

## POSITION PAPER

Birch Communications, Broadview, Cavalier, Cbeyond, DeltaCom, First Communications, Integra Communications, NuVox, PAETEC, RNK Communications, TDS Metrocom, TelePacific Communications, tw telecom, and XO Communications (collectively, “We” or the “CLECs”) are providing this position paper to facilitate a thoughtful and comprehensive discussion about the issues on the agenda for the LNPA-WG conference call scheduled for Tuesday, August 11, 2009, as well as to respectfully request the LNPA-WG to reconsider its conclusion that a consensus was reached during the meeting on July 27-28, 2009 regarding FOC response times.

We believe that it is inappropriate for the LNPA-WG to recommend the Revised Option 2a<sup>1</sup> regarding FOC response times to Non-Simple Ports because the Commission’s recent *Porting Interval Order*<sup>2</sup> applies only to Simple Ports and does not require or direct the NANC to develop any process flows that would unnecessarily change the processing for Non-Simple Ports. The Federal Communications Commission’s rule states: “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.”<sup>3</sup> There is no mention of changing the porting interval or carrier-to-carrier communications for Non-Simple Ports. This is particularly important since all of the goals for improving the porting process for Simple Ports can be accomplished without unnecessarily imposing significant costs and burdens for the Non-Simple Porting Process that are associated with Revised Option 2a.

### FOC Response Times

We understand there may be investigation and further discussion into the feasibility of developing a new response (other than a FOC or Reject) to an LSR requesting a Simple Port when the Old SP determines that it is actually a Non-Simple LSR in order to alert the New SP that the FOC will be sent within 24 hours rather than 4 hours. However, we believe that the Old SP should be subject to the following requirements:

- If the New SP-requested due date is 1-2 Business Days after LSR receipt, for LSRs involving Simple Ports, as determined by the Old SP, the Old SP must

---

<sup>1</sup> **Revised Option 2a:** If the New SP-requested due date is 1-2 Business Days after LSR receipt, the Firm Order Confirmation (FOC) or Reject (whichever is applicable) is due within 4 hours, provided the LSR is received by the Old SP by the 1pm Business Day cutoff time (local time in the predominant time zone of the NPAC Region where the number is being ported). If the New SP-requested due date is 3 or more business days after LSR receipt, the Firm Order Confirmation (FOC) or Reject (whichever is applicable) is due within 24 clock hours. In instances where the LSR indicates the port request is Non-Simple based on the current FCC definition and rule for a Simple Port, the Old SP must return a FOC or appropriate response within 24 clock hours.

<sup>2</sup> *In the Matter of Local Number Portability Porting Interval and Validation Requirements and Telephone Number Portability*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 07-244 and CC Docket No. 95-116, ¶ 19 (2009) (“*Porting Interval Order*” or “*2009 Porting NPRM*”).

<sup>3</sup> 47 C.F.R. 52.35.

return a FOC or Reject (whichever is appropriate) within 4 hours of receiving the LSR.

- If the New SP-requested due date is 1-2 Business Days after LSR receipt, for LSRs involving Non-Simple Ports, as determined by the Old SP, the Old SP must return a FOC or Reject (whichever is appropriate) within 24 hours of receiving the LSR.
- If the New SP-requested due date is 3 or more Business Days after LSR receipt, for LSRs involving Simple or Non-Simple Ports, the Old SP must return a FOC or Reject (whichever is appropriate) within 24 hours of receiving the LSR.

These requirements would provide the New SP with all of the information it needs without imposing unnecessary costs upon the Old SP. Specifically,

- The New SP will receive a FOC or a Reject within 4 hours for all Simple Port Requests that request processing within the one-business-day interval.
- The New SP will receive a FOC or a Reject within 24 hours for all Non-Simple Port Requests and for Simple Port Requests that request a later due date.
- Within 4 hours, the New SP will know that an LSR it erroneously identified as involving a Simple Port actually involves a Non-Simple Port: The lack of response within 4 hours is the equivalent of a notification that the LSR involves a Non-Simple Port and that the FOC or Reject will be sent within 24 hours.

The focus and intent of the Commission's *Porting Interval Order* is to increase the efficiency and speed of Simple Ports. Requiring the Old SP to act on an LSR involving a Non-Simple Port within 4 hours merely because the New SP mistakenly believed it involved a Simple Port is unreasonable because it would impose significant costs and burdens on Old SPs that are not required by the Commission's rules and not necessary to improve the experience for the New SP's customers as the port itself would not be expedited. On the contrary, it introduces greater opportunities for errors during such expedited validation and processing for Non-Simple Ports that are inherently more complex and time-consuming to process and could jeopardize the Old SP's processing of other Simple Ports as the carrier is diverted to also handle responses to Non-Simple Ports during that 4-hour timeframe. To the extent that default notification to the New SP that it erroneously identified a Non-Simple Port Request as a Simple Port request is insufficient from the New SP's perspective, the New SP could verify the nature of the port request by requesting the CSR before submitting the LSR.

To the extent the preliminary conclusion that consensus was reached during the July 27-28 meeting is inconsistent with this approach of providing the New SP with all of the information it needs without unnecessarily imposing costs and burdens on the Old SP, we strongly object. In addition to our objections that Options 2a and 3a (even with the additive language) are substantively flawed since they impose tremendous costs and burdens with no benefit to the customer whatsoever, we do not believe that a consensus finding accurately reflects the depth and breadth of the objections to those options,

particularly since the objections are based upon well-founded concerns and thoughtful analysis.

For these reasons, we respectfully request the LNPA-WG reconsider the option we have set forth here and its preliminary conclusion that consensus was reached in support of Revised Option 2a. Although we understand consensus is not to be determined by a mechanical objective process, we believe there was considerable intense objection from both the ILEC and CLEC industry segments against the proposed options that required an Old SP to respond within 4 hours to *all* port requests submitted with a 1-2 or 1-3 business day due date (original Options 2a<sup>4</sup> and 3a,<sup>5</sup> respectively), regardless of whether those requests were actually Simple or Non-Simple. In fact, there was unanimous objection by the CLECs (constituting a consensus block) as well as objection by a considerable number of both large and small ILEC representatives to the original Option 3a. Additionally, there was almost unanimous objection by both the CLEC industry segment and large ILEC segment (as well as other small ILECs) to the original Option 2a. We believe that taking all these votes into consideration should have constituted a block of both Options 2a and 3a, rather than applying the mechanical process of pronouncing a consensus block only when a unanimous vote of one industry segment exists. Thus, even though neither the large ILECs nor the CLECs may have formed an outright unanimous block of Option 2a as individual industry segments, we believe that the fact that there was almost unanimous objection for it by essential segments of the wireline industry should have formed a consensus block for that option. Additionally, if the LNPA-WG moves forward to vote on the proposed revision to the flows, we object to eliminating the Old SP's ability to respond with a Reject for invalid due date if the port request is actually one for a Non-Simple Port, as determined by the Old SP.<sup>6</sup> In any event, we strongly believe the proposal described here would accomplish the goals of all industry segments without imposing the costs and burdens that have generated so much opposition.

---

<sup>4</sup> **Original Option 2a:** If the New SP-requested due date is 1-2 business days after LSR receipt, the Firm Order Confirmation (FOC) or Reject (whichever is applicable) is due within in 4 hours. If the New SP-requested due date is 3 or more business days after LSR receipt, the Firm Order Confirmation (FOC) or Reject (whichever is applicable) is due within 24 clock hours.

<sup>5</sup> **Original Option 3a:** If the New SP-requested due date is 1-3 business days after LSR receipt, the Firm Order Confirmation (FOC) or Reject (whichever is applicable) is due within 4 hours. If the New SP-requested due date is 4 or more business days after LSR receipt, the Firm Order Confirmation (FOC) or Reject (whichever is applicable) is due within 24 clock hours.

<sup>6</sup> "NOTE: The current draft revision to the flows accommodates an option for the Old SP, after determining that a Simple Port request is really Non-Simple, to FOC the order within 4 hours with a different due date appropriate for a Non-Simple Port if the LSR contains sufficient data for a Non-Simple Port. If the LSR contains insufficient data, it can be rejected back to the New SP" (Excerpt from August 4, 2009 e-mail from co-chair Gary Sacra to the LNPA-WG).