Wireless Local Number Portability and Its Effect on Competition: Can There Be Too Much of a Good Thing?

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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

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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 Record (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, Leveraging LNP, Telephony, 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 WLNP, New York Times, Oct. 18, 2003, at Al (discussing how consumers will benefit by being allowed to retain their same phone number when they switch service providers); see also Elizabeth Douglass, Carriers Aim to Kill Number Portability, L.A. Times, Jan. 16, 2003, at Cl.

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).


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. Secondly, 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 wireless carriers in our society. WLNP will have on consumers and telecommunications carriers.
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.
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. 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.

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. Wireless carriers were especially enraged because the 1996 Act only specifically required that LECs implement number portability. No provision of the 1996 Act explicitly called for CMRS providers to implement LNP. Thus, wireless carriers believed the FCC had overstepped its authority in ordering them to offer LNP to their customers. Many wireless and wireline providers filed comments, petitions, and oppositions. In response, the FCC released its First Memorandum Opinion and Order on Reconsideration (“First Memorandum Opinion”).

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. 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. In addition, the FCC provided guidance to wireline and wireless carriers by setting forth particular plans regarding the implementation of LNP. 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. Minimum standards were also placed on telecommunications service providers to ensure LNP was implemented efficiently and without delay.
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.

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Notes:

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, TELEPHONY, Feb. 15, 1999 at 38 ("[T]he 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. Third, the carrier must show that it is in the public interest to allow for the forbearance. 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.

While Verizon decided to support WLNP after its loss in court, 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. These carriers sought guidance from the FCC to resolve these issues. For instance, wireless carriers were concerned about allowing customers to port their numbers if they still owed money on their bills. 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. Other issues were later clarified in the FCC’s Memorandum Opinion and Order, released on October 7, 2003. 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. Additionally, interconnection agreements, which are arrangements made between telephone carriers to allow their subscribers to dial each other, were unnecessary and if two wireless providers could not agree to certain terms, they still had to unconditionally port the customer’s phone number.

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. 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. Another petition, filed by CTIA, asked that the vice 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 Customers, 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).


Id. at para. 14. The FCC asserted that carriers were not permitted to hold on to a customer, regardless of the status of a customer’s account. However, the FCC also stated that it would not interfere with service providers’ rights to certain contract terms, such as “early termination fees, credit requirements, or other similar provisions.” Id.

See Newton, supra note 69 (providing a definition for interconnection agreements).

See Carrier Requests for Clarification, supra note 89, at para. 21. (“Of course, nothing would prevent carriers from entering into interconnection agreements on a voluntary basis; however, no carrier may unilaterally refuse to port with another carrier because that carrier will not enter into an interconnection agreement.”) Id.

See, e.g., Wireless, DAILY, Oct. 30, 2003, at 10. According to James Guest, the Chief Executive Officer of the Consumers Union, “This move is particularly disingenuous for the companies who have publicly told their customers they are prepared for Nov. 24th while they are privately negotiating eleventh-hour deals to stave off competition . . . Our question is simple: What are they afraid of? Competition?” Id. (detailing how a request for mandamus against

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83 Id.
84 Id.
85 Cellular Telecomms. & Internet Ass’n, 330 F.3d 502, 512 (D.C. Cir. 2003).
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).
87 See, e.g., In re Telephone Number Portability, Emergency Motion for Stay of the CMRS LNP Deadline, CC Dkt No. 95-116, 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.
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) service).
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.

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

The 1996 Act opened the door to competition in the telecommunications industry by ordering the FCC to implement technological advances, such as WLNP. 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. Prior to the passage of the 1996 Act, the Communications Act of 1934 ("1934 Act") was the sole piece of legislation focusing on telecommunications regulation. 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.

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

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. The FCC has tried to live up to Congress' mandate to "promote competition," by regulating and deregulating the telecommunications industry as it deems necessary. 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.

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.

See Mary E. Thyfault, Telecommunications—The Telecommunications Act's Promise—Carriers Say Competition Will Bring Low Prices and More Choice—But Don't Hold Your Breath, INFOP. 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. 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.

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See, e.g., James K. Glassman, Commentary, Telecom Waffling 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 WIREFLINE AND WIRELESS COMMUNICATIONS

Since the introduction of telephony services to the American public, competition has played an important role in shaping the telecommunications industry.117 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 telegraph119 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 Telegram & 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 125, 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.\footnote{See Stacy Schwartz, Telephone Competition Under the 1996 Telecommunications Act, 9 MEDIA L. & POL'Y 33, 34 (2001).} 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.\footnote{\textit{Id.}}

In the early part of the twentieth century, Congress imposed regulations on AT&T to curb its monopoly,\footnote{\textit{Id.}} but these efforts had little success.\footnote{\textit{Id.}} 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.\footnote{\textit{See Swedenburg, supra note 125, at 1424.} By defining telephone companies as common carriers, AT&T had to provide at a just cost interconnection service to any carrier who made a valid request. \textit{Id.}} However, state public utility commissions (“PUCs”) still maintained their role as regulators over all intrastate communications.\footnote{\textit{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 at a just cost interconnection service to any carrier who made a valid request. \textit{Id.}} Unfortunately, neither the FCC nor the state PUCs were able to break up AT&T’s monopoly\footnote{\textit{Id.}} and competition remained nonexistent.

Over the years, numerous complaints were brought against AT&T for unfair competition\footnote{\textit{See Schwartz, supra note 135, at 35.}} 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.\footnote{\textit{See Schwartz, supra note 135, at 35.}} As a result, the United States District Court for the District of Columbia issued a modification of final judgment (“MFJ”).\footnote{\textit{See Schwartz, supra note 135, at 35.} 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.\footnote{\textit{Id.}} In exchange for its divestiture, AT&T was allowed to provide long-distance telephone services without restriction.\footnote{\textit{Id.}} 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.\footnote{\textit{Id.}}

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.\footnote{\textit{Id.}} Additionally, if the RBOCs sought to entice customers with new services, they had to endure a lengthy process in the courts.\footnote{\textit{Id.}} 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.\footnote{\textit{Id.}}

B. The Creation of Wireless Telephony

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

The advent of wireless communications began in 1896 when Guglielmo Marconi received a patent for the first wireless transmitter—a radio. In 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 contrast, 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

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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 646-67.
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 wireline 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 More People Cutting Cords to Phones; Wireless Only Use Rising Among Young, PATRIOT-NEWS, Aug. 11, 2003, at A01 [hereinafter More People Cutting Cords] (detailing the decline of wireline subscribers as the market becomes increasingly inundated with individuals desiring to have their cellular phones as their primary and in some cases, their only telephone).


Id.

See More People Cutting Cords, supra note 160, at A01.


See Raymond Gifford, Editorial, Ground Line Versus Wireless: Idaho Wins With Deregulation, ID. STATESMAN, July 25, 2003, at 6 (discussing the advantages that the wireless industry has over traditional wired phones).

See, e.g., Christopher Stern & Yuki Noguchi, Traditional Phones Gain New Respect; Power Failures Cut Cell Signals, WASH. POST, Sept. 20, 2003, at E01 (detailing how traditional wired phones were able to keep people connected with one another via telephony during Hurricane Isabel).

Id. (stating some of the benefits that traditional wireline phones offer over their cellular counterparts); see also Sabatini, supra note 157, at E1; see also Newman, supra note 159, at A1; Williams, supra note 167, at B11.

Id.


Id.
communications market.\textsuperscript{175} Still, many individuals in the telecommunications industry argue that WLNP will be just another nail in the coffin for wireline.\textsuperscript{176}

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

Currently, "the most visible communications service"\textsuperscript{177} in America is enjoying a period of enormous growth.\textsuperscript{178} America has six national cellular providers and a variety of regional wireless carriers.\textsuperscript{179} 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.\textsuperscript{180} In addition, a study conducted by the Yankee Group found that cellular customers spend more time talking on their telephones than wireline subscribers.\textsuperscript{181} Additionally, in today’s society, CTIA reports that approximately 93\% of Americans can choose between three wireless carriers.\textsuperscript{182}

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 consumers.\textsuperscript{183} While this issue is important, it is not excessive for providers who are fixated on revenues.\textsuperscript{184} Moreover, these providers understand that if they want to maintain their dominance in telephony, they must be willing to contribute a significant amount of funds to improve services and keep consumers satisfied.\textsuperscript{185}

Despite all the luxuries associated with cellular phones, problems still abound that make landline phones formidable competitors. Examples of issues that are specific to wireless include poor reception, dead zones, dropped calls, and 911 services.\textsuperscript{186} Landlines do not face such problems. They can handle all but 1\% of phone calls during periods of heavy usage.\textsuperscript{187} Other problems for wireless carriers involve roaming fees, billing, and contract terms.\textsuperscript{188} While the FCC receives numerous complaints about wireless communications,\textsuperscript{189} wireless carriers are continuing to improve their services for their customers by offering new data features with their cellular plans and phones, such as weather information, games, and Internet access.\textsuperscript{190}

Some wireless carriers argue that WLNP is unnecessary, as the industry is already highly competitive.\textsuperscript{191} Consumer advocates rebuke these arguments claiming that the telecommunications industry can never be too competitive.\textsuperscript{192} They believe that WLNP is in the best interest of consumers.\textsuperscript{193} However, wireless carriers remain resolute in their belief that WLNP will usher in an era of more costs with lower revenues, leading to their

\textsuperscript{175} See id.
\textsuperscript{176} See Rosenbluth, supra note 19.
\textsuperscript{177} See id.
\textsuperscript{178} See id.
\textsuperscript{180} See id.
\textsuperscript{181} 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.
\textsuperscript{182} Id.
\textsuperscript{183} 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.
\textsuperscript{184} See Williams, supra note 167, at B11.
\textsuperscript{185} See id.
\textsuperscript{186} 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.
\textsuperscript{187} See Williams, supra note 167, at B11. In fact, Verizon plans its wired network for 99.99\% reliability. Id.
\textsuperscript{188} See Newman, supra note 159, at A1.
\textsuperscript{189} 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.
\textsuperscript{190} See Lynch Letter, supra note 12, at 1.
\textsuperscript{191} See Lauren Mayk, Mobile Phones, Mobile Numbers: Starting Nov. 24, When You Switch to a New Wireless Phone Carrier, Your Number Can Go with You, SARASOTA HERALD-TRIB. (Fla.), July 27, 2003, at D1.
\textsuperscript{192} See Lynch Letter, supra note 12, at 1.
\textsuperscript{193} Id.
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,\(^1\) it is easy to see why WLNP has generated such powerful reactions.\(^2\) 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.\(^3\) They assert that WLNP will create more competition in the telecommunications industry generating lower prices, greater offerings, and better service.\(^4\) Consumers, however, are not the only ones who stand to benefit from WLNP.\(^5\)

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.\(^6\) They view WLNP as an opportunity to be seized and not something to be fought against.\(^7\)

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.\(^8\) Also, telecommunications service providers stand to lose a significant portion of their customers and revenues to their competitors with WLNP.\(^9\) As a result, many wireline and wireless carriers may face dissolution or be forced to merge with other companies.\(^10\) Still, these burdens should not overshadow the benefits that WLNP will bring to the American public via increased competition.\(^11\)

A. The Appeal of WLNP

1. How Consumers Will Benefit from WLNP

WLNP has been described as a “customer’s dream.”\(^12\) 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.\(^13\) This competition, many consumer advocates suspect, will result in a windfall for consumers.\(^14\) As one telecommunications leader recently

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\(^1\) See Hudson, supra note 16, at K1.

\(^2\) See Richtel, supra note 6, at A1.

\(^3\) See Backover, supra note 5, at 1B (detailing how consumers will benefit from WLNP).

\(^4\) 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”).

\(^5\) 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).

\(^6\) 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).


\(^9\) 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).

\(^10\) See generally Rosenbush, supra note 19.

\(^11\) 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).

\(^12\) See generally Christopher Waldron, Comment, Permanent Number Portability: A Necessary Element for Effective Local Competition, 5-WTR MEDIA L. & POL’LY 17 (1996). “Without number portability there will be no true local competition.” Id.

\(^13\) 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.

\(^14\) Id.
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. \(^{209}\)

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. \(^{210}\)

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. \(^{211}\) They had placed their phone number on their résumés, business cards, and stationery. \(^{212}\) 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. \(^{213}\)

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. \(^{210}\)

New business cards and other similar materials when they switch service providers. \(^{213}\) Nor do they have to track down all of their loved ones and associates when they switch telephone carriers. Thus, the convenience associated with WLNP is anticipated to lead to greater consumer satisfaction. \(^{214}\)

3. Lower Prices and More Choice

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. \(^{215}\) In fact, some telecommunications experts believe a "price war" will erupt among carriers. \(^{216}\) However, all agree that consumers will come out on top now that WLNP has been implemented. \(^{217}\) 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. \(^{218}\)

To combat against number portability's anticipated impact on churn, carriers offer many gimmicks to entice existing and potential customers into long-term contracts. \(^{219}\) For example, AT&T Wireless has recently offered $50 credits and air-
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 carriers, 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, 2005, 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.

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). 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).

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.
consumers to switch from their larger service providers.\textsuperscript{235}

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,\textsuperscript{234} and companies with programs designed to aid the telecommunications industry with technical support should realize higher profits with the deployment of WLNP.\textsuperscript{235}

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.\textsuperscript{236} 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.\textsuperscript{237} Additionally, consumers who expect porting one’s phone number to be a simple process may be disappointed.\textsuperscript{238} Once porting begins, delays in telephone service can occur anywhere between a few hours to a few days.\textsuperscript{239} Also, some opponents have argued that consumers can experience diminished service quality because the funds that are normally used to improve such matters are now dedicated to WLNP.\textsuperscript{240}

a. Expenses

Currently, telephone service subscribers pay taxes and fees, which may, in some cases, total approximately 25% of their monthly bills.\textsuperscript{241} Most telecommunications carriers are now also charging consumers a number portability fee,\textsuperscript{242} but each carrier charges at a different rate.\textsuperscript{243} Customers have little choice but to pay the fees associated with number portability, even if they never consumers and discussing other problems that may occur because of WLNP).

\textsuperscript{234} See 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).

\textsuperscript{235} See, e.g., Kruse, 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).

\textsuperscript{236} See, e.g., Greg Scoblete, Verizon, WCG Trade FCC Filings Over Local Number Portability, Sept. 1, 2003, at 73 (mentioning some of the costs that the service providers will pass on to
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...
aggressively compete with one another for customers. Wireless industry leaders also argue that WLNP is not needed because any more competition could lead to further consolidation.

2. **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. Portability is expected to generate some chaos in the telecommunications industry. For instance, now that WLNP has been implemented, wireline carriers stand to lose even more customers and revenue to their wireless counterparts. On the other hand, wireless carriers are fearful that their wireline competitors will not cooperate with the FCC mandate. Wireless carriers insist that issues pertaining to intermodal portability, i.e., rate center disparities, create an uneven competitive playing field between themselves and wireline providers. However, wireline carriers believe that their wireless counterparts’ fears are “extremely one-sided.” Wireline carriers argue that they have more to lose from WLNP. 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.” While these are great intentions, it is apparent that wireline carriers are going to be somewhat disadvantaged by WLNP.

3. **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. In addition, wireless carriers are also losing a large number of customers to their cellular counterparts. Now that WLNP has become available, customer churn is expected to increase substantially.

Every year, increases in churn create $2 to $3 billion in expenses for wireline and wireless carriers is that under current FCC guidelines, LECs are only required to port numbers to wireless carriers when that carrier has a switch in the consumer’s rate center. (hereinafter *Wireline Carriers*). Id. (quoting Bell South in its assertion that CTIA’s belief of being competitively disadvantaged is “extremely one-sided”). See id.

See Van, supra note 155, at C1 (quoting John Muleta, chief of the Wireless Telecommunications Bureau, at the FCC); see also Mark Wigfield, Key Senator Won’t Delay Wireless Number Portability Now, DOW JONES NEWS SERV., Oct. 30, 2003, (on file with author) (discussing how four United States senators sent a letter to FCC Chairman Michael Powell asking that the FCC resolve issues pertaining to intermodal portability).

See generally Wireline Carriers, supra note 263, at 28; see also USTA Asks FCC for “Workable” LNP Approach, COMM. TODAY, Aug. 14, 2003, at 1 (discussing how WLNP can create problems for wireline carriers). But cf. Williams, supra note 165 (quoting Roberta Wiggins, the director of wireless research for the Yankee Group, as saying “[p]eople are loath to let go of their wireline phones”). See also Bischoff, supra note 257 (discussing the viewpoints of wireless carriers with divergent ideas, such as Verizon Wireless and Nextel); see also Ratner, supra note 10, at 1E (describing how wireless carriers believe that they will lose more customers once WLNP is implemented).


See, e.g., Tim McElligott, Churn Plus Portability Equals Y2K-03, WIRELESS REV., Sept. 1, 2003, available at 2003 WL 9297710 (noting that an estimated 45% of wireless customers will switch service providers within the first six months after WLNP becomes available).

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268 See Wigfield, supra note 200.

269 See Guerra, supra note 238, at 12.

270 See Gartner Says *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.” *Id.*

271 See Douglass, supra note 6, at C1 (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).

272 See Mayk, supra note 191, at D1 (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).

273 See *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.\textsuperscript{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.\textsuperscript{272} If telecommunications providers cannot amass these fees they may lose their business.\textsuperscript{273} Since WLNP is expected to increase churn by ten percent within the next year alone,\textsuperscript{274} this new service could lead to a major shakeout of the telecommunications industry—leaving only a few carriers behind.\textsuperscript{275}

4. Costs

In order for telecommunications carriers to implement and deploy WLNP on November 24, 2003, they had to spend approximately $1 billion.\textsuperscript{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.\textsuperscript{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.\textsuperscript{278} Other wireless service providers have also spent considerable money on implementing WLNP.\textsuperscript{279}

Now, that WLNP has become a reality, many costs remain.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{283} However, consumers remain satisfied with the service despite what has been a

\textsuperscript{271} Id.
\textsuperscript{272} See Backover, supra note 5, at 1B (explaining how carriers will attempt to prevent costs from rising exponentially—they will offer customers better deals and equipment).
\textsuperscript{273} See McElligott, supra note 270.
\textsuperscript{274} See Berg, supra note 14, at D1.
\textsuperscript{275} See id.; but cf. Miller, supra note 235, at 212. Some suspect that the telecommunications industry will remain fixed at 65% of consumers are locked into long-term contracts that they will probably adhere to in order to avoid paying hefty early termination fees. Id.
\textsuperscript{276} See Mayk, supra note 191, at D1.
\textsuperscript{277} See iGillott Research, supra note 253, at 5140.
\textsuperscript{278} See Reddy, supra note 223 (discussing how much some wireless carriers will spend to make sure their networks are correctly configured to allow for customers to port their numbers if they so desire). Cingular expects to pay $50 million a year for the next five years to maintain its ability to port numbers upon valid requests by consumers. Id.
\textsuperscript{279} Id. Verizon Wireless estimates that it will spend between $60 million to $80 million initially on WLNP implementation. Id.
\textsuperscript{280} Nguyen Q. Le, Lights! Camera! What Happened?, ORANGE COUNTY METROPOLITAN (Newport Beach, CA.), Feb. 5, 2004, at 42, "Carriers maintain three costs when it comes to wireless portability, upfront costs, maintenance costs and costs associated with subscriber churn."; see also Hudson, supra note 16. Travis Larson, a spokesman for CTIA, has said, "There’s a huge range of projected costs out there. All we know is that it’s an expensive mandate." Id.
\textsuperscript{281} See Meyer, supra note 240, at 6 (explaining that iGillott Research suggested that if carriers cannot meet the economic hardships placed upon them as a result of WLNP they can be forced into consolidation because otherwise they would not be able to "shoulder the financial burden"). See also Cingular to Pay $41 Billion for AT&T Wireless in All-Cash Deal, COMM. DAILY, Feb. 18, 2004 available at 2004 WL 60705118 [hereinafter Cingular] (describing Cingular’s acquisition of AT&T Wireless). WLNP can be inferred to have had an impact on this merger between two of the nation’s largest wireless carriers.
\textsuperscript{282} See Teresa McCusick, Got Phone? Now That You Can Easily Switch Cell Phone Plans, the Question is Whether you Should, FT. WORTH STAR-TELEGRAM, March 5, 2004, at 1 (describing how competition has increased in the telecommunications industry as a result of WLNP providing consumers with many options regarding their telecommunications carriers).
\textsuperscript{283} Wireless, COMM. DAILY, March 30, 2004 available at 2004 WL 60705528, "The wireless carriers most often mentioned in the complaints to date are AT&T Wireless, 2,293 times; Sprint PCS, 1,585 times; Verizon Wireless, 590 times; T-Mobile, 914; Cingular Wireless, 900; and Nextel 452." Most of these complaints concerned the time it took for carriers to port numbers between each other. Id.
burdensome procedure in many instances.\textsuperscript{284} 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.

\textsuperscript{284} See, e.g., Le, 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.” Id. However, Egan of Mobile Competency argues that WLNP “is a disaster and it continues to be chaos.” Id.