Within the first full year after wireless local number portability ("WLNP") is implemented, an estimated twenty-two million subscribers will switch their telecommunications service providers. WLNP allows individuals to keep their phone numbers when they switch to another service provider. In essence, customers may take their wireless number to another provider as long as they stay within the same geographical area. As a result, their numbers can no longer be held hostage, and customers are provided with more incentive and less hassle to switch carriers. With the convenience of WLNP, 27% of cellular customers are willing to switch to telecommunications providers that offer better deals. In anticipation of this expected "churn," analysts predict that some of the nation's top wireless providers will be forced to dissolve or consolidate with other carriers. Fearing these results, most wireline and wireless carriers have implemented strong efforts to halt WLNP, maintaining that the industry is already too plagued by competition. In the words of Tom Wheeler, then President and Chief Executive Officer of the Cellular Telecommunications & Internet Association ("CTIA"), "[r]equiring wireless number portability in the name of increasing competition is as realistic as a fish on a bicycle. The wireless industry is already hyper-competitive." Advocates for WLNP do not think that there can ever be too much competition, especially in the context of number portability. Many federal and state regulators agree. They

1 See Federal Communications Commission, Consumer Information: Local Telephone Number Portability, at http://www.fcc.gov/Bureaus/Common_Carrier/Factsheets/ portable.html (last visited Nov. 7, 2003) (on file with author) [hereinafter Consumer Information]. This document describes local telephone number portability as "a service that provides residential and business telephone customers with the ability to retain, at the same location, their existing local telephone numbers when switching from one local telephone service provider to another." Id.

2 Martha McKay, They've Got the Number, Won't Let Go, THE REC. (Bergen Co., N.J.), Jan. 26, 2003, at B01 (citing a study by In-Stat/MDR, a research firm, which anticipates that number portability will have a significant effect on the rate of service provider switches in the United States).

3 See CONSUMER INFORMATION, supra note 1.

4 See generally Jeffrey Ganek, Leverage LNP, TELEPHONE, Feb. 7, 2000, at 30 (describing how the concept of local number portability developed and discussing its potential impact on America).

5 See Letter from Anne Boyle, Commissioner, Nebraska Public Service Commission, to Michael Powell, Chairman, FCC, at http://www.naruc.org/boyle.pdf (Nov. 29, 2001) (arguing that without WLNP customers will be held hostage to service contracts because they do not want to lose their phone numbers); see also Andrew Backover, New Rule Rattles Cellphone Industry, Many Say Number Portability Will Give Power to the People, USA Today, Oct. 17, 2003, at 1B.

6 See, e.g., Matt Richtel, Cellphone Deals Sweeten in Face of

7 Jonathan B. Cox, They Have Your Number, Now, NEWS & OBSERVER (Raleigh, N.C.), Aug. 7, 2003, at D1 (citing a survey by the consulting firm, Management Network Group, which shows that customers would readily switch their service providers if WLNP allows for them to be the recipients of better deals).

8 Max Jarman, Change Carriers, Not Number, ARIZ. REPUB., Aug. 10, 2003, at 1D. WLNP is expected to lead to greater competition and higher churn rates within the telecommunications industry. In light of these factors, some wireless carriers could go out of business or merge with other service providers. Id.

9 See McKay, supra note 2, at B01 (explaining why telecommunications carriers, particularly wireless providers, are ardently opposed to the implementation and deployment of WLNP).

10 Andrew Ratner, Portable Wireless Numbers Debated; Court Grills Opponents of Letting Customers Take Cell Identity With Them, BALT. SUN, April 16, 2003, at 1E. But cf., Verizon Wireless's LNP Move May Lead to Subscriber Gains, TELECOM. REP., July 1, 2003., at 32.

11 See, e.g., McKay, supra note 2, at B01.

12 See Letter from Loretta M. Lynch, Former President, Public Utilities Commission of California, to Michael K. Pow-
argue that local number portability is the "key to open and equal competition" among service providers, and believe that such competition will lead to lower prices and higher quality services. As Loretta Lynch, former President of the California Public Utilities Commission, argues:

Number portability is pro-competitive and strongly in the public interest. Without portability, customers must change both their telephone handset and their telephone number before switching carriers, thus imposing a major obstacle on a customer's ability to change providers. Not only will number portability enhance competition among wireless competitors, it will bring much-needed additional competition to wireline carriers.

A strong majority of telecommunications providers disagree with WLNP advocates. They argue that WLNP will prove to be more burdensome than beneficial to America. These carriers maintain that WLNP will cost "tens of millions of dollars" to implement and will lead to higher prices and lower service quality. In addition, wireline service providers are particularly fearful that WLNP will provide consumers with even more incentive to "cut the cord" and eliminate their landlines in favor of their cellular phones. Thus, the question remains as to whether WLNP will help or hurt consumers. This Comment will illustrate that while the telecommunications industry is already highly competitive, the benefits of technological advances, such as WLNP, will outweigh the burden of enhanced competition.

This Comment begins by examining the origins and current state of local number portability. Second, this Comment introduces the Telecommunications Act of 1996 and describes its importance in stimulating competition among wireline and wireless carriers. Third, this Comment explores the genesis and history of both wireline and wireless carriers in our society. Fourth, this Comment addresses the current competitive landscape that exists between service providers in the telecommunications industry. Fifth, this Comment details the challenges and anticipated effects that WLNP will have on consumers and telecommunications carriers. Finally, this Comment will demonstrate that WLNP, which has created some initial difficulty for telecommunications carriers, will ultimately lead to a healthy and strong competitive environment in which consumers will be offered more services at lower prices.

I. THE DEVELOPMENT OF LOCAL NUMBER PORTABILITY

Local Number Portability ("LNP") is defined within the Telecommunications Act of 1996 ("1996 Act") as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." It has been described as a "huge undertaking" that requires an extraordinary amount of collaboration among wireline and particularly wireline-to-wireless number porting; see also Charles Mason, The Burden of Number Portability: No Other Issue Will Cost Wireless Carriers More in Labor and Dollars. Are They Ready? Nope, America's Network, Aug. 1, 1999, at 58 (explaining that WLNP will cost a large amount of money for telecommunications providers to implement).

15 Mark Dziatkiewicz, Local Number Portability Pits Practicality vs. Probability, AM. NETWORK, Mar. 15, 1994, at 22 (explaining that number portability is critical to achieving local competitive goals within the telecommunications industry).

16 See Christian Berg, A Rule Cell Users Can Identify With; FCC Move Lets Phone Owners Transfer, Keep Their Same Numbers, ALLENTOWN MORNING CALL (Allentown, Pa.), Aug. 17, 2003, at D1 (providing a general overview of the potential benefits and difficulties that may occur when WLNP is fully implemented).

17 Hudson, supra note 16, at K1.

18 See CTIA Letter to FCC: LNP or Improved Quality? Consumers Want Improved Quality of Service, PR NEWSWIRE, Jan. 25, 2002, at 1 [hereinafter CTIA Letter] (quoting a letter from CTIA's Tom Wheeler to the Chairman and Commissioners of the Federal Communications Commission, which addresses a variety of problems that wireless carriers fear may result from implementing WLNP).

19 See, e.g., Todd Rosenbluth, Time to Hang Up on SBC; Competition and Regulations Allowing Subscribers to Switch Providers While Keeping Their Old Numbers Are Going to Inflict Some Pain, BUS. WEEK ONLINE, at 2003 WL 6952740 (June 27, 2003). "About 3% of U.S. customers already have eliminated their wireline phones and gone entirely wireless. We see this rate climbing if customers are able to take their local wireline phone number with them when leaving the house, a proposal being discussed at the FCC." Id.

wireless carriers. Originally, the Federal Communications Commission ("FCC" or "Commission") implemented LNP in early trials in 1994 and 1995. However, it was not until the 1996 Act that the FCC took a serious look at making LNP available to the public. Pursuant to Section 251(b), all local telephone companies offering service exclusively in particular areas, commonly called local exchange carriers ("LECs"), have "[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." Based on this statute, the FCC initiated proceedings to implement LNP and to bring competition to telephony.

A. The Procedural History of WLNP

1. The Beginnings of Telephone Number Portability Regulation

In its First Report and Order, the FCC recognized that number portability was critical to promoting competition. Therefore, the FCC mandated that all LECs within the 100 most heavily populated areas of the United States, referred to as Metropolitan Statistical Areas ("MSAs"), were required to meet its guidelines for long-term service-provider portability by October 1, 1997 and to deploy such portability by December 31, 1998. Although the 1996 Act did not explicitly mention commercial mobile radio service ("CMRS") providers, such carriers would also have to implement number portability, but they were given until June 30, 1999 to offer this service to their customers.

Another issue addressed by the FCC in the First Report and Order was the type of methodology required. This was significant as some carriers sought to have uniformity in implementing LNP. The FCC described all suggested methods for porting numbers, but declined to adopt any one of these methods because there did not appear to be enough of a national calling for compatible methods to be utilized. The FCC also feared that requiring telecommunications carriers to adopt a particular methodology could inhibit the deployment of LNP services to consumers.

---

21 Joan Engebretson, Much Ado About Numbers: Can Local Number Portability Bring Change Without Pain?, TELEPHONY, Apr. 7, 1997, at 22 (describing the various phases and procedures that the FCC has mandated for local number portability implementation). "Local number portability is a huge undertaking, requiring significant infrastructure upgrades and a high level of cooperation between incumbent local exchange carriers and their competitors." Id.

22 See Ganek, supra note 4, at 30 (explaining the FCC's initial interest in LNP and the early tests it performed to determine its potential to become a reality for consumers).

23 Id.

24 Nat'l Communications System Tech. & Standards Dir., General Services Admn. Telecommunications: Glossary of Telecommunications Terms, Federal Standard 1037 C (Aug. 7, 1996) [hereinafter Glossary of Telecommunications Terms]. A local exchange carrier is defined as "[a] local telephone company, i.e., a communications common carrier provides ordinary local voice-grade telecommunications service under regulation within a specified service area." Id.


27 See id. at 8354, para. 2. ("Number portability is one of the obligations that Congress imposed on all local exchange carriers, both incumbents and new entrants, in order to promote the pro-competitive, deregulatory markets it envisioned"); see generally Deonne L. Bruning, The Telecommunications Act of 1996: The Challenge of Competition, 30 CREIGHTON L. REV. 1255 (1997) (quoting former U.S. President William Clinton as mentioning that one of the primary goals of the Telecommunications Act of 1996 is "to create an open marketplace where competition and innovation can move as quick as light").

28 First Report and Order, supra note 26, at 8355, para. 3; see also Victor J. Toth, The FCC's Complex Plans for Local Number Portability, BUS. COMM. REV., Sept. 1995, at 26. There are three types of portability: geographic/location portability, service portability, and provider portability. Geographic/location portability [w]ould require that end users who relocate to a new physical location—whether across town, across the state or across the country—retain their existing 10-digit telephone number." Id. Under service portability "a telephone number can be retained if a customer changes or adds a new form of service—such as substituting ISDN (integrated services digital network) for basic exchange service—at the same location. Id. Finally, provider portability occurs when "[a] customer could retain an existing 10-digit number, even if the customer decides to take local exchange or access services from a provider other than the traditional local exchange carrier, including CAPs, cellular or other wireless alternatives." Id.

29 A CMRS is a wireless service provider that works for profit. See 47 C.F.R. §20.5 (2002) (providing a complete and precise definition of what traits a carrier must possess to qualify as a CMRS by the FCC).

30 See First Report and Order, supra note 26, at 8355, para. 4. The FCC announced that it would require CMRS providers to implement LNP even though they are not classified as LECs under §251(b) of the Telecommunications Act of 1996.

31 Id. at 8359, para. 13 (discussing a variety of methods that carriers could use for porting customers' phone numbers in accordance with the FCC's WLNP mandate).

32 See id. at 8355, para. 4.

33 Id. at 8359, para. 13.

34 See id. at 8377, para. 46.

35 See id. The FCC did not want its stamp of approval on
Furthermore, a specific methodology could deter telecommunications providers from attempting to improve current methods and it could also delay service providers from creating new hybrids from available methodologies.36 Thus, instead of adopting a particular portability methodology, the FCC decided it would best serve the public interest to adopt mandatory performance criteria for all wireline and wireless carriers. The FCC believed this criteria would provide uniformity among carriers without discouraging them from developing new ideas that would aid the implementation of LNP.37

After the First Report and Order was released, wireless carriers, as well as some wireline carriers, were strongly opposed to the FCC’s LNP mandate.38 Wireless carriers were especially enraged because the 1996 Act only specifically required that LECs implement number portability.39 No provision of the 1996 Act explicitly called for CMRS providers to implement LNP.40 Thus, wireless carriers believed the FCC had overstepped its authority in ordering them to offer LNP to their customers.41 Many wireless and wireline providers filed comments, petitions, and oppositions.42 In response, the FCC released its First Memorandum Opinion and Order on Reconsideration (“First Memorandum Opinion”).43

In its First Memorandum Opinion, the FCC discarded the performance criterion, which required that a methodology selected for number portability must involve cooperation among telecommunications providers.44 It removed this particular performance criterion because regardless of what method a service provider utilized, it would have to rely on the other carrier to make the porting a success.45 In addition, the FCC provided guidance to wireline and wireless carriers by setting forth particular plans regarding the implementation of LNP.46 The FCC also asserted that it was reasonable for LECs to focus their initial number portability implementation efforts only in areas where competitors would be likely to enter.47 Minimum standards were also placed on telecommunications service providers to ensure LNP was implemented efficiently and without delay.48

a number portability methodology that might turn out to be more burdensome than helpful in implementing LNP.

36 First Report and Order, supra note 26, at 8377, para. 46.
37 Id.
38 Annie Lindstrom and Andrew Braunberg, We Don’t Want Any, Local Number Portability: A Bold New World, AMERICA’S NETWORK, Oct. 1, 1997, at S9 (explaining how aggrovated and angry wireless service providers were about being told they must implement local number portability, just like their wireline counterparts, and are “kicking and screaming all the way to the LNP starting line”) [hereinafter Lindstrom & Braunberg].
39 See First Report and Order, supra note 26, at 8355, para. 4.
40 Id.; see also In re Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd. 7236, 7315, para. 141 (1997) [hereinafter First Memorandum Opinion]. While the FCC recognized that the 1996 Act did not include CMRS providers in the definition of a LEC, the agency still asserted it had “independent authority under Sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, to require CMRS providers to provide number portability as we deem appropriate.” Id.
41 See Lindstrom & Braunberg, supra note 38, at S9 (quoting Fran Malnati, the director of government affairs for Bell Atlantic Mobile, as saying that the imposition of WLNP was done with "a very minimal record, and a record that did not support whether or not number portability was, in fact, required to add competition to the wireless industry.").
42 See, e.g., SBC Communications, Inc., Petition for Reconsideration, CC Dkt No. 95-116, at 12 (Aug. 26, 1996) (arguing that GRMS providers should be granted an extension of the June 30, 1999 deadline for WLNP deployment); Petition for Clarification and/or Reconsideration of The Cellular Telecommunications & Industry Association, CC Dkt No. 95-116, at 5 (Aug. 21, 1996) (asking that the Chief of the Wireless Telecommunications Bureau of the FCC be able to extend the deadline for wireless providers to deploy LNP in longer than nine months).
43 First Memorandum Opinion, supra note 40, at 7237, para. 1. A significant amount of service providers filed their opinions and requests with the FCC. In total, the FCC heard from fifty-seven commenters. Id.
44 See id. at 7247-7248, para. 19. The FCC dismissed the performance criteria that specifically called for a number portability methodology, which would call for telecommunications carriers to rely on each other for access to one another’s materials and equipment for efficiently deploying LNP. Id.
45 Id.
46 See, e.g., First Memorandum Opinion, supra note 40, at 7294-7295.
47 Id. at 7272, para. 59. The FCC adopted this approach because it was necessary for LECs to “avoid expenditures in areas within an MSA in which competitors are not currently interested.” Id.
48 Id. at 7273, para. 60. The FCC required telecommunications carriers to meet the following:
[A]ny wireline carrier that is certified, or has applied for certification, to provide local exchange service in the relevant state, or any licensed CMRS provider, must be allowed to make a request for deployment; (2) requests for deployment must be submitted at least nine months before the deadline in the Commission’s deployment schedule for that MSA; (3) carriers must make available lists of their switches for which deployment has and has not been requested; and (4) additional switches must be deployed upon request within the time frames described below.
Id.
One particularly relevant topic the FCC discussed in its First Memorandum Opinion was the LNP implementation schedule for both wireline and wireless providers.\(^{49}\) For wireline carriers, the end date for the initial phase of LNP implementation was extended by three months to March 31, 1998, with allowance for the second phase to commence as late as May 15, 1998.\(^{50}\) As for wireless carriers, the FCC found their WLNP schedule to be "sufficient" and "reasonable."\(^{51}\) Thus, no extension beyond that which was given to wireline carriers for implementation of LNP was granted to wireless customers.\(^{52}\)

In the Second Report and Order, the FCC addressed more of the outstanding issues that were raised in the filed comments.\(^{53}\) Specifically, the Commission adopted a number of measures proposed by the North American Numbering Council ("NANC").\(^{54}\) A few examples include establishing regional number portability databases across America, creating a committee to oversee number portability in the top 100 MSAs, and adopting the NANC standards for wireline carriers regarding technology and operations.\(^{55}\) While wireline and wireless providers raised many more issues and problems, nothing further was mentioned in the FCC's Second Report and Order on LNP.

In the Third Report and Order, adopted in May of 1998, the FCC determined how wireline and wireless carriers would recover costs associated with LNP.\(^{56}\) Essentially, it attempted to determine how to implement Section 251(e)(2) of the 1996 Act.\(^{57}\) The report had "far reaching implications" for some telecommunications service providers,\(^{58}\) but it would ultimately be the end-users (i.e., consumers) who would bear the burden of paying for LNP.\(^{59}\)

Telecommunications providers were permitted to charge consumers a monthly fee designed to offset some of the costs associated with LNP.\(^{60}\) However, telephony subscribers would only be charged if number portability was available. Thus, customers would not be charged unless they could receive the benefits of the service.\(^{61}\) The FCC allotted five years, beginning on February 1, 1999, for carriers to recover their LNP costs.\(^{62}\) Although the FCC recognized that consumers would not be pleased with having to pay for LNP, it believed that the benefits of greater competition superseded any of its costs.

During these proceedings, many wireless carriers petitioned the FCC to stay the LNP implementation deadlines.\(^{63}\) Initially, the FCC agreed to extend the deadline from June 1999 to March 2000.\(^{64}\) However, wireless providers still did not feel they would be able to provide adequate number portability services by this date. They petitioned again and the FCC granted their request. CMRS providers would not have to deploy WLNP until November 24, 2002.\(^{65}\) The FCC acquiesced

\(^{49}\) Id.

\(^{50}\) Id. at 7283, paras. 78, 80. The FCC extended the end date to alleviate any of the problems that may have arisen if the first two phases were completed in a particular area on the same date. Id.

\(^{51}\) Id. at 7312, para. 134.

\(^{52}\) Id.


\(^{54}\) Id. NANC is a federal advisory committee that councils the FCC on issues relating to numbering resources. The committee meets six times a year and includes as its members industry leaders, consumer advocates, and state regulators. See NORTH AMERICAN NUMBERING COUNCIL, FCC, WIRELINE COMPETITION BUREAU, TELECOMMUNICATIONS ACCESS POLICY DIVISION, at http://www.fcc.gov/wcb/tapd/NANC/ (last visited Nov. 7, 2003).

\(^{55}\) Second Report and Order, supra note 52, at 12283, para. 3.


\(^{57}\) 47 U.S.C. §251(e)(2) (2000) ("The costs of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.").

\(^{58}\) Richard Dreher, From Cost Recovery to Competitive Edge, TELEPHONE, Feb. 15, 1999 at 38 ("The report had far-reaching implications for the regional Bell operating companies and other incumbent LECs because it dictated how they could recover costs through tariffs paid by end users.").

\(^{59}\) See, e.g., Third Report and Order, supra note 55, at 11704, 11707, at paras. 4, 9.

\(^{60}\) Id. at 11776, para. 142.

\(^{61}\) Id.

\(^{62}\) Id. at 11777, para. 144. ("We choose the five-year period for the end-user charge because it will enable incumbent LECs to recover their portability costs in a timely fashion, but will also help produce reasonable charges for customers and avoid imposing those charges for an unduly long period.").


\(^{64}\) See id. at 16322, para. 14. The FCC allowed a stay for all wireless service providers for a period of nine months to allow them more time to prepare for the technological and operational requirements that would come with LNP. Id.

\(^{65}\) See In re Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations and Tele-
because maintaining the current implementation schedule was unnecessary to protect customers from high and irrational prices, and would not impair consumer demand for WLNP. While the FCC also mentioned that it did not believe WLNP would always be a non-issue for consumers, it speculated that as wireless phones become more popular, customers would be eager to reap the benefits of WLNP.

In July 2002, wireless carriers were again granted forbearance from implementing WLNP, which meant that they were free from any type of regulation by the FCC regarding this matter. The FCC agreed to extend the date of LNP deployment by one year but it declined to grant Verizon Wireless’s (“Verizon”) petition for permanent forbearance. The Commission determined that permanent forbearance would be inconsistent with the goal of consumer protection and would not be in the public interest because it would increase competition in the telecommunications industry. According to the FCC, consumers were entitled to receive the benefits of enhanced competition, such as more choices in areas of “price, service, and coverage,” but issues still existed, which merited another temporary stay from LNP deployment. As a result, the FCC issued another stay until November 24, 2003 to ensure customers would be able to have their numbers ported without any delays or other problems.

2. **Increased Efforts to Delay the November 24, 2003 WLNP Implementation Mandate**

Although wireless carriers were given from June 1999 until November 2003 to deploy WLNP to their customers, they still did not think they were adequately prepared to meet the FCC ruling. The biggest effort to achieve permanent forbearance from WLNP deployment came in June 2003. The CTIA, in association with Verizon, took the FCC to court in *Cellular Telecommunications & Internet Association v. FCC*. The United States Court of Appeals for the District of Columbia focused on two issues raised by CTIA and Verizon. First, both carriers argued that the FCC did not have the statutory authority necessary to impose WLNP on wireless carriers because the requirement of implementing number portability only pertained to LECs and not CMRS providers. The court dismissed this contention holding that the issue was barred by the statute of limitations.

Second, CTIA and Verizon argued that the FCC misconstrued and misapplied Section 160(a) of the 1996 Act. This Section deals with the three-pronged conjunctive forbearance test. In order for the FCC to allow a carrier forbearance from one of its regulations, the carrier must first show that enforcement is unnecessary to ensure that carriers are acting indiscriminately when they promulgate any regulations, fees, and the like. Second, the carrier must show that enforcement of...
the regulation by the FCC is not necessary to protect consumers from harm.\textsuperscript{83} Third, the carrier must show that it is in the public interest to allow for the forbearance.\textsuperscript{84} According to the court, enforcement of WLNP was necessary to protect consumers. Therefore, since CTIA and Verizon failed the second prong of the conjunctive test, the FCC was correct in its decision to deny wireless carriers permanent forbearance from WLNP.\textsuperscript{85}

While Verizon decided to support WLNP after its loss in court,\textsuperscript{86} many other wireless carriers argued that a variety of issues, such as potential economic harm. Thus, WLNP should not be implemented until these matters are resolved.\textsuperscript{87} These carriers sought guidance from the FCC to resolve these issues.\textsuperscript{88} For instance, wireless carriers were concerned about allowing customers to port their numbers if they still owed money on their bills.\textsuperscript{89} The Chief of the Wireless Telecommunications Bureau at the FCC, John B. Muleta, wrote a letter addressing these concerns in which he claimed that telecommunications providers could not hold phone numbers hostage if a customer desires to port them to another carrier.\textsuperscript{90} Other

issues were later clarified in the FCC’s Memorandum Opinion and Order, released on October 7, 2003.\textsuperscript{91} For example, the Commission declared that while providers were able to contract with their customers, they could never deny them their right to port their numbers upon making a valid request.\textsuperscript{92} Additionally, interconnection agreements, which are arrangements made between telephone carriers to allow their subscribers to dial each other,\textsuperscript{93} were unnecessary and if two wireless providers could not agree to certain terms, they still had to unconditionally port the customer’s phone number.\textsuperscript{94}

Attempts continued to be made by telecommunications carriers to delay or permanently forbear the implementation of WLNP. For example, the wireless industry had been accused of trying to pass an amendment that would allow for WLNP to be delayed by sixty days—meaning consumers would not be able to port their numbers until after the start of 2004.\textsuperscript{95} In addition, on October 29, 2003, the United States Court of Appeals for the District of Columbia denied wireless carriers’ petition for mandamus seeking relief from WLNP.\textsuperscript{96} Another petition, filed by CTIA, asked that the service and also whether carriers may place restrictions on consumers before allowing them to port their numbers). See also Heather Forsgren Weaver, Carriers Fight Mandate that Forces Them to Port Delinquent Consumers, RCR Wireless News, Aug. 11, 2003, at 9 (detailing telecommunications carriers’ reactions to Muleta’s letter regarding the porting of customers who still have outstanding balances).

\textsuperscript{83} Id.

\textsuperscript{84} Id.

\textsuperscript{85} Cellular Telecomms. & Internet Ass’n, 330 F.3d 502, 512 (D.C. Cir. 2003).

\textsuperscript{86} See, e.g., Dan Meyer, Verizon ‘Ports’ its LNP Position, RCR Wireless News, June 30, 2003, at 1 (detailing Verizon Wireless’ switch from being a fierce opponent of WLNP implementation to a staunch advocate for the consumer-friendly service once it realized that LNP would become a reality regardless of any efforts made by wireless providers).

\textsuperscript{87} See, e.g., In re Telephone Number Portability, Emergency Motion for Stay of the CMRS LNP Deadline, CC Dkt No. 95-116, filed on behalf of Cingular Wireless, LLC and AT&T Wireless Services, Inc., Aug. 15, 2003. But cf. CMRS Carriers, ILECS Disregard on LNP Implementation Rules, TELECOMM. REP., July 1, 2003, available at 2003 WL 12294469. The Wireless Consumers Alliance stated, “the last-minute logistical ‘problems’...are viewed by us as created by the carriers to thwart competition.” Id.

\textsuperscript{88} See CTIA Presses FCC to Act on LNP Implementation Issues, TELECOMM. REP., Sept. 1, 2003, at 2003 WL 12295150 (describing CTIA’s vow to seek a writ of mandamus if the FCC did not address its concerns by September 1, 2003).


\textsuperscript{90} Letter from John B. Muleta, Chief of the Wireless Telecommunications Bureau of the FCC, to John T. Scott III, Vice President and Deputy General Counsel for Verizon Wireless, and Michael F. Altschul, Senior Vice President and General Counsel for CTIA (July 3, 2003) (on file with author) (addressing issues concerning the porting interval period that may create havoc with enhanced 911 (E-911) ser-
FCC be compelled to respond to other outstanding questions. However, despite all of the carriers’ complaints and filings, the FCC permitted consumers to gain the advantages of true competition by making WLNP a reality on November 24, 2003.98

II. THE CALL TO COMPETE: THE TELECOMMUNICATIONS ACT OF 1996

The 1996 Act opened the door to competition in the telecommunications industry99 by ordering the FCC to implement technological advances, such as WLNP.100 Thus, to fully understand how the competitive relationships developed between wireline and wireless carriers, it is critical to explore the origins and development of the 1996 Act.

A. The Role of the 1996 Act in Stimulating Competition

On February 8, 1996, then United States President Bill Clinton signed the 1996 Act into law.101 Prior to the passage of the 1996 Act, the Communications Act of 1934 ("1934 Act")102 was the sole piece of legislation focusing on telecommunications regulation.103 The goals of the 1996 Act are "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new communications technologies."104 It was primarily intended to bring about a period of "boom time" for the telecommunications field.105

While the 1996 Act eventually established competition on a nationwide and local level,106 not everyone believed it would reach its goals.107 For example, in the beginning, prices appeared to increase and consumers did not receive the competitive advantages they had expected.108

The 1996 Act may not have had an initial dramatic impact on telecommunications, but few doubt that it has well-served its aim of "promoting competition" and allowing for consumers to take hold of the benefits of better service offerings and deals.109 The FCC has tried to live up to Congress’ mandate to "promote competition," by regulating and deregulating the telecommunications industry as it deems necessary.110 The regulators also

Richard Wiley, a partner at the law firm of Wiley, Rein & Fielding and a former chairman of the FCC, as saying, "I was talking to new clients yesterday, as a matter of fact. I think it’s going to be boom time.")

106 Id. at 1258. ("The Act enabled local competition to exist nationwide and erected a strong framework for local competition by establishing baseline rules for every company that wanted to provide telecommunications service.") Id.

107 See Mary E. Thyfault, Telecommunications—The Telecom Act’s Promise—Carriers Say Competition Will Bring Low Prices and More Choice—But Don’t Hold Your Breath, INFOR. WEEK, Apr. 15, 1996, at 49. "Carriers promise the future will hold more choices, lower prices, and one-stop shopping for packages of local, long-distance, and wireless data and voice services . . . But don’t hold your breath. Despite carriers’ optimistic projections, most competition won’t arrive soon.") Id.

108 See David Rohde, You Call This Competition? Long-Haul Rates On The Rise Since The Signing Of Landmark Law, NETWORK WORLD, May 6, 1996, at 1 (alleging that the prices charged by telecommunications carriers right after the passage of the 1996 Act did not reflect the advantages that competition was supposed to bring to consumers). Carriers, such as Sprint, AT&T, and MCI, raised their rates on particular services they offered to their customers. See id.

109 See, e.g., James K. Glassman, Commentary, Telecom Wefting at the FCC Helm, WASH. TIMES, Nov. 26, 2002, at A16 (detailing how since the passage of the 1996 Act the benefits of competition have become pronounced and genuine).

try to achieve Congress' order by making a conscious effort to encourage developments and trends in telephony, such as WLNP, in order to achieve this goal. To this end, federal regulators cite the vast growth of wireless subscribers in America. For instance, they reported that as of June 2002, there were 129 million wireless customers, 6.5 million of whom used their cellular phone as their only telephone service provider, stimulating competition for wireline carriers. However, others have cautioned and warned of the "boom and bust" cycle that the telecommunications industry has seen since the passage of the 1996 Act. Some have even feared that rather than ushering in a "new era of competition," the 1996 Act may eventually lead to consolidation in telephony where large powerful carriers dominate the market. Whether these concerns are justified is still the subject of much debate. Nevertheless, despite the economic downturn of the telecommunications industry at the end of the twentieth century, it appears that the 1996 Act has been successful in promoting competition among telecommunications carriers, especially between wireline and wireless providers.

III. THE EVOLUTION OF WIRELINE AND WIRELESS COMMUNICATIONS

Since the introduction of telephony services to the American public, competition has played an important role in shaping the telecommunications industry. However, wireline and wireless services did not develop at the same pace or confront the same challenges. Each had unique experiences as competition called for the expansion of their capabilities and offerings. Thus, to fully understand how competition has shaped the telecommunications industry it is essential to consider the background of both wireline and wireless services.

A. Development of Wireline Services

The history of wireline communications began with the creation of the telegraph in the mid-nineteenth century. Since this form of wireline communication caught on rapidly, Congress in 1866, offered telegraph companies certain privileges, provided they agree to serve all potential clients indiscriminately. At this time, telegraph companies became viewed as common carriers; thus, they were subject to judicial decrees and legislation. As a result, the regulation of telecommunications began.

In 1876, Alexander Graham Bell created a new device that would forever change the way individuals communicated with one another—the telephone. Once the telephone became available to the general public, telephony spread swiftly throughout the country. After Bell's patent expired, American Telegraph & Telephone Co. ("AT&T") acquired the Bell telephone system. AT&T quickly monopolized telephony by

1036 (1996) (explaining how wireline developed over the years).
121 Id. at 1036-1037 (describing how fifty telegraph businesses were operating within America by 1851).
122 Id. at 1037 ("Congress . . . offered telegraph companies rights of way along post roads and across public lands and permitted the companies to cut trees for poles on public lands without charge.")
123 See Glossary of Telecommunications Terms, supra note 24. The Federal Standard defines a common carrier as "a telecommunications company that holds itself out to the public for hire to provide communications transmission services . . . such companies are usually subject to regulation by federal and state regulatory commissions." Id.
124 See Cate, supra note 118, at 1037.
126 See Cate, supra note 118, at 1038.
127 See Swedenburg, supra note 123, at 1424 (describing the formation of the monopoly on telephony that AT&T cre-
purchasing small local telephone companies and restricting competitors from completing calls, unless an agreement had been negotiated. Most often, AT&T refused to negotiate such a contract, and if it did, it would charge high interconnection rates. As a result, the competitor would almost always be forced out of business.

In the early part of the twentieth century, Congress imposed regulations on AT&T to curb its monopoly, but these efforts had little success. In a further attempt to limit AT&T’s monopolization, Congress passed the Communications Act of 1934. The 1934 Act created the FCC to regulate the telecommunications industry and in doing so gave it jurisdiction over all interstate communications. However, state public utility commissions (“PUCs”) still maintained their role as regulators over all intrastate communications. Unfortunately, neither the FCC nor the state PUCs were able to break up AT&T’s monopoly and competition remained nonexistent.

Over the years, numerous complaints were brought against AT&T for unfair competition but it was not until August 1982 that a significant step was taken to strip AT&T of its domination. At that time, the Department of Justice filed an antitrust lawsuit against AT&T. As a result, the United States District Court for the District of Columbia issued a modification of final judgment (“MFJ”). The MFJ provided that AT&T would divest itself of its twenty-two Bell operating companies (“BOCs”) into seven independent regional BOCs (“RBOCs”), which would serve as LECs. In exchange for its divestiture, AT&T was allowed to provide long-distance telephone services without restriction. Moreover, the RBOCs were neither allowed to offer any type of long-distance or information service, nor were they authorized to manufacture any type of telephony equipment.

While the MFJ brought an end to AT&T’s monopoly, it did little to effectuate actual competition in the telecommunications market. Under the MFJ, RBOCs were unable to compete with AT&T because they were prohibited from offering long-distance services. Additionally, if the RBOCs sought to entice customers with new services, they had to endure a lengthy process in the courts. Therefore, true competition did not enter the wireline industry until the passage of the 1996 Act, which allowed for the RBOCs to obtain significant gains by permitting them to offer long distance services.

B. The Creation of Wireless Telephony

Wireless telephony ushered in an era of great expectations for the telecommunications indu-

\[\text{\textsuperscript{128}} \text{id.} \text{([A]ny telephone service carrier wanting to complete calls for its customers that lived in an area with an AT&T-controlled LEC had to negotiate an 'interconnection' agreement with AT&T.)} \]

\[\text{\textsuperscript{130}} \text{see, e.g., Mann Elkins Act of 1910, Pub. L. No. 65-218, §7, 36 Stat. 539, 544 (1910). This legislation provided that telephone companies were common carriers and therefore were subject to regulation by the Interstate Commerce Committee; see also Swedenburg, supra note 125, at 1424. By defining telephone companies as common carriers, AT&T had to provide a just cost interconnection service to any carrier who made a valid request. Id.} \]

\[\text{\textsuperscript{135}} \text{see Swedenburg, supra note 125, at 1425. "In particular, both state and federal courts permitted AT&T to refuse interconnection to rival local service providers, leaving AT&T ample leeway to pursue its monopolistic ambitions." (footnote omitted.) Id.} \]
try. The advent of wireless communications began in 1896 when Guglielmo Marconi received a patent for the first wireless transmitter—a radio. A few years later, in 1906, the first "wireless telephone" was brought into existence when a radio communication of an individual's voice traveled from America out into the Atlantic Ocean. However, wireless telephony as we know it today would not be available for many years.

In 1947, Bell Labs first worked out the concept of wireless telecommunications, but deployment of these services would not be available to consumers for almost another thirty years. The technology necessary for the development of cellular telecommunications was simply not available. There was not enough continuous range of frequencies, often referred to as spectrum, to hold a significant amount of wireless customers. For instance, a single-cell transmitter would only allow for twenty-five channels and approximately only half of that amount could be used at any given time.

In 1977, the FCC decided to encourage the deployment of wireless communications by opening up additional spectrum to wireless carriers; however, the Commission put a limit on the number of licenses it would grant in a service area. This prohibition was soon found to be inefficient, as the Commission was besieged with applications from prospective competitors. In 1994, the FCC decided to change its course by sectioning off radio spectrum for wireless providers "per market area through an open-bidding process." With this announcement, the wireless boom began and competition fiercely entered the market as carriers sought out new customers.

IV. OVERVIEW OF THE COMPETITIVE PLAYING FIELD PRIOR TO WLNP

Studies show that there are currently about 150 million cellular subscribers in America and this number is expected to increase. In 2002, there were approximately 223 million landline customers and this number is likely to decrease. In addition, approximately 4% of American households use only cellular phones and this figure is expected to increase rapidly within the next few years. Since there is already a significant amount of competition in the telecommunications market, it would not have made sense to permanently forbear WLNP. There can never be too much competition when it allows consumers to benefit from lower prices and encourages companies to develop higher quality services and more innovative products that ultimately assist the public at large.

A. The Decline of Wireline Communications: Where Have All the Landlines Gone?

Since the introduction of cellular phones, wireline carriers' subscription rates have declined. Recently, as many as 7.5 million people have system." Id.


145 Id.

146 Id. at 501.


148 See Newton, supra note 69 (describing spectrum as "[a] continuous range of frequencies, usually wide in extent within which waves have some specific common characteristics.").

149 See Kratofil, supra note 142, at 500. "The available spectrum could only support 140,000 subscribers nationwide, including police and other special users." Id. at 501.

150 Id.

151 See Niehaus, supra note 147, at 646 (discussing the FCC's role in promoting wireless services to the public and how it implemented these services). "[T]he first was automatically awarded to the local telephone company, and the second was awarded to a competing provider through a lottery system." Id.

152 Id. at 646-47.

153 Id. at 647.

154 Id. "The FCC's announcement fanned the competitive flames as providers dumped billions of dollars into the federal treasury to acquire licenses and set up shop in market areas across the country, bringing new technology to American consumers." Id.

155 See Jon Van, New Twist to Phone Number Portability, CHI. TRIB., Aug. 22, 2003, at C1 (discussing how wireline carriers may suffer as a result of WLNP).

156 Id.

157 See Patricia Sabatini, Cutting the Strings; As Wireless Prices Fall and Service Improves, Growing Legions Make Cellular Their Main—and In Some Cases Their Only—Phone, PITTSBURGH POST-GAZETTE, Aug. 24, 2003, at E1 (explaining that the current trend appears to be switching from landline to wireless service providers).

158 Id. A telecommunications analyst, Jeff Kagan, has said, "The industry is totally reinventing itself. It will look very different in five years. It will be very competitive and healthy." Id.

159 See Judy Newman, Landlines Not Needed, Some Phone Users Decide; The Percentage of Cell Phone Users, Meanwhile, Con-
switched from a wireline to a wireless service provider. Also, it is estimated that 38% of Americans are considering making wireless their only phone service. More staggering statistics abound concerning the decline of landline usage. For instance, the number of telephone lines is shrinking and expected to continue to decline at a rate of 0.5% to 2% every year. Even more disheartening for wireline carriers is the FCC's announcement in June 2003 that the amount of landline phones has decreased by more than 5 million.

One answer for why wireline service providers are slowly disappearing from the marketplace is convenience. Unlike landlines, cellular phones can follow their owners anywhere they go. Another disadvantage that may be costing wireline customers their business is excessive regulation. Wireless providers are able to offer more specials and services than their wireless counterparts because they are not subject to the same regulations. Thus, for the most part, wireline service providers are heavily regulated, whereas wireless carriers appear to have free reign. One example of a special service offered by wireless carriers is a promotional plan that allows a consumer to talk for “free” at night and on weekends to anyone, anywhere in the United States. Similar service plans for wireline customers have not been made available.

Although there are many forces that may render landlines extinct, there are still qualities about wired phones that may ensure their survival in the telecommunications market. Traditional wired phones offer consumers some benefits that wireless providers simply cannot extend to their customers. For instance, when a power outage strikes, wired phones are often the only telephones that function. Another reason why most people are hesitant to part with their landline is because they do not want to deal with the traditional problems associated with wireless phones—dead spots, lost calls, poor reception and dead batteries.

While wireless phones may not necessarily lead to the demise of landlines, questions still remain as to what effect, if any, competition among wireline providers will have on their future. Most telecommunications leaders agree that a significant problem facing wireline carriers is that there is not enough competition among themselves. However, many regulators believe an effective way of remedying this situation is through implementation of WLNP. They argue that not only will WLNP lead to more competition among wireline and wireless service providers, but it will also encourage wireline carriers to compete with each other in a way that is currently lacking in the tele-

---


See Fred O. Williams, Staving Off Regulation? The Cell Phone Industry Will Unveil Self-Imposed Standards on Tuesday,
communications market. Still, many individuals in the telecommunications industry argue that WLNP will be just another nail in the coffin for wireline.

B. Land of a Thousand Options: The Boom of the Wireless Industry

Currently, "the most visible communications service" in America is enjoying a period of enormous growth. America has six national cellular providers and a variety of regional wireless carriers. There are 1,500 wireless phone systems set up in 750 national areas and research suggests that wireless penetration in America may reach 80% by 2005. In addition, a study conducted by the Yankee Group found that cellular customers spend more time talking on their telephones than wireline subscribers. Additionally, in today's society, CTIA reports that approximately 93% of Americans can choose between three wireless carriers.

As a result, fierce competition has developed among cellular providers and their wireline counterparts. For instance, Verizon, the number one wireless carrier in America, spends $4 billion a year on enhancing its cellular system for its customers. For example, Senator Charles Schumer, Vice Chairman, Federal Communications Commission, on the Committee on Commerce, Science, and Transportation, United States Senate, at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-230241A3.pdf (Jan. 14, 2003) [hereinafter Abernathy Statement].


See Rosenbluth, supra note 19.

See Aarons, supra note 161, at 24.

See Williams, supra note 167, at B11 (citing a study by the Yankee Group, which found that wireless consumers spent 500 minutes on their telephones—more time than was spent on the telephone than landline users). The Yankee Group, Company Backgrounder, at http://www.yankee group.com/public/about/about.jsp. (last visited Nov. 9, 2004) The Yankee Group, which is headquartered in Boston, is a company focusing on network research and consulting within the communications field. Id.

See Newman, supra note 159, at A1. While Verizon does spend a great deal of money on improving its services, as the "nation's No. 1 wireless phone company" its customers can help ease the expenses it incurs. Id.

See Williams, supra note 167, at B11.

See generally Newman, supra note 159, at A1. Consumers should not be worried with these problems, especially dropped calls, according to individuals, such as Travis Larson, a spokesman for CTIA. "A wireless phone is only a fancy radio, and just like a car radio sometimes loses its connection, a wireless phone can sometimes lose its connection... in the end, we're all battling the laws of physics." Id.

See Williams, supra note 167, at B11. In fact, Verizon plans its wired network for 99.99% reliability. Id.


During the first three months of 2003, the FCC received 4,119 complaints from wireless subscribers. However, the FCC also receives complaints regarding wireline service. See also Wireless, COMM. DAILY, Oct. 20, 2003, at 11. Even Congress has taken notice of the plight of cell phone users. For example, Senator Charles Schumer (D-NY) has introduced a "cell phone users bill of rights," which purports to assist wireless subscribers in their struggles with their service providers. Id.
demise in the marketplace.194

V. TIPPING THE SCALES: THE BENEFITS AND BURDENS OF WLNP

With an expected thirty-nine million people set to switch telecommunications providers this year and more to follow throughout 2004,195 it is easy to see why WLNP has generated such powerful reactions.196 The essential question is whether the potential difficulties associated with WLNP should be allowed to overshadow the many benefits it promises to convey to consumers. This question is what has sparked tremendous concern and outrage by both telecommunications carriers and their customers.

The vast majority of those in favor of WLNP are consumers and their advocates, such as federal and state regulators.197 They assert that WLNP will create more competition in the telecommunications industry generating lower prices, greater offerings, and better service.198 Consumers, however, are not the only ones who stand to benefit from WLNP.199 While most major wireline and wireless carriers vehemently oppose WLNP, a few companies recognize the benefits. These carriers realize they could use WLNP to entice customers away from their competitors and expand their own business and profits.200 They view WLNP as an opportunity to be seized and not something to be fought against.201

Despite this potential, telecommunications insiders are quick to point out that WLNP is not without its difficulties for consumers, wireline, and wireless carriers. Consumers will be forced to pay for numerous "costs"—both economic and qualitative—associated with WLNP.202 Also, telecommunications service providers stand to lose a significant portion of their customers and revenues to their competitors with WLNP.203 As a result, many wireline and wireless carriers may face dissolution or be forced to merge with other companies.204 Still, these burdens should not overshadow the benefits that WLNP will bring to the American public via increased competition.205

A. The Appeal of WLNP

1. How Consumers Will Benefit from WLNP

WLNP has been described as a "customer's dream."206 In addition to providing consumers with the convenience of phone number portability, WLNP is also expected to usher in a new wave of competition for the telecommunications industry.207 This competition, many consumer advocates suspect, will result in a windfall for consumers.208 As one telecommunications leader recently

195 See Richtel, supra note 6, at A1.
196 See Backover, supra note 5, at 1B (detailing how consumers will benefit from WLNP).
197 Id. (describing some consumers' bliss at being able to keep their phone number while switching telecommunications service providers); see also Boyle, supra note 5 (stating "[c]ustomers should have the ability to change carriers without the inconvenience of changing numbers").
198 See Berg, supra note 14, at D1 (detailing how consumers stand to gain from the "unprecedented choices" that greater competition, via WLNP, will bring to the telecommunications industry), see also Letter from Judy Mucasey to the Federal Communication Commission (Oct. 16, 2003) (on file with the FCC).
199 See Jim Krane, Numbered Among Their Assets: Wireless Carriers at Odds with FCC (and Each Other) Over Portability, SOUTH FL. SUN-SENTINEL, Feb. 3, 2002, at 3G (exploring the different stances that wireless carriers have taken on WLNP and offering some suggestions on how these carriers stand to benefit from the service).
202 See, e.g., Bruce Meyerson, Fees for Cell Number Switch Seem Sure to Ring Up Profits for Carriers, COMM. APPEAL (Memphis, TN), Aug. 15, 2003, at C2 (detailing how much consumers will be charged for the fees that wireless carriers are incurring to implement WLNP).
203 See generally Rosenbieth, supra note 19.
204 See, e.g., Wigfield, supra note 198 (stating that consolidation could occur within the wireless industry as a result of WLNP); see also Dan Meyer, LNP Costs Could Trigger Consolidation, RCR WIRELESS NEWS, Sept. 8, 2003, at 3 (explaining how WLNP could result in consolidation among carriers within the telecommunications industry).
205 See generally Christopher Waldron, Comment, Permanent Number Portability: A Necessary Element for Effective Local Competition, 5-WTR MEDIA L. & POL’Y 17 (1996). "Without number portability there will be no true local competition." Id.
206 See Vikas Bajaj, Loyalty is on the Line: Cellular Firms Fight to Keep Clients in Advent of Number Portability, DALLAS MORN. NEWS, Oct. 25, 2003, at 1D. Ivan Seidenberg, a chief executive of Verizon Communications, Inc. argued that WLNP will be a "customer's dream" because telecommunications providers will vie for consumers' business. Id.
207 Id.
208 See, e.g., Adam Cataldo, Be Wary of Cell Service Switch, SCHUMER WARNS, N.Y. SUN, Oct. 20, 2003, at 3 (quoting Sen. Charles Schumer (D-NY) as saying, "It may seem like good
stated:

When you think about today’s environment, when you leave carrier X and go to carrier Y, you have to buy a new phone and change your number . . . It’s a real pain. With this inhibitor gone, companies have a choice between using a carrot or a stick to get you to stay or lure you to move. I think you’re going to see companies focusing on having great customer service, great coverage, fewer line drops, bill accuracy, and more convenience in monthly plans.

As a result, wireline and wireless carriers, desperate to keep their profits strong and steady, will provide customers with the benefits of lower prices, better services, and a wider array of innovative features.

2. Convenience

Prior to the implementation of WLNP, individuals were not likely to switch to different service providers because of the inconvenience and costs associated with such a move. They had placed their phone number on their résumés, business cards, and stationery. They had also given their phone number out to their family members, friends, and associates. The benefits of switching carriers were clearly outweighed by burdens.

WLNP now frees consumers of these troubles. It allows for individuals to port their numbers to different wireline and wireless carriers, when they so desire. Customers no longer have to pay for new cell phone offers are raining down on you today, but when the cell phone companies face real competition next month, it’s going to be like Niagara Falls.”

WLNP is anticipated to promote strong competition among telecommunications providers. In turn, this competition is expected to lead to lower prices for consumers as wireline and wireless carriers struggle to maintain a viable presence in the telephony industry. In fact, some telecommunications experts believe a “price war” will erupt among carriers. However, all agree that consumers will come out on top now that WLNP has been implemented. Even if service providers do not offer their customers outright cheaper rates, WLNP provides customers with a powerful negotiating tool, which helps to ensure that they receive the best service at the lowest prices.

To combat against number portability’s anticipated impact on churn, carriers offer many gimmicks to entice existing and potential customers into long-term contracts. For example, AT&T Wireless has recently offered $50 credits and air-

3. Lower Prices and More Choices

WLNP is anticipated to promote strong competition among telecommunications providers. In turn, this competition is expected to lead to lower prices for consumers as wireline and wireless carriers struggle to maintain a viable presence in the telephony industry. In fact, some telecommunications experts believe a “price war” will erupt among carriers. However, all agree that consumers will come out on top now that WLNP has been implemented. Even if service providers do not offer their customers outright cheaper rates, WLNP provides customers with a powerful negotiating tool, which helps to ensure that they receive the best service at the lowest prices.

To combat against number portability’s anticipated impact on churn, carriers offer many gimmicks to entice existing and potential customers into long-term contracts. For example, AT&T Wireless has recently offered $50 credits and air-


come).
line miles to some of their more valuable customers, and Sprint PCS offers consumers “free” air-time minutes starting at 7:00 p.m., rather than the traditional industry standard time of 9:00 p.m. In addition, many service providers are also giving customers new phones and more peak-time minutes at cheaper rates. Thus, it is clear that WLNP provides consumers with a vast amount of deals and services that have never before been offered.

4. Innovative Services

To ensure their survival in an enhanced competitive playing field, wireline and wireless carriers are developing new and creative products that they hope will garner attention and interest by both their potential and existing clients. For instance, Cingular Wireless (“Cingular”), in conjunction with SBC Communications (“SBC”), and Bell South have introduced a service called FastForward. With FastForward, wireless calls are forwarded to an individual’s wireline phone without using any of the wireless user’s minutes. Another inventive service is “push to talk.” This service equips consumers’ cellular phones with walkie-talkie type features. FastForward and “push to talk” are not the only features that carriers are developing for their consumers. Interestingly, as WLNP generates increasingly more competition in the telecommunications industry, wireline and wireless carriers will continue to create innovative services to remain competitive.

5. How the Telecommunications Industry Will Benefit From WLNP

While many wireline and wireless carriers strongly oppose WLNP, a few have recognized that it may lead to potential gains for their businesses. These carriers believe that WLNP will present them with a unique opportunity to distinguish themselves from their competitors and attract new customers in the process. Wireless carriers are especially eager to lure customers away from their wireline counterparts and from each other. They think WLNP presents them with the substantial prospect of being able to expand their clientele in a way that has never before happened. Also, many smaller telecommunications carriers hope that WLNP will encourage many customer costs a wireless carrier about $320 on average, once marketing costs and handset subsidies are factored in.” Id.

---

220 See Richtel, supra note 6, at A1. Customer churn has always been a problem in the telecommunications industry; however, WLNP is expected to accelerate it and thus, many service providers are eager to offer outstanding deals to customers as a means of retaining their business. Id.

221 See Spencer, supra note 218, at D1. With lowered prices and more service offerings by telecommunications carriers being a cellular customer has never been better. Customers should expect to see even more compelling deals arise once WLNP is in full effect. As Adam Guy, a wireless analyst with the Yankee Group, remarked, “The offers are getting bigger, and the carriers are getting more proactive.” Id.

222 Id.

223 See generally Anitha Reddy, Verizon Still Backs Number Portability for Cell Phones, NewsBytes, Aug. 15, 2003, available at 2003 WL 61569045 (explaining the various techniques wireless carriers are taking in order to combat the anticipated increase in churn that WLNP is expected to bring to the telecommunications industry once it is fully implemented).

224 Janice Francis-Smith, Cingular Offers Free Call Forwarding to Land Phones, J. Rec. (Okla. City), Sept. 9, 2003, at 1 (describing two inventive service offerings, FastForward and MinuteShare, created by Cingular, SBC, and Bell South in partnership with each other).

225 Id. FastForward is a way that Cingular, SBC, and Bell South are attempting to link wireline and cellular phones in an effort to preserve landlines’ presence in the telephone industry. Id.

---

226 See Moran, supra note 212, at D3; see also Reinhardt Krause, Verizon Gains Wireless Users, But Local Wireline Sales Fall; Overall Revenue Barely Rises; Company Likes its Progress in New Push to Talk Service that Competes with Nextel, Investor’s Bus. Daily, Oct. 29, 2003, at A04 (noting that in a period slightly over six weeks Verizon Wireless added 1.4 million subscribers and 100,000 “push to talk” customers).

227 See Moran, supra note 212, at D3. Other wireless carriers are eager to develop and introduce other services, like “push to talk,” in order to fully and efficiently compete with one another in the American marketplace. Id.

228 Id.

229 See id.

230 See generally Krane, supra note 199, at 36. Many telecommunications carriers are ardently opposed to WLNP, including AT&T Wireless and Sprint PCS. However, other carriers believe that WLNP may lead to new business and therefore support its implementation; see also Suzanne King, Number Portability Will Mean Lots of Wireless Switching, Kan. City Star, June 19, 2003, at C3. A report by the Management Network Group shows that out of 2700 individuals partaking in a survey, six percent plan to switch carriers the day following the deployment of WLNP, Nov. 25, 2003. Id.

231 See King, supra note 230, at C3. According to Dan Wilinsky, a spokesman for Sprint PCS, “You’re going to see signs of how we’re differentiating ourselves from the competition in the wireless industry. We’re going to take advantage of the uniqueness of our network as we’re battling for these customers.” Id.

232 See, e.g., Krause, supra note 226, at A04. Some wireless carriers have expressed their belief that landline customers are unlikely to switch service providers unless they can...
consumers to switch from their larger service providers.\footnote{See Krane, supra note 199, at 36; see also Valeric Lewis, Porting Without a Wire: Wireless Providers Confront Issues and Opportunity as WNP-Compliance Draws Near; Wireless Number Portability, Oct. 1, 2001, at 45.}

In addition to wireline and wireless carriers, others associated with the telecommunications industry stand to benefit from WLNP. Businesses that specialize in making telephony equipment, and companies with programs designed to aid the telecommunications industry with technical support should realize higher profits with the deployment of WLNP.\footnote{See, e.g., Krause, supra note 226, at A04 (explaining that mobile phone makers could see their businesses flourish because while WLNP will allow for consumers to keep their phone numbers, they will still be required to buy new telephones when they switch service providers).}

B. The Burdens of WLNP

1. How WLNP Will be Problematic for Consumers

While consumer advocates have praised WLNP for its benefits, many opponents have countered that the service creates more harm than good to customers and the telecommunications industry.\footnote{See Matthew Miller, Making Money from the Coming Wave of Unfaithful Cell Phone Customers, FORBES, Oct. 27, 2003, at 212 (describing how Telecordia Technologies will assist five of the nation’s top wireless carriers, i.e., Verizon, Nextel, Gingular, Sprint PCS, and T-Mobile, in number switching once WLNP takes effect on Nov. 24, 2003; see generally FutureDial Launches Wireless Local Number Portability Solution for Wireless Carriers, Retailers, and Corporations; Wireless Carriers, Retailers, and Corporate Telecom Departments Can Now Get Ready for Wireless Local Number Portability with the New Cell Phone Service Station, PR NEWSWIRE, Oct. 20, 2003, at 1; FutureDial, Inc., a wireless software developer, has created a new service offering to assist with number portability, called Cell Phone Service Station. This service will help wireless carriers’ staffs with transferring information between mobile phones once a number portability request has been made by a consumer. Id.}

They argue that consumers are being forced to pay for WLNP through fees established by wireline and wireless carriers to offset the costs incurred to implement the service.\footnote{Currently, telephone service subscribers pay taxes and fees, which may, in some cases, total approximately 25% of their monthly bills. Most telecommunications carriers are now also charging consumers a number portability fee, but each carrier charges at a different rate. Customers have little choice but to pay the fees associated with number portability, even if they never keep their phone number, thus, they believe WLNP will prove to be beneficial to them in securing a new type of customer base—dissatisfied wireline subscribers; see also Eric Hellweg, Number Portability Cometh, CNNMONEY.COM, Oct. 27, 2003, at http://money.cnn.com/2003/10/27/technology/techninvestor/hellweg (commenting that WLNP could prove to be a victory for wireless carriers as it may provide wireless customers with additional incentive to let go of their landlines in favor of cellular phones).}

a. Expenses

Currently, telephone service subscribers pay taxes and fees, which may, in some cases, total approximately 25% of their monthly bills. Most telecommunications carriers are now also charging consumers a number portability fee, but each carrier charges at a different rate. Customers have little choice but to pay the fees associated with number portability, even if they never keep their phone number, thus, they believe WLNP will prove to be beneficial to them in securing a new type of customer base—dissatisfied wireline subscribers; see also Eric Hellweg, Number Portability Cometh, CNNMONEY.COM, Oct. 27, 2003, at http://money.cnn.com/2003/10/27/technology/techninvestor/hellweg (commenting that WLNP could prove to be a victory for wireless carriers as it may provide wireless customers with additional incentive to let go of their landlines in favor of cellular phones).
intend on using the service. At this point, the federal government has not set a cap on how much carriers can charge their subscribers for WLNP. Additionally, the FCC has not investigated how much wireline and wireless carriers are charging consumers for number portability expenses. Thus, consumers are being arbitrarily charged for number portability and no one is monitoring whether they are paying too much money to their service providers.

b. Service Delays and Lower Quality Service

If consumers would like to keep their phone number when switching carriers, they should expect a delay in the time in which they have telephone service. This delay could last anywhere from a few hours to a few days. While this may not seem like a big problem for many, it could be a huge burden for those individuals wishing to retain access to emergency services, such as 911, during the porting interval. This delay may discourage many subscribers from switching providers, which would circumvent the goal of WLNP. Many individuals believe that customers must choose between number portability and better service capabilities. This stems from the fact that the funds devoted to improving services will be over-shadowed by the expenses of number portability.

2. How WLNP Will Be Problematic for Telecommunications Carriers

Wireline and wireless carriers are also burdened by WLNP. Many wireless carriers argue that the industry is already too competitive and now that WLNP has been implemented, service providers will be forced to dissolve or consolidate. Wireline carriers also fear WLNP because they believe it may give consumers additional incentive to remove their landlines in favor of their cellular phones. Enhanced competition is also expected to lead to higher churn rates. In addition, WLNP was expensive to implement and is costly to deploy to consumers. Carriers have to absorb these costs initially, although they are permitted to charge consumers a fee for porting their numbers. These issues clearly show that WLNP is not necessarily an outright blessing for the telecommunications industry or its consumers.

C. Hyper-Competitive Market

1. Wireless

Wireless carriers argue that WLNP is unnecessary because competition within the industry is already strong. Currently, the major national wireless companies and smaller regional carriers

---

244 Wireline and wireless carriers are free to impose as high or as low of a fee as they desire upon their customers.

245 Telecommunications carriers are not required to report their expenses to the agency. Id.

246 See generally Guerra, supra note 238, at 12 (detailing all of the problems and concerns that surround the implementation of WLNP).

247 Id. When an individual transfers their wireline phone number to a cellular phone there may be a significant period of time before he or she has access to telephone service. Thus, "911 operators may not be able to call back cell subscribers during emergencies if the number porting isn't complete." Id.

248 See Michael Altschul, Editorial, Wireless Portability Won't Be Answer for Everyone, ATLANTA J. CONST., June 30, 2003, at 11A ("Moreover, while wireless carriers are investing capital and hiring new employees so their customers can port numbers in a few hours, landline telephone companies are insisting it will take as long as four business days to process even a simple port."); see also Heather Forsgren Weaver, Industry Needs WLNP Clarification, RCR WIRELESS NEWS, July 14, 2003, at 3 (describing how wireless carriers believe there will be many problems with porting numbers resulting in delays).

249 See Meyer, supra note 240, at 6.

250 See CTIA Letter, supra note 18; (the FCC will have to make a decision for wireless carriers regarding "funding a new regulatory mandate or funding continued improvement of the quality of wireless service and the expansion of competition"); but cf: Glenn Bischoff, Crunching the Portability Numbers, WIRELESS REVIEW, Aug. 1, 2003, at 8 (describing how Greg Smith of Accudata Technologies believes "WLNP should be a snap to pull off, and for a lot less money than the industry thinks . . .").

251 See Meyer, supra note 240, at 6.

252 See Backover, supra note 5, at 1B.


254 See, e.g., Portability Proves Unprofitable, SEATTLE TIMES, Sept. 5, 2003, at C3 (describing how wireless carriers, such as, Cingular, AT&T Wireless, and Verizon, will spend a great deal of money over a period of time to fully comply with the FCC's mandate of WLNP).

255 See Mayk, supra note 191, at D1. Many wireless carriers are attempting to collect some of the money they have spent on number portability off of their customers by adding a monthly fee to their bills. Id.

256 See Ratner, supra note 10, at 1E.
aggressively compete with one another for customers.\textsuperscript{257} Wireless industry leaders also argue that WLNP is not needed because any more competition could lead to further consolidation.\textsuperscript{258}

2. \textit{Wireline}

WLNP is also meant to increase intermodal portability, which is the ability of a consumer to switch their phone number from their landline phone to a cellular phone, and vice versa.\textsuperscript{259} Portability is expected to generate some chaos in the telecommunications industry.\textsuperscript{260} For instance, now that WLNP has been implemented, wireline carriers stand to lose even more customers and revenue to their wireless counterparts.\textsuperscript{261} On the other hand, wireless carriers are fearful that their wireless competitors will not cooperate with the FCC mandate.\textsuperscript{262} Wireless carriers insist that issues pertaining to intermodal portability, \textit{i.e.}, rate center disparities, create an uneven competitive playing field between themselves and wireline providers.\textsuperscript{263} However, wireline carriers believe that their wireless counterparts' fears are "extremely one-sided."\textsuperscript{264} Wireline carriers argue that they have more to lose from WLNP.\textsuperscript{265} The FCC has recognized these concerns and has stated, "We have two systems that have grown up under different regulatory paradigms. We want to give consumers more choices about service providers."\textsuperscript{266} While these are great intentions, it is apparent that wireline carriers are going to be somewhat disadvantaged by WLNP.\textsuperscript{267}

3. \textit{Higher Churn Rates}

As of 2003, the wireless industry had a churn rate of 30%. Carriers argue that this is proof that more competition, via WLNP, is unnecessary.\textsuperscript{268} In addition, wireline carriers are also losing a large number of customers to their cellular counterparts.\textsuperscript{269} Now that WLNP has become available, customer churn is expected to increase substantially.\textsuperscript{270} Every year, increases in churn create $2 to $3 billion in expenses for wireline and wireless carriers is that under current FCC guidelines, LEGs are only required to port numbers to wireless carriers when that carrier has a switch in the consumer's rate center.) [hereinafter \textit{Wireline Carriers}].

\textsuperscript{257} See Glenn Bischoff, \textit{Wireless Carriers Square Off in LNP Spat}, TELEPHONYONLINE.COM, at http://www.wirelessreview.com/ar/telecom_wireless_carriers_square/ (Aug. 15, 2003); See Bill Menezes, \textit{The Heart of LNP}, WIRELESS WEEK, Jan. 28, 2002, at 33. "The record shows, in somewhat painful detail, given the churn figures carriers have been releasing ahead of their formal earnings reports, that competition is raging furiously in the wireless market." \textit{Id.}

\textsuperscript{258} See Wigfield, supra note 200.

\textsuperscript{259} See Guerra, supra note 238, at 12.

\textsuperscript{260} See Gartner Says \textit{Wireline-to-Wireless Local Number Portability Will Reshape U.S. Telecom Market}, BUS. WIRE, Aug. 27, 2003, at 5052. According to Ron Cowles, the research vice president for Gartner, "It will turn marketing strategies upside down and have a significant impact on customer calling patterns and areas, state and federal regulations, pricing and interconnection agreements, and product offerings and plans. It will also likely raise questions about market coverage, reach, telecom quality, and security." \textit{Id.}

\textsuperscript{261} See Douglass, supra note 6, at 11 (noting that regulators believe that once consumers can port their numbers between wireline and wireless carriers, many customers will be motivated to "cut the cord" and use only their cellular phones for telephone services); see also Rosenbluth, supra note 19 (arguing that intermodal portability will irreparably harm all wireline carriers as they struggle to maintain their presence in the telecommunications industry).

\textsuperscript{262} See Mayk, supra note 191, at 11 (explaining how wireless carriers stand to gain many more subscribers as a result of wireline to wireless number portability, but noting that wireless providers are afraid that their wireline counterparts will not adhere to the FCC's order to implement WLNP).

\textsuperscript{263} See \textit{Wireline Carriers Oppose CTIA Bid to Boost Wireline-to-Wireless LNP; States Want No Delay}, TELECOMM. REP., Mar.15, 2003, at 28 (describing that the problem regarding rate cen-
ers.\footnote{271} To halt customer churn, carriers must be willing to spend a significant amount of money to preserve their customer base and entice new clients.\footnote{272} If telecommunications providers cannot amortize these fees they may lose their business.\footnote{273} Since WLNP is expected to increase churn by ten percent within the next year alone,\footnote{274} this new service could lead to a major shake down of the telecommunications industry—leaving only a few carriers behind.\footnote{275}

4. Costs

In order for telecommunications carriers to implement and deploy WLNP on November 24, 2003, they had to spend approximately $1 billion.\footnote{276} To maintain the capability of porting customers’ phone numbers, it is estimated that the cost to the industry will be more than $20 billion over a four-year period due to expected increases in customer churn.\footnote{277} In 2003 alone, many wireless carriers spent a significant amount of money in ensuring that they possessed the capability to port telephone numbers by the November 24th deadline. For instance, Cingular spent close to $50 million on this endeavor.\footnote{278} Other wireless service providers have also spent considerable money on implementing WLNP.\footnote{279}

Now, that WLNP has become a reality, many costs remain.\footnote{280} These costs include initial expenses, fees associated with maintaining and attracting new customers, and charges accrued from maintenance of the porting technology and equipment. With all of these expenses, telecommunications carriers face significant struggles in maintaining their viability in the industry. If these costs cannot be met, wireless and wireline carriers will be forced into dissolution or consolidation.\footnote{281} Thus, it appears that WLNP is not a “dream” for many telecommunications service providers.

VI. CONCLUSION

On November 24, 2003, WLNP became a reality. As a result, consumers are reaping the benefits of true competition in telephony.\footnote{282} Companies are vying for their business offering everything from better deals, newer phones, and higher quality services at lower prices. Customers now have greater power to choose who they want as their wireless or wireline carriers as their numbers are no longer permitted to be held unreasonably captive by telecommunications companies.

Despite these benefits, porting telephone numbers has not been an easy task for either carriers or consumers. In fact, as of March 25, 2004, the FCC had received a total of 6,640 complaints regarding WLNP.\footnote{283} However, consumers remain satisfied with the service despite what has been a "draconian" outcome.\footnote{284}
burdensome procedure in many instances.\footnote{See, e.g., \textit{Le}, \textit{supra} note 280, at 42 (describing customer Catherine Owen's hassle with porting her telephone number). Regardless of the burdens, Owen has said, "I would do it over again because in the end, it turned out fine." \textit{Id.} However, Egan of Mobile Competency argues that WLNP "is a disaster and it continues to be chaos." \textit{Id.}}

Thus, while some problems may plague the deployment of WLNP, it has shown itself to be of great value to the American public. In the words of Mark Lowenstein, managing director of Mobile Ecosystem, "[T]he wireless consumer is in the driver's seat like never before." This was the goal the FCC envisioned when it mandated WLNP—a telecommunications industry ripe with competition leading to incredible benefits for consumers across the country.