develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Intergovernmental relations, Phosphate fertilizers production, Reporting and recordkeeping requirements.

Dated: April 8, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601 and 7602.

Subpart X—[Amended]

2. In § 60.241, paragraphs (a) and (d) are revised to read as follows:

§ 60.241 Definitions.

* * * * *

(a) *Granular triple superphosphate storage facility* means any facility curing or storing fresh granular triple superphosphate.

* * * * *

(d) *Fresh granular triple superphosphate* means granular triple superphosphate produced within the preceding 72 hours.

3. In § 60.242, paragraph (b) is added to read as follows:

§ 60.242 Standard for fluorides.

* * * * *

(b) No owner or operator subject to the provisions of this subpart shall ship fresh granular triple superphosphate from an affected facility.

4. In § 60.243, paragraphs (b) and (c) are revised and paragraph (d) is added to read as follows:

§ 60.243 Monitoring of operations.

* * * * *

(b) The owner or operator of any granular triple superphosphate storage facility subject to the provisions of this subpart shall maintain a daily record of total equivalent P_2O_5 stored by multiplying the percentage P_2O_5 content, as determined by § 60.244(c)(3), times the total mass of granular triple superphosphate stored.

(c) The owner or operator of any granular triple superphosphate storage facility subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring device which continuously measures and permanently records the total pressure drop across any process scrubbing system. The monitoring device shall have an accuracy of ± 5 percent over its operating range.

(d) The owner or operator of any granular triple superphosphate storage facility subject to the provisions of this subpart shall develop for approval by the Administrator a site-specific methodology including sufficient recordkeeping for the purposes of demonstrating compliance with § 60.242 (b).

5. In § 60.244, paragraph (a)(2) is revised to read as follows:

§ 60.244 Test methods and procedures.

(a) * * *

(2) Fresh granular triple superphosphate is at least six percent of the total amount of triple superphosphate, or

* * * * *

[FR Doc. 97–9583 Filed 4–14–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; FCC 97–74]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The First Memorandum Opinion and Order on Reconsideration, (Order) released March 11, 1997, affirms and clarifies the Commission's rules implementing section 251(b)(2) of the Communications Act of 1934, as amended, which requires all LECs to offer long-term number portability in accordance with requirements prescribed by the Commission in the *First Report and Order*, 61 FR 38605 (July 25, 1996). The *First Report & Order* also requires all LECs to implement long-term number portability in the 100 largest Metropolitan Statistical Areas (MSAs) according to a five-phase deployment schedule that commences October 1, 1997, and concludes December 31, 1998. The Commission herein concludes, first, that Query on Release (QOR) is not an acceptable long-term number portability method. Second, the Commission extends the completion deadlines in the implementation schedule for wireline carriers by three months for Phase I and by 45 days for Phase II, clarifies the requirements imposed thereunder, concludes that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for portability, and addresses issues raised by rural LECs and certain other parties. Finally, the Commission affirms and clarifies its implementation schedule for wireless carriers.

DATES: Effective May 15, 1997. Information collections, however, which are subject to approval by the Office of Mangement and Budget (OMB), shall become effective upon approval by OMB, but no sooner than September 12, 1997. A document announcing the information collections approval by OMB will be published in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Jeannie Su, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Analysis

This is a summary of the Commission's Order on Reconsideration

adopted March 6, 1997, and released March 11, 1997.

Synopsis of First Memorandum Opinion and Order on Reconsideration

Introduction

1. On June 27, 1996, the Commission adopted the *First Report and Order and Further Notice of Proposed Rulemaking (First Report & Order),* 61 FR 38605 (July 25, 1996), in this docket implementing the requirement under Section 251(b) of the Communications Act of 1934, as amended (the Act), that all local exchange carriers (LECs) offer, ''to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' 47 U.S.C. 251(b). By this action, the Commission resolves certain petitions for reconsideration or clarification of the Commission's number portability rules adopted in the *First Report & Order*. First, the Commission concludes that Query on Release (QOR) is not an acceptable long-term number portability method. Second, the Commission extends the completion deadlines in the implementation schedule for wireline carriers by three months for Phase I and by 45 days for Phase II, clarifies the requirements imposed thereunder, concludes that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for portability, and addresses issues raised by rural LECs and certain other parties. Finally, the Commission affirms and clarifies its implementation schedule for wireless carriers.

Background

2. Pursuant to the statutory requirement of section 251(b), the *First Report & Order* requires all LECs to implement a long-term number portability method in the 100 largest Metropolitan Statistical Areas (MSAs) according to a phased deployment schedule that commences October 1, 1997, and concludes December 31, 1998. Thereafter, in areas outside the 100 largest MSAs, each LEC must make long-term number portability available within six months after a specific request by another telecommunications carrier. The *First Report & Order* also requires all cellular, broadband personal communications services (PCS), and covered Specialized Mobile Radio (SMR) providers to be able to deliver calls from their networks to ported numbers by December 31, 1998, and requires cellular, broadband PCS, and covered SMR providers to offer number portability throughout their networks and have the capability to support roaming nationwide by June 30, 1999.

3. Rather than choosing a particular technology for the provision of number portability, the Commission established performance criteria that any long-term number portability method selected by a LEC must meet. The Commission noted, however, that one of the criteria it adopted effectively precludes carriers from implementing QOR. The *First Report & Order* further concludes that long-term number portability should be provided through a system of regional databases that will be managed by one or more independent administrators selected by the North American Numbering Council (NANC).

4. The *First Report & Order* also requires wireline LECs, pending their deployment of a long-term number portability method, to provide currently available number portability measures upon request by another telecommunications carrier. Consistent with Section 251(e)(2) of the Communications Act, the *First Report & Order* sets forth principles that ensure that the costs of currently available measures are borne by all telecommunications carriers on a competitively neutral basis, and permits states to utilize various cost recovery mechanisms, so long as they are consistent with these statutory requirements and the Commission's principles. The Commission also concurrently adopted a *Further Notice of Proposed Rulemaking (Further NPRM),* 61 FR 38687 (July 25, 1996), seeking comment on cost recovery for long-term number portability.

Discussion

Issues Relating to Long-Term Number Portability Methods

Performance Criteria

5. *Criterion Four.* The Commission concludes that criterion four should be removed from the list of minimum performance criteria required for number portability, because all interconnected carriers are likely to rely upon each other's networks to some extent to process and route calls in a market in which a long-term number portability method has been deployed. For example, under both Location Routing Number (LRN) and Query on Release (QOR), the competitive LEC may be dependent upon facilities provided by the original service provider for the proper routing of all ported calls, because the original service provider is the entity that launches a query to the number portability database to obtain the location routing number for the dialed number. Furthermore, the Commission finds no basis in the record for drawing a principled distinction between permissible and impermissible levels of reliance on the original service provider's network. For these reasons, the Commission finds that criterion four—which requires that any number portability method may not ''require telecommunications carriers to rely on databases, other network facilities, or services provided by other telecommunications carriers in order to route calls to the proper termination point''—is, from a practical perspective, unworkable. Moreover, many of the Commission's concerns about reliance on a competitor's network (*e.g.*, the possibility of service degradation and call blocking) are addressed by criterion six. Thus, criterion four does not appear to be necessary in order to implement the statutory definition of number portability. In light of the Commission's decision to eliminate criterion four, the Commission concludes that AirTouch's requested clarification of criterion four is moot.

6. *Criterion Six.* With respect to criterion six, the Commission affirms its conclusion in the *First Report & Order* that any long-term number portability method must not result in any degradation of service quality or network reliability when customers switch carriers. The Commission further concludes, based on the record in this proceeding, that criterion six prohibits the use of QOR as a long-term number portability method. The Commission agrees with the commenters, primarily potential new providers of local exchange services (also referred to as ''competitive LECs''), that: (1) QOR results in degradation of service by imposing post-dial delay only on calls ported to new carriers; (2) if network reliability problems were to arise as a result of QOR, those problems would disproportionately affect customers who port their numbers; and (3) QOR should not be permitted on an intranetwork basis, because it is not ''competitively neutral.'' The Commission discusses each of these conclusions in more detail below.

Service Degradation

7. After considering petitioners' arguments and concerns, the Commission affirms its conclusion in the *First Report & Order* that, in accordance with criterion six, a long-term number portability method may not cause customers to experience ''a greater dialing delay or call set up time'' as compared to when the customer was with the original carrier. Criterion six implements the statutory requirement that consumers be able to retain their

numbers ''without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.''

8. At the outset, the Commission agrees with AT&T and Time Warner that the time it takes to receive a call is an important factor for many subscribers, particularly businesses that receive and respond to a large number of calls on a daily basis. If the party making a call to a business experiences additional delay because that business has switched carriers, that delay may negatively impact how the business is perceived, which, in turn, could dissuade the business from switching carriers in the first place. Therefore, the Commission clarifies that performance criterion six requires that calls *to* customers who change carriers (not just calls *from* customers who change carriers) must not take longer to complete merely because the customer has switched local service providers. In order to implement the statutory requirement that consumers should be able to change carriers and retain their original phone number without impairment of quality, reliability, or convenience, the Commission concludes that any post-dial delay imposed by a number portability method should be roughly equivalent for all consumers, whether they are calling to or from a ported or a non-ported number.

9. The Commission further concludes that consumers that switch telecommunications carriers and retain their numbers would experience ''impairment of quality'' if QOR were used, because the post-dial delay imposed by QOR is not equivalent for all consumers. Under QOR, calls that are placed to ported numbers must undergo a series of signalling and routing steps that result in longer post-dial delay than occurs for calls that are placed to non-ported numbers. No party disputes that QOR causes additional post-dial delay. There is disagreement, however, over the appropriate baseline for comparison. Proponents of QOR erroneously focus on the post-dial delay of alternative number portability technologies, comparing the incremental post-dial delay associated with a call to a ported number using LRN with that of a call to a ported number using QOR. That is not the statutory standard. The Commission agrees with AT&T and MCI that the proper comparison for incremental post-dial delay is the difference in delay between calls placed to ported numbers and calls placed to non-ported numbers, because that is the delay that occurs ''when switching from one telecommunications carrier to another.'' According to the most conservative estimates, calls to ported numbers from a network that uses QOR would experience an additional post-dial delay of approximately 1.3 seconds as compared to calls placed to non-ported numbers. Because the Commission finds that post-dial delay of 1.3 seconds is significant, it concludes that QOR violates the statutory definition of number portability and criterion six. By contrast, under LRN, there is no differential between ported and non-ported calls; for all calls, it takes the same amount of time to query the database for appropriate routing instructions. LRN therefore does not impair service quality when a customer changes carriers. Accordingly, the Commission concludes that LRN is consistent with the statutory definition of number portability and performance criterion six.

10. The Commission also rejects petitioners' argument that some degree of added post-dial delay should be acceptable, provided that it is not ''perceptible'' to the public. First, the Commission agrees with AT&T that the studies submitted by petitioners fail to demonstrate that 1.3 seconds of post-dial delay is imperceptible to the public. Second, the Commission agrees with those parties that contend that, even if the additional post-dial delay were imperceptible to the caller, QOR could adversely affect competitors, because the incumbent LEC could truthfully advertise the fact that calls to customers that remain on the incumbent LEC's network are completed more quickly than calls to customers that switch to a competitor's network. MCI points out that this could create a marketplace perception that competitive LECs are operating inferior networks, which could harm competition. In response, six incumbent LECs have voluntarily committed not to mention the call set-up time differences between LRN and QOR in their advertising materials. As AT&T and MCI point out, however, the incumbent LECs' voluntary commitment is limited to ''advertising materials,'' and therefore does not preclude them from mentioning call set up in all other aspects of their marketing, such as direct sales and telemarketing, news releases, studies commenced to compare competitors' service performance, and editorials. Furthermore, because only six incumbent LECs signed the letter, the Commission has no basis on which to conclude that all incumbent LECs will refrain from using the differences in call set-up time to influence marketplace perceptions and inhibit competition. Thus, the Commission declines to designate a threshold below which added post-dial delay is permissible. Moreover, given the Commission's concerns about these marketplace perceptions, the Commission finds U S West's suggestion that the Commission survey consumers to ascertain whether they can perceive the post-dial delay associated with QOR to be unnecessary.

Network Reliability

11. *QOR.* As discussed above, criterion six requires that no long-term number portability method may result in ''any degradation of service quality or network reliability when customers switch carriers.'' The Commission agrees with the opponents of QOR that technical concerns raised by QOR are more likely to impact ported numbers adversely than non-ported numbers. For example, QOR requires fewer SS7 links to the number portability database than LRN because of the lower number of queries to support. There is a risk, therefore, that an SS7 network engineered to accommodate a lower traffic level would not be able to handle an unexpected sharp increase in the number of calls to ported numbers. Such increases could occur in response to advertising or promotions by competitive LECs with ported numbers. Difficulties in querying the database may result in call blockage (*i.e.*, lost or incomplete calls) and increased post-dial delay, but only on calls to ported numbers. The Commission also notes that the apparent advantage of QOR in requiring fewer queries to the database is offset by the fact that it will require at least two additional signalling messages for each call to a ported number before routing instructions are obtained. This additional load on the signalling network creates the potential for reliability problems for ported calls. The Commission concludes that network reliability concerns posed by QOR violate criterion six and the statutory definition of number portability because, if any network problems arise as a result of QOR, they would disproportionately affect consumers who port their numbers.

12. *LRN.* As a related matter, proponents of QOR assert that deployment of LRN is more likely to result in network failure than if carriers are permitted to use the QOR enhancement to LRN. Although the proponents of QOR do not frame their arguments in terms of the performance criteria the Commission adopted in the *First Report & Order,* the thrust of their argument appears to fall within the scope of criterion five, which requires that no number portability method

should result in ''unreasonable degradation in service quality or network reliability when implemented.''

13. The Commission also concludes that petitioners have not demonstrated that LRN fails to meet criterion five. Although the initial deployment of any new technology may pose some risk to the network, the Commission is not persuaded that deployment of LRN will result in unreasonable degradation of network reliability when deployed under the revised schedule adopted in this *First Reconsideration Order.* Indeed, petitioners' concerns about LRN's impact on network reliability are mitigated by a number of factors. First, as the Commission noted previously, LRN has been examined extensively by a number of state commissions and industry workshops, and had been selected for deployment by at least six states prior to the adoption of the *First Report & Order.* Second, the Commission provided in the *First Report & Order* for a field test of LRN in the Chicago MSA (Chicago trial), which should help to protect against network reliability problems. If technical problems with LRN arise with respect to the Chicago trial, the Commission can take appropriate action at that time. Third, as discussed in more detail below, the Commission is extending the implementation schedule for Phase I to allow carriers additional time to test number portability in a live environment, and to take appropriate steps to safeguard network reliability. Indeed, the Bellcore study submitted by SBC supports the Commission's conclusion that additional time for testing, integration, and soaking (limited use of the software in a live environment for a length of time sufficient to find initial defects) will help to reduce the probability of network failure. Fourth, as the Commission clarifies below, its implementation schedule does not require a flashcut implementation on October 1, 1997, for those MSAs in the first phase of the deployment schedule. Rather, number portability may be implemented gradually throughout the initial phase, provided that implementation in the designated markets is completed by the end of that phase.

Intranetwork Use of QOR

14. Incumbent LECs ask the Commission to permit them to use QOR on all calls that originate on their network and are placed to numbers that originally were assigned to one of their end offices (*i.e.*, calls ''within their own network'' or ''intranetwork calls''). The Commission concludes that their request is misleading insofar as it implies that only calls to and from their own customers would be affected. In fact, calls that are placed to numbers that have been ported would require a query to the number portability database after the originating switch is notified by the terminating switch in the incumbent LEC's service area that the called number has been ported. The Commission agrees with MCI that, as customers subscribe to alternative carriers, the only calls that will remain ''within'' the incumbent LEC's network will be calls from one of the incumbent LEC's customers to another. As discussed above, however, the call to the ported number would experience increased post-dial delay because of the additional signalling and routing preparations required by QOR. Such disparity in treatment between ported and non-ported numbers violates criterion six and the statutory definition of number portability.

Public Interest Considerations

Overview

15. Petitioners further assert that, regardless of the Commission's performance criteria, incumbent LECs should not be prohibited from using QOR as a number portability method, because deployment of QOR serves the public interest. First, they claim that QOR will result in significant cost savings. Second, they claim that permitting incumbent LECs to use QOR will make it easier for them to meet the Commission's implementation schedule.

16. As an initial matter, the Commission disagrees with the petitioners' premise that LECs should be permitted to implement QOR regardless of the performance criteria, if the Commission determines that QOR serves the public interest. As stated above, the Commission concludes that QOR violates criterion six, which is required by the statute. Thus, the Commission is not at liberty to apply a public interest analysis that could result in an abrogation of the statutory mandate. Nevertheless, because the parties raised public interest concerns, the Commission addresses them in order to establish that its decision to prohibit QOR is not contrary to the public interest.

17. *Discussion.* As most carriers recognize, LRN is the more economical way to provide long term number portability once ported numbers for a given switch reach a certain level, although the point at which it becomes more cost-effective to use LRN rather than QOR remains in dispute. From an economic perspective, the question is whether the present discounted value of the cost of initially deploying LRN is less than the present discounted value of the cost of deploying QOR initially and LRN at some later date. Proponents of QOR contend that the use of the QOR enhancement to LRN would result in real cost savings, not just a short-term deferral of expenses, because the number of ported calls in some areas will never reach the level where it is more cost effective to disable QOR and complete the build-out necessary to support LRN. The Commission concludes, however, that the statutory scheme that Congress has put in place should, over time, result in vigorous facilities-based competition in most areas, and therefore LRN will be the most economical long-term solution. Thus, deploying QOR would most likely result in short-term cost savings, not overall cost savings. In fact, at least one incumbent LEC, Ameritech, has already decided that it is beneficial to deploy LRN from the outset, rather than converting from QOR to LRN at some later date. Even if facilities-based competition does not develop in the immediate future, however, the Commission concludes that the harm that QOR imposes on competitors outweighs the benefit of allowing incumbent LECs to defer the cost of implementing a superior long-term number portability solution.

18. Moreover, the Commission is not convinced that the incumbent LEC's estimates of the short-term savings associated with QOR are reliable. The Commission is particularly concerned by the fact that the cost savings estimates submitted by incumbent LECs have varied significantly over the course of this proceeding. In some cases, estimates from the same carrier have changed by 100 percent or more. Further, the changed estimates have not moved in the same direction; some carriers' estimates of the cost savings increased drastically and other carriers' estimates decreased equally drastically. While the Commission recognizes that carriers have worked over time to refine their projections, the wide variation in the estimates submitted by individual carriers at different points in this proceeding raises questions about the reliability of these estimates. Furthermore, the fact that some carriers have not explained the basis for the assumptions underlying their estimates precludes the Commission from conducting an independent evaluation of the reasonableness and reliability of their projected cost savings and, consequently, limits the weight the

Commission can reasonably assign to those estimates.

19. In addition, MCI alleges that the cost savings that would be realized by permitting the deployment of QOR are far less than the estimated $54 million to $136.3 million in annual savings alleged by individual incumbent LECs. The LECs collectively estimate they would save between $624 and $649 million if permitted to use QOR. MCI has provided figures indicating that the LECs collectively would save only $50 million, but that figure only includes estimated savings for four out of the seven carriers. MCI was unable to estimate cost savings for three carriers due to insufficient information in the record. For three of the carriers for which MCI was able to provide estimates, however, these estimates ranged from 20% to 23% of the corresponding LEC figure. For the fourth carrier, MCI argued that QOR actually would cost more than LRN.

20. MCI's calculation of the asserted cost savings associated with QOR challenges a key assumption underlying the incumbent LECs' estimates. Specifically, MCI claims that the LECs substantially underestimate the number of transactions (*i.e.*, queries) per second (tps) that an SCP pair can perform and, consequently, their estimate of the number of SCP pairs that must be deployed to provide LRN is overstated. AT&T also alleges that the incumbent LECs' savings estimates do not take into account offsetting increases in additional switching facilities costs that would be required for QOR. MCI and AT&T further contend that the incumbent LECs' estimates of the relative costs of deploying LRN and QOR must be adjusted downward to account for revenues that they will receive to perform database queries at the request of rural and other LECs that do not have the capability to perform such queries themselves. Although incumbent LECs would obtain such revenues with both the LRN and QOR methodologies, the revenue stream is likely to be significantly greater with LRN because the number of database queries is likely to be much greater. Indeed, Pacific, a proponent of QOR, acknowledges that its estimate of the cost savings associated with QOR would be reduced by as much as $18 million if such revenues were included in the estimate. In view of the significant changes in the estimates of the cost savings associated with QOR submitted by individual incumbent LECs over the past months, a lack of data explaining many of the assumptions underlying their estimates, and the questions raised by MCI and AT&T with respect to specific aspects of the estimates, the Commission finds, on balance, that the incumbent LECs have not substantiated their claim that deployment of QOR will produce significant cost savings.

21. Moreover, a recent submission by Illuminet, a provider of SS7, database, and other services to independent LECs and other entities, casts doubt on the reasonableness of one of the most basic assumptions underlying the incumbent LECs' estimates of the relative costs of QOR and LRN. Incumbent LEC estimates assume that the LEC number portability architecture will be deployed through a network of SCPs, and that a major cost driver of LRN is the number of SCPs needed to handle increased traffic volumes. On the other hand, Illuminet advocates using an STP-based architecture, in which call routing information from the regional database is transferred to a carrier's STP instead of an SCP, and the SCP is not involved in processing the number portability query. Illuminet asserts that STPs are designed specifically to do ten-digit translations such as LRN query processing and can process number portability queries at a much faster rate than SCPs. In contrast, SCPs are designed to support multiple call processing applications and process significantly fewer queries per second. Carriers using an STP-based architecture, therefore, would need to purchase and install a relatively smaller number of STPs instead of the larger number of SCPs alleged by the LECs, and would not need to purchase and install additional SS7 links between the SCPs and STPs. Thus, according to Illuminet, use of an STP-based architecture would reduce dramatically the cost of LRN. In response, Pacific acknowledges that a combined STP-SCP approach may reduce some costs, but that expenses related to upgrading switch processors, links, and existing STPs will still be substantial. Although the Commission acknowledges that carriers deploying LRN will incur costs other than those associated with SCPs, the Commission agrees with Illuminet that an STP-based approach should reduce the relative cost differential between LRN and QOR.

Conclusion

22. Congress recognized that there are costs associated with the implementation of local number portability. Although carriers may realize some short-term cost savings if permitted to use QOR instead of LRN, the exact amount of savings from utilizing QOR is unclear. Even if the cost savings figures submitted by the LECs were correct, the Commission believes that the benefits to consumers of such savings do not outweigh the harm that QOR would impose on competitive LECs, the cost of disrupting state efforts to implement LRN, or any delay in implementation that might result from such disruption. Thus, the Commission concludes that permitting carriers to deploy QOR as a long-term number portability method does not serve the public interest.

Implementation Schedule for Wireline Carriers

Background

23. In the *First Report & Order,* the Commission required local exchange carriers operating in the 100 largest MSAs to offer long-term service provider portability, according to a phased deployment schedule commencing on October 1, 1997, and concluding on December 31, 1998. The Commission required deployment in one specified MSA in each of the seven BOC regions by the end of fourth quarter 1997 (''Phase I''), 16 additional specified MSAs by the end of first quarter 1998 (''Phase II''), 22 additional specified MSAs by the end of second quarter 1998 (''Phase III''), 25 additional specified MSAs by the end of third quarter 1998 (''Phase IV''), and 30 additional specified MSAs by the end of fourth quarter 1998 (''Phase V''). The Commission noted that, in establishing the deployment schedule, it relied upon representations of switch vendors regarding the dates by which the necessary switching software will be generally available for deployment. In particular, vendors estimated that they could begin to make software for at least one long-term number portability method generally available for deployment by carriers around mid-1997. In addition, a carrier may file a specific request for number portability beginning January 1, 1999, for areas outside the 100 largest MSAs, and each LEC must make long-term number portability available in that MSA within six months after the specific request. The Commission also directed the carriers that are members of the Illinois Commerce Commission Local Number Portability Workshop (ICC Workshop) to conduct in the Chicago MSA, concluding no later than August 31, 1997, a field test of LRN or another technically feasible long-term number portability method that comports with the performance criteria. The Commission noted that section 251(f)(2) of the Act permits a LEC with fewer than two percent of the country's total installed subscriber lines to petition a state commission for suspension or

modification of the interconnection requirements of sections 251 (b) and (c).

24. The Commission delegated to the Chief, Common Carrier Bureau, the authority to monitor the progress of LECs implementing number portability, and to direct carriers to take any actions necessary to ensure compliance with its deployment schedule. The Commission also delegated to the Chief, Common Carrier Bureau, the authority to waive or stay any of the dates in the implementation schedule, for a period not to exceed nine months (*i.e.*, no later than September 30, 1999, for the MSAs in Phase V of the deployment schedule), as is necessary to ensure the efficient development of number portability. In the event a carrier is unable to meet the Commission's deadlines for implementing a long-term number portability method, it may file with the Commission, at least 60 days in advance of the implementation deadline, a petition to extend the time by which implementation of long-term number portability in its network will be completed. The Commission emphasized, however, that carriers are expected to meet the prescribed deadlines, and a carrier seeking relief must present extraordinary circumstances beyond its control in order to obtain an extension of time. The Commission required a carrier seeking such relief to demonstrate through substantial, credible evidence the basis for its contention that it is unable to comply with the deployment schedule.

Deployment Only in Requested Switches

25. *Discussion.* The Commission agrees with the majority of the parties commenting on this issue that it is reasonable to focus initial efforts in implementing number portability in areas where competing carriers plan to enter. This approach will permit LECs to target their resources where number portability is needed and avoid expenditures in areas within an MSA in which competitors are not currently interested. The Commission further agrees that such a procedure will foster efficient deployment, network planning, and testing, reduce costs, and lessen demands on software vendors. Moreover, the Commission believes that limiting deployment to switches in which a competitor expresses interest in number portability will address the concerns of smaller and rural LECs with end offices within the 100 largest MSAs that they may have to upgrade their networks at significant expense even if no competitors desire portability. Limiting deployment to switches in which a competitor expresses interest in deployment will be consistent to a large extent with procedures suggested by Ameritech and BellSouth and already considered by several state commissions, as well as the Commission's past practice in implementing conversion to equal access for independent telephone companies.

26. The Commission therefore concludes that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of portability. The Commission leaves it to the industry and to state commissions to determine the most efficient procedure for identifying those switches in which carriers have expressed interest and which will be deployed with number portability according to the original deployment schedule for the 100 largest MSAs. The Commission finds, however, that any procedure to identify and request switches for deployment of number portability must comply with certain minimum criteria to ensure that minimal burden is imposed upon carriers requesting deployment in particular switches, and that carriers that receive requests for deployment in their switches have adequate time to fulfill the requests. As explained below, the Commission requires that: (1) Any 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.

27. First, any wireline carrier that is certified (or has applied for certification) to provide local exchange service in a state, or any licensed CMRS provider, must be given a reasonable opportunity to make a specific request for deployment of number portability in any particular switch located in the MSAs in that state designated in the *First Report & Order.* According to the Act, any carrier that desires number portability from a LEC must be able to obtain portability, in accordance with the requirements established by the Commission. 47 U.S.C. 251(b)(2). A state commission, however, may review whether the requests made by a carrier are unreasonable, given the state commission's knowledge of that carrier's plans to enter the state. Based on the limited information available to the Commission at this time, the states that are reviewing seemingly unreasonable requests appear to be acting in good faith to accommodate carriers' interests in number portability capabilities. If the Commission receives evidence in the future that states are unreasonably limiting deployment, then it can revisit this issue at that time.

28. Second, a carrier must make its specific requests for deployment of number portability in particular switches at least nine months before the deadline for completion of implementation of number portability in that MSA. The Commission concludes that this deadline will enable a LEC to plan ahead for the deployment of number portability in multiple switches in a given MSA. The Commission encourages carriers to make such requests earlier than the nine-month deadline to give the LEC that operates the switch in which portability is requested more time to implement number portability capabilities. In addition, carriers may agree among themselves, or state commissions may require carriers, to comply with a deadline for submitting requests that is more than nine months prior to the implementation deadline.

29. The Commission encourages carriers, before requests for deployment are submitted, to seek to reach a consensus on the particular switches that initially will be deployed with number portability. The Commission notes, moreover, that the state commission may decide, or carriers affected in the state may agree, that it would be preferable for the state commission to aggregate the requests to produce a master list of requested switches. In addition, the Commission concludes that carriers may negotiate private agreements specifying that a carrier will not request that certain switches be deployed according to the Commission's schedule if the LEC from which deployment is requested agrees to deploy other number portability-capable switches, either inside or outside the 100 largest MSAs, at an earlier date than the deadlines in the Commission's schedule. For example, NEXTLINK suggests waiving the scheduled deployment deadlines for switches in the 100 largest MSAs for which no competitor expresses interest in deployment, and allowing carriers instead to deploy switches outside the 100 largest MSAs in which a competitor expresses interest, according to the deadlines for those unrequested switches within the 100 largest MSAs.

30. Third, after carriers have submitted their requests, a carrier must make readily available upon request to any interested parties a list of its switches for which number portability has been requested and a list of its switches for which number portability has not been requested. The Commission finds that simplifying the task of identifying the switches in each MSA in which number portability is initially scheduled to be deployed is consistent with its policy of facilitating the deployment of number portability in areas where new competitors plan to enter.

31. Fourth, carriers must be able to request at any time that number portability be deployed in additional switches. LECs must provide portability in these additional switches upon request, after the deployment deadline mandated by the Commission's schedule for that MSA, within the time frames that the Commission adopts here, unless requesting carriers specify a later date. Although carriers may make specific requests for deployment in additional switches in a particular MSA at any time, the time frames set forth below will commence after the deadline for deployment in that particular MSA in the implementation schedule. The Commission agrees with Sprint and Time Warner that specific time frames within which number portability must be deployed in all switches that were not initially requested are necessary to ensure that competitive LECs can be certain that portability will be available in areas in which they plan to compete and can formulate their business plans accordingly. Absent this certainty, competing carriers would have an incentive to request more switches during the initial request process, including those serving markets which they do not plan to enter in the near future, in order to ensure deployment of portability in any switch in which they might ever want portability. The Commission finds, therefore, that establishing specific time frames for deployment in all additional switches will benefit competitive LECs by ensuring that portability will be available to them at a designated future time, and will benefit incumbent LECs by reducing their initial deployment burdens.

32. The Commission finds that the time frames developed by the carriers participating in the ICC Workshop generally successfully balance the needs of competitive LECs for certainty of deployment and the burdens faced by incumbent LECs in deploying number portability in additional switches that require different levels of upgrades. The Commission therefore adopts, with slight modification, the time frames developed by the ICC Workshop for the conversion of additional exchanges: (1) Equipped Remote Switches within 30 days; (2) Hardware Capable Switches within 60 days; (3) Capable Switches Requiring Hardware within 180 days; and (4) Non-Capable Switches within 180 days. For example, if carriers request deployment in a certain number of switches in the Pittsburgh, PA MSA nine months before that MSA's Phase III deadline of June 30, 1998 (*i.e.*, they make requests by September 30, 1998), and a carrier requests on April 1, 1998, deployment in an additional Equipped Remote Switch in Pittsburgh, then the additional switch must be equipped with number portability capability on or before July 30, 1998 (*i.e.*, 30 days after June 30, 1998). The Commission notes that the ICC Workshop developed the time frames for the first three switch categories, but did not reach agreement on a time frame for converting a Non-Capable Switch. Since the Commission finds, as discussed above, that specific time frames for deployment of all additional switches are necessary, the Commission finds that it is reasonable to allow no more time for deployment of any switches within the 100 largest MSAs than is allowed for deployment of switches outside the 100 largest MSAs. Deployment in additional switches will be less burdensome for carriers with networks within the 100 largest MSAs that have already made network-wide upgrades, *e.g.*, SCP hardware and OSS modifications, to support number portability in the initially requested switches.

33. Carriers seeking relief from these deadlines may file a petition for waiver under the procedures set forth in the *First Report & Order.* The Commission notes that the deadlines for switches in categories (1) and (2) are shorter than switches in categories (3) and (4) because the former require less extensive upgrades. The Commission realizes that the shorter deadlines for switches in categories (1) and (2) do not allow time for carriers to file a petition for waiver under the procedure established in the *First Report & Order* on the grounds of extraordinary circumstances that prevent it from complying with the Commission's deployment requirements. The Commission therefore will suspend the deadlines for switches in categories (1) and (2) during the period that the Commission is considering a carrier's petition for waiver. For example, if a LEC receives a request for deployment in an additional switch that is an Equipped Remote Switch, and five days later the LEC files a petition for waiver, then the LEC need not deploy number portability in the switch until 25 days after the Commission denies its petition, or until the date specified in the Commission's grant of the petition.

34. The Commission agrees with MCI that, after portability has been introduced in an MSA, the incremental cost and resources needed to add additional end offices are relatively minor because most costs, *e.g.*, SCP hardware and signalling links, OSS modifications, and shared regional database costs, will have already been incurred. Number portability, consequently, can be deployed more quickly in the switches for which number portability is requested after the initial deployment of number portability. The Commission therefore declines to adopt suggestions by USTA and GTE to allow a longer time after receipt of a request for deployment of number portability capability in switches not in the initial deployment.

35. The Commission emphasizes that a carrier operating a non-portability-capable switch must still properly route calls originated by customers served by that switch to ported numbers. When the switch operated by the carrier designated to perform the number portability database query is non-portability-capable, that carrier could either send it to a portability-capable switch operated by that carrier to do the database query, or enter into an arrangement with another carrier to do the query.

36. The Commission concludes that permitting carriers to specify those switches within the 100 largest MSAs in which they desire portability is more workable than the procedures proposed by some petitioners that would require incumbent LECs to file waiver requests for specific switches for which the incumbent LECs believe that no competitor is interested. A waiver procedure would create a period of uncertainty for both the incumbent LEC and the competitive LEC as to whether portability would actually be deployed in that switch. Moreover, a waiver procedure would burden the incumbent LEC with preparing and filing the petition for waiver, require that the Commission review the petition, and potentially burden the state commission with determining whether there is actual competitive interest in the switch. In addition, these proposals by petitioners appear to assume generally that no competitive LEC would oppose the waiver petition; if this is not the case, then a waiver procedure would burden competing carriers with

challenging the waiver. A waiver procedure would also burden both competing carriers and consumers by hampering competitive entry into the market while waiting for a determination by the Commission or a state commission.

37. The Commission believes that the criteria set forth above adequately address MCI's concern that requesting carriers would bear an unnecessary burden of justifying deployment in each end office and endure uncertainty as to deployment. The only burden on requesting carriers is to identify and request their preferred switches. In addition, carriers have a time frame for deployment of the initially unrequested switches within the 100 largest MSAs. Competitive LECs can thus market their services as widely as they desire with assurance that number portability will be available in the areas where, and at the times when, they desire to compete. As an additional safeguard against anticompetitive abuses of the procedures to identify and request those switches for which a carrier desires deployment of number portability, the Commission delegates authority to the Chief, Common Carrier Bureau, to take action to address any problems that arise over any specific procedures.

Extension of Implementation Schedule

38. *Discussion.* The Commission grants, with some modifications, the requests by BellSouth and other parties to extend the deadlines for completion of deployment of long-term number portability for Phases I and II, as set forth in appendix E of this *First Reconsideration Order.* On reconsideration, the Commission extends the end date for Phase I by three months. Thus, deployment in Phase I will now take place from October 1, 1997, through March 31, 1998. The Commission takes this action because it is now persuaded that initial implementation of this new number portability technology is likely to require more time than subsequent deployment once the technology has been thoroughly tested and used in a live environment. For example, initial implementation of this new technology is likely to involve more extensive testing, and may require extra time to resolve any problems that may arise during the testing. It therefore is appropriate that Phase I be longer than subsequent phases in the schedule to allow carriers to take appropriate steps to safeguard network reliability.

39. The Commission also notes that the participants in the Chicago trial have recently informed it that the completion date of the Chicago trial, previously scheduled for August 31, 1997, has been postponed by approximately one month until September 26, 1997. While the Chicago trial participants have committed to providing the Commission with weekly updates on trial progress, the full report on the Chicago trial that participants had planned to file September 30, 1997, is now scheduled to be filed October 17, 1997. Consistent with this notification by the Chicago trial participants, the Commission hereby extends the deadline for carriers that are members of the ICC Workshop to conduct a field test of any technically feasible long-term database method for number portability in the Chicago, Illinois, MSA and to report the results of that trial. While the Commission understands that participants in the Chicago trial are prepared to commence implementation in Chicago immediately upon conclusion of the trial and still expect to meet the original December 31, 1997, deadline, the Commission recognizes that carriers operating in other MSAs may require additional time to interpret the results of the Chicago trial in light of their individual network configurations. Finally, the Commission finds some merit in CBT's argument that an extra 90 days for initial implementation may permit small and mid-size LECs to reduce their testing costs by allowing time for larger LECs to test and resolve the problems of new technology. Given all the factors listed above, the Commission concludes that a three-month extension of the time period for initial deployment in Phase I markets appropriately safeguards network reliability, and therefore is warranted.

40. The Commission also extends the end date for Phase II by 45 days. Thus, deployment in Phase II will now take place from January 1, 1998, through May 15, 1998. The Commission extends Phase II to alleviate potential problems that may arise if deployment in markets in Phase I and II must be completed on the same date. Requiring that implementation be completed in a greater number of markets by a specific deadline may make that deadline more difficult to meet (*e.g.*, by straining vendor resources to perform software upgrades in any given period of time). For the same reason, the Commission declines to extend Phase II by 90 days as requested by BellSouth, as such an extension would establish the same deadline for completion of deployment for Phases II and III. The Commission concludes that the modest adjustment of the deadline for Phase II adopted in this *First Reconsideration Order* will more effectively stagger the deadlines for deployment in different markets than BellSouth's proposal.

41. The Commission clarifies, per BellSouth's request, that implementation of number portability for a phase may begin at any time during that phase, provided that implementation in the designated markets is completed by the end of that phase. Contrary to the allegations of Pacific and other parties, number portability thus need not be introduced ''on virtually the same day'' in the seven of the largest MSAs, especially because it may now be phased into the first markets more gradually over six months, instead of three.

42. The Commission strongly advises carriers to begin implementation early in each phase, however, as they will not be able to obtain a waiver of the schedule if they cannot demonstrate, through substantial, credible evidence, at least sixty days before the completion deadline, the extraordinary circumstances beyond their control that leave them unable to comply with the schedule, including ''a detailed explanation of the activities that the carrier has undertaken to meet the implementation schedule prior to requesting an extension of time.'' This is especially applicable to Phases I and II, given that the Commission now is granting carriers additional time during those phases specifically so that they can implement number portability more gradually. The Commission will not look favorably upon a waiver request if the carrier has not taken significant action to implement portability, if the carrier does not place orders with switch manufacturers in a timely manner, or, for example, if the carrier requests a waiver for a Phase II market because it only began preparing for implementation for a Phase I market in the first quarter of 1998, and then claims that it has too many software upgrades to perform from January through May 15, 1998. Carriers should be able to identify any specific technical problems that may necessitate an extension of the deployment deadline for Phase I during the four months between the scheduled end of the Chicago trial and the deadline for requesting an extension for Phase I, especially because carriers will be receiving initial feedback from testing in Chicago far in advance of the Chicago trial's conclusion. As noted above, the participants in the Chicago trial have committed to providing weekly progress reports as the trial progresses. Initial tests of LRN hardware and software on a subset of switches in the Chicago MSA began in January 1997. Intra-network and database testing

in Chicago is scheduled to take place for several months before the start of the Chicago trial mandated by the Commission.

43. The Commission's decision to extend the deadlines for completing Phases I and II of its deployment schedule reflects the fact that the Commission considers network reliability to be of paramount importance. Consistent with that commitment, in the *First Report & Order* the Commission delegated authority to the Chief, Common Carrier Bureau, to monitor generally the progress of number portability implementation and take appropriate action, as well as establishing a procedure for individual LECs to obtain an extension of the deployment deadlines as necessary for their specific markets. The Chief, Common Carrier Bureau, will monitor the weekly reports from the Chicago trial and any other pertinent developments. The Commission finds that further adjustment of the deployment schedule in response to these developments is more properly a matter for the Chief, Common Carrier Bureau, to handle as number portability technology is tested and carriers discover any actual, specific difficulties. If significant problems arise during the Chicago trial, or other significant implementation problems arise during Phase I, the Chief, Common Carrier Bureau, has the authority to adjust the schedule for the Chicago trial or the deadline for Phase I implementation, as appropriate, to ensure network reliability.

44. Although the findings of the Bellcore study submitted by SBC were vigorously challenged by AT&T and MCI, it bears mention that extending the Phase I completion date by three months is responsive to the recommendation in the Bellcore study that the Commission should allow additional ''time for testing, integration, and soaking (limited use of the software in a live environment for a length of time sufficient to find initial defects) of the software.'' In fact, the Bellcore study specifically recommended that the Commission ''(e)xtend the time interval for introduction of (number portability) by 3 months.'' The Commission's extension of Phase I, in combination with its conclusion that carriers need provide portability only in requested switches, also allows carriers the flexibility to introduce portability more gradually, beginning with a subset of switches within the MSA.

45. The Commission denies the petitions to extend the deployment deadlines for all markets or otherwise provide wireline carriers greater flexibility in the schedule to implement long-term number portability. Although the Commission concludes that initial implementation of this new number portability technology may require additional time, the Commission is not persuaded that implementation in subsequent phases, after the technology has already been tested and installed in the initial markets, need be delayed to the extent requested by some petitioners. The Commission finds on the basis of the record in this proceeding that the implementation schedule as revised in this *First Reconsideration Order* is reasonable, and that granting any further delay of the schedule at this time is premature and unnecessary, especially because there is still approximately one year before LECs must complete deployment for the earliest phase. Petitioners have only speculated that unpredictable events may, at some point in the future, generally delay implementation, and have not shown that a specific factor will render the later schedule impossible to meet for any particular reason, much less for any particular LEC.

46. Petitioners' arguments are even more speculative given that their implementation obligations are likely to be significantly lighter than they assume, because, as the Commission discusses above, LECs are required to deploy number portability only in switches for which they receive requests for number portability capability. Moreover, even if the problems identified by petitioners do in fact develop, in the *First Report & Order* the Commission established a procedure for LECs to obtain an extension of the deployment deadlines as necessary, and delegated authority to the Chief, Common Carrier Bureau, to monitor the progress of number portability implementation.

47. Furthermore, the Commission finds it unnecessary to act on GTE's request that it clarify that LECs may obtain a waiver if they cannot meet the schedule for reasons beyond their control. The waiver procedure established in the *First Report & Order* for extending deployment deadlines as necessary provides an effective vehicle for addressing any problems in implementing number portability that LECs can document. In particular, if problems necessitating delay do arise, the Chief of the Common Carrier Bureau may waive or stay any of the dates in the implementation schedule, as the Chief determines is necessary to ensure the efficient development of number portability, for a period not to exceed nine months. In the event a carrier is unable to meet the deadlines for implementing a long-term number portability method, it may file with the Commission, at least 60 days in advance of the deadline, a petition to extend the time by which implementation in its network will be completed. *See* ALTS Opposition at 6 n.7 (arguing that incumbent LECs should try to settle their claims with carriers and vendors and develop a record before challenging the schedule); Sprint Opposition at 13–14. The Commission notes that carriers may file petitions for waiver of the deployment schedule more than 60 days in advance of an implementation deadline, and thus receive relief earlier, if they are able to present substantial, credible evidence at that time establishing their inability to comply with the deadlines.

48. The Commission rejects USTA's proposal to give every state commission and/or workshop the authority to extend independently the deployment deadlines according to their assessments of the level of local competition in an area. As set forth above, the Commission requires carriers to identify the switches in which they desire number portability capability well before the deadline for deployment in a particular MSA. The Commission finds that this requirement will enable LECs to deploy number portability in areas in which local competition is likely to develop at an early stage, while relieving LECs of the obligation to install the capability in areas that competitive LECs have no initial interest in serving. This requirement, in the Commission's view, addresses USTA's concerns by striking a reasonable balance between a LEC's interest in avoiding unnecessary switch upgrades, and a competitive LEC's interest in having assurances that number portability will be available in areas where it plans to compete to serve existing LEC customers.

49. The Commission declines to expedite the Chicago trial, as requested by NYNEX. The *First Report & Order* scheduled the completion date for the Chicago trial for as early as appeared reasonably possible at that time. Given the record before it now, the Commission concludes that it would not be possible to accelerate the commencement of that trial. Moreover, the Commission agrees with the Chicago trial participants that it would be inappropriate to shorten or delete any of the planned testing.

50. The Commission also declines to order additional field tests, as requested by NYNEX. The requirement that there be a field trial in Chicago is only intended to ensure that at least one field trial is held to identify technical

problems in advance of widespread deployment, which will provide all carriers, as well as the Commission, with information on implementation. All carriers will have an opportunity to monitor testing in Chicago and evaluate the results of the testing on an ongoing basis. The Commission finds, moreover, that LECs currently have access to additional information concerning the impact of number portability on their systems, because many LECs are, and have been for some time, analyzing extensively implementation and inter-carrier OSS impact of number portability under the auspices of state and industry fora. As the Commission stated in the *First Report & Order,* it does not routinely schedule field trials in rulemaking proceedings; its requiring a field trial in the Chicago MSA is an exceptional step that the Commission adopted to safeguard against any risk to the public switched telephone network. The need for any further trials should be determined by the industry.

51. To the extent that other networks differ in design or switch use or other relevant variables, the Commission does not preclude the testing of either software or hardware in other areas or by other carriers, either contemporaneously with the Chicago trial or even before that trial begins. Indeed, the Commission encourages carriers to test portability within their own networks as early as possible. For example, Bell Atlantic plans to do ''first office application'' testing in Gaithersburg, Maryland, from July 15, 1997, to August 30, 1997. The Gaithersburg test, therefore, will have been completed seven months before Bell Atlantic's March 31, 1998, deadline to complete implementation in Philadelphia, the market in which it must deploy long-term number portability in Phase I under the revised schedule. In any event, carriers should have the opportunity to perform their own testing, including on ''live traffic,'' well before the date by which they must request any waiver of the Phase I implementation requirements.

52. The Commission also declines to adopt NYNEX's proposal to deploy portability in smaller MSAs instead of the largest ones during Phase I of the deployment schedule. At this time, there is only speculation that starting with the most populous MSAs will result in technical problems. Indeed, carriers are further ahead in preparing for number portability in many of the larger MSAs than in the smaller ones; for example, several state commissions that had addressed the issue of number portability before issuance of the *First Report & Order* had ordered that deployment begin in several major cities that are currently in Phases I or II of the schedule. Therefore, switching the deadlines of those larger MSAs with other, smaller MSAs now would, at a minimum, disrupt planning by competitive LECs and state commissions in those jurisdictions. Moreover, the three-month extension of the end date of Phase I, in combination with the Commission's conclusion that carriers need provide portability only in requested switches, will serve much the same purpose as NYNEX's request by allowing carriers the flexibility to begin deployment in a subset of switches within each of the Phase I MSAs and gradually increase coverage over the six-month period. In addition, the Commission does not prohibit, but rather encourages, carriers to take whatever additional actions they believe are necessary to safeguard their networks, including testing deployment of portability in one of their smaller MSAs before or during Phase I of the deployment schedule. For example, Bell Atlantic is testing number portability in the smaller market of Gaithersburg, MD before Phase I.

53. The Commission also denies NYNEX's request that it explicitly encourage states to be flexible in opting out of the regional database or choosing to construct joint databases, or to work with less active neighboring states to establish regional databases. The Commission finds that the *First Report & Order* allows sufficient flexibility for states to opt out of the regional databases. In addition, NYNEX's concern that the NANC would not resolve the database issues in time for carriers to meet the deployment schedule is now largely moot, given the recent activities of the NANC. The NANC has committed to making its final recommendations to the Commission on the database system by May 1, 1997. The NANC's working groups and task forces relating to number portability are already organized and holding regular meetings to resolve the database issues. The Local Number Portability Administration Selection Working Group projects that all seven regional databases will be ready for testing on dates ranging from April 18, 1997, to July 1, 1997, and will be ready to support number portability deployment on or before October 1, 1997, in accordance with the deployment schedule set forth in the *First Report & Order.*

54. Finally, the Commission clarifies that the first performance criterion, that any method ''support existing network services, features, and capabilities,'' refers only to services existing at the time of the *First Report & Order.* The Commission cautions LECs that problems in implementing their chosen number portability method due to modifications necessitated by the introduction of a new service or technology will not justify a delay of the deployment schedule. The Commission declines, however, specifically to prohibit the introduction of any new service that is incompatible with LRN, as the *First Report & Order* did not adopt LRN or mandate use of any specific long-term number portability method.

Acceleration of Implementation Schedule

55. *Discussion.* The Commission denies the petitions for reconsideration that advocate: (1) Accelerating deadlines for certain MSAs; (2) allowing carriers with operational networks in the 100 largest MSAs and the authority to provide local exchange service to request portability in any MSA in the 100 largest MSAs beginning July 1, 1997, and requiring LECs to fulfill such requests on a specified date six or more months in the future; (3) adding MSAs outside the largest 100 MSAs to the initial deployment schedule; or (4) combining the deadlines of consolidated MSAs. The current schedule is based on the projected availability of switch software, and recognizes the burden on carriers serving multiple regions and the fact that more significant upgrades may be necessary for carriers operating in smaller areas. Petitioners have not made a showing that the necessary software, hardware, and other resources will be available earlier in areas originally scheduled for later deployment, or will be available in quantities sufficient to support deployment in additional areas, particularly in areas outside the 100 largest MSAs. If such hardware and software is not available for deployment early enough or in sufficient quantities to support deployment in additional areas, then accelerating deployment deadlines for smaller MSAs may divert these limited resources from deployment in other, larger MSAs, and thus delay deployment of number portability where a greater population might benefit from competition.

56. For the reasons stated above, the Commission also rejects ACSI's request to require deployment in Phase I in certain additional markets in which the incumbent LECs are not BOCs. In addition, the Commission continues to believe that non-BOC incumbent LECs, most of which have more limited resources than the BOCs, should have additional time to upgrade and test their networks. Moreover, the Commission

concludes above that LECs need deploy number portability in the 100 largest MSAs only in switches for which another carrier has made a specific request for the provision of portability. Requiring that additional MSAs be deployed in Phase I does not give sufficient notice to carriers or states to establish switch-requesting procedures in MSAs for which they had no previous notice that deployment was required in Phase I. The Commission also declines to adopt USTA's proposal that state commissions be free to accelerate the deployment schedule. While the Commission is sympathetic to the desires of some states to advance deployment where actual competitive interest exists, it concludes that the schedule adopted in the *First Report & Order,* as modified in this *First Reconsideration Order,* represents a reasonable balancing of competing interests, and carriers need to have certainty that these are the requirements with which they must comply. The Commission's *First Report & Order* was silent on the issue of whether states could accelerate the deployment schedule. The Commission therefore grandfathers any state decisions to accelerate deployment for a particular market from one phase to an earlier phase that were adopted prior to release of this *First Reconsideration Order.*

57. The Commission does not prohibit LECs from agreeing to accelerate implementation, either for specific MSAs or specific switches within MSAs. The Commission finds, however, that acceleration of the schedule is more properly determined by private agreements among carriers. Competitive LECs are free to negotiate with incumbent LECs for deployment of number portability ahead of the Commission's schedule. Moreover, to the extent that carriers agree to ''swap'' the implementation deadlines for specific MSAs or switches within MSAs, they can jointly file specific waiver petitions to do so.

58. The Commission grants in part the petitions of ACSI, KMC, and NEXTLINK to allow requests for deployment of number portability in areas outside the 100 largest MSAs to be submitted earlier than January 1, 1999. The Commission therefore modifies its rules to permit carriers to submit requests for deployment of number portability in areas outside the 100 largest MSAs at any time. The Commission declines, however, to require that deployment be completed within six months of request for requests filed prior to January 1, 1999. This modification to the rules will benefit all parties, because receiving earlier notice to upgrade switches will likely ease a LEC's compliance burden and help to ensure that competing carriers will receive portability within the time requested. Finally, the Commission clarifies that, contrary to KMC and ACSI's view, the current schedule does not leave an implementation gap between December 31, 1998, and July 1, 1999, since implementation of requests for deployment of number portability in areas outside the 100 largest MSAs filed on or before January 1, 1999, will occur during the first six months of 1999. KMC and ACSI's suggestion that the Commission permit requests for markets outside the 100 largest MSAs beginning July 1, 1998, and require fulfillment of those requests within six months, would actually require that those smaller markets be completed at the same time as the MSAs in the last phase of the deployment schedule, thus sharply increasing the burden on carriers during that phase.

Exemptions for Rural and/or Smaller LECs

59. *Discussion.* As set forth above, the Commission grants the petitions to limit deployment of portability to those switches for which a competitor has expressed interest in deployment by concluding that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of portability. The Commission finds that this modification to the rules should address the concerns of parties that urge it to waive number portability requirements for rural and/or smaller LECs serving areas in the largest 100 MSAs until receipt of a request.

60. The Commission denies the petitions that request a blanket waiver of the number portability requirements for rural and/or smaller LECs that receive a request for deployment in one of their switches. The Commission finds that such a blanket waiver is unnecessary and may hamper the development of competition in areas served by smaller and rural LECs that competing carriers want to enter. If, as petitioners allege, competition is not imminent in the areas covered by rural/smaller LEC switches, then the rural or smaller LEC will not receive requests from competing carriers to implement portability, and thus will not need to expend its resources, until competition actually develops in its service area. In addition, by that time extensive non-carrier-specific testing will likely have been done, and carriers' testing costs will likely be smaller.

61. Further, to the extent that portability is requested in a rural or smaller LEC's switch, and that LEC has difficulty complying with the request, it has two avenues for relief. Pursuant to the *First Report & Order,* a LEC may apply for an extension of time on the basis of extraordinary circumstances beyond its control that prevent it from complying with the Commission's deployment schedule. In addition, under section 251(f)(2), a LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide (an ''eligible LEC'') may petition the appropriate state commission for suspension or modification of the requirements of section 251(b). The state commission shall grant such petition to the extent that, and for as long as, the state commission determines that such suspension or modification: (A) Is necessary to avoid a significant adverse economic impact on end users, to avoid imposing an unduly economically burdensome requirement, or to avoid imposing a technically infeasible requirement; and (B) is consistent with the public interest, convenience and necessity. 47 U.S.C. 251(f)(2). The state commission is required to act on the petition within 180 days. 47 U.S.C. 251(f)(2). The Commission believes eligible LECs will have sufficient time to obtain any appropriate section 251(f)(2) relief as provided by the statute, especially since the state commission can suspend the application of the deployment deadlines to that LEC while it is considering the LEC's petition for suspension or modification of the requirements. Section 251(f)(2) provides that ''[t]he State commission shall act upon any petition filed under (section 251(f)(2)) within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.'' 47 U.S.C. 251(f)(2).

62. If, however, a competitor is interested in number portability in a particular switch operated by a rural or smaller LEC, and the LEC cannot demonstrate extraordinary circumstances justifying an extension of the deployment requirements, and the state commission denies a Section 251(f)(2) request for suspension or modification, the Commission finds no statutory basis for excusing such a LEC from its obligations to provide number portability. In addition, issuance of a blanket exemption in this proceeding would be inconsistent with the *Local Competition Order,* 61 FR 45476

(August 29, 1996), in which the Commission generally declined to adopt national rules regarding Section 251(f), or provide for different treatment of rural and smaller carriers. Rather, Congress established a specific procedure under which state commissions are empowered to make case-by-case decisions on the application of number portability requirements to eligible LECs pursuant to Section 251(f)(2), based on the particular facts and circumstances presented. Eligible LECs that have been granted suspension or modification of number portability requirements under Section 251(f)(2) are not bound by the implementation schedule until the state commission removes the suspension.

63. The comments of some parties in this proceeding appear to reflect a misapprehension of the scope of section 251(f). Sections 251(f)(1) and 251(f)(2) apply to different classes of carriers, and provide different types of relief. Section 251(f)(1) applies only to rural LECs, and offers an exemption only from the requirements of section 251(c). In contrast, section 251(f)(2) applies to all LECs with less than two percent of the nation's subscriber lines. In addition, section 251(f)(2) establishes a procedure for requesting *suspension or modification* of the requirements of sections 251(b) *and* 251(c). Number portability is an obligation imposed by section 251(b). Because section 251(f)(1) does not exempt rural LECs from the requirements of section 251(b), there is no exemption for rural LECs of their number portability obligations under section 251(f)(1). The only statutory avenue for relief from the section 251(b) requirements specifically for eligible LECs is to request suspension or modification of the number portability requirements under the procedure established by section 251(f)(2).

64. The plain text of the statute refutes JSI's argument that section 251(f)(1) exempts rural LECs from number portability requirements. JSI states that the section 251(f)(1) exemption from interconnection requirements permits the Commission to impose number portability requirements upon rural LECs only to the extent it is technically feasible for rural LECs to provide portability without having to upgrade their networks to utilize databases, install SS7 or AIN capabilities, or install and furnish functions requiring new switching software. JSI adds that this exemption may be terminated only by a state commission.

65. Because sections 251(b) and 251(c) are separate statutory mandates, the requirements of section 251(b) apply to a rural LEC even if section 251(f)(1) exempts such LECs from a concurrent section 251(c) requirement. To interpret section 251(f)(1) otherwise would undercut section 251(b) and, in this case, would effectively preclude any provision of long-term number portability by rural LECs until termination of the section 251(f)(1) exemption by a state commission. The Commission finds such an interpretation to be contrary to Congress's mandate that all LECs provide number portability, and Congress's exclusion of the section 251(b) obligations, including the duty to provide number portability, from the section 251(f)(1) exemption for rural LECs.

66. Moreover, under JSI's interpretation, the only carriers that would have to provide number portability would be incumbent LECs that are not exempt under section 251(f)(1). Non-incumbent LECs, as well as rural incumbent LECs that are exempt under section 251(f)(1), would not have to satisfy the requirements of section 251(b) and, consequently, would not have to provide number portability. This directly contradicts section 251(b)(2), which specifically requires ''all local exchange carriers'' to provide number portability. 47 U.S.C. 251(b)(2). Section 251(c) sets forth ''additional obligations'' that apply only to incumbent LECs, whereas section 251(b) sets forth obligations that apply to all LECs.

67. Even if the Commission were to agree with JSI's statutory interpretation that rural LECs that are exempt from the section 251(c) requirements are also exempt from any requirements of sections 251 (b) and (c) that overlap, petitioners have not demonstrated that the section 251 (b) and (c) obligations in fact overlap. To provide long-term number portability under section 251(b)(2), LECs obviously must install and use any necessary databases, SS7 or AIN capabilities, or switching software. Section 251(c), in contrast, requires incumbent LECs to provide unbundled access to network elements, including call-related databases. *See* 47 U.S.C. 251(c)(3). Number portability does not require any provision of unbundled access to these elements. Moreover, to provide number portability, carriers can interconnect either directly or indirectly as required under section 251(a)(1). *See* 47 U.S.C. 251(a)(1). For example, a smaller rural carrier and a competing carrier might interconnect indirectly by both establishing direct connections with a third carrier and routing calls to each other through that third carrier. The smaller rural carrier could then provide portability by performing its own database queries and then routing the call to the competing carrier through that third carrier. Another option would be for the smaller rural LEC to contract with that third carrier to perform its queries and the necessary routing. Section 251(c), in contrast, imposes an additional requirement on incumbent LECs to provide ''equal'' interconnection at ''any technically feasible point within the carrier's network,'' which a carrier does not need to provide number portability. *See* 47 U.S.C. 251(c)(2). Thus, sections 251(a) and (b), not section 251(c), require that carriers interconnect and install and use necessary network elements to provide number portability. Rural LECs are not exempt from section 251(a) or (b) requirements under section 251(f)(1). *See* 47 U.S.C. 251(f)(1). The Commission therefore denies JSI and USTA's request to ''automatically exempt'' rural LECs from the number portability requirements to the extent that they are exempt from the requirements of section 251(c) under the provisions of section 251(f)(1).

68. The Commission also denies the requests that it clarify that smaller and/or rural LECs serving areas that only partially overlap one of the 100 largest MSAs need not deploy number portability until receipt of a *bona fide* request. The Commission believes that, when determining whether a suspension or modification is necessary to avoid imposing an unduly economically burdensome requirement, pursuant to section 251(f)(2), state commissions would likely consider whether an eligible LEC's presence in the MSA is truly *de minimus* and whether such a LEC is entitled to a suspension or modification of the number portability requirements on this basis.

69. Finally, NTCA/OPASTCO erroneously claims that the *First Report & Order* violates the Regulatory Flexibility Act (RFA) because its Final Regulatory Flexibility Analysis (FRFA) does not address the impact of the rules on small incumbent LECs, and is, therefore, inconsistent with the *Local Competition Order.* As the Commission stated in the *First Report & Order's* FRFA, small incumbent LECs do not qualify as small businesses because they are dominant in their field of operation. The *Local Competition Order's* FRFA likewise set forth the Commission's view that small incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses due to their dominance in their field of operation. The Commission in that proceeding specifically stated that it

was including small incumbent LECs in its FRFA only because two parties had especially questioned that conclusion in that proceeding's Initial Regulatory Flexibility Analysis (IRFA), and it wanted to ''remove any possible issue of RFA compliance.'' In contrast, no party commented on the IRFA in this proceeding. The Commission attaches, nevertheless, a Supplemental Final Regulatory Flexibility Analysis that further explains its analysis of the rules' impact upon rural and smaller carriers and the basis for selecting the particular options that the Commission has selected. This analysis takes into account NTCA/OPASTCO's specific claim raised in its petition for reconsideration, in order to ''remove any possible issue of RFA compliance.'' The Commission also notes that its establishment of a procedure whereby number portability would only be deployed in requested switches effectively grants the relief sought by NTCA/OPASTCO, the sole petitioner on this issue.

Implementation Requirements for Intermediate (N–1) Carriers

70. *Discussion*. The Commission denies Pacific's request that it require all N–1 carriers, including interexchange carriers, to meet the implementation schedule the Commission established for LECs. Such a requirement is not mandated by the 1996 Act, which subjects only LECs, not interexchange carriers engaged in the provision of interexchange service, to the number portability requirements. 47 U.S.C. 251(b)(2). Moreover, petitioners have not demonstrated a need for the Commission to impose such requirements under its independent rulemaking authority under sections 1, 2, and 4(i) of the Communications Act of 1934, as amended. 47 U.S.C. 151, 152, 154(i). In that regard, the Commission is not convinced that Pacific's hypothetical situation, whereby the N–1 carrier would not perform any queries and the original terminating LEC would thus have to perform all the queries not performed by the originating LEC, will arise often. The industry already appears to favor using the N–1 scenario, under which the N–1 carrier performs the database query, as indicated in the majority of comments on call processing scenario issues received pursuant to the original *Notice of Proposed Rulemaking*. The vast majority of interLATA calls are routed through the major interexchange carriers, and the two largest interexchange carriers, at least, claim they plan to deploy portability as soon as possible. Therefore, most interLATA calls will be queried by the major interexchange carriers, not the incumbent LECs. Moreover, as the Commission stated in the *First Report & Order*, it wishes to allow carriers the flexibility to choose and negotiate among themselves which carrier shall perform the database query, according to what best suits their individual networks and business plans. Finally, the Commission declines to address Pacific's argument that, if the terminating carrier is forced to perform queries, that would violate the fourth performance criterion. Since the Commission is eliminating the fourth performance criterion, Pacific's argument is moot.

71. The Commission clarifies, however, per NYNEX's request, that if an N–1 carrier is designated to perform the query, and that N–1 carrier requires the original terminating LEC to perform the query, then the LEC may charge the N–1 carrier for performing the query, pursuant to guidelines the Commission will establish in the order addressing long-term number portability cost allocation and recovery.

Implementation Schedule for Wireless Carriers

72. *Background*. In the *First Report & Order*, the Commission required all cellular, broadband PCS, and covered SMR carriers to have the capability of querying the appropriate number portability database systems in order to deliver calls from their networks to ported numbers anywhere in the country by December 31, 1998. The term ''covered SMR'' means either 800 MHz or 900 MHz SMR licensees that hold geographic area licenses or incumbent wide area SMR licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services. This term does not include local SMR licensees offering mainly dispatch services to specialized customers in a non-cellular system configuration, licensees offering only data, one-way, or stored voice services on an interconnected basis, or any SMR provider that is not interconnected to the public switched network. 47 CFR 52.1(c). The Commission notes that several parties have petitioned for reconsideration of the definition of ''covered SMR.'' The Commission will address this issue in a subsequent order. These wireless carriers may implement the upgrades necessary to accomplish the queries themselves, or they may make arrangements with other carriers to provide that capability. In addition, wireless carriers subject to these rules are required to offer service provider portability throughout their networks, including the ability to support roaming, by June 30, 1999. In the *First Report & Order*, the Commission delegated authority to the Chief, Wireless Telecommunications Bureau, to waive or stay any of the dates in the implementation schedule for a period not to exceed nine months, and to establish reporting requirements in order to monitor the progress of wireless carriers. 47 CFR 52.11 (c), (e). In the event a carrier subject to these requirements is unable to meet the Commission's deadlines for implementing a long-term number portability method, it must file a petition to extend the time by which implementation must be completed with the Commission at least 60 days in advance of the deadline, along with an explanation of the circumstances and the need for such an extension. 47 CFR 52.11(d).

73. *Discussion*. The Commission declines at this time to alter the implementation schedule imposed by the *First Report & Order* for wireless carriers. The Commission recognizes that the wireless industry has lagged behind the wireline industry in developing a method for providing number portability, and that the wireless industry faces special technical challenges in doing so. Nonetheless, the Commission finds that the schedule for implementation of number portability by cellular, broadband PCS, and covered SMR providers is reasonable and takes into account the current stage of development for wireless number portability. The Commission finds that a period of nearly two years is sufficient for wireless carriers either to implement the upgrades necessary to perform the database queries themselves, or to make arrangements with other carriers to provide that capability. The Commission also believes it is reasonable to expect wireless carriers to implement long-term service provider portability, including roaming, in their networks in a period of more than two years. The Commission continues to believe the monitoring and reporting mechanism established in the *First Report & Order* will ensure that wireless carriers will continue to work together to find solutions to technical problems associated with number portability, and to address quickly any implementation issues which may arise. As the Commission provided in the *First Report & Order*, in the event a wireless carrier is unable to meet the Commission's deadlines for implementing a long-term number

portability method, it may file a request for extension with the Commission. If it becomes apparent that the wireless industry is not progressing as quickly as necessary to meet the deadlines for providing querying capability and service provider portability, the Wireless Telecommunications Bureau Chief may waive or stay the implementation dates for a period of up to nine months. The Commission finds that enough flexibility has been incorporated into the implementation schedule for wireless carriers, and that no modification is needed.

74. The Commission also declines to establish target dates in lieu of actual deadlines or to defer imposing number portability requirements on wireless carriers, as some petitioners have suggested. As the Commission stated in the *First Report & Order*, requiring cellular, broadband PCS, and covered SMR providers to provide number portability is in the public interest because these entities are expected to compete in the local exchange market, and number portability will enhance competition among wireless service providers, as well as between wireless service providers and wireline service providers. Service provider portability offered by wireless service providers will enable customers to switch carriers more readily and encourage the successful entry of new service providers into wireless markets. Removing barriers, such as the requirement that customers must change phone numbers when changing providers, is likely to foster the development of new services and create incentives for carriers to lower prices and costs. In light of these positive competitive results that are likely to be produced, the Commission continues to believe that number portability should be provided by wireless carriers with as little delay as possible. Setting specific deadlines, rather than amorphous ''target dates,'' is consistent with this goal.

75. In response to requests by CTIA and BANM, the Commission agrees that some clarification of the requirements under the schedule is necessary. Contrary to the petitioners' claims, the schedule for CMRS providers is not stricter than the schedule for wireline service providers. Some carriers apparently misunderstood the *First Report & Order* to require wireless providers to provide number portability in areas outside the largest 100 MSAs, even if number portability is not requested in those areas. The Commission requires cellular, broadband PCS, and covered SMR providers to have the capability to query the number portability databases nationwide, or arrange with other carriers to perform the queries, by December 31, 1998, in order to route calls from wireless customers to customers who have ported their numbers. The Commission clarifies that, by June 30, 1999, CMRS providers must (1) offer service provider portability in the 100 largest MSAs, and (2) be able to support nationwide roaming. Although the Commission has not provided a specific phased deployment schedule for CMRS providers as it has for wireline carriers, the Commission expects that CMRS providers will phase in implementation in selected switches over a number of months prior to the June 30, 1999, deadline for deployment.

76. In addition, consistent with the modification to the wireline schedule deployment requirements, CMRS carriers need only deploy local number portability by this deadline in the 100 largest MSAs in which they have received a specific request at least nine months before the deadline (*i.e.*, a request has been received by September 30, 1998). As in the wireline context, any 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; and cellular, broadband PCS, and covered SMR providers must make available lists of their switches for which deployment has and has not been requested. Additional switches within the 100 largest MSAs (*i.e.*, those that are not requested initially) must be deployed upon request, after the June 30, 1999, deadline for wireless carriers, within the same time frames that the Commission adopts here for wireline carriers, unless requesting carriers specify a later date. The time frames for deployment of additional wireless switches are as follows: (1) Equipped Remote Switches within 30 days; (2) Hardware Capable Switches within 60 days; (3) Capable Switches Requiring Hardware within 180 days; and (4) Non-Capable Switches within 180 days. As in the wireline context, carriers may submit requests for deployment of number portability in areas outside the 100 largest MSAs at any time. CMRS providers must provide number portability in those smaller areas within six months after receiving a request or within six months after June 30, 1999, whichever is later. As a result, the schedule for wireless providers is comparable to the one for wireline carriers in terms of timing.

77. The Commission adds one further requirement for any procedures that limit deployment in such fashion to requested wireless switches. The existing state procedures for limiting deployment of number portability capabilities within one of the 100 largest MSAs to requested wireline switches generally appear to require carriers to specify which switches located within the MSA the carrier wishes to be deployed. The Commission does not wish to disturb a number of state decisions concluding that it is preferable to limit the selection of wireline switches for deployment to switches located within the MSA rather than switches serving subscribers within the MSA. The Commission recognizes, however, that the wireless switches that provide service to areas within a particular MSA are more likely to be located outside the perimeter of that MSA than the wireline switches that provide service to areas within the MSA. The Commission concludes, therefore, that, when limiting deployment within one of the 100 largest MSAs to particular requested wireless switches, carriers must be able to request deployment in any wireless switch that provides service to any area within that MSA, even if the wireless switch is located outside of the perimeter of that MSA, or outside any of the 100 largest MSAs.

78. By June 30, 1999, the Commission expects that regional or statewide local number portability databases containing both wireless and wireline numbers will be widely available; therefore, the Commission does not anticipate a need to condition the requirement that number portability be required on request after June 30, 1999, upon the existence of regional or statewide databases. If there is a delay in the development of the databases, the Wireless Telecommunications Bureau Chief has been delegated authority to waive or stay the deadline for CMRS providers.

79. In its petition for reconsideration, BANM questions the Commission's authority and its basis in the record for imposing number portability obligations upon CMRS providers. Specifically, BANM claims that the Commission has previously held that its regulatory authority over CMRS providers is limited to instances in which there is a ''clear cut need'' for doing so, and that regulation of number portability is not clearly necessary in the CMRS market. BANM advanced essentially the same argument previously in this proceeding, and its reconsideration petition raises no new issues. Accordingly, the Commission affirms its prior rejection of this argument. As the Commission stated in the *First Report & Order*, the *CT DPUC Petition* does not limit its

authority to require CMRS providers to provide number portability to other CMRS or wireline carriers because that proceeding was restricted to the question of state authority to regulate rates of CMRS providers. The *CT DPUC Petition* did not reach the question of the Commission's authority to impose number portability requirements on CMRS providers. The Commission affirms its determination that it has authority to impose number portability obligations on CMRS providers based on the findings that this requirement will result in pro-competitive effects, and furthers its CMRS regulatory policy of establishing moderate, symmetrical regulation of all services.

80. BANM has not introduced any new evidence or arguments that cause the Commission to reconsider its conclusion in the *First Report & Order* that provision of number portability by CMRS carriers is important to competition. Previously in this proceeding, several PCS providers attested to the importance of number portability in fostering competition in the CMRS industry. The record in this proceeding contains convincing evidence that service provider portability would enhance competition between wireless service providers, as well as between wireless and wireline service providers, by removing the requirement that a customer must change numbers when changing service providers. The Commission also rejects BANM's argument that it failed to make a determination on the technical feasibility of wireless number portability. The record in this proceeding supports the prior conclusion that cellular, broadband PCS, and covered SMR providers will be able to resolve any technical issues necessary to implement number portability.

Deferral of Implementation Until Resolution of Cost Recovery Issues

81. *Background.* Section 251(e)(2) of the Act requires that the costs of establishing number portability ''be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' In conjunction with the *First Report & Order,* the Commission adopted a *Further Notice of Proposed Rulemaking (Further NPRM)* that seeks comment on appropriate cost recovery mechanisms for long-term number portability. The Commission has not yet issued the *Second Report & Order* addressing these issues, although it intends to do so in the near future.

82. *Discussion.* The Commission is not persuaded by the requests of U S West and JSI that LECs should be permitted to suspend ongoing preparations to meet the deployment schedule until the Commission has acted on the issues raised in the *Further NPRM* in this proceeding that involve the LECs' recovery of their costs of providing number portability. As stated above, the Commission plans to adopt a *Second Report & Order* in this proceeding in the near future implementing the statutory provision that expenses incurred as a result of number portability be ''borne by all telecommunications carriers on a competitively neutral basis.'' U S West appears to suggest that it necessarily will be barred from assessing charges in the future that are intended to recover costs that it incurs in connection with the implementation of long-term number portability prior to its resolution of the cost recovery issues posed in the *Further NPRM.* That speculative assertion is unfounded. The Commission anticipates that the *Second Report & Order* will be adopted well before a LEC is required by the deployment schedule to commence the provision of long-term number portability to the public in the Phase I markets. Moreover, the Commission expects that LECs will maintain records of the costs that they incur in implementing the requirements of the *First Report & Order* in this proceeding. Those records will enable the LECs to comply with the decisions the Commission reaches in the *Second Report & Order* with respect to their recovery of long-term number portability costs. The Act does not mandate that the Commission complete action on cost recovery issues prior to the LECs' commencement of the planning and other steps required to deploy long-term number portability consistent with the schedule adopted in the *First Report & Order.* Indeed, permitting carriers to suspend their ongoing preparations to meet the deployment schedule for number portability until the Commission has adopted specific cost recovery rules may be inconsistent with the statutory mandate that carriers must provide number portability ''to the extent technically feasible.''

83. The Commission also concludes that U S West has not described, much less documented, the specific ''distorting effects'' on investment decisions, the use of number portability facilities, and the relationships among providers and between providers and their customers that it claims will ensue from the Commission's brief deferral of long-term number portability cost recovery issues. The Commission further agrees with ALTS that U S West's constitutional claim is premature, because it is impossible for any party to establish that a cost recovery mechanism that has not yet been adopted is unconstitutional. Finally, because the arguments advanced by JSI on behalf of rural carriers with respect to these cost recovery issues repeat the points asserted by U S West, the Commission reaches the same conclusions.

Ordering Clauses

84. Accordingly, it is ordered that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 201–205, 218, 251, and 332 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 251, and 332, Part 52 of the Commission's rules, 47 CFR 52, is amended as set forth in Appendix B hereto.

85. It is further ordered that the Petitions for Reconsideration and/or Clarification are granted to the extent indicated herein and otherwise are denied.

86. It is further ordered that the policies, rules, and requirements set forth herein are adopted, effective May 15, 1997, except for collections of information subject to approval by the Office of Management and Budget (OMB), which are effective September 12, 1997.

87. It is further ordered that the Motion to Accept Late-Filed Comments of Telecommunications Resellers Association and the Motion to Accept Late-Filed Reply Comments of U S West are granted.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rule Changes

Part 52 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 52—NUMBERING

1. Section 52.23 is amended by revising paragraphs (a)(4) through (a)(8), removing paragraph (a)(9), and revising paragraphs (b) and (g) to read as follows:

§ 52.23 Deployment of long-term database methods for number portability by LECs.

(a) * * *

(4) Does not result in unreasonable degradation in service quality or network reliability when implemented;

(5) Does not result in any degradation in service quality or network reliability when customers switch carriers;

(6) Does not result in a carrier having a proprietary interest;

(7) Is able to migrate to location and service portability; and

(8) Has no significant adverse impact outside the areas where number portability is deployed.

(b) (1) All LECs must provide a long-term database method for number portability in the 100 largest Metropolitan Statistical Areas (MSAs) by December 31, 1998, in accordance with the deployment schedule set forth in the Appendix to this part, in switches for which another carrier has made a specific request for the provision of number portability, subject to paragraph (b)(2) of this section.

(2) Any procedure to identify and request switches for deployment of number portability must comply with the following criteria:

(i) Any wireline carrier that is certified (or has applied for certification) to provide local exchange service in a state, or any licensed CMRS provider, must be permitted to make a request for deployment of number portability in that state;

(ii) Carriers must submit requests for deployment at least nine months before the deployment deadline for the MSA;

(iii) A LEC must make available upon request to any interested parties a list of its switches for which number portability has been requested and a list of its switches for which number portability has not been requested; and

(iv) After the deadline for deployment of number portability in an MSA in the 100 largest MSAs, according to the deployment schedule set forth in the Appendix to this part, a LEC must deploy number portability in that MSA in additional switches upon request within the following time frames:

(A) For remote switches supported by a host switch equipped for portability (''Equipped Remote Switches''), within 30 days;

(B) For switches that require software but not hardware changes to provide portability (''Hardware Capable Switches''), within 60 days;

(C) For switches that require hardware changes to provide portability (''Capable Switches Requiring Hardware''), within 180 days; and

(D) For switches not capable of portability that must be replaced (''Non-Capable Switches''), within 180 days.

* * * * *

(g) Carriers that are members of the Illinois Local Number Portability Workshop must conduct a field test of any technically feasible long-term database method for number portability in the Chicago, Illinois, area. The carriers participating in the test must jointly file with the Common Carrier Bureau a report of their findings within 30 days following completion of the test. The Chief, Common Carrier Bureau, shall monitor developments during the field test, and may adjust the field test completion deadline as necessary.

2. Section 52.31 is amended by revising paragraph (a) to read as follows:

§ 52.31 Deployment of long-term database methods for number portability by CMRS Providers.

(a) By June 30, 1999, all cellular, broadband PCS, and covered SMR providers must provide a long-term database method for number portability, in the MSAs identified in the Appendix to this part in compliance with the performance criteria set forth in § 52.23(a), in switches for which another carrier has made a specific request for the provision of number portability, subject to paragraph (a)(1) of this section.

(1) Any procedure to identify and request switches for deployment of number portability must comply with the following criteria:

(i) Any wireline carrier that is certified (or has applied for certification) to provide local exchange service in a state, or any licensed CMRS provider, must be permitted to make a request for deployment of number portability in that state;

(ii) For the MSAs identified in the Appendix to this part, carriers must submit requests for deployment by September 30, 1998;

(iii) A cellular, broadband PCS, or covered SMR provider must make available upon request to any interested parties a list of its switches for which number portability has been requested and a list of its switches for which number portability has not been requested;

(iv) After June 30, 1999, a cellular, broadband PCS, or covered SMR provider must deploy additional switches serving the MSAs identified in the Appendix to this part upon request within the following time frames:

(A) For remote switches supported by a host switch equipped for portability (''Equipped Remote Switches''), within 30 days;

(B) For switches that require software but not hardware changes to provide portability (''Hardware Capable Switches''), within 60 days;

(C) For switches that require hardware changes to provide portability (''Capable Switches Requiring Hardware''), within 180 days; and

(D) For switches not capable of portability that must be replaced (''Non-Capable Switches''), within 180 days.

(v) Carriers must be able to request deployment in any wireless switch that serves any area within that MSA, even if the wireless switch is outside that MSA, or outside any of the MSAs identified in the Appendix to this part.

(2) By June 30, 1999, all cellular, broadband PCS, and covered SMR providers must be able to support roaming nationwide.

* * * * *

3. The Appendix to part 52 is revised to read as follows:

Appendix to Part 52—Deployment Schedule for Long-Term Database Methods for Local Number Portability

Implementation must be completed by the carriers in the relevant MSAs during the periods specified below:

PHASE I—10/1/97–3/31/98

Chicago, IL	3
Philadelphia, PA	4
Atlanta, GA	8
New York, NY	2
Los Angeles, CA	1
Houston, TX	7
Minneapolis, MN	12

PHASE II—1/1/98–5/15/98

Detroit, MI	6
Cleveland, OH	20
Washington, DC	5
Baltimore, MD	18
Miami, FL	24
Fort Lauderdale, FL	39
Orlando, FL	40
Cincinnati, OH	30
Tampa, FL	23
Boston, MA	9
Riverside, CA	10
San Diego, CA	14
Dallas, TX	11
St. Louis, MO	16
Phoenix, AZ	17
Seattle, WA	22

PHASE III—4/1/98–6/30/98

Indianapolis, IN	34
Milwaukee, WI	35
Columbus, OH	38
Pittsburgh, PA	19
Newark, NJ	25
Norfolk, VA	32
New Orleans, LA	41
Charlotte, NC	43
Greensboro, NC	48
Nashville, TN	51
Las Vegas, NV	50
Nassau, NY	13
Buffalo, NY	44
Orange Co, CA	15
Oakland, CA	21
San Francisco, CA	29
Rochester, NY	49
Kansas City, KS	28
Fort Worth, TX	33
Hartford, CT	46
Denver, CO	26
Portland, OR	27

PHASE IV—7/1/98–9/30/98

Grand Rapids, MI	56
Dayton, OH	61
Akron, OH	73
Gary, IN	80
Bergen, NJ	42

Middlesex, NJ	52
Monmouth, NJ	54
Richmond, VA	63
Memphis, TN	53
Louisville, KY	57
Jacksonville, FL	58
Raleigh, NC	59
West Palm Beach, FL	62
Greenville, SC	66
Honolulu, HI	65
Providence, RI	47
Albany, NY	64
San Jose, CA	31
Sacramento, CA	36
Fresno, CA	68
San Antonio, TX	37
Oklahoma City, OK	55
Austin, TX	60
Salt Lake City, UT	45
Tucson, AZ	71
PHASE V—10/1/98–12/31/98	
Toledo, OH	81
Youngstown, OH	85
Ann Arbor, MI	95
Fort Wayne, IN	100
Scranton, PA	78
Allentown, PA	82
Harrisburg, PA	83
Jersey City, NJ	88
Wilmington, DE	89
Birmingham, AL	67
Knoxville, KY	79
Baton Rouge, LA	87
Charleston, SC	92
Sarasota, FL	93
Mobile, AL	96
Columbia, SC	98
Tulsa, OK	70
Syracuse, NY	69
Springfield, MA	86
Ventura, CA	72
Bakersfield, CA	84
Stockton, CA	94
Vallejo, CA	99
El Paso, TX	74
Little Rock, AR	90
Wichita, KS	97
New Haven, CT	91
Omaha, NE	75
Albuquerque, NM	76
Tacoma, WA	77

Supplemental Final Regulatory Flexibility Analysis

1. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*NPRM*). The Commission sought written public comment on the proposals in the *NPRM*. In addition, pursuant to section 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *First Report & Order.* That FRFA conformed to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) 5 U.S.C. 601 *et seq.* The SBREFA is title II of the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996). The Supplemental Final Regulatory Flexibility Analysis in this *First Memorandum Opinion and Order on Reconsideration* (*First Reconsideration Order*) (Supplemental FRFA) also conforms to the RFA.

A. Need for and Objectives of this First Reconsideration Order and the Rules Adopted Herein

2. The need for and objectives of the rules adopted in this *First Reconsideration Order* are the same as those discussed in the FRFA in the *First Report & Order.* In general, the rules implement the statutory requirement that all LECs provide telephone number portability when technically feasible. In this *First Reconsideration Order,* the Commission grants in part and denies in part several of the petitions filed for reconsideration and/or clarification of the *First Report & Order,* in order to further the same needs and objectives. First, the Commission concludes that QOR is not an acceptable long-term number portability method. Second, the Commission extends the implementation schedule for wireline carriers, clarifies the requirements imposed thereunder, and addresses issues raised by rural LECs and certain other parties. The Commission concludes that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of portability. Finally, the Commission affirms and clarifies the implementation schedule for wireless carriers.

B. Analysis of Significant Issues Raised in Response to the FRFA

3. *Summary of the FRFA.* In the FRFA, the Commission concluded that incumbent LECs do not qualify as small businesses because they are dominant in their field of operation, and, accordingly, the Commission did not address the impact of the rules on incumbent LECs. The Commission noted that the RFA generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act. 15 U.S.C. 632. A small business concern is one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. According to the SBA's regulations, entities engaged in the provision of telephone service may have a maximum of 1,500 employees in order to qualify as a small business concern. 13 CFR 121.201. This standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.

4. The Commission did recognize that these rules may have a significant economic impact on a substantial number of small businesses insofar as they apply to telecommunications carriers other than incumbent LECs, including competitive LECs, as well as cellular, broadband PCS, and covered SMR providers. Based upon data contained in the most recent census and a report by the Commission's Common Carrier Bureau, the Commission estimated that 2,100 carriers could be affected. The Commission also discussed the reporting requirements imposed by the *First Report & Order.*

5. Finally, the Commission discussed the steps it had taken to minimize the impact on small entities, consistent with stated objectives. The Commission concluded that the actions in the *First Report & Order* would benefit small entities by facilitating their entry into the local exchange market. The Commission found that the record in this proceeding indicated that the lack of number portability would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. These competitive providers, many of which may be small entities, may find it easier to enter the market as a result of number portability, which will eliminate this barrier to entry. The Commission noted that, in general, it attempted to keep burdens on local exchange carriers to a minimum. For example, the Commission adopted a phased deployment schedule for implementation in the 100 largest MSAs, and then elsewhere upon a carrier's request; the Commission conditioned the provision of currently available measures upon request only; the Commission did not require cellular, broadband PCS, and covered SMR providers, which may be small businesses, to offer currently available number portability measures; and it did not require paging and messaging service providers, which may be small entities, to provide any number portability.

1. Treatment of Small Incumbent LECs

6. *Comments.* NTCA/OPASTCO claims that the *First Report & Order*'s Final Regulatory Flexibility Analysis does not address the impact of the rules on small incumbent LECs, and is thus inconsistent with the *Local Competition Order.* NTCA/OPASTCO suggests that exempting rural LECs from number portability requirements absent a *bona fide* request would fulfill the Commission's responsibility under the Regulatory Flexibility Act.

7. *Discussion.* Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with the Commission's prior practice, they are excluded from the definition of ''small entity'' and ''small business concerns.'' As the Commission stated in the *Local Competition Order,* it has found incumbent LECs to be ''dominant in their field of operation'' since the early 1980's, and that it consistently has certified under the RFA (5 U.S.C. 605(b)) that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses. The Commission has made similar determinations in other areas. Accordingly, the use of the terms ''small entities'' and ''small businesses'' does not encompass small incumbent LECs. Although the Commission is not fully persuaded on the basis of this record that the prior practice has been incorrect, in light of the special concerns raised by NTCA/OPASTCO in this proceeding, for regulatory flexibility analysis purposes, the Commission will include small incumbent LECs in this Supplemental FRFA and use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.'' Out of an abundance of caution, therefore, the Commission will include small incumbent LECs in the Supplemental FRFA in this *First Reconsideration Order* to remove any possible issue of RFA compliance.

2. Other Issues

8. Although not in response to the FRFA, certain parties urge the Commission to waive number portability requirements for rural and/or smaller LECs serving areas in the largest 100 MSAs until receipt of a *bona fide* request, or to grant an exemption from the Commission's rules on the basis of rural and/or smaller LEC status. The Commission discusses these issues above in the *First Reconsideration Order.*

C. Description and Estimates of the Number of Small Entities Affected by this First Reconsideration Order

9. For the purposes of this *First Reconsideration Order,* the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. *See* 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. 15 U.S.C. 632. SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities with fewer than 1,500 employees. The Commission first discusses generally the total number of small telephone companies falling within both of those SIC categories. Then, the Commission discusses the number of small businesses within the two subcategories that may be affected by these rules, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under the rules.

10. Consistent with the prior practice, the Commission shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this Supplemental FRFA. Nevertheless, as mentioned above, the Commission includes small incumbent LECs in this Supplemental FRFA. Accordingly, the use of the terms ''small entities'' and ''small businesses'' does not encompass ''small incumbent LECs.'' The Commission uses the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.'' *See* 13 CFR § 121.201 (SIC 4813).

11. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' 15 U.S.C. 632(a)(1). For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. The Commission believes that these rules may affect certain subcategories within that estimate, *i.e.,* wireline carriers and service providers, including local exchange carriers and competitive access providers; and wireless carriers, including cellular service carriers, broadband PCS licensees, and SMR licensees. The Commission discusses those subcategories below in further detail. The Commission believes, on the other hand, that these rules will not affect certain subcategories within that estimate, *i.e.,* interexchange carriers, operator service providers, pay telephone operators, mobile service carriers, and resellers, and, moreover, will not affect small cable system operators.

12. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. 13 CFR 121.201. Standard Industrial Classification (SIC) Code 4812. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this *First Reconsideration Order.*

13. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which the Commission is aware appears to be the data that the Commission collects annually in connection with the Telecommunications Relay Service (TRS). According to the Commission's most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this *First Reconsideration Order.*

14. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which the Commission is aware appears to be the data that the Commission collects annually in connection with the TRS. According to the Commission's most recent data, 57 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 57 small entity CAPs that may be affected by the decisions and rules adopted in this *First Reconsideration Order.*

15. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted in this *First Reconsideration Order.*

16. *Cellular Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications

companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which the Commission is aware appears to be the data that the Commission collects annually in connection with the TRS. According to the Commission's most recent data, 792 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimate that there are fewer than 792 small entity cellular service carriers that may be affected by the decisions and rules adopted in this *First Reconsideration Order.*

17. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for blocks C through F have not been awarded fully; therefore, there are few, if any, small businesses currently providing PCS services. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

18. SMR Licensees. Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in this *First Reconsideration Order* may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. The Commission assumes, for purposes of this Supplemental FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this *First Reconsideration Order.*

19. The Commission's auctions for geographic area licenses in the 900 MHz SMR band concluded in April of 1996. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, the Commission concludes that the number of geographic area SMR licensees affected by the rules adopted in this *First Reconsideration Order* includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, the Commission assumes, for purposes of this Supplemental FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in this *First Reconsideration Order.*

20. *Cable System Operators.* SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,432 such cable and other pay television services generating $11 million or less in annual receipts that were in operation for at least one year at the end of 1992.

21. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). Based on the Commission's most recent information, the Commission estimates that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are fewer than 1,468 small entity cable system operators that may be affected by the decisions and rules adopted in this *First Reconsideration Order.*

22. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' 47 U.S.C. 543(m)(2). There were 63,196,310 basic cable subscribers at the end of 1995, and 1,450 cable system operators serving fewer than one percent (631,960) of subscribers. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

D. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Steps Taken to Minimize the Significant Economic Impact of this First Reconsideration Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected

23. *Structure of the Analysis.* In this Section of the Supplemental FRFA, the Commission analyzes the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities and small incumbent LECs as a result of this *First Reconsideration Order. See* 5 U.S.C. 604(a)(4). As a part of this discussion, the Commission mentions some of the types of skills that will be needed to meet the new requirements. The Commission also describes the steps taken to minimize the economic impact of its decisions on small entities and small incumbent LECs, including the significant alternatives considered and rejected. *See* 5 U.S.C. 604(a)(5).

24. The Commission provides this summary analysis to provide context for the analysis in this Supplemental FRFA. To the extent that any statement contained in this Supplemental FRFA is perceived as creating ambiguity with respect to the rules or statements made in the *First Report & Order* or preceding Sections of this *First Reconsideration Order,* the rules and statements set forth in the *First Report & Order* and those preceding Sections of this *First Reconsideration Order* shall be controlling.

1. Implementation Schedule

25. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In the *First Report & Order,* the Commission required local exchange carriers operating in the 100 largest MSAs to offer long-term service provider portability, according to a phased deployment schedule commencing on October 1, 1997, and concluding by December 31, 1998, set forth in appendix F of the *First Report & Order.* In this *First Reconsideration Order,* the Commission extends the end dates for Phase I of the deployment schedule by three months, and for Phase II by 45 days. Thus, deployment will now take place in Phase I from October 1, 1997, through March 31,

1998, and in Phase II from January 1, 1998, through May 15, 1998. The Commission also clarifies that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of portability. LECs must make available lists of their switches for which deployment has and has not been requested. The parties involved in such requests identifying preferred switches may need to use legal, accounting, economic and/or engineering services.

26. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* In this *First Reconsideration Order,* the Commission lightens the burdens on rural and smaller LECs by establishing a procedure whereby, within as well as outside the 100 largest MSAs, portability need only be implemented in the switches for which another carrier has made a specific request for the provision of portability. If, as petitioners allege, competition is not imminent in the areas covered by rural/small LEC switches, then the rural or smaller LEC should not receive requests from competing carriers to implement portability, and thus need not expend its resources until competition does develop. By that time, extensive non-carrier-specific testing will likely have been done, and rural and small LECs need not expend their resources on such testing. The Commission notes that the majority of parties representing small or rural LECs specified as the relief sought that the Commission only impose implementation requirements where competing carriers have shown interest in portability. Moreover, the Commission's extension of Phases I and II of the deployment schedule may permit smaller LECs to reduce their testing costs by allowing time for larger LECs to test and resolve the problems of this new technology.

27. Indeed, in this *First Reconsideration Order,* the Commission rejects several alternatives put forth by parties that might impose greater burdens on small entities and small incumbent LECs. The Commission rejects requests put forth by ACSI, KMC, ICG, NEXTLINK, and ALTS to accelerate the deployment schedule for areas both within and outside the 100 largest MSAs. The Commission also rejects the procedures proposed by some parties that would require LECs to file waiver requests for their specific switches if they believe there is no competitive interest in those switches, instead of requiring LECs to identify in which switches of other LECs they wish portability capabilities. The suggested waiver procedures would burden the LEC from whom portability is requested with preparing and filing the petition for waiver. In addition, a competing carrier that opposes the waiver petition would be burdened with challenging the waiver. In contrast, under the procedure the Commission establishes, the only reporting burden on requesting carriers is to identify and request their preferred switches. Carriers from which portability is being requested, which may be small incumbent LECs, only incur a reporting burden if they wish to lessen their burdens further by requesting more time in which to deploy portability. Finally, the Commission clarifies that CMRS providers, like wireline providers, need only provide portability in requested switches, both within and outside the 100 largest MSAs.

2. Exemptions for Rural or Small LECs

28. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* Section 251(f)(2) provides that LECs with fewer than two percent of the nation's subscriber lines may petition a state commission for a suspension or modification of any requirements of sections 251(b) and 251(c). Section 251(f)(2) is available to all LECs, including competitive LECs, which may be small entities. A small incumbent LEC or a competitive LEC, which may be a small entity, seeking under 251(f)(2) to modify or suspend the number portability requirements imposed by section 251(b)(2), bears the burden of proving that the number portability requirements would: (1) Create a significant adverse economic impact on telecommunications users; (2) be unduly economically burdensome; or (3) be technically infeasible. The parties involved in such a proceeding may need to use legal, accounting, economic and/or engineering services.

29. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* As explained above in the *First Reconsideration Order,* the Commission considers it unnecessary to create a general exemption for all small and/or rural LECs, as suggested by some parties. The Commission has effectively granted the small and rural LEC petitioners' requests that it waive number portability requirements for rural and/or small LECs serving areas in the largest 100 MSAs until receipt of a *bona fide* request, since the Commission now requires all competing carriers specifically to request, of any LEC, the particular switches in which they desire portability. To the extent that portability is requested in a rural or small LEC's switch, and that LEC has difficulty complying with the request, it may apply for an extension of time on the basis of extraordinary circumstances beyond its control that prevent it from complying with the Commission's deployment schedule or, if eligible, it may petition the appropriate state commission for suspension or modification of the requirements of section 251(b). 47 U.S.C. 251(f)(2). The Commission's grant of petitioners' requests to limit deployment to requested switches, however, decreases the likelihood that smaller and rural LECs will have to apply for extensions of time or file petitions under section 251(f)(2).

30. As the Commission stated in the *Local Competition Order,* the determination whether a section 251(f)(2) suspension or modification should be continued or granted lies primarily with the relevant state commission. By largely leaving this determination to the states, the *Local Competition Order* stated, the Commission's decisions permit this fact-specific inquiry to be administered in a manner that minimizes regulatory burdens and the economic impact on small entities and small incumbent LECs. However, to minimize further regulatory burdens and minimize the economic impact of the Commission's decision, in the *Local Competition Order* the Commission adopted several rules that may facilitate the efficient resolution of such inquiries, provide guidance, and minimize uncertainty. In the *Local Competition Order,* the Commission found that the rural LEC or smaller LEC must prove to the state commission that the financial harm shown to justify a suspension or modification would be greater than the harm that might typically be expected as a result of competition. Finally, the Commission concluded that section 251(f) adequately provides for varying treatment for smaller or rural LECs where such variances are justified. As a result, the Commission stated, it expects that section 251(f) will significantly minimize regulatory burdens and economic impacts from the rules adopted in the *First Report & Order* and this *First Reconsideration Order.*

3. Reporting Requirements by the Chief, Wireless Telecommunications Bureau, on Carriers' Progress

31. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In the *First Report & Order,* the Commission delegated authority to the Chief, Wireless Telecommunications Bureau, to require reports from cellular, PCS, and covered SMR providers in order to monitor the progress of these providers toward implementing long-term number portability. These reporting requirements were not defined in sufficient detail in the *First Report & Order* to obtain approval from the Office of Management and Budget. Separate approval will be requested when the specific requirements are imposed by the Wireless Telecommunications Bureau.

32. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* Although no party to this proceeding suggested that changes to these reporting requirements would affect small entities or small incumbent LECs, several parties requested that the Chief, Wireless Telecommunications Bureau, be given greater authority to act to increase flexibility in the schedule. As explained above in this *First Reconsideration Order,* the Commission lightens the burden on smaller and rural wireless carriers by modifying these rules so that CMRS providers, like wireline providers, need only provide portability in requested switches, both within and outside the 100 largest MSAs. The Commission also declines at this time to alter further the implementation schedule imposed by the *First Report & Order* for wireless carriers because the Commission finds that enough flexibility has been incorporated into the implementation schedule for wireless carriers, and that no modification is needed.

E. Report to Congress

33. The Commission shall send a copy of this Supplemental FRFA, along with this *First Reconsideration Order,* in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Supplemental FRFA will also be published in the **Federal Register**.

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