

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

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| In the Matter of |) | |
| |) | |
| Telephone Number Portability |) | CC Docket No. 95-116 |
| |) | |
| CTIA Petitions for Declaratory Ruling on |) | |
| Wireline-Wireless Porting Issues |) | |
| |) | |

**REPLY COMMENTS OF THE
OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION
ON THE FURTHER NOTICE OF PROPOSED RULEMAKING
AND INITIAL REGULATORY FLEXIBILITY ANALYSIS**

The Office of Advocacy of the United States Small Business Administration (“Advocacy”) submits these Reply Comments to the Federal Communications Commission (“FCC” or “Commission”) regarding its *Further Notice of Proposed Rulemaking* (“*Further Notice*”)¹ in the above-captioned proceeding. In the *Further Notice*, the Commission sought comment on: 1) how to facilitate wireless-to-wireline porting² where the rate center³ associated with the wireless number does not match the rate center for the wireline carrier seeking to serve the customer, and 2) whether it should reduce the four business-day interval for porting numbers between wireline and wireless carriers. The *Further Notice* suggests that the FCC is considering

¹ *In the Matter of Telephone Number Portability, Further Notice of Proposed Rulemaking*, CC Dkt. No. 95-116, FCC 03-284 (rel. Nov. 10, 2003).

² Porting is the transfer of a telephone number from one carrier to another at a customer’s request. Wireline-to-wireless porting is the transfer of a number from a wireline carrier to a wireless carrier. Wireless-to-wireline porting is the transfer of a number in the opposite direction.

³ “A ‘rate center’ is the geographic area served by a wireline carrier’s central office switch, and is used to determine the rating of calls to and from that switch as local or toll calls. Blocks of telephone numbers used by both wireline and wireless carriers are assigned to particular rate centers. However, while wireline local exchange carriers (LECs) have numbering resources in most rate centers, wireless carriers, because of the nature of their networks, typically do not, but instead serve customers over a wider geographic area from a single rate center in that area.” *FCC Clears Way for Local Number Portability between Wireline and Wireless Carriers*, FCC News Release, CC Dkt. No. 95-116 (Nov. 10, 2003).

requiring wireless-to-wireline porting when the rate centers do not match and reducing the interval for wireline carriers to port numbers to wireless carriers.

Advocacy agrees with comments filed with the FCC that raise concerns about the vagueness of the *Further Notice* and the initial regulatory flexibility analysis (“IRFA”) not satisfying the requirements of the Regulatory Flexibility Act. Advocacy agrees with comments filed on behalf of wireline carriers, including small, rural wireline carriers in particular, that the changes suggested by the FCC’s *Further Notice* would impose significant economic burdens. Consistent with the small business comments, Advocacy recommends that the FCC convert the *Further Notice* to a Notice of Inquiry and not proceed on the issues presented in the *Further Notice* until the FCC can publish for comment a proposed rule with specific regulatory requirements and a meaningful IRFA with consideration and analysis of significant alternatives that minimize the economic impact on small wireline carriers.

1. Advocacy Background

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the Small Business Administration (“SBA”), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. Section 612 of the Regulatory Flexibility Act (“RFA”) requires Advocacy to monitor agency compliance with the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act.⁴

Congress designed the RFA to ensure that, while accomplishing their intended purposes, regulations did not unduly inhibit the ability of small entities to compete, innovate, or to comply

⁴ Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612) amended by Subtitle II of the Contract with America Advancement Act, Pub. L No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

with the regulation.⁵ An objective of the RFA is for agencies to be aware of the economic structure of the entities they regulate and the effect their regulations may have on small entities. To this end, the RFA requires agencies to analyze the economic impact of proposed regulations when there is likely to be a significant economic impact on a substantial number of small entities, and to consider regulatory alternatives that will achieve the agency's goal while minimizing the burden on small entities.⁶ The RFA does not seek preferential treatment for small entities. Rather, it establishes an analytical requirement for determining how public issues can best be resolved without erecting barriers to competition. To this end, the RFA requires the agencies to analyze the economic impact of proposed regulations on different-sized entities, estimate each rule's effectiveness in addressing the agency's purpose for the rule, and consider alternatives that will achieve the rule's objectives while minimizing burdens on small entities.⁷

On August 13, 2002, President George W. Bush signed Executive Order 13272 requiring federal agencies to implement policies protecting small entities when writing new rules and regulations.⁸ This Executive Order highlights the President's goal of giving "small business owners a voice in the complex and confusing federal regulatory process"⁹ by directing agencies to work closely with the Office of Advocacy and properly consider the impact of their regulations on small entities. In addition, Executive Order 13272 authorizes Advocacy to provide comment on draft rules to the agency that has proposed the rule, as well as to the Office of Information and Regulatory Affairs ("OIRA") of the Office of Management and Budget.¹⁰ Executive Order 13272 also requires agencies to give every appropriate consideration to any

⁵ Pub. L. 96-354, FINDINGS AND PURPOSES, SEC. 2 (a)(4)-(5), 126 CONG. REC. S299 (1980).

⁶ See generally, Office of Advocacy, U.S. Small Business Administration, *A Guide for Federal Agencies: How to Comply with the Regulatory Flexibility Act* (2003).

⁷ 5 U.S.C. § 604.

⁸ Exec. Order. No. 13272 at § 1, 67 Fed. Reg. 53,461 (2002).

⁹ White House Home Page, *President Bush's Small Business Agenda*, (announced March 19, 2002) (last viewed February 2, 2004) <<http://www.whitehouse.gov/infocus/smallbusiness/regulatory.html>>.

¹⁰ E.O. 13272, at § 2(c).

comments provided by Advocacy. Under the Executive Order, the agency must include, in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, the agency's response to any written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.¹¹

2. The FCC's Initial Regulatory Flexibility Analysis Is Insufficient

Advocacy has reviewed the FCC's IRFA for the *Further Notice*¹² and agrees with the comments of the National Telecommunications Cooperative Association ("NTCA") that the IRFA is not sufficient to comply with the RFA.¹³ Although the FCC describes and estimates the number of regulated small entities,¹⁴ there is no analysis of the impact of the suggested changes on the identified small businesses. The FCC only provides general statements: "[t]o address concerns regarding wireline carriers' ability to compete for wireless customers through porting, future rules may change wireline porting guidelines," and "future rules may require wireline carriers to reduce the length of the current wireline porting interval for ports to wireless carriers."¹⁵ While the FCC acknowledges that "[t]hese changes may impose new obligations and costs on carriers," it does not provide any information on the impacts on small businesses¹⁶ in aggregate or at the firm level. The FCC cross references information in the *Further Notice*, but

¹¹ *Id.* at § 3(c).

¹² *Further Notice*, Appendix B, paras. 1-15. The FCC released a Memorandum Opinion & Order ("MO&O") as part of the same document as the *Further Notice*. The MO&O addressed wireline-to-wireless porting while the *Further Notice* addressed wireless-to-wireline porting. Both actions, however, dealt with important issues relating to intermodal portability and both imposed requirements and costs on small rural wireline carriers. The FCC did not conduct a regulatory flexibility analysis for the MO&O on the basis that it was an interpretative rule. Advocacy does not agree with this assessment and believes that regulatory requirements imposed by the MO&O are similar in nature and scope to those in the *Further Notice* and require a notice and comment rulemaking and an RFA analysis.

¹³ Comments of the NTCA, on the *Further Notice of Proposed Rulemaking* in CC Dkt. No. 95-116, at 3 (Jan. 20, 2004).

¹⁴ The FCC identified three classes of entities affected by the rule: incumbent local exchange carriers ("ILECs"), competitive local exchange carriers, and wireless service providers. *Further Notice*, Appendix B, paras. 5-7. Advocacy's analysis concentrates on the impact on small rural ILECs (also called small wireline carriers) as the burden of the *Further Notice* falls most heavily upon them.

¹⁵ *Further Notice*, Appendix B, para. 8.

¹⁶ *Id.*

does not provide any specific compliance requirements or cost information on small business impacts.¹⁷ There is no discussion of projected recordkeeping or other compliance requirements the *Further Notice* would impose on small businesses, or the professional skills necessary to prepare the record or report, as required by the RFA.¹⁸ The IRFA solicits comments on two of the three options mentioned in the *Further Notice* to facilitate wireless-to-wireline porting, but it does not address how these options will minimize any significant economic impact on small businesses. Advocacy encourages the FCC to consider alternatives raised by small business comments and in these comments,¹⁹ as well as exemptions for small wireline carriers and extended periods of time for small businesses to come into compliance.

Advocacy notes that the FCC states no federal rules overlap, duplicate or conflict with the *Further Notice*;²⁰ however, throughout the *Further Notice* and the IRFA, the FCC solicits comments on whether there are “regulatory obstacles that prevent wireline carriers from porting-in wireless numbers when the rate center associated with the number and the customer’s physical location do not match,” and what the regulatory implications are of the alternative approaches suggested by the FCC.²¹ In addition, commenters specifically state that the FCC’s *Further Notice* has a direct impact on the FCC’s intercarrier compensation rules and wireline carriers tariffing requirements.²² Advocacy encourages the FCC to consider how the *Further Notice* overlaps with other requirements placed upon small wireline carriers as required by the RFA.

Advocacy recognizes that the primary difficulty with identifying small entity impacts and

¹⁷ *Further Notice*, Appendix B, para. 8, footnote 149, cross references paras. 41, 48-49 in the *Further Notice*. In paragraph 41, the FCC cites information from Qwest, a large ILEC, as showing that requiring wireless-to-wireline porting in the context suggested by the FCC in the *Further Notice* “would require significant and costly operational changes.” Paras. 48 and 49 suggest the possibility of shorting the porting interval, acknowledges that there may be technical or practical impediments and seeks comments.

¹⁸ 5 U.S.C. § 603(b)(4).

¹⁹ See *infra* Sections 3-4.

²⁰ *Further Notice*, Appendix B, para. 15.

²¹ *Further Notice*, Appendix B, paras. 11-12.

²² USTA Comments on the *Further Notice* at 4-5; TSTC Comments on the *Further Notice* at 2.

compliance requirements in the IRFA is the vagueness of the FCC's underlying *Further Notice*. As NTCA states, the *Further Notice* does not contain concrete proposals to solicit small carriers' comment.²³ Instead, the Commission suggests options without explanation on how they would work as a regulatory scheme.²⁴ The South Dakota Telecommunications Association ("SDTA") points out that the *Further Notice* has no discussion of how these options would be achieved.²⁵ Since there are no proposed rules, only ideas, NTCA recommends that this action is more properly a subject of a Notice of Inquiry ("NOI").²⁶

As Advocacy has stated in prior comments to the FCC,²⁷ the FCC's practice of publishing notices of proposed rulemakings to solicit information and comments from the regulated entities and interested public without providing specific proposed regulations for comment is more consistent with an NOI than a notice of proposed rulemaking. The purpose of an NOI is to gather information about the scope of a problem, factors that contribute to a problem, the benefits, or limitations of different regulatory approaches and the potential impacts of various alternative approaches. Advocacy recommends that the FCC use an NOI whenever the Commission lacks information about the industry to be regulated, the exact nature of the problem to be addressed or specific regulatory proposals to achieve the policy objective.

Therefore, Advocacy agrees with NTCA and recommends that the Commission consider the *Further Notice* to be an NOI. The Commission should take into consideration the comments

²³ NTCA Comments on the *Further Notice* at 3.

²⁴ NTCA Comments on the *Further Notice* at 2.

²⁵ Comments of the SDTA, to the *Notice of Proposed Rulemaking* in CC Dkt. No. 95-116, at 2 (Jan. 20, 2004).

²⁶ NTCA Comments on the *Further Notice* at 3.

²⁷ Letter from Thomas M. Sullivan, Chief Counsel, Office of Advocacy to Michael K. Powell, Chairman, Federal Communications Commission, in MB Dkt. No. 02-227 (April 9, 2003); Comments of the Office of Advocacy, U.S. Small Business Administration, to the *Notice of Proposed Rulemaking* in MM Dkt. Nos 01-317, 00-244 (March 27, 2002); Letter from Thomas M. Sullivan, Chief Counsel, Office of Advocacy to Michael K. Powell, Chairman, Federal Communications Commission, in CC Dkt. No. 01-338; CC Dkt. No. 96-98; CC Dkt No. 98-147 (Feb. 5, 2003); Letter from Mary K. Ryan, Deputy Chief Counsel, Office of Advocacy to Michael K. Powell, Chairman, Federal Communications Commission, in MM Dkt. No. 00-167 (Feb. 6, 2001); Comments of the Office of Advocacy, U.S. Small Business Administration, to the *Notice of Proposed Rulemaking* in CC Dkt. No. 01-92 (Nov. 6, 2001).

submitted in response to the *Further Notice* and IRFA, and use them as a basis for developing a revised proposed rule and IRFA for comment, if the Commission decides to move forward on the issues raised in the *Further Notice*. The revised IRFA should identify and analyze the compliance costs for small wireline and wireless carriers to implement specific regulatory requirements in the revised proposed rule for wireless-to-wireline porting when rate centers differ (including defined porting intervals) and consider significant regulatory alternatives to the approach proposed by the FCC that would minimize the impact on the regulated small businesses.

3. Wireless-to-Wireline Porting Imposes Burdens on Small Wireline Carriers

Advocacy agrees with comments advising the FCC that requiring wireless-to-wireline number portability where the rate centers do not match would impose significant burdens on small wireline carriers. A significant concern raised by commenters is that the impediments to wireless-to-wireline porting under the existing ILEC regulatory requirements and compensation process.²⁸ Small rural wireline carriers would have to make significant and costly routing, rating, and billing system changes.²⁹ Many small wireline carriers in rural areas do not directly interconnect with wireless carriers.³⁰ Therefore, calls to and from the ported number would be routed over a third carrier, which generates toll charges.³¹ Neither the FCC nor the industry has determined who pays for the transport of porting numbers when they must be routed over a third carrier.³² Commenters also raised the concern that the mismatch of the rate center of the wireless

²⁸ NTCA Comments on the *Further Notice* at 4. Comments of the Texas Statewide Telephone Cooperative, to the *Notice of Proposed Rulemaking* in CC Dkt. No. 95-116, at 1-2 (Jan. 20, 2004).

²⁹ Comments of the Texas Statewide Telephone Cooperative, to the *Notice of Proposed Rulemaking* in CC Dkt. No. 95-116, at 1-2 (Jan. 20, 2004).

³⁰ SDTA Comments on the *Further Notice* at 2.

³¹ *Id.*

³² NTCA Comments on the *Further Notice* at 4.

and wireline carriers would create an unfair competitive advantage between wireline and wireless carriers.³³

Advocacy agrees with the recommendation that the FCC resolve the issues associated with intercarrier compensation before requiring wireless-to-wireline porting.³⁴ One way to resolve these issues is to limit the intermodal number portability to carriers that have entered into an interconnection agreement. Another alternative is for the FCC to revise its wireless-to-wireline porting order and limit porting to situations where rate centers match.³⁵ Such a limitation would reduce the cost of porting significantly for small wireline carriers.³⁶ Until the compensation and regulatory issues can be resolved, Advocacy agrees with comments stating that the benefits of limiting number portability to situations where rate centers match would outweigh the benefits afforded to customers by permitting porting where rate centers do not match.³⁷

4. Reducing the Number Porting Interval Imposes Burdens on Small Businesses

Advocacy agrees with comments filed on behalf of wireline carriers, including small and rural wireline carriers in particular, that urge the FCC not to shorten the porting period.³⁸ Shortening the porting interval would impose significant burdens on small wireline carriers due to their limited staff and resources.³⁹ Wireline carriers have designed their systems based on the longer porting interval.⁴⁰ Large wireline carriers estimate that the costs of reconfiguration could

³³ *Id.*; Comments of the Oklahoma Rural Telephone Companies, to the *Notice of Proposed Rulemaking* in CC Dkt. No. 95-116, at 4 (Jan. 20, 2004).

³⁴ Comments of the United States Telecom Association, to the *Notice of Proposed Rulemaking* in CC Dkt. No. 95-116, at 4 (Jan. 20, 2004).

³⁵ NTCA Comments on the *Further Notice* at 4; TSTC Comments on the *Further Notice* at 2.

³⁶ *Id.*

³⁷ *Id.*

³⁸ USTA Comments on the *Further Notice* at 5; SDTA Comments on the *Further Notice* at 6; TSTC Comments on the *Further Notice* at 2.

³⁹ TSTC Comments on the *Further Notice* at 2-3.

⁴⁰ USTA Comments on the *Further Notice* at 6.

exceed \$100 million.⁴¹

Based on the comments from small wireline carriers, Advocacy urges the FCC to retain the current porting interval and allow small wireline carriers to negotiate terms and conditions with wireless carriers for conducting complex ports, including minimum porting intervals.⁴² Should the Commission decide to shorten the interval for porting numbers between wireless and wireline carriers, Advocacy recommends that the FCC grant small wireline carriers a longer porting interval to alleviate the disproportionate impact due to their smaller staffs and scarcer resources. Providing a longer interval for small wireline carriers would not cause significant disruption to consumers generally because small wireline carriers serve less than two percent of the total subscriber lines.⁴³ Advocacy further recommends that the FCC should solicit input from small wireline carriers on whether this alternative is beneficial to them and the appropriate length of an exception for small wireline carriers.

5. Conclusion

Advocacy agrees with small business comments that the *Further Notice* suggests requirements that would impose significant impacts and unfairly burden small wireline carriers, and that the IRFA does not meet the requirements of the RFA. Advocacy recommends that the Commission convert the *Further Notice* to an NOI. If the FCC moves forward, the Commission should take into account the comments gathered in response to the *Further Notice* as a basis for

⁴¹ *Id.* at 6-7 (citing estimates of over \$100 million from Verizon, with Qwest stating that its cost to initially implement number portability were in excess of \$300 million). Advocacy presumes that the costs for small wireline carriers would be proportional.

⁴² TSTC Comments on the *Further Notice* at 3.

⁴³ *Emergency Join Petition for Partial Stay and Clarifications* of the Independent Telephone and Telecommunications Alliance, NTCA, and Organization for the Promotion and Advancement of Small Telecommunications Companies, CC Dkt. No. 95-116, at 1 (Nov. 21, 2003).

its further action on a revised rule with specific regulatory proposals and IRFA that reduce the disparate impacts on small businesses.

Respectfully submitted,

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