uniform industry porting guidelines and to work cooperatively with other carriers in resolving disputes.

Sponsored by the Committees on Telecommunications and Consumer Affairs.
Adopted by the NARUC Board of Directors, February 21, 2007.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

The CHAIRMAN. All right, thank you very much, Mr. Clark. Without objection, my opening statement will be made part of the record.

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

More than a decade ago, Congress sought to open our communications markets to competition. By removing barriers that impaired the ability of new entrants to compete, we sought to usher in a new era of pro-consumer telecommunications competition.

Number portability was one of these barriers. Without it, consumers would have been required to switch their telephone number whenever they switched their service provider.

To avoid this complication, Congress required the Federal Communications Commission (FCC) to implement number portability. As a result, consumers can take their phone number with them without the hassle, loss of identity, and cost that would otherwise come with changing numbers when changing providers.

New forms of competition like wireless and Voice-over-IP services have predictably led to new portability challenges. These services raise important, and sometimes technically difficult questions about how we might streamline the porting process and provide consumers with a swift and glitch-free transition between service providers.

Today's hearing allows us to explore these issues and to get some answers. It also allows us to discuss legislation recently introduced by Vice Chairman Stevens and myself that takes a small, yet important, step in directing the Commission to establish porting performance standards that will promote competition and make it easier for consumers to switch services.

I look forward to working on this issue and to hearing from today's witnesses.

The CHAIRMAN. Mr. Vice Chairman?

Senator STEVENS. Thank you very much, Mr. Chairman.

I want to know, Mr. Schremp, how many of these port orders would be normal to come per day in an organization such as yours?

Mr. SCHREMP. About three-quarters of our new customers bring their phone number with them. So, the vast majority of our transactions are port-based orders, so that we go through the porting process. So, on a daily basis, it's two or three thousand, and certainly growing as we expand our business.

Senator STEVENS. Now, there's an assumption here in the industry that the cost should be absorbed by the entity that's losing the customer, is that right?

Mr. SCHREMP. Well, my understanding of the basis is that it actually be borne by the end-user consumer, and that it be part of the tariff charges that many consumers have incurred for 10 years now, so when number portability first came about in the, sort of, mid- to late nineties, that a lot of those costs were borne by the consumer, and continue to be.

Senator STEVENS. That's the consumers of the entity that's losing the customer, right?

Mr. SCHREMP. That would be the case in terms of the majority of the customer base that continues to be with the incumbent telephone, that's true.

In our case, we certainly do port-out transactions as well, and we assess no fees to other parties.

Senator STEVENS. Well, let me ask all of you, if the customers are moving to a new entity, and the income is going to go with that

customer, what's the rationale for leaving the costs of this porting system on the backs of the losing carrier?

Anyone want to comment on that? It seems to me, there's a disincentive here to the losing carrier to move as fast as the customer wants, because they're going to have to pay the cost. The faster you move—I assume—the greater the cost. Am I wrong?

Mr. SCHREMP. From my perspective, the greater issue is that there are no market incentives, regardless of the administrative costs of completing the port. There are—in the wireline-to-wireline world, there are no market incentives for the incumbent providers to act in an efficient mode. The incumbent carriers—pretty much across the board—have been losing 6 to 7 percent of their wireline customers on an annual basis.

Senator STEVENS. Does the acquiring carrier have any costs at all to portability?

Mr. SCHREMP. Sure we do, we absolutely do.

Senator STEVENS. What is that?

Mr. SCHREMP. So, those costs are the administrative costs of populating these forms, the administrative costs of having—you know, in our case—you know, literally dozens of people that do nothing but port transactions.

Senator STEVENS. Any different than taking on a new customer?

Mr. SCHREMP. Certainly more expensive for us to take on a new customer where they port their number. And, the difference is——

Senator STEVENS. But, I mean, is it—suppose it's just a brand-new customer. Someone moves into the country, they want a telephone service. Now, is that going to cost you more or less than having a current customer from another entity ask you to come to your service.

Mr. SCHREMP. Absolutely costs us less. So, in the case that we're porting the customer's phone number, our costs are certainly $20, $30, $40 higher to complete the port transaction. That's sort of the hard cost associated with the head count, the human resources required to——

Senator STEVENS. Gentlemen, can any of you tell us, what's the relative cost between the entity that's losing the customer, and the entity that's gaining the customer?

Mr. GUTTMAN-MCCABE. I can't answer that now, but I could get you some information for the record on that, on what it costs us to port.

Senator STEVENS. Well, our bill is trying to make it fair, but make it customer-friendly, consumer-friendly, and saying it must be done as quickly as possible. Now, can that be achieved? And, do we need this bill to achieve it?

Mr. BANKS. Well, I think you're right, Senator, to raise the issue of the, sort of, a cost-benefit analysis. That there are costs to number porting, and there are benefits. The benefits are—we don't understand the benefits of moving it from 4 days, which is the current deadline, to 3 days or 2 days.

But, when NANC spent a lot of time on this, they attached some cost estimates, to different solutions to speeding up wireline porting, and none of the solutions would move us all the way to the wireless intervals. Some would move us closer, but could cost bil-

lions of dollars, and I think you raise a very good point that, those billions of dollars will have to be paid by somebody.

Senator STEVENS. Mr. Clark, you're, I understand, the Chairman of the Telecommunications Committee. Has that Committee analyzed this problem, in terms of balance of cost of this porting transaction?

Mr. CLARK. Mr. Vice Chairman, I'm not aware that our Committee has done that, most of that would rest with either the NANC, or the ATIS industry board.

However, I think your question raises a valid point, which is, when LNP was first set up, recall that the ILECs were allowed, for 5 years, to recover the cost of implementing the setup of that program. So, I think there was a recognition that there is a cost to initially set it up.

I think it's very worthy of study to decide, if there are ongoing administrative costs that need to be recovered, and I think NARUC's position would be, if that's a root cause, if that's one of the barriers to getting effective porting taken care of, then we ought to find some way to knock down that barrier.

Senator STEVENS. But if I leave that entity, and ask to move my number to a new wireless service—if I leave a wire service to go to a wireless service, I understand it takes two and a half hours to go to the wireline service, it takes 4 days on the wireline service. Now, why is that?

Mr. CLARK. And that's what we're hearing, as well, and that's what was really the impetus for our resolution, which is that—we don't know what it is, yet, but there clearly is something wrong. I mean, if wireless-to-wireless ports can happen so quickly, we ask, why cannot wireline-to-wireless ports happen with the same type of speed? And I don't think we have the answer to that today. But——

Senator STEVENS. Is there uniformity within the industry of how it's done?

Mr. GUTTMAN-MCCABE. On the wireless side there is, Senator. And that is part of our concern. We recognize and understand that there is going to be a cost that will be a portion of, or go along with streamlining the wireline-to-wireless process. And as Commissioner Clark suggested, there was a cost-recovery mechanism in place for the local exchange carriers when this requirement was initially put in, by the Committee, and by Congress.

But what we question is why can a wireless-to-wireless port happen in two and a half hours, using three or four fields, when a wireline-to-wireless happens in a less effective manner, taking up to 4 days or beyond, involving, at times, 20, 30, 50 or more fields.

Senator STEVENS. Mr. Schremp, Mr. Banks—I think, we want to be fair in what we're mandating, but it appears to me that as—wireless is the new game in town—there are going to be more consumers migrating from wireline service to wireless, than there is from wireless-to-wireless, or from wireless back to the wireline. Why should the customers that remain on the telephone system, the wireline system, bear the cost of portability to the wireless system?

Mr. BANKS. I think that's a reasonable question. And, I would also add that there are—when we compare the 2 hours, to the 4

days it takes on the wireline side, that is exactly what NANC spent thousands of hours understanding and making recommendations about. And it's hard to sum up very quickly why it takes longer on the wireline side, but it's a function of the fact that wireline networks are different, and incumbents have said this, and competitive carriers say this—we both say this—it's different, we have loops we have to keep track of, we have a number of things we have to keep track of, we have networks that have been in place for a long time.

And, finally, I think all our companies would prefer faster, and faster is good, but getting it right is better. And if we mess up for a wireline customer that has one line at their house, and the port is done incorrectly, so the wrong person loses service, that's a very bad thing. And, it's very important to avoid that.

Senator STEVENS. Can this be automated between wireline to wireless? It looks like it is automated wireless-to-wireless. Can it be automated, wireline to wireless?

Mr. BANKS. In fact, the processes are automated on the wireline side at the larger companies, their semi-automated at some of the medium-sized companies, and at the smaller companies, they tend to be completely manual.

Senator STEVENS. So, by definition, the smaller the company, the greater the cost if you're going to lose a customer?

Mr. BANKS. More or less.

Senator STEVENS. Mr. Chairman, I'm a little worried about what we're doing in terms—is our bill really, in the opinion of the four of you, is it necessary in order to bring about action from the FCC? Mr. Schremp? Let's just go by—I'm going to have to give up here in a minute.

Mr. SCHREMP. From my perspective, I think one of the key points for Charter, is not so much that we need any new technology or any new infrastructure that doesn't exist. What we're really looking for is, sort of, reinforcement and validation of the 4-day rule.

We have 260 porting partners, we call them, folks that we work with to either port numbers in or port numbers out. Fully half of which, their published procedures are in violation of the 4-days.

We can make 4 days work. We're not asking for any significant new investment or infrastructure, at least at this point in time. We think we can make 4 days work, but in many, many cases today it doesn't. Including with very large telcos. There are folks like Century Tel, and TDS and Citizens, who—their published processes, be they either manual or automated—are in violation of the four-day rule.

We're a fairly small telco. You know, we have 600,000 customers, so in the grand scheme of telecommunications companies for phone, we're fairly small. We're not automated. And we abide by the 4-day rule without any problem whatsoever. And the port——

Senator STEVENS. Can you do it shorter than 4 days?

Mr. SCHREMP. We absolutely can. The port-out process for us——

Senator STEVENS. Does it increase your cost?

Mr. SCHREMP. To a degree it does, to deal with, sort of, peaks and valleys in terms of, of volume, perhaps. You know, any time you compress a process. But it takes us 2 to 3 minutes.

Senator STEVENS. I've got to keep going.

Mr. Banks?

Mr. BANKS. I think that this bill, and the discussion we're having about the porting process are helpful for the FCC, for NANC, for the industry to renew their focus on this issue, and to work together in NANC in the Ordering and Billing Forum to improve the processes.

Senator STEVENS. Mr. Clark, the FCC has had it before the Commission for 3 years, as I understand it, and has not acted. Do you think we have to have this bill?

Mr. CLARK. Mr. Vice Chairman, I think in our opinion it would be necessary, to the extent necessary to get the FCC to act, well, they've got the authority they need. Does this hearing and the bill, perhaps, speed up a process that, perhaps, has been too slow at the FCC? I think we would agree with that.

Senator STEVENS. What do you think, Mr. Guttman-McCabe?

Mr. GUTTMAN-MCCABE. Senator, I would say, I hope that this legislation is not necessary. The Commission has before it a recent filing by Sprint and T-Mobile of December of 2006, and we hope that they will act quickly on that. We are concerned by some of the suggestions by Mr. Banks and others that this is properly housed in the NANC or in the ATIS Ordering and Billing Forum, because it's been there since 2004, and that's 3 years. So, hopefully it's not necessary.

Senator STEVENS. OK, last question for this time—the current legislation doesn't cover Internet voice services in the port area. Do you think we need this bill so it will be covered?

Any of you?

Mr. SCHREMP. I believe there's value in clarifying that VoIP providers are, in fact, mandated to support number portability, as we put in some of our filings with the FCC. Vonage ports have taken as long as 3 weeks in many cases, and it has been a fairly common experience.

Senator STEVENS. Mr. Chairman, I'm sorry to take so long, I'll yield the floor. But, I do think there must be cost differences in the way this is done, and I think we should have from you all, what are the differences, and what are the—how do they vary in terms of wireless-to-wireless, wireless-to-wireline, and wireline-to-wireless, in terms of the cost differences. Could you give us that information?

Thank you very much, Mr. Chairman.

The CHAIRMAN. I thank you, your questions were very important, so you could have continued if you wanted it.

Senator Klobuchar?

STATEMENT OF HON. AMY KLOBUCHAR, U.S. SENATOR FROM MINNESOTA

Senator KLOBUCHAR. Thank you, Mr. Chairman.

Thank you to our witnesses. I was listening to this remembering back to when I worked in this area as a private lawyer representing MCI and other companies back in the nineties, and this was right when the Telecom Act passed, and I remembered we had hearings about area codes, and very heated discussions about whether people would remember new area codes and that they wanted to have the same one as their neighbors, and I remember

the discussion would always say, "But in the future, we're going to have number portability, and it won't matter." And, so here we are.

And I do believe that for consumers to fully benefit from the competitive promises of the 1996 Telecom Act, we need to ensure that the telecom industry is operating under an efficient and fair number portability system. After all, the promise of that landmark legislation can only be realized if consumers are able to take advantage of the competitive options that are available to them.

So, I just had a few questions along those lines to follow up on some of the questions that Senator Stevens was asking. And I guess the first question is for you, Mr. Banks, is you talked about—and there was a line of questioning about how, that you've received very few consumer complaints, I think in your prepared testimony you said 9 porting complaints out of approximately 900,000. Yet, I think that where we were going here, was that for some of the companies, it's much more difficult to do that. And, could you talk about where the complaints are, and where the problems are, and is it solely based on the size of the company?

Mr. BANKS. So, I think that there's no simple answer to your question, in that there is a lot of performance data that's submitted to state commissions from the larger companies that look at, sort of, various aspects of ordering and porting. So there are monthly reports to state commissions for the larger carriers.

The smaller carriers—from the data we have gotten, which is, certainly doesn't cover all of them—shows that, for the most part they work their processes correctly, and get very few complaints.

So, I think there are some ships passing in the night about exactly how many complaints are there, and how many intervals are missed, and who's doing it.

Senator KLOBUCHAR. Mr. Clark, do you have anything along this line that you'd like to add? Just as we've discussed, there's such a difference between the portability between wireless-to-wireless, and wireline-to-wireless.

Mr. CLARK. Sure, and Senator, let me say, it's an honor to testify before you. My old legislative district in Fargo bordered the Red River, so we in eastern North Dakota sort of adopted most of northwest Minnesota as honorary North Dakotans.

Senator KLOBUCHAR. And we, too.

[Laughter.]

Mr. CLARK. Let me say that, I think that your state commissions would have better information, as Mr. Banks suggested, for those larger carriers. And a good part of the reason is because the 271 process, most States, as part of that approval process, tracked the manner in which new customers, or ports are taken. Things like that. So, I think you, probably are able to get pretty good information on most of the former Bell companies.

It would be more difficult for everyone but the RBOCs, because I don't know that that information would be as readily available. I know in talking with the smaller carriers in our State, they had a great deal of concern about implementing local number portability, because of the cost-benefit that they, perhaps, saw. And most of them have indicated that they have yet to process any local number portability cases, although they indicate they have the capability to do so.

Senator KLOBUCHAR. How does the demand differ from, though, rural areas to metropolitan areas across the country for the intermodal number porting?

Mr. CLARK. Senator, I think the answer is probably that you're going to see most of it in the urban areas, and the reason is because as you get into more rural areas—although it's not universally true—certainly wireless coverage tends to be a little bit more spotty. So that, the reason——

Senator KLOBUCHAR. I guess I just noticed that on my trip home. [Laughter.]

Mr. CLARK. So, folks in rural areas oftentimes, the rationale behind getting a wireless phone is often for the mobility aspect, being able to have some safety on the highways when they travel long distances, things like that, whereas actually cutting the cord may not be as realistic an option for them, because, perhaps, their in-home wireless penetration isn't as good as you might have in more urban areas. I think that's probably a lot of what's driving the reason that the impetus for wireline-to-wireless ports seems to be in the more urban areas, where there just is much heavier wireless coverage. And they tend to be covered by the RBOCs.

Senator KLOBUCHAR. Mr. Schremp, I know your company has business in Minnesota, and employees in Minnesota, and I just wondered from your perspective, how long do you believe that potential customers have to wait for your service, before they're transferred?

Mr. SCHREMP. Our average order to install interval is in the range of 10 to 12 days for a ported number, which is significantly longer than our install interval for other types of services. And one of the things that becomes particularly challenging for us is that—as you probably see in advertising and so forth across the cable industry—you know, the real push is around the "bundle" of services. So, video programming, high-speed Internet access, and telephone.

And, there are certainly many scenarios where, because of delays in the porting process, we're forced to go out, and the consumer is forced to endure, two separate installations; go out and install video service and high-speed Internet service, and then wait for number porting to occur to come back and install the telephone service. So, it creates, sort of, an additional layer of complexity for us, above and beyond other issues that may occur, solely within the phone product.

Senator KLOBUCHAR. And how about the number of people that cancel their service, because it just takes too long to transfer? And, do you have Minnesota-specific numbers on that?

Mr. SCHREMP. I don't have Minnesota-specific numbers, I could certainly obtain them for you and share them.

The real challenge that we have, is when an order is rejected by what we call, the donor telco, the portee, I guess is the way to look at it—and that rejection rate is about 15 percent, so 150 to 300 per day. The challenge in almost every case, once an order is rejected, is that our original install date that we've negotiated with the customer, and arranged with the customer, is no longer valid. So, we have to get back in touch with that customer—they may or may not have to re-plan their schedule, and so forth.

And so, the cancellation rate is particularly high within those 15 percent that have an order rejected in the initial go-round. And, it becomes a snowball effect of negotiating a new installation date, and communicating with the customer.

Senator KLOBUCHAR. OK. Thank you very much.

The CHAIRMAN. I thank you very much.

All of you have mentioned NANC, the North American Numbering Council. It was set up to advise the FCC on matters that we are now discussing. I gather that NANC has not been submitting any important recommendations on matters that we're discussing now.

Mr. Banks, you suggested another group, made up of consumers and wireless and wireline people. Are you suggesting we wipe out NANC?

Mr. BANKS. No, I'm certainly not. I think NANC has been a leader in this area, and in particular, they formulated a working group, a subcommittee composed of consumer representatives, and carriers, to work on intermodal porting. And they submitted a pretty detailed report to the FCC in 2004, and since then a sub-group at NANC has continued to work on solving piece-parts of the intermodal porting problems, and to make those better.

So, a big chunk of their work and report was done in 2004, and they've continued working on this problem since then.

The CHAIRMAN. Are you suggesting that legislation is not necessary because NANC is operating?

Mr. BANKS. No. I think that this bill, and discussion—as I said before—are very good to motivate people to look more at this issue, and to go back to the FCC and NANC, and work more on it.

The CHAIRMAN. I was interested in your responses to Senator Stevens' questions. I was impressed by *The Wall Street Journal* article on the recent mad rush to push this iPhone, Apple iPhone, and then the problem that followed that. Is there any way we can resolve that? This congestion problem?

Mr. BANKS. Well, I think the fact that whatever—500,000 of them were sold over the course of a weekend is probably difficult for any industry to deal with. It seemed to me the problems were relatively small, and I think it's very difficult to know. I mean, I would assume that a great majority of the issues are on wireless-to-wireless porting, because wireline-to-wireless porting is about 3 percent of total ports. So, I'm sure there are some issues with wireline-to-wireless, but I'm sure there were many issues with wireless-to-wireless ports as well.

The CHAIRMAN. I would like to ask the panel, do you believe that this Committee should proceed in acting upon this bill? I'll ask each one of you. Do you think we should continue? Or just stop it at this point? Mr. Schremp?

Mr. SCHREMP. I think the Committee should continue on two bases. One is relative to your earlier point about NANC. You know, from our perspective, in the wireline-to-wireline world, there are no market forces that are going to drive efficiency. It's a documented fact that the incumbent providers are losing 6 to 7 percent market share every year. And other alternatives, both wireless and competitive wireline included, are picking up that market share.

So, regardless of cost allocations and those sorts of things, the incumbent telcos are in a net-loss position for wireline services, period. And, whether it's through FCC action, or through this Committee, we believe that the market forces, again, are not sufficient, and that further action is required. Again, either through FCC action or through this Committee, and legislation associated.

The CHAIRMAN. Mr. Banks?

Mr. BANKS. Well, I think again, the Committee's interest in this issue, and the discussion we're having here, can only help the entire industry sit down and work through these issues. But they are very complicated, and some of them are very costly.

The CHAIRMAN. Mr. Clark?

Mr. CLARK. Mr. Chairman, I'm always bound by Association policy and resolution that's been adopted, and I have to say that we haven't taken a specific position on this piece of legislation.

However, from my own perspective, I think at the very minimum it makes sense to keep the legislation alive, to keep the pressure up. We believe that the FCC can address this, has the authority to address it, but to the extent that it continues to not be acted upon, we believe that hearings such as this, and potential legislation are worthwhile.

The CHAIRMAN. Mr. Guttman-McCabe?

Mr. GUTTMAN-MCCABE. Mr. Chairman, I would agree, I think, with my colleagues on the panel that, at the least, it makes sense for the Committee to continue to watch over what is happening at the Commission. We are concerned by the concept of leaving this with the NANC or the ATIS Forum, because those are consensus-driven bodies, and at least half of the membership of those consensus-driven bodies don't have the incentive to reach consensus. So, there is an active proceeding at the Commission, it's alive, it's recent, and hopefully the Commission will act appropriately and timely on that. If not, then I think it, you know, it makes sense to revisit the fact, or the need for legislation. But, in the interim, watching over the process, and making sure that something happens, makes complete sense.

The CHAIRMAN. Thank you very much.

Senator Stevens?

Senator STEVENS. Was there an increase in hoarding, after the FCC acted?

Mr. GUTTMAN-MCCABE. In its original?

Senator STEVENS. Yes.

Mr. GUTTMAN-MCCABE. Yes, absolutely. And, initially, in the wireless-to-wireless space, Mr. Vice Chairman, there was a large number of ports, that I think has toned down a little bit, but it's been relatively consistent in the wireless-to-wireless space. The wireline-to-wireless space we're seeing, as Mr. Schremp had said, we're seeing a quarter-to-quarter drop in the number of people who have LEC lines, and in turn, a significant percentage of those are people who are trying, when they cut the cord, to bring their numbers with them, so——

Senator STEVENS. To the whole panel—what's the single-greatest cost involved in porting? I assume it differs from smaller to medium to larger-sized telephone companies, but what's the greatest cost involved in this? Is it manual? Does it involve sending a guy

out in a truck? What is the cost here, in terms of that shifting? Basic costs.

Mr. CLARK. Mr. Chairman, I personally haven't been through one of the LNP cost-benefit cases in my own State of North Dakota—a number of state commissions have, and I think that we could probably provide you with some of that information in a follow up response form.

I think what you'll probably find is it, it really depends on the size of the company, and when you talk about smaller LECs, they just simply don't—at least up to this point—get a lot of porting requests, and so the per-port cost would be quite high.

Senator STEVENS. Let me be the, just the devil's advocate here. Could I just decide I want to keep my wireline, and I want to add wireless to it? Can I have two providers on the same number?

Mr. GUTTMAN-MCCABE. I don't think that technology exists right now, Mr. Vice Chairman. I think that——

Senator STEVENS. So, if I have an IP phone, by definition—have to leave the wireline if I want to use it?

Mr. GUTTMAN-MCCABE. I think that is the case, with the technology today.

Senator STEVENS. Is it coming? Why shouldn't I be able to say, by just a little switch on my phone at home, that's wired, I'm going off on the wireless now, I want to use this as I ride my motorcycle.

Mr. CLARK. Chairman Stevens, I believe that, that technology isn't far from what is soon going to be rolled out by T-Mobile, a lot of folks have keyed in on that where, the technology, when you're out on your motorcycle rides over the wireless network, traditional cellular network, when you get near your home, it actually hits a WiFi spot, and at the point that it picks up that WiFi signal, the call goes over a traditional, sort of, broadband-type network. And the device itself, recognizes when it's close to one of those spots, where it can hit the broadband network, versus——

Senator STEVENS. I hope someone does—I prefer using my speakerphone at home, I can work, and turn it on. I can't do that with the iPhone, but I can't have it when I'm out, away from the house. It does seem to me that some of this problem could go away if we just say, look, you can use another mechanism if you want to, you don't have to switch services in order to do it.

Senator Thune?

Pardon me, Mr. Chairman, your——

The CHAIRMAN. Senator Thune?

STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA

Senator THUNE. Thank you, Mr. Chairman, and I appreciate you holding the hearing. I think that it's pretty clear that giving customers the ability to keep their telephone numbers as they change service providers is one of the smarter things that the Congress has done in recent years, in terms of telecommunications policy, and I would argue that it's been—by and large—a success. The barriers to changing voice service providers have dropped significantly with the advent of number portability, and that means more competition. So, I think we can expect that voice service providers won't simply rely on their customer's desire to keep their phone

number as a reason to keep their service with their current provider.

I do have a couple of questions, with regard to making that process work more smoothly, and regarding any additional action that ought to be taken, either by Congress or the FCC. And the first has to do with whether or not the witnesses believe that the FCC currently has the authority to act on this issue.

Mr. CLARK. Yes.

Mr. GUTTMAN-MCCABE. Yes.

Senator THUNE. Everybody is in agreement on that point?

Then, can you tell us why Congress ought to be intervening, and is there anything that the legislation that's before us does that the FCC couldn't do on their own?

Mr. CLARK. I think the rationale for Congress intervening would be is, if the sense of Congress is that it just simply is taking too long at the FCC to act on some of the petitions, and concerns, and questions that have been raised about the length of time, and the differential, really, between wireline-to-wireline porting, and wireline-to-wireless porting, Senator.

Senator THUNE. Anybody else care to comment on that?

Mr. GUTTMAN-MCCABE. I think I would agree with that statement, that if Congress can provide a measure of oversight over the Commission process, and if it, if it extends too long, or an outcome comes out that doesn't make sense, then Congressional action likely would make sense in that case. But, the most recent filing by Sprint and T-Mobile was in December, and that docket has been fully submitted, and hopefully we'll have a decision from the Commission in the short-term on that.

Mr. SCHREMP. And from Charter's perspective, we've overcome, you know, a whole host of hurdles to become successful in the facilities-based wireline market, you know, including certainly interconnection agreements, inter-connection rights, you know, economic issues about making facilities-based competition work.

But, given that three-quarters of our customers port their numbers when they come to us, we have—on a daily basis—what we view as, you know, a barrier to competition. Certainly for those cases where, you know, where we've got folks that aren't abiding by the current 4-day rule. So, any mechanism to enforce that current 4-day rule is something that enables us to continue to be successful, and to drive additional investment in launching new markets.

Senator THUNE. Are we seeing any differences in number portability between large and small voice service providers?

Mr. BANKS. Yes, I mean, from the USTelecom perspective, the difference we see is that smaller carriers tend to be more manual in how they deal with these requests, larger carriers tend to have more complex operating systems that can automate some of the process. But there's very clearly a difference between how smaller carriers can afford to approach this problem, how larger carriers can.

Senator THUNE. And, do you think we need different deadlines for portability, for, based on the size of the carrier?

Mr. CLARK. Senator Thune, one of the things that I would just comment on, is probably one of the state commissions that has a

very well-developed record on this particular topic is your home state of South Dakota. I'm very familiar with a number of the folks down there, and they had very extensive hearings on the cost to implement local number portability, specifically for those carriers defined under the Act as rural.

Senator THUNE. Anybody else care to comment if we ought to have some distinction between—?

Mr. GUTTMAN-MCCABE. Sure, I think, I think if a distinction comes out of the process, and it's sort of a fully vetted process at the Commission, and it makes sense, that's one thing. Our concern is that the process has completely stalled in front of the NANC and the ATIS Ordering and Billing Forum, and it's been in this same state since 2004. And, as I said earlier, those are both consensus-driven bodies, and when a significant portion of the membership of those bodies has no incentive to reach a consensus, it makes logical sense that the process is going to stall.

What we've done as T-Mobile and Sprint, and then as an industry association is put a recommendation on the table, saying that this can be done with four fields, and can be done quickly, and we have to believe that if a carrier only has to monitor less fields, in some areas, it has to cost less. It just seems, seems just eminently logical. And, our ports are working—a larger number of ports, quicker time, less fields, with less failures. And I think that's kind of like a grand slam in the sense that, if all four of those things are true, we see a need to sort of export that into the wireline-to-wireless port space. And, hopefully, that's where the Commission comes out, is reducing the amount of time, and reducing the amount of fields that are needed to be filled in before a port becomes successful.

Senator THUNE. Mr. Chairman, thank you and thank our panel for your testimony, and your answering questions. Thanks.

The CHAIRMAN. Thank you very much.

Based upon your testimony, and your suggestions, and I'll have to confirm with the Vice Chairman, I wish to announce that this bill will be subject to an Executive Session, or mark-up, a week from today. So, may I suggest that, if you have any recommendations as to amendments, additions, or what have you, will you please advise us as soon as you can?

With that, the hearing is adjourned.

[Whereupon, at 11:10 a.m., the hearing was adjourned.]

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