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May 6, 2009

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 95-116; WC Docket No. 07-244
Notice of Written *Ex Parte* Presentation

Dear Ms. Dortch:

On May 5, 2009, John Staurulakis, Inc. ("JSI") submitted an ex parte letter in the above-referenced dockets. JSI hereby submits a revised and supplemented version of that notice. Please contact the undersigned with any questions.[1]

Respectfully submitted,

/s/ John Kuykendall
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[1] As of the filing of this revised notice, no public notice has been released stating that the matters discussed herein have been placed on the Sunshine Agenda.

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Re: CC Docket No. 95-116; WC Docket No. 07-244
Notice of Written *Ex Parte* Presentation

Dear Ms. Dortch:

In its *2007 VoIP LNP Order and NPRM*, the Federal Communications Commission ("FCC" or "Commission") tentatively concluded that it should adopt rules reducing the porting interval for simple port requests and sought comment on that tentative conclusion and on the burdens that such rules might impose on small entities.[1] In this *ex parte* letter, John Staurulakis, Inc.("JSI") demonstrates that adopting such rules would be unduly burdensome on rural local exchange companies ("LECs") and that these entities should be exempted from a shorter porting interval requirement were the Commission to adopt such a requirement. JSI also urges the Commission to use this opportunity to make certain clarifications to address number porting process issues.

Among its consulting services, JSI provides Service Order Administration ("SOA") management services for more than one hundred and eighty rural LECs. Through this SOA service, JSI interfaces with Neustar's Number Portability Administration Center ("NPAC") for the purpose of performing porting services on behalf of these rural LEC clients. Accordingly, JSI is intimately acquainted with the number porting processes to and from rural LECs and the impact that shortening the porting interval would have on rural LECs.

Costs Associated with Shortening the Porting Interval Would Be Unduly Burdensome for Rural LECs

In 2004, the Commission sought comment on the recommendation of the North American Numbering Council ("NANC") for reducing the time interval for intermodal porting.[2] In

[1] *Telephone Number Requirements for IP-Enabled Service Providers*, WC Docket No. 07-243, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, FCC 07-188 (rel. Nov. 7, 2008) ("2007 VoIP LNP Order & NPRM") at paras. 59 & 64.

[2] *See Telephone Number Portability*, CC Docket No. 95-116, Second Further Notice of Proposed

response to the *2004 Second FNPRM*, JSI and many other commenters demonstrated that the Commission should exempt small and rural LECs if it decided to shorten the intermodal porting interval.[3] As demonstrated herein, this record evidence continues to show that justification for such an exemption exists for all types of porting.

The record developed in response to the *2004 Second FNPRM* clearly demonstrates that if the Commission were to shorten the porting interval, unduly burdensome costs would be imposed on rural LECs. In the *Second FNPRM*, the Commission sought comment on a proposal set forth by NANC which would shorten the porting interval through the use of a mechanized interface.[4] The Commission itself recognized that such a proposal would have economic impacts that "may not be justified for rural telephone companies."[5] Additionally, in its comments, the Small Business Administration ("SBA") found that the costs to implement such interfaces are exorbitant because "such systems are currently designed to handle a larger volume of requests than small and rural telephone companies require."[6] It then cited as an example one rural LEC that estimated the costs of software and hardware to be at least \$100,000.[7]

Record evidence also demonstrates that alternatives to implementing a mechanized interface would be unduly burdensome. For example, commenters noted that for companies that use third party vendors, monthly charges to these vendors would increase.[8] Additional costs that would be incurred include costs associated with increased personnel, extended office hours and modification of billing practices, system maintenance operations, inventory tracking systems and

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Rulemaking, FCC 04-217 (rel. Sept. 16, 2004) ("*2004 Second FNPRM*").

[3] *See e.g.,* Reply Comments of JSI, CC Docket No. 95-116, filed December 17, 2004 ("JSI's Reply Comments"). JSI's Reply Comments and other comments cited in this *ex parte* notice were made in response to the *2004 Second FNPRM*.

[4] *2004 Second FNPRM* at para. 14.

[5] *Id.*

[6] SBA Comments at 4.

[7] *Id. See* Comments of the National Telecommunications Cooperative Association ("NTCA") at 3 ("The most tangible, direct cost would be the necessary software upgrades to existing systems in order to accommodate an automated process"); Comments of Frontier at 6 (estimating that its costs would exceed \$1.4 million of one-time costs plus more than \$450,000 in annual recurring costs to implement NANC's Proposal because it would have to create an Operational Support System); Comments of Cincinnati Bell Telephone Company at 2 (noting that it would have to install a mechanized interface for the exchange of wireless porting requests at an estimated cost of \$500,000 to implement NANC's proposal).

[8] *See* SBA Comments at 4; Comments of the Texas Statewide Telephone Cooperative, Inc. ("TSTCI") at 2, n.3 (estimating increased costs of \$1,000 - \$1,200 per month that third party vendors would charge to small rural carriers if the vendors were required to upgrade their systems to implement a mechanized system).

management procedures.[9] As demonstrated by the SBA, these increased costs would have a significant impact on small and rural telephone companies because they "do not have the requisite scope to absorb the increase in costs."[10]

Statements made by these commenters are still valid even today given the fact that there has been no change in the porting processes for most rural LECs. Further, were the FCC to shorten the porting interval, the options available to rural LECs would be the same regardless of whether the type of porting is intermodal or wireline-to-wireline. Accordingly, based on record evidence alone, ample justification exists for the Commission to exempt rural LECs from a shorter porting interval requirement if the Commission decides to adopt such a requirement.

No Justifiable Reason Exists to Impose These Burdensome Costs on Rural LECs

Given the fact that rural LECs would be unduly burdened were the Commission to impose a shorter porting interval, the Commission should not impose such a requirement on these small entities absent a strong showing that the benefits gained would outweigh the negative economic impact of imposing this requirement. According to an analysis that JSI has conducted and summarized herein, however, no such showing can be made. On the contrary, there are few if any benefits to be gained by imposing such a requirement on rural LECs given the fact that for many rural LECs, there is little and, in many cases, no demand for the LECs to port numbers to other carriers.

JSI conducted an analysis using a random sample of twenty-six of its SOA clients. The sample examined the number of ports made from the SOA clients from April 1, 2008 through March 31, 2009 and included companies in the following access line ranges: seven companies have less than 2,000 access lines; four companies fall in the range of 2,001 – 6,000 access lines; five companies fall in the range of 6,001 – 10,000 access lines; six companies fall in the range of 10,001-20,000 access lines and four companies have more than 20,000 access lines. These companies represent a cross section of rural areas within the continental United States.

JSI's analysis concluded that during the past year, of the twenty-six companies, twelve had no outgoing ports; five had from one to three outgoing ports; four had from three to twenty-one outgoing ports and five had over twenty-one outgoing ports. In summary, of JSI's one hundred and eighty rural LEC SOA clients, the sample of fourteen percent of the rural LEC SOA clients

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[9] *See* NTCA's Comments at 3-4; Comments of the United States Telecom Association at 6.

[10] SBA's Comments at 5 (citing studies showing that "small businesses bear a disproportionate share of the federal regulatory burden"). *See* Comments of the Public Service Commission of the State of Nebraska at 1 ("It is undisputed that rural carriers serve a smaller customer base and therefore, the per customer cost associated with any changes in hardware, software, and carrier processes and procedures are higher than carriers serving more densely populated areas").

resulted in approximately sixty-five percent having three or less outgoing ports for the year and approximately eighty percent having less than twenty-one outgoing ports for the year.

Given the extremely small and, in many cases, non-existent demand for porting from rural LECs, no justifiable reason exists to impose any additional costs on rural LECs by shortening the porting interval. This is especially the case when the costs are unduly burdensome as outlined above. Accordingly, if the Commission decides to shorten the porting interval, the Commission should grant a blanket exemption from the shorter porting interval requirements for all rural LECs.

The Commission Should Address Certain Process Matters Pertaining to LNP

In its *2007 VoIP LNP Order and NPRM*, the Commission requested comment on the other components of the porting process including issues involving the "simple port validation process" and Charter's request that the Commission declare that "interconnection agreements are not a necessary precondition to effectuating wireline-to-wireline ports."[11] JSI urges the Commission to clarify the functions that are involved in the porting process and to rule that interconnection agreements are required before a wireline carrier can port numbers with a rural incumbent LEC ("ILEC").

Regarding matters involving other components of the porting process, it has been JSI's experience in assisting rural carriers in the porting process that there is a lack of clarity among other carriers regarding what functions are included in the porting interval. For example, in the *2007 VoIP LNP Order and NPRM*, the Commission stated, "[g]enerally speaking, the porting interval comprises two elements: the Confirmation Interval and the Activation Interval."[12] However, some carriers interpret the porting interval to include the Customer Service Record ("CSR"). The CSR process is outside the realm of the Port Confirmation and Activation. Accordingly, if the Commission decides to shorten the porting interval, it should clarify the functions that are involved in the porting process interval are only those specified in the *2007 VoIP LNP Order and NPRM*. The Commission should specifically state the allotted intervals for port confirmation and port activation.

Further, the Commission should be very clear in making its ruling that the shortened interval applies only in the context of simple ports and not to complex ports and that only business days and not weekends or holidays are counted in determining whether a carrier is in compliance with the shortened interval rules.

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[11] *2007 VoIP LNP Order and NPRM* at para. 56.

[12] *Id*. at para. 42.

The Commission should also rule that an interconnection agreement is required before a wireline carrier can port numbers with a rural ILEC because an interconnection agreement between a CLEC and a rural ILEC serves the public interest in the porting process. Some JSI SOA rural ILEC clients have encountered situations in which a CLEC requests numbers to be ported from the rural ILEC, yet the CLEC has no interest in entering into an interconnection agreement. For a CLEC to port numbers prior to entering into an interconnection agreement with a rural ILEC is contrary to the public interest. An interconnection agreement ensures that both parties clearly understand their roles in the porting process and that the procedures that will be used to port numbers between the carriers have been formalized. Additionally, an interconnection agreement protects the rights of both parties by serving as the instrument that implements each party's interconnection rights under the Act and can be enforced by a state commission or the FCC.[13]

Although the Commission found in its *Intermodal Number Portability Order* that interconnection agreements are not necessary for the intermodal porting process, it declined to address a matter which is typically addressed in the context of interconnection agreements - routing and rating of calls to ported numbers.[14] As a result, problems have arisen in completing calls between rural ILECs and wireless carriers who have ported numbers away from the rural ILECs because there is no arrangement for determining a path to route the traffic to the ported numbers now residing in the wireless carrier's switch.[15] If interconnection agreements are not required for wireline carriers to port numbers from rural ILECs, similar problems can occur since there would likewise be no path for local calls to be routed to the new carrier. This would then exacerbate and expand the problems associated with completing calls to ported numbers, a situation that the Commission should not allow. Accordingly, JSI urges the Commission to rule that an interconnection agreement is required before a wireline carrier can port numbers with a rural ILEC.

Please contact the undersigned with any questions regarding these matters.

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[13] Requiring CLECs to have interconnection agreements with both rural and non-rural ILECs would also serve the public interest. For example, in situations where there are multiple CLECs competing in the same area as the ILEC, if the CLECs follow the terms and conditions that they have negotiated with the ILEC and formalized in interconnection agreements, the CLECs would have a common point of interconnection and should be able to port with each other and to exchange traffic without having to negotiate interconnection agreements between themselves.

[14] *See Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 96-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697 (2003) (*Intermodal Number Portability* Order) at paras. 34-37; 39-40. The Commission found that the matter of rating and routing of numbers was outside the scope of that decision and noted that the matter was being considered in a separate proceeding.

[15] JSI has also observed that in the absence of a requirement that an interconnection agreement must be in place, some wireless carriers have refused to include porting provisions in an interconnection agreement when one is negotiated. As a result, confusion can arise in the porting process between the carriers which could result in delays and difficulties for the consumer.

Respectfully submitted,

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