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General Counsel.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WC Docket No. 07–244; FCC 09–41]

Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted rules requiring all entities subject to its local number portability (LNP) rules to complete simple wireline-to-wireline and simple intermodal port requests within one business day.

DATES: Effective August 3, 2009.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michelle Sclater, Wireline Competition Bureau, (202) 418–0388.

SUPPLEMENTARY INFORMATION: In this Order, the Commission reduces the porting interval for simple wireline and simple intermodal port requests to one business day to help ensure that consumers are able to port their telephone numbers efficiently and to enhance competition for all communications services.

Synopsis of Report and Order

1. Section 251(b)(2) of the Communications Act of 1934, as amended (the Act), requires local exchange carriers (LECs) to ''provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' The Act and the Commission's rules define number portability as ''the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.'' In addition, section 251(e) of the Act gives the Commission plenary jurisdiction over the North American Numbering Plan (NANP) and related telephone numbering issues in the United States. To implement these congressional mandates, the Commission required all carriers, including wireline carriers and covered commercial mobile radio service (CMRS) providers, to provide LNP according to a phased deployment schedule. The Commission found that LNP provided end users options when choosing among telecommunications service providers without having to change their telephone numbers, and established obligations for porting between wireline providers, porting between wireless providers, and intermodal porting (*i.e.*, the porting of numbers from wireline providers to wireless providers, and *vice versa*). The Commission also directed the North American Numbering Council (NANC), its advisory committee on numbering issues, to make recommendations regarding various LNP implementation issues.

2. Twelve years ago, in 1997, the Commission adopted the NANC's recommendation for a four-business day porting interval for wireline ports. This four-business day interval also applies to simple intermodal ports. In its *2007 LNP NPRM*, the Commission tentatively concluded that it should adopt a rule reducing the porting interval for simple port requests and allow the industry to work through the actual implications of such a timeline. In particular, the Commission tentatively concluded that it should adopt a rule reducing the porting interval for simple wireline-to-wireline and simple intermodal port requests to 48 hours. The Commission sought comment on its tentative conclusions, and whether there were any technical impediments or advances that affect the overall length of the porting interval such that it should adopt different porting intervals for particular types of ports.

3. In this Report and Order (Order), the Commission reduces the porting interval for simple wireline and simple intermodal port requests to ensure that consumers are able to port their telephone numbers efficiently and to enhance competition for all communications services. Specifically, the Commission requires all entities subject to its LNP rules to complete simple wireline-to-wireline and simple intermodal port requests within one business day.

4. As the Commission has found previously, it is critical that customers be able to port their telephone numbers in an efficient manner in order for LNP to fulfill its promise of giving ''customers flexibility in the quality, price, and variety of telecommunications services.'' Through the LNP process, consumers have the ability to retain their phone number when switching telecommunications service providers, enabling them to choose a provider that best suits their needs and enhancing competition. Although customers have had the option to port numbers between their telephone service providers for a number of years, the current four-business day porting interval may hinder the effectiveness of such options. Delays in porting cost consumers time and money and limit consumer choice and competition because when consumers get frustrated with slow porting, they often abandon efforts to switch providers. The Commission finds this to be a significant concern due to its efforts generally to ensure ''the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another,'' as well as due to the important role intermodal providers play in telecommunications competition. As the Commission has stated previously, LNP ''eliminates one major disincentive to switch carriers'' and thus facilitates ''the successful entrance of new service providers,'' which in turn ''stimulate[s] the development of new services and technologies, and create[s] incentives for carriers to lower prices and costs.'' Thus, to promote competition and the deregulation that can result from it, the Commission must ensure the efficiency and effectiveness of LNP.

5. The four-business day porting interval for simple wireline port requests was adopted over 10 years ago as an interim measure. Since that time, the telecommunications landscape has changed dramatically, and technological advances have enabled number porting to be accomplished in a much shorter time period, as evidenced by the voluntary two and one-half hour wireless interval standard. The Commission finds that there are no significant technological impediments to reducing the porting interval for simple wireline-to-wireline and simple intermodal ports to one business day, as a general matter. The record reflects that for many providers, particularly those employing an electronic interface, number porting can be accomplished in significantly less time than the current four-business day porting interval allows. As such, the Commission finds that the record supports this action to reduce the current porting interval for simple wireline-to-wireline and simple intermodal port requests to one business day. The Commission believes that a

porting interval of one business day strikes the appropriate balance, based on the current record, between enabling consumers to realize the benefits of LNP and the current technological and business capabilities of service providers.

6. In this Order, the Commission concludes that reducing the porting interval for simple wireline-to-wireline and simple intermodal ports to one business day is necessary to enable customers to port their numbers in a timely fashion and to enhance competition. The Commission believes that, in conjunction with its clarification in 2007 that providers may require no more than four information fields to validate simple port requests, the steps taken today will significantly streamline the simple porting process for service providers and consumers and will enhance competition. The Commission adopts a porting interval in terms of a business day, as opposed to adopting the tentative conclusion that was in terms of hours, to accommodate providers that may not have adequate staffing to handle port requests outside of regular business hours. Thus, the Commission requires all entities subject to its LNP rules, including interconnected VoIP providers and their numbering partners, to complete port requests for simple wireline-to-wireline and simple intermodal ports within one business day, unless a longer period is requested by the new provider or the customer elects otherwise. By ''intermodal ports,'' the Commission refers to: (1) Wireline-to-wireless ports; (2) wireless-to-wireline ports; and (3) ports involving interconnected Voice over Internet Protocol (VoIP) service. Because interconnected VoIP service can be provided over various types of facilities, the Commission refers to all interconnected VoIP ports as ''intermodal'' irrespective of the facilities at issue. The Commission also noted that not all wireline and wireless providers are required to port telephone numbers in all circumstances.

7. In this Order, the Commission also reiterated its 2007 finding that interconnected VoIP providers are obligated to take all steps necessary to initiate or allow a port-in or port-out itself or through its numbering partner on behalf of the interconnected VoIP customer. In its *2007 VOIP LNP Order,* the Commission made clear that when an interconnected VoIP provider obtains its NANP telephone numbers through commercial arrangements with one or more traditional telecommunications carriers, the intervals that would be applicable to ports between the numbering partner and the other provider, if the port were not related to an interconnected VoIP service, will apply to the port of the NANP telephone number between the numbering partner and the other provider when the end user with porting rights is a customer of the interconnected VoIP provider. The Commission also found that interconnected VoIP providers and their numbering partners may not enter into agreements that would prohibit or unreasonably delay an interconnected VoIP service end user from porting between interconnected VoIP providers, or to or from a wireline carrier or covered CMRS provider.

8. In this Order, the Commission leaves it to the industry to work through the mechanics of this new interval. In particular, the Commission directs the NANC to develop new LNP provisioning process flows that take into account this shortened porting interval. In developing these flows, the NANC must address how a ''business day'' should be construed for purposes of the porting interval, and generally how the porting time should be measured. The NANC must submit these flows to the Commission no later than 90 days after the effective date of this Order.

9. The Commission concludes that nine months is sufficient time for affected entities to implement and comply with the one-business day porting interval, and therefore requires all providers subject to its LNP rules to comply with the one-business day porting interval within nine months from the date that the NANC submits its revised provisioning flows to the Commission, except as described below with regard to small providers. The Commission found that nine months provides adequate time for providers to make the necessary software changes and upgrades and to accommodate changes to internal processes and policies.

10. In the *2007 LNP NPRM,* the Commission specifically sought comment on the benefits and burdens, including the burdens on small entities, of adopting porting interval rules for all types of simple port requests. In this Order, the Commission finds that the benefits to consumers and competition discussed above outweigh the costs associated with implementing a shorter porting interval for simple wireline and simple intermodal ports. However, the Commission recognizes that some providers that do not employ automated systems for handling port requests and have limited resources to upgrade their systems may have to make more significant changes or upgrades than other providers that already employ automated porting interfaces. To address this disparity, the Commission allows small providers, as defined below for purposes of this Order, a longer period of time for implementing the porting interval of one business day. Thus, small providers are required to implement the reduced porting interval of one business day for simple wireline and simple intermodal ports no later than 15 months from the date that the NANC submits its revised provisioning flows to the Commission. For purposes of this Order, the Commission considers providers with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide and Tier III wireless carriers, as defined in the *E911 Stay Order,* to be small providers. For purposes of this Order, what constitutes a 2 percent provider will be calculated based on an aggregate of incumbent local exchange carrier (LEC) and competitive LEC lines, based on the Commission's most recent industry statistics available as of the effective date of this Order. The Commission found that these categories encompass the providers whose systems will most likely require significant upgrades, and who also may have limited resources to make those upgrades. Thus, these providers may require the extended 15-month implementation period.

11. In this Order, the Commission declines to implement a specific cost recovery mechanism for carrier-specific costs associated with implementing the reduced porting interval. As an initial matter, the Commission notes that there are several options for carriers to recover their costs of implementing the reduced porting interval. For one, the Commission notes that many small carriers have not yet filed for recovery of costs for implementing long-term number portability under the Commission's LNP cost recovery mechanism. To the extent that such carriers incur costs to implement the one-business day porting interval that meet the standard for the LNP cost recovery mechanism, the Commission's rules give carriers five years to recover those costs through end-user charges. Once incumbent LECs have recovered their initial LNP implementation costs through the LNP cost recovery mechanism, the Commission intended carriers to recover ongoing costs incurred to provide number portability as a normal network feature through existing mechanisms available for the recovery of general costs of providing service. Under rate-of-return regulation, carriers are allowed to recover their costs plus a prescribed rate of return on investment. Under price cap regulation, rather than earning a specific rate of

return on their costs, carriers are permitted to earn returns significantly higher if they can operate efficiently, but are not guaranteed recovery of all costs. Price cap regulation includes an exogenous cost adjustment mechanism. Under the Commission's rules, price cap carriers may file proposed tariff rates that would exceed applicable price cap indices, if necessary to recover costs, with the requisite LNP-specific cost showing.

12. Further, small carriers have options for seeking modification of the new LNP interval requirements. For example, under section 251(f)(2) of the Act, a LEC ''with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for suspension or modification of the application of the requirements'' of section 251(b), which includes the ''duty to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission.'' The Commission finds that these safeguards further address commenters' concerns regarding the costs that small entities may incur to implement the one-business day porting interval.

13. Further, because the Commission recognizes that some providers may find it unduly burdensome to implement a one-business day porting interval even with an extended implementation period, providers may also apply for a waiver of the one-business day porting interval under the Commission's rules. To demonstrate the good cause required by the Commission's waiver rule, a provider must show with particularity that it would be unduly economically burdensome for the provider to implement the reduced porting interval. In making this showing, a provider should address the number of port requests it typically receives on a monthly basis as well as the specific costs that complying with the reduced porting interval would impose. Waiver requests will be considered on a case-by-case basis. In making a determination on waiver requests, the Commission may, in its judgment, set the porting interval length between one business day and four business days, or longer, as individually warranted. Further, the Commission will determine the length of the waiver period based on the particular facts presented. The Commission is concerned by evidence in the record that some providers may not be complying with the Commission's current rules regarding porting intervals, however. So there is no possible confusion regarding this requirement, the Commission clarifies that providers that obtain a waiver of the Commission's one-business day porting interval must comply with the current rules regarding a four-business day porting interval at a minimum, unless told otherwise. The Commission delegates authority to the Chief, Wireline Competition Bureau to review and decide these waiver requests.

14. The Commission also finds that the statutory requirement of competitive neutrality would not be violated if small and mid-size carriers are not allowed additional LNP recovery. Section 251(e)(2) mandates that the costs of establishing LNP be ''borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' The Commission, accordingly, established principles of competitive neutrality for cost distribution and recovery mechanisms related to number portability. Competitive neutrality requires that ''the cost of number portability borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace,'' and the Commission adopted a two-part test for making this determination. Under this test, number portability cost distribution and recovery mechanisms: (1) Must not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber; and (2) must not disparately affect the ability of competing service providers to earn a normal return.

15. In this Order, the Commission finds that neither prong of the competitive neutrality test is violated. Indeed, in the *Cost Recovery Order,* the Commission explicitly rejected arguments that competitive neutrality requires it ''to ensure that carriers recover all their number portability costs,'' emphasizing that '''[n]othing in section 251(e)(2) states that the Commission must guarantee recovery of such costs.'' Instead, this section requires the Commission to ensure that the manner in which all carriers bear the costs of providing number portability is competitively neutral. Thus, the Commission explained that ''[e]ven if a carrier does not recover all its costs, the Commission's rules will satisfy section 251(e)(2) so long as that carrier's ability to compete for subscribers is not significantly affected.''

Congressional Review Act

The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

This document does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *2007 LNP NPRM* in WC Docket 07–244. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. The Commission received comments on the Notice and also received comments specifically directed toward the IRFA from two commenters in WC Docket No. 07–244. These comments are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Rules

2. This Report and Order (Order) reduces the porting interval for simple wireline and simple intermodal port requests. Specifically, this Order requires all entities subject to the Commission's LNP rules to complete simple wireline-to-wireline and simple intermodal port requests within one business day, unless a longer period is requested by the new provider or the customer elects otherwise. The Order directs the NANC to develop new LNP provisioning process flows that take into account this shortened porting interval. In developing these flows, the NANC must address how a ''business day'' should be construed for purposes of the porting interval, and generally how the porting time should be measured. The NANC must submit these flows to the Commission no later than 90 days after the effective date of the Report and Order. The Order requires all providers subject to the Commission's LNP rules to comply with the new porting interval within nine months of the date that the NANC submits the revised provisioning flows to the Commission, except with regard to small providers. Small providers are required to implement the reduced porting interval of one business day for simple wireline and simple intermodal ports no later than 15

months from the date that the NANC submits the revised provisioning flows to the Commission. For purposes of this Order, the Commission considers small providers to be providers with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide and Tier III wireless carriers, as defined in the *E911 Stay Order.*

3. Providers may also apply for a waiver of the one-business day porting interval under the Commission's rules. To demonstrate the good cause required by the Commission's waiver rule, a provider must show with particularity that it would be unduly economically burdensome for the provider to implement the reduced porting interval. In making this showing, a provider should address the number of port requests it typically receives on a monthly basis as well as the specific costs that complying with the reduced porting interval would impose. The Order clarifies that providers that obtain a waiver of the Commission's one-business day porting interval must comply with the current rules regarding a four-business day porting interval for simple ports, at a minimum, unless told otherwise. Waiver requests will be considered on a case-by-case basis, and the Commission will determine the length of the waiver period based on the particular facts presented.

4. Although customers have had the option to port numbers between their telephone service providers for a number of years, the current four-business day porting interval may hinder the effectiveness of such options. Delays in porting cost consumers time and money and limit consumer choice and competition because when consumers get frustrated with slow porting, they often abandon efforts to switch providers. The Commission finds this to be a significant concern both due to the Commission's efforts generally to ensure ''the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another,'' as well as due to the important role intermodal providers play in telecommunications competition. This Order concludes that reducing the porting interval for simple wireline-to-wireline and simple intermodal ports to one business day is necessary to enable customers to port their numbers in a timely fashion and to enhance competition.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. In this section, the Commission responds to comments filed in response to the IRFA. To the extent the Commission received comments raising general small business concerns during this proceeding, those comments are discussed throughout the Report and Order.

6. OPASTCO and WTA comment that the IRFA is deficient, arguing that it contains no description of project compliance requirements, contains no alternatives considered, and impermissibly shifts the burden of providing required estimated compliance descriptions and compliance cost projections to commenting parties. Windstream, USTelecom, and NTCA agree with OPASTCO's and WTA's comments regarding the deficiency of the IRFA.

7. The Commission disagrees with these assertions as it finds that small entities have received sufficient notice of the issues addressed in the Order. Further, the Commission has considered the economic impact on small entities and what ways are feasible to minimize the burdens imposed on those entities. To the extent feasible, the Commission has implemented those less burdensome alternatives, and the Commission discusses these alternatives in section E, *infra.*

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

9. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses according to SBA data.

10. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.

1. Telecommunications Service Entities

a. Wireline Carriers and Service Providers

11. The Commission has included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

12. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by its action.

13. *Competitive LECs, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive LEC services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or

fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

14. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 184 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by its action.

15. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by its action.

16. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by its action.

17. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 330 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by its action.

18. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by its action.

19. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, 102 are estimated to have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that all or the majority of prepaid calling card providers are small entities that may be affected by its action.

20. *800 and 800-Like Service Subscribers.* These toll-free services fall within the broad economic census category of Telecommunications Resellers. This category ''comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census Bureau data for 2002 show that there were 1,646 firms in this category that operated for the entire year. Of this total, 1,642 firms had employment of 999 or fewer employees, and four firms had employment of 1,000 employees or more. Thus, the majority of these firms can be considered small. Additionally, it may be helpful to know the total numbers of telephone numbers assigned in these services. Commission data show that, as of June 2006, the total number of 800 numbers assigned was 7,647,941, the total number of 888 numbers assigned was 5,318,667, the total number of 877 numbers assigned was 4,431,162, and the total number of 866 numbers assigned was 6,008,976.

b. International Service Providers

21. The first category, Satellite Telecommunications, ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' The size standard for this industry is $15.0 million; the NACIS code is 517410. For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by its action.

22. The second category of Other Telecommunications ''comprises establishments primarily engaged in: (1) Providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' The size standard for this category is $25.0 million and the NAICS code is 517919. For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 274 firms had annual receipts of under $24,999,999. Consequently, the

Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by its action.

c. Wireless Telecommunications Service Providers

23. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

24. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small. The Commission notes that that the categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications'' are now obsolete, and have been replaced with a new category, ''Wireless Telecommunications Carriers (except Satellite).'' Under this new category, a wireless business is small if it has 1,500 or fewer employees.

25. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted above, the SBA has developed a small business size standard for ''Wireless Telecommunications Carriers (except Satellite).'' Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. The Commission has estimated that 221 of these are small under the SBA small business size standard.

26. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

2. Cable and OVS Operators

27. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

28. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small

29. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore the Commission is unable to estimate more accurately the number of cable system operators that would

qualify as small under this size standard.

30. *Open Video Systems (OVS).* In 1996, Congress established the open video system (OVS) framework, one of four statutorily recognized options for the provision of video programming services by local exchange carriers (LECs). The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS previously fell within the now obsolete SBA small business size standard of Cable and Other Program Distribution Services, which consists of such entities having $13.5 million or less in annual receipts. The Commission has certified 25 OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. As of June, 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households. Affiliates of Residential Communications Network, Inc. (RCN), which serves about 371,000 subscribers as of June, 2005, is currently the largest BSP and 14th largest MVPD. RCN received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. The Commission thus believes that at least some of the OVS operators may qualify as small entities.

3. Internet Service Providers

31. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' The new size standard is 500 employees. However, data is not yet available under this new standard. Under the previous SBA size standard, such a business is small if it has average annual receipts of $23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

32. *All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. However, data has not yet been collected under the new size standard, and so the Commission refers to data collected under the previous size standard, $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under $5 million, and an additional four firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

4. Equipment Manufacturers

33. SBA small business size standards are given in terms of ''firms.'' Census Bureau data concerning computer manufacturers, on the other hand, are given in terms of ''establishments.'' The Commission notes that the number of ''establishments'' is a less helpful indicator of small business prevalence in this context than would be the number of ''firms'' or ''companies,'' because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the census numbers provided below may reflect inflated numbers of businesses in the given category, including the numbers of small businesses.

34. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

35. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.'' The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: all such firms having 1,000 or fewer employees. According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year. Of this total, 511 had employment of under 1,000, and an additional 7 had employment of 1,000 to 2,499. Thus, under this size standard, the majority of firms can be considered small.

36. *Semiconductor and Related Device Manufacturing.* Examples of manufactured devices in this category include ''integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 1,032 establishments in this category that operated with payroll during 2002. Of these, 950 had employment of under 500, and 42 establishments had employment of 500 to 999. Consequently, the Commission estimates that the majority of these establishments are small entities.

37. *Computer Storage Device Manufacturing.* These establishments manufacture ''computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is

1,000 or fewer employees. According to Census Bureau data, there were 170 establishments in this category that operated with payroll during 2002. Of these, 164 had employment of under 500, and five establishments had employment of 500 to 999. Consequently, the Commission estimates that the majority of these establishments are small entities.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

38. This Order does not impose any new or modified reporting, recordkeeping or other compliance requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

39. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

40. In the *2007 LNP NPRM,* the Commission tentatively concluded that it should adopt a rule reducing the porting interval for simple port requests and allow the industry to work through the actual implications of such a timeline. In particular, the Commission tentatively concluded that it should adopt a rule reducing the porting interval for simple wireline-to-wireline and simple intermodal port requests to 48 hours. The Commission sought comment on its tentative conclusions, and whether there were any technical impediments or advances that affect the overall length of the porting interval such that it should adopt different porting intervals for particular types of ports. The Commission also sought comment on the benefits and burdens, including the burdens on small entities, of adopting rules regarding porting intervals for all types of simple port requests.

41. The Commission must assess the interests of small businesses in light of the overriding public interest in ensuring that all consumers benefit from local number portability. In the Order, the Commission found that it is critical that customers be able to port their telephone numbers in an efficient manner in order for LNP to fulfill its promise of giving ''customers flexibility in the quality, price, and variety of telecommunications services'' and that the current four-business day porting interval may hinder the effectiveness of LNP. The Commission also found that delays in porting cost consumers time and money and limit consumer choice and competition because when consumers get frustrated with slow porting, they often abandon efforts to switch carriers. The Commission thus concluded that reducing the porting interval for simple wireline-to-wireline and simple intermodal ports to one business day was necessary to enable customers to port their numbers in a timely fashion and to enhance competition, and found that the benefits to consumers and competition outweigh the costs associated with implementing a shorter porting interval for simple wireline and simple intermodal ports.

42. In order to reduce the burden on smaller entities, the Commission considered several alternatives, some of which were presented by commenters and some of which the Commission developed based on its own analysis. For example, the Commission recognized that some providers who do not employ automated systems for handling port requests and have limited resources to upgrade their systems may have to make more significant changes or upgrades than other carriers that already employ automated porting interfaces. To address this disparity, the Commission allowed small providers a longer period of time for implementing the one-business day porting interval. Specifically, small providers are required to implement the reduced one-business day porting interval for simple wireline and simple intermodal ports no later than 15 months after the NANC submits the revised provisioning flows to the Commission. For purposes of the longer implementation period, the Commission considers providers with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide and Tier III wireless carriers, as defined in the *E911 Stay Order,* to be small providers.

43. The Commission declined to provide for special recovery of costs for implementing the reduced porting interval, noting that there are several options for carriers to recover their costs of implementing the reduced porting interval. The Commission noted that many small carriers have not yet filed for recovery of costs for implementation of long-term number portability under its LNP cost recovery mechanism. To the extent that such carriers incur costs to implement the one-business day porting interval that meet the standard for the LNP cost recovery mechanism, the Commission's rules give carriers five years to recover those costs through end-user charges. Once incumbent LECs have recovered their initial LNP implementation costs through the LNP cost recovery mechanism, the Commission intended carriers to recover ongoing costs incurred to provide number portability as a normal network feature through existing mechanisms available for the recovery of general costs of providing service. Under rate-of-return regulation, carriers are allowed to recover their costs plus a prescribed rate of return on investment. Under price cap regulation, rather than earning a specific rate of return on their costs, carriers are permitted to earn returns significantly higher if they can operate efficiently but are not guaranteed recovery of all costs. Price cap regulation includes an exogenous cost adjustment mechanism.

44. Further, small providers have options for seeking modification of the new LNP interval requirements. For example, under section 251(f)(2) of the Act, a LEC ''with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for suspension or modification of the application of the requirements'' of section 251(b), which includes the ''duty to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission.'' The Order also notes that providers may apply for a waiver of the one-business day porting interval under the Commission's rules. To demonstrate the good cause required by the Commission's waiver rule, a provider must show with particularity that it would be unduly economically burdensome for the provider to implement the reduced porting interval. In making this showing, a provider should address the number of port requests it receives as well as the specific costs that complying with the reduced porting interval would impose. The Commission found that these safeguards address commenters' concerns regarding the costs that small entities may incur to implement the one-business day wireline and intermodal porting interval.

45. Report to Congress: The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review

Act. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

Accordingly, *It is ordered* that, pursuant to sections 1, 4(i), 4(j), 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 251, 303(r), this Report and Order in WC Docket No. 07–244 and CC Docket No. 95–116 is adopted, and that Part 52 of the Commission's Rules, 47 CFR part 52, Is amended as set forth in Appendix B. The Report and Order shall become effective August 3, 2009. It is further ordered that, pursuant to sections 1, 4(i), 4(j), 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 251, 303(r), and sections 52.11(b) and 52.25(d) of the Commission's rules, 47 CFR 52.11(b), 52.25(d), the North American Numbering Council shall submit its recommendations to the Commission within 90 days of the effective date of the Report and Order as discussed in paragraph 10 of this Report and Order.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends part 52 of Title 47 of the Code of Federal Regulations as follows:

PART 52—NUMBERING

■ 1. The authority citation for part 52 continues to read as follows:

Authority: Secs. 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154 and 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–205, 207–09, 218, 225–27, 251–52, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–27, 251–52, 271 and 332 unless otherwise noted.

■ 2. Section 52.21 is amended by adding paragraph (w) to read as follows:

§ 52.21 Definitions.

* * * * *

(w) The term *2009 LNP Porting Intervals Order* refers to In the Matters of Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability, WC Docket No. 07–244, CC Docket No. 95–116, Report and Order and Further Notice of Proposed Rulemaking, FCC 09–41 (2009).

■ 3. Section 52.26 is amended by revising paragraphs (a) and (c) to read as follows:

§ 52.26 NANC Recommendations on Local Number Portability Administration.

(a) Local number portability administration must comply with the recommendations of the North American Numbering Council (NANC) as set forth in the report to the Commission prepared by the NANC's Local Number Portability Administration Selection Working Group, dated April 25, 1997 (*Working Group Report*) and its appendices, which are incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. *Except that:* Section 7.10 of Appendix D is not incorporated herein and all references to the porting intervals for simple wireline and simple intermodal port requests in the *Working Group Report* are not incorporated herein after § 52.35 becomes effective as described in § 52.35(a).

* * * * *

(c) The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the *Working Group Report* and its appendices can be obtained from the Commission's contract copier, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail at *fcc@bcpiweb.com,* and can be inspected during normal business hours at the following locations: Reference Information Center, 445 12th Street, SW., Room CY—A257, Washington, DC 20554 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.* The *Working Group Report* and its appendices are also available on the Internet at *http://www.fcc.gov/wcb/cpd/Nanc/lnpastuf.html.*

■ 4. Section 52.35 is added to read as follows:

§ 52.35 Porting Intervals.

(a) Nine months after the NANC submits its port provisioning process flows to the Commission as provided in the *2009 LNP Porting Interval Order,* all telecommunications carriers required by the Commission to port telephone numbers must complete a simple wireline-to-wireline or simple intermodal port request within one business day unless a longer period is requested by the new provider or by the customer. Small providers, as described in the *2009 LNP Porting Interval Order,* must comply with this section 15 months after the NANC submits its port provisioning process flows to the Commission as provided in the *2009 LNP Porting Interval Order.* For purposes of this section, simple intermodal ports include wireline-to-wireless ports, wireless-to-wireline ports, and ports involving interconnected Voice over Internet Protocol (VoIP) service.

(b) Unless directed otherwise by the Commission, any telecommunications carrier granted a waiver by the Commission of the one-business day porting interval described in paragraph (a) of this section must complete a simple wireline-to-wireline or simple intermodal port request within four business days unless a longer period is requested by the new provider or by the customer.

(c) For purposes of this section, the term ''telecommunications carrier'' includes an interconnected VoIP provider as that term is defined in § 52.21(h).

(d) Once effective as described in paragraph (a) of this section supersedes any porting interval requirements for simple wireline or simple intermodal port requests incorporated by reference in § 52.26.

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 300

[Docket Number: 090225246-9247-01]

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Revision to the Manual of Regulations and Procedures for Federal Radio Frequency Management

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.