

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matters of)
)
Local Number Portability Porting Interval and Validation Requirements) WC Docket No. 07-244
)
Telephone Number Portability) CC Docket No. 95-116
)
CenturyLink Petition for Waiver of Deadline)

ORDER

Adopted: August 2, 2010

Released: August 2, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. By this Order, we grant in part a request from CenturyLink to waive the deadline for CenturyLink to comply with the Commission's requirement for one-business day porting of simple wireline and simple intermodal port requests.¹ For reasons discussed below, we find it is in the public interest to waive the deadline for a period of six months, until February 2, 2011.

II. BACKGROUND

2. On May 13, 2009, the Commission adopted a Report and Order (the *Porting Interval Order*) reducing the porting interval for all entities subject to its local number portability (LNP) rules from four business days to one business day for simple² wireline-to-wireline and simple intermodal port requests.³ The deadline for implementing one-business day porting is August 2, 2010 for all but small providers, which must comply by February 2, 2011.⁴ In adopting this new porting interval, the Commission instructed industry to work through the mechanics of the one-business day port and directed the North American Numbering Council (NANC) to develop new LNP provisioning process flows that take into

¹ CenturyLink Petition for Waiver of Deadline, WC Docket No. 07-244, CC Docket No. 95-116 (filed June 7, 2010) (CenturyLink Petition).

² As the Commission has previously explained, simple ports are those ports that: (1) do not involve unbundled network elements; (2) involve an account only for a single line; (3) do not include complex switch translations (e.g., Centrex, ISDN, AIN services, remote call forwarding, or multiple services on the loop); and (4) do not include a reseller. See, e.g., *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23715, para. 45, n.112 (2003) (citing North American Numbering Council, Local Number Portability Administration Working Group, Third Report on Wireless Wireline Integration, Sept. 30, 2000, CC Docket No. 95-116 (filed Nov. 29, 2000)).

³ See *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, 24 FCC Rcd 6084, para. 1 (2009) (*Porting Interval Order*).

⁴ *Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability*, WC Docket No. 07-244, CC Docket No. 95-116, Report and Order, 25 FCC Rcd 6953 (2010) (*Standardized Fields Order*).

account this shortened porting interval.⁵ The NANC submitted its recommendations to the Commission on November 2, 2009.⁶ On May 20, 2010, the Commission adopted most of the NANC recommendations along with rules codifying various aspects of the adopted recommendations.⁷

3. On June 7, 2010, CenturyLink filed a petition requesting the Commission to waive the August 2, 2010 deadline for implementing the one-business day porting requirement for simple wireline and simple intermodal ports until CenturyLink integrates two separate operational support systems in connection with the merger of CenturyTel (the former name of CenturyLink) and Embarq. (The Commission approved the CenturyTel-Embarq transaction on June 25, 2009, just after adopting the *Porting Interval Order* and long before the NANC submitted its recommendations to the Commission.) CenturyLink stated that it expects to be able to meet the one-business day porting requirement by May 1, 2011.⁸ On June 15, 2010, the Wireline Competition Bureau issued a Public Notice seeking comment on CenturyLink's waiver request.⁹ On June 29, 2010, CTIA – The Wireless Association (CTIA), the National Cable and Telecommunications Association (NCTA), and Sprint Nextel Corporation (Sprint) filed comments in opposition to CenturyLink's request.¹⁰ On July 6, 2010, CenturyLink filed reply comments.¹¹ On July 30, 2010, CenturyLink modified its petition to seek a waiver only until the February 2, 2011 deadline for small providers to implement one-business day number porting.¹²

4. In support of its request, CenturyLink maintains that it faces special circumstances warranting a deviation from the general rule in this instance, and that its requested waiver will serve the public interest.¹³ Specifically, CenturyLink argues that the public interest would be better served if it were not required to modify operating systems that it is in the process of eliminating through integration.¹⁴ CenturyLink explains that it has been building its systems to meet the NANC-

⁵ See *Porting Interval Order*, 24 FCC Rcd at 6090, para. 10.

⁶ See Letter from Betty Ann Kane, Chairman, North American Numbering Council, to Sharon Gillett, Chief, Wireline Competition Bureau, FCC, WC Docket No. 07-244, Attachs. (filed Nov. 2, 2009) (NANC Nov. 2, 2009 *Ex Parte* Letter). The Commission concluded that nine months from the date the NANC submitted its flows was sufficient time for affected entities, other than small providers, to implement the one-business day porting interval. Small providers were given no more than 15 months from the date that the NANC submitted its revised provisioning flows to the Commission. Thus, affected entities have until August 2, 2010 and affected small providers have until February 2, 2011 to implement one-business day porting.

⁷ See *Standardized Fields Order*, 25 FCC Rcd at 6954, para. 1.

⁸ CenturyLink Petition at 3.

⁹ *Comments Sought on CenturyLink Petition for Waiver of Deadline to Implement Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244, CC Docket No. 95-116, Public Notice, DA 10-1078 (rel. June 15, 2010).

¹⁰ Comments of CTIA – The Wireless Association, WC Docket No. 07-244, CC Docket No. 95-116 (filed Jun. 29, 2010) (CTIA Comments); Comments of Sprint Nextel Corporation, WC Docket No 07-244, CC Docket No. 95-116 (filed Jun. 29, 2010) (Sprint Comments); Opposition of the National Cable and Telecommunications Association, WC Docket No. 07-244 (filed Jun. 29, 2010) (NCTA Comments).

¹¹ CenturyLink Reply Comments, WC Docket No. 07-244, CC Docket No. 95-116 (filed July 6, 2010) (CenturyLink Reply).

¹² See Letter from Jeffrey S. Lanning, Director-Federal Regulatory Affairs, CenturyLink, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-244 & CC Docket No. 95-116, at 1 (filed July 30, 2010) (CenturyLink July 30, 2010 *Ex Parte* Letter).

¹³ CenturyLink Petition at 8.

¹⁴ *Id.* at 4.

recommended flows and timers for one-business day porting.¹⁵ It states that at the same time, CenturyLink is integrating two separate operational support systems – those that were used by CenturyTel and Embarq before the merger of the two companies.¹⁶ CenturyLink explains that, until that integration is complete, absent a waiver it must alter both these legacy systems in order to implement one-day porting by August 2, 2010.¹⁷ CenturyLink claims that the development associated with duplicating these changes appears likely to cost millions of dollars.¹⁸ Moreover, notes CenturyLink, the disruption to merger integration would be even more costly than the duplication that would be required to meet the August 2 deadline.¹⁹ It notes specifically that the ongoing system changes related to the merger would have to be suspended, leading to service disruptions, delays, and errors, which would likely cause additional costs.²⁰

5. CenturyLink also maintains that the public interest would be better served if it did not delay integration of the CenturyTel and Embarq systems, which will create a superior customer support platform consistent with the *CenturyTel/Embarq Merger Order*.²¹ The Commission's approval of that merger was conditioned, in part, on CenturyLink fulfilling commitments regarding the integration of operational support systems of the two companies.²² CenturyLink claims that, if it is required to meet the August 2 deadline for one-business day porting, it will have to divert resources away from its integration efforts, which could affect the October 1, 2010 deadline for complying with the provisions of the *CenturyTel/Embarq Merger Order*.²³ For this reason, CenturyLink argues that it is in the public interest to allow it to continue with the scheduled merger integration without the delay that will arise if it must first make temporary, interim changes to its systems to comply with the August 2 deadline.²⁴ It also maintains that even after its operational support systems are integrated on October 1, CenturyLink must still integrate additional systems that are necessary for automated porting. In addition, CenturyLink explains that it must migrate large numbers of customer accounts to the billing component of the integrated operational support system before automated one-day porting can be provided.²⁵ It notes that "this is a highly sensitive process that must be done with care to avoid harming customer service or altering customer data."²⁶ CenturyLink states that it will continue to comply with the four-business day requirement for simple port requests if its request for a waiver is granted.²⁷

6. The commenters filing in response to the petition disagree with CenturyLink over whether its request serves the public interest. For example, Sprint argues that CenturyLink's view of the "public interest" is narrow and self-serving, because it considers only the effect the deadline will have on

¹⁵ *Id.*

¹⁶ *Id.* at 5.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238, Report and Order, 24 FCC Rcd 8471 (2009) (*CenturyTel/Embarq Merger Order*).

²² CenturyLink Petition at 7.

²³ *Id.*

²⁴ *Id.* at 7-8.

²⁵ CenturyLink Reply at 2.

²⁶ *Id.* at 3.

²⁷ CenturyLink Petition at 9.

CenturyLink's own bottom-line.²⁸ CTIA notes that CenturyLink's petition would serve only to delay the one-business day porting implementation with no countervailing benefit to the public.²⁹ NCTA argues that the waiver would harm consumers by denying them the benefits of one-day porting and harm competitors by making it more difficult for customers to switch service from CenturyLink to other providers.³⁰

III. DISCUSSION

7. The Commission may waive its rules for good cause shown.³¹ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.³² In making this determination, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³³ Waiver of the Commission's rules is therefore appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.³⁴

8. We conclude that CenturyLink has demonstrated that there are special circumstances warranting a limited waiver in this instance, and that such a waiver will serve the public interest. When the Commission adopted the one-business day porting requirement, it recognized that some providers might find it unduly burdensome to implement a one-business day porting interval.³⁵ To demonstrate the good cause required by the Commission's waiver rule, the Commission indicated that a provider must show with particularity that it would be unduly economically burdensome for it to implement the reduced porting interval.³⁶ CenturyLink has demonstrated that requiring it to now modify two legacy operational support systems to perform one-business day porting, when those systems will be replaced through merger integration a few months later, would be unduly burdensome. We do not believe that such a requirement serves the public interest. We are also concerned that CenturyLink's efforts to comply with the August 2 porting deadline will impede its compliance with the October 1 systems integration requirement of the *CenturyTel/Embarq Merger Order*. Furthermore, requiring CenturyLink to make interim changes to its provisioning and billing systems to support one-day porting now, and then make permanent changes again in the near future, when each set of systems is integrated between the merged companies, could result in more porting errors, which would not serve the goals of our *Porting Interval Order*.³⁷

9. While a limited waiver may delay some consumers from receiving the benefits of the one-business day porting requirement immediately following the August 2, 2010 deadline, we are convinced that, on balance, the public interest benefits described above outweigh any potential public

²⁸ Sprint Comments at 2.

²⁹ CTIA Comments at 2.

³⁰ NCTA Comments at 2-3.

³¹ 47 C.F.R. § 1.3; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

³² *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³³ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular Tel.*, 897 F.2d at 1166.

³⁴ *Id.*

³⁵ *Porting Interval Order*, 24 FCC Rcd at 6094, para. 16.

³⁶ *Id.*

³⁷ *See* CenturyLink Reply at 1-2.

interest harms. CenturyLink states that it processes 35,000 ports per month on average across all its operating companies.³⁸ Of these, only 18 percent, or approximately 6,300 per month, request the current four-day interval, which CenturyLink states that it meets.³⁹ CenturyLink estimated in its petition that manual LNP processing to meet the one-day interval by August 2 would cost a minimum of \$2.0-\$2.5 million in additional personnel costs alone, plus hundreds of thousands of dollars of supporting system changes.⁴⁰ Applying such manual processing, which involves switching from automated validation of port requests to the temporary use of a manual validation process until billing systems are converted, would still cost an additional \$1.0 million above and beyond the cost of implementing automated one-day porting in order to meet the February 2, 2011 deadline for small providers because only 60 percent of its customers would have undergone a billing conversion by that date.⁴¹ Once the remaining states are converted to the integrated billing system, CenturyLink will be able to perform automated validation for all customers in connection with the one-day port process.⁴²

10. As CenturyLink notes in its petition, the integrated operational support systems mandated by the merger will improve the efficiency of its operations and result in fewer service disruptions, delays, and porting errors to both its retail and wholesale customers. In sum, this systems integration will enable CenturyLink to provide superior service in all components of its operations. Therefore, we grant in part CenturyLink's request for waiver of the August 2, 2010 one-business day porting requirement. In granting this request in part, we rely on CenturyLink's assertion that it will "continue to comply with the current four-day requirement for simple port requests."⁴³ Evidence to the contrary of that assertion may result in the termination of this limited waiver.

11. Although we find it is in the public interest to grant CenturyLink's waiver request, we do not find that the public interest dictates an extension of the one-business day porting interval until May 1, 2011, as originally requested. We agree with NCTA that a shorter waiver period is more appropriate.⁴⁴ In determining an appropriate waiver period, we take into consideration arguments by commenters that, given the Commission's adoption of the one-business day porting interval in May 2009, seven months after the merger was announced in October 2008 and one month before its approval, CenturyLink had sufficient opportunity to consider and plan for the implementation of one-business day porting with its combined operations.⁴⁵ In particular, NCTA concludes that in committing to complete the merger integration efforts by October 1, 2010, the companies were presumably committing to an integrated system that would be capable of meeting all of its regulatory obligations.⁴⁶

12. We also take into consideration arguments by CenturyLink that while it is aware of the requirement to support one-business day porting and is building its integrated system to support that requirement, it only committed to the migration of its wholesale provisioning by October 1, 2010. Additionally, the provisioning system integration is just one part of the overall integration needed to

³⁸ CenturyLink July 30, 2010 *Ex Parte* Letter at 1.

³⁹ *Id.*

⁴⁰ CenturyLink Petition at 6.

⁴¹ See CenturyLink July 30, 2010 *Ex Parte* Letter at 1.

⁴² *Id.*

⁴³ CenturyLink Petition at 9.

⁴⁴ NCTA Comments at 5.

⁴⁵ NCTA Comments at 3; Sprint Comments at 3.

⁴⁶ NCTA Comments at 3.

support the new porting interval.⁴⁷ CenturyLink notes that the Commission recognized that integration would take longer than the porting deadline because it made integration of the provisioning component by October 1, 2010 a condition of the merger.⁴⁸ Moreover, CenturyLink argues that it could not legally begin its merger integration before the merger closed on July 1, 2009.⁴⁹ Finally, we note that CenturyLink did not have specific guidance on how to modify ongoing integration efforts until the Commission addressed the NANC recommendations in its May 20, 2010 order. Thus, we conclude that this is not a case in which a carrier is attempting merely to use cost justifications or the existence of a merger to delay compliance with regulatory requirements.

13. Taking all this into account, we conclude that it is appropriate to grant CenturyLink an additional six months to meet the small provider deadline for implementing one-business day porting, which CenturyLink indicates that it will be able to meet through temporary use of a manual validation process.⁵⁰ CenturyLink states that it serves predominantly rural areas, which are similar to the areas typically served by small providers, and that its compliance with the one-day porting deadline for small providers should substantially mitigate public interest concerns.⁵¹ Thus, CenturyLink has until February 2, 2011, to implement one-business day porting for simple wireline and simple intermodal ports.⁵²

IV. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED that, pursuant to authority contained in 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 section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291 the request of CenturyLink for a waiver of the deadline for compliance with the one-business day porting requirement until February 2, 2011 IS GRANTED IN PART and otherwise IS DENIED as described above.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau

⁴⁷ CenturyLink Reply at 5.

⁴⁸ *Id.*

⁴⁹ *Id.* at 7.

⁵⁰ CenturyLink July 30, 2010 *Ex Parte* Letter at 1.

⁵¹ *Id.*

⁵² We note that this is the deadline specified in the *Porting Interval Order* for small providers. *Porting Interval Order*, 24 FCC Rcd at 6092, para. 12. Consequently, by this date all service providers, regardless of size, must comply with the Commission's one-business day number porting requirement.