

NEWS & COMMENTARY

ANALYSIS OF A CHANGING INDUSTRY

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LOCAL NUMBER PORTABILITY: THE PAST, PRESENT, AND (IMMEDIATE) FUTURE OF A BREWING CONTROVERSY FOR RURAL LECs

In the previous issue of *JSI News & Commentary* (No. 0303, Aug. 6), we took a brief look at local number portability (LNP), with the promise that we would undertake a fuller examination of this evolving development in an upcoming edition. To begin, we repeat our caution that while wireless LNP on the surface may not appear to have significant impact on rural LECs, many JSI clients have received number portability requests from an assortment of commercial mobile radio service (CMRS) providers. We reiterate our conclusion that the current uncertainty about wireless LNP obligations will likely cause rural LECs grief in the coming months. We want to apply some salve to the festering problem of wireless number portability by reviewing LEC duties for number portability in detail. First, however, for those who have not closely followed the wireless give-and-take at the Federal Communications Commission (FCC), we start with a brief review of number portability from its genesis to the present.

A Brief History

The concept of LNP began with the Telecommunications Act of 1996. In this landmark legislation, Congress required all local exchange carriers to provide LNP in accordance with requirements as prescribed by the FCC. (47 U.S.C. §251(b)(2)) Later that year, the FCC issued its *Local Competition Order* and concluded that for purposes of this section of the Act, CMRS providers would not be identified as local exchange carriers.

Subsequently, the FCC ordered all LECs within the top-100 Metropolitan Statistical Areas (MSAs) to implement the *database method* of number portability by a date certain. After JSI and several trade associations expressed concerns about this initial obligation for rural LECs that have portions of their study areas within the top-100 MSA list, reconsideration of the FCC's initial order was sought and received. It is worth noting that while relief was intended only for rural LECs, the FCC's final rules provided relief to all carriers in the top-100 MSA list. Consequently, any carrier with operations in areas identified as in the top-100 MSA list has the duty to implement the database method of number portability only for switches that have received a specific request.

For LECs with operations outside the geographic areas identified on the MSA list, the FCC required the deployment of a long-term database method for LNP within *six months* after a

specific request by another telecommunications carrier for areas in which the carrier is operating or plans to operate.

The number portability rules for CMRS providers have an interesting history. As noted above, the FCC did not include CMRS providers in the rules it established for LECs. Nonetheless, considering the value of wireless-to-wireless number portability, the FCC mandated that CMRS providers provide a long-term database method for number portability, including the ability to support roaming, for areas on the top-100 MSA list. The deadline for CMRS providers to have a long-term database method for number portability is Nov. 24, 2003.

Current Status

With the wireless LNP deadline looming, many rural LECs have received requests for number portability from CMRS providers. This type of number portability is considered *inter-modal* number portability, because it involves two telecom carriers using *different* modes, or technologies, to provide services to their customers. The most pressing issue for rural LECs is to determine their duties related to inter-modal LNP. To identify these duties, we must first examine the various nuances of FCC policy and rules.

To the layman, number portability can describe many different things. To CMRS providers, number portability appears to mean something quite different from what the FCC has spelled out in its various orders. To be clear, we need to keep in mind what the FCC has stated in its rules when using the term, “number portability.”

The FCC defines several key terms in its LNP rules: Location portability, number portability, service portability, service provider portability, and transitional number portability all have specific definitions in the FCC rules. As it is critical to understand these various terms, we review each in turn.

Location portability is the term used to describe the scenario in which a telecommunications service user can “retain existing telecommunications numbers without impairment of quality, reliability, or convenience when moving from one physical location to another.” (47 CFR §52.21(j))

Number portability is the term used to describe the scenario in which a telecommunications service user can “retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.” (47 CFR §52.21(l))

Service portability is the term used to describe the scenario in which a telecommunications service user can “retain existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications service to another, without switching from one telecommunications carrier to another.” (47 CFR §52.21(p))

Service provider portability is the term used to describe the scenario in which a telecommunications service user can “retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.” (47 CFR §52.21(q))

Transitional number portability measure refers to a method that “allows one local exchange carrier to transfer telephone numbers from its network to the network of another telecommunications carrier, but does not comply with certain performance criteria. Transitional number portability measures are technically feasible methods of providing number portability including Remote Call Forwarding (RCF), Direct Inward Dialing (DID), Route Indexing--Portability Hub (RI-PH), Directory Number Route Indexing (DNRI) and other comparable methods.” (47 CFR §52.21(r))

To put these definitions into context, one must consider three distinct scenarios. But, before we even get to that review, we need to emphasize the importance of the “database methods.” The term *database method* refers to a number portability method that uses one or more external databases to provide called party routing information. And, the term *long-term database method* means that it complies with specific performance criteria established by the FCC. With the practical meaning of a database method in mind, we are able to examine the three scenarios.

The first scenario addresses the instance in which telecommunications service customers (end users) seek to move their telephone numbers from one type of service to another, offered by the same provider. This is *service portability* and is not a disputed issue in the industry.

The other two scenarios, on the other hand, are what have caused all the national LNP attention and controversy. The second scenario describes the case in which end-user customers are able to retain their telephone numbers when changing service providers at the same location. This is called *number portability* (or *service provider portability*, as the definitions are similar). When long-term database number portability is not available, the carrier may provide, upon a specific request, number portability using a transitional number portability measure as described above. The third scenario refers to the case in which end-user customers are able to retain their telephone numbers when moving from one location to another. This is *location portability*.

The wireless LNP fracas has emerged as a result of the misinterpretation of the FCC’s terms. When a CMRS provider seeks number portability from a LEC, the duty of the LEC is to provide “number portability” as defined by the FCC. In many instances, however, what CMRS providers are really seeking is “location portability,” or something entirely different, under the guise of number portability.

The CMRS providers have sought determinations from the FCC and the courts regarding their duties. Mingled among the CMRS petitions is the confused concept that LECs should port a number to a wireless provider that has no physical presence in the LEC’s exchange area. From

the LEC perspective, JSI argues, there is no justification for such a request because LEC responsibility stops at “number portability.” The FCC has yet to establish a framework or timeline for location portability. This particular point of contention between LECs and CMRS providers has become identified as the “rate-center disparity” issue. Rate center disparity refers to the fact that a CMRS carrier’s service area is generally much larger than a LEC’s rate center (*i.e.*, exchange) – in some cases, CMRS service areas include multiple states. In view of the rate-center disparity and the continuing question of CMRS requests for LNP, the industry has urged the FCC to clarify the duties of rural LECs in order to effectuate an orderly implementation of legitimate number portability.

JSI would hope that clear reasoning prevails at the FCC when it issues its clarification of these LNP rules. We believe the FCC should conclude that number portability requires service to be provided at the same location. For practical purposes, the “same location” provision is understood to mean “within the exchange area of the rated telephone number.” As we’ll explain below, in almost all rural LEC instances, CMRS requests for LEC number portability are, in reality, requests for location portability. JSI considers such requests to be premature, given that the FCC has not yet mandated any requirements for location portability.

The Duty

With all of the preceding in mind, what exactly are LECs’ number portability duties? There are three clearly defined duties for a LEC regarding number portability:

1. An ILEC must make available upon request a list of its switches for which number portability has been requested and a list of its switches for which number portability has not been requested. While this duty is defined in a section of the rules that addresses the FCC’s MSA list (47 CFR §52.23(b)), JSI submits it generally applies to all LECs.
2. A LEC must provide transitional number portability measures as soon as reasonably possible upon receipt of a specific request from another telecommunications carrier, until such time as the LEC implements a long-term database method for number portability in the requested area. (47 CFR §52.27) The request for transitional number portability measures is not a common request and, therefore, while this duty applies to LECs, JSI does not see its industry application at this time. One reason for not seeing requests for transitional measures is that the long-term database method is generally required within six months after a specific request is received by the LEC. A LEC may demonstrate that provision of a specific transitional number portability measure is not technically feasible or, if technically feasible, is unduly burdensome.
3. A LEC must make a long-term database method for number portability available within six months after a specific request by another telecommunications carrier in areas in which that carrier is operating or plans to operate. (47 CFR §52.23(c))

If a LEC is unable to provide long-term database number portability in accord with FCC requirements, there are provisions for the LEC to seek an extension of time in order to comply, or to seek a waiver of FCC rules. In addition to seeking relief at the FCC, a LEC with less than

two percent of the nation's subscriber lines may petition its state commission or regulatory authority for suspension or modification of the number portability requirement. (See 47 U.S.C. §251(f)(2))

The Problem

We are now in position to focus on the LNP problem currently vexing the rural LEC industry. The nagging issue has to do with *wireline-to-wireless* number portability. In reaction to the imminent November deadline, CMRS providers are seeking portability with rural LECs. In many instances, these CMRS providers do not have any direct interconnection with a rural LEC and do not have an NXX rate-centered in the rural LEC's exchange. Seemingly, under the guise of number portability, CMRS providers want rural LECs to port telephone numbers from their current exchange areas to a distant exchange where the CMRS provider has its NXX rate-centered. In addition, these wireless carriers want rural LECs to transport the traffic for these ported numbers outside the rural LEC's exchange area at no cost to the CMRS provider.

Conjoined with the question of whether a CMRS provider must have facilities and numbers in the rate centers of wireline carriers to be eligible to participate in porting is the whole issue of whether number portability is governed by interconnection agreements. In JSI's view, it is crystal clear that number portability is governed by an agreement – “interconnection” or otherwise – whose provisions comport with Section 251 and Section 252 of the Communications Act of 1934, as amended. Clearly, the process of negotiation and arbitration outlined in Section 252 is intended to address the issues in Section 251, subsection (b), in which – as noted above – number portability is required for LECs.

Some CMRS providers contend that a *service-level agreement (SLA)* is sufficient for wireline-to-wireless portability. After all, SLAs are exactly what CMRS providers are using among themselves in preparation for the Nov. 24 deadline – *e.g.*, Nextel and Sprint recently became the first non-affiliated companies to sign and announce an SLA for wireless portability. Perhaps, much of the CMRS-LEC portability confusion can be explained by the simple fact that CMRS providers are not considered LECs under the statute and, thus, SLAs are indeed appropriate for two CMRS providers that agree to porting. However, when it comes to LECs, the appropriate sections of the Act come into play, meaning that the only means to adopt an LNP relationship with a LEC is by complying with the provisions of Sections 251 and 252 of the Act. An SLA can be voluntarily accepted by a LEC, but in no instance do federal rules require a LEC to accept an SLA offered by a CMRS provider. In fact, JSI recommends that such requests be dealt with in a fashion described below.

The very fact that they are not considered LECs is the major source of complaint CMRS providers have with the FCC. With the deadline getting closer, the CMRS industry has used all venues to keep the FCC from implementing its wireless porting rules. CMRS providers contend that the FCC has exceeded its authority in requiring wireless number portability because they are not LECs and, therefore, are not duty-bound under Section 251(b) to provide number portability. It apparently galls CMRS providers that the FCC would impose number portability on them under the more expansive provisions of the Act (Sections 1, 2, 4, and 332). JSI notes that while the FCC is expected to clarify certain aspects of wireless number portability, the fundamental

requirement that CMRS providers port numbers will not change. In fact, FCC commissioners and staff have repeatedly stated that the Nov. 24, 2003 deadline is set in stone. While FCC clarification may be near, court action would appear to be the only viable option for CMRS providers to stop the wireless portability train from leaving the station at its appointed time.

In summary, the principal sticking point for wireline-to-wireless portability is the fact that CMRS providers are not requesting “number” portability but something akin to “location” portability. Whatever it is that they are requesting, in the majority of cases, it is not number portability according to the definitions adopted by the FCC.

A Solution

It should now be obvious that the number portability dilemma is very complex. We hope this *JSI News & Commentary* has helped you gain a better understanding of the many sides of this issue. Now, we offer some solutions to the barrage of portability requests and demands JSI clients and other rural LECs are receiving almost daily.

First, the LEC industry has been seeking clarification from the FCC on the critical issues that remain unresolved regarding wireless portability. Since CMRS providers are at odds with what appears to be a plain reading of the FCC’s rules, the most urgent item in need of resolution is rate-center disparity, or how number portability and location portability interact. As mentioned, the number portability requests of various CMRS providers received by many rural LECs would result in *de facto* location portability, since the wireless customer with the LEC’s ported number can be in a different location – not only outside the LEC exchange, but even outside the state.

This summer, the FCC Wireline Competition Bureau chief released a letter that expressed his view that the rate-center disparity problem is relatively minor and should not be an impediment to wireless portability implementation in November. Following a whirlwind of criticism from the LEC industry, the FCC sheepishly admitted that, perhaps, rate-center disparity may need further examination and clarification. In fact, JSI notes, rural LECs have asked the FCC repeatedly to address the rate-center disparity issue and bring clarity to its policy in a manner that even CMRS providers can understand.

In response to any CMRS request for porting numbers, JSI recommends that clients closely study the request to determine if it is specific and detailed. In at least two instances, clients have received requests for a wireline-to-wireless SLA via *voice mail*. Such requests hardly meet the “specific request” requirement mandated by the FCC’s rules. If you determine that the CMRS request is not for number portability as defined by the FCC but, rather, a request for either location portability or something entirely different, you should respond appropriately to the CMRS provider. JSI can assist you in developing appropriate response language that you can review with your legal counsel. Finally, in the event that the CMRS request is a *bona fide* request, you have the responsibility to respond and negotiate an appropriate agreement implementing number portability or seek regulatory relief.

In the event that the FCC changes its existing rules and determines that wireline-to-wireless portability is permissible (where the wireless carrier does not have an interconnection agreement,

does not have a physical presence in your exchange area, and does not have telephone numbers rate-centered in your exchange), you should consider seeking relief from either the FCC or your state regulatory commission. We urge you to make contingency preparations regarding number portability; however, we recommend against filing a waiver or seeking a suspension of a rule that is non-existent. To repeat, many CMRS requests being made now are not requests for “number portability” and, consequently, there is no public policy or LEC duty specified by the FCC that would require you to seek relief. Only if the FCC changes its current rules would such relief be an appropriate strategy for your consideration.

We hope this newsletter has provided you with the necessary guidance to successfully navigate the next few months as rural LECs face a potential tidal wave of premature location portability requests from CMRS providers. If you have any questions or comments about this article, or regarding CMRS and LEC number portability issues in general, please contact Azita Sparano (asparano@jsitel.com) in JSI’s Georgia office, at 770-569-2105, Manny Staurulakis (mstaurulakis@jsitel.com) in the Maryland office, at 301-459-7590, or Douglas Meredith (dmeredith@jsitel.com) in Utah, at 801-294-4576.

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