
WIRELESS LOCAL NUMBER PORTABILITY AND ITS EFFECT ON COMPETITION: CAN THERE BE TOO MUCH OF A GOOD THING?

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Within the first full year after wireless local number portability ("WLNP")¹ is implemented, an estimated twenty-two million subscribers will switch their telecommunications service providers.² WLNP allows individuals to keep their phone numbers when they switch to another service provider.³ In essence, customers may take their wireless number to another provider as long as they stay within the same geographical area.⁴ As a result, their numbers can no longer be held hostage,⁵ and customers are provided with more incentive and less hassle to switch carriers.⁶ With the convenience of WLNP, 27% of cellular customers are willing to switch to telecommunications providers that offer better deals.⁷ In anticipation of this expected "churn," analysts predict that some

of the nation's top wireless providers will be forced to dissolve or consolidate with other carriers.⁸ Fearing these results, most wireline and wireless carriers have implemented strong efforts to halt WLNP, maintaining that the industry is already too plagued by competition.⁹ In the words of Tom Wheeler, then President and Chief Executive Officer of the Cellular Telecommunications & Internet Association ("CTIA"), "[r]equiring wireless number portability in the name of increasing competition is as realistic as a fish on a bicycle. The wireless industry is already hyper-competitive."¹⁰ Advocates for WLNP do not think that there can ever be too much competition, especially in the context of number portability.¹¹ Many federal and state regulators agree.¹² They

¹ See FEDERAL COMMUNICATIONS COMMISSION, CONSUMER INFORMATION: LOCAL TELEPHONE NUMBER PORTABILITY, at http://www.fcc.gov/Bureaus/Common_Carrier/Factsheets/portable.html (last visited Nov. 7, 2003) (on file with author) [hereinafter CONSUMER INFORMATION]. This document describes local telephone number portability as "a service that provides residential and business telephone customers with the ability to retain, at the same location, their existing local telephone numbers when switching from one local telephone service provider to another." *Id.*

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

³ See CONSUMER INFORMATION, *supra* note 1.

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

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

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

New Rule on Keeping Number, N.Y. TIMES, Oct. 18, 2003, at A1 (discussing how consumers will benefit by being allowed to retain their same phone number when they switch service providers); see also Elizabeth Douglass, *Carriers Aim to Kill Number Portability*, L.A. TIMES, Jan. 16, 2003, at C1.

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

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

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

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

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

¹² See Letter from Loretta M. Lynch, Former President, Public Utilities Commission of California, to Michael K. Pow-

argue that local number portability is the "key to open and equal competition" among service providers,¹³ and believe that such competition will lead to lower prices and higher quality services.¹⁴ As Loretta Lynch, former President of the California Public Utilities Commission, argues:

Number portability is pro-competitive and strongly in the public interest. Without portability, customers must change both their telephone handset and their telephone number before switching carriers, thus imposing a major obstacle on a customer's ability to change providers. Not only will number portability enhance competition among wireless competitors, it will bring much-needed additional competition to wireline carriers.¹⁵

A strong majority of telecommunications providers disagree with WLNP advocates. They argue that WLNP will prove to be more burdensome than beneficial to America.¹⁶ These carriers maintain that WLNP will cost "tens of millions of dollars" to implement¹⁷ and will lead to higher prices and lower service quality.¹⁸ In addition, wireline service providers are particularly fearful that WLNP will provide consumers with even more incentive to "cut the cord" and eliminate their landlines in favor of their cellular phones.¹⁹ Thus, the question remains as to whether WLNP will help or hurt consumers. This Comment will illustrate that while the telecommunications industry is already highly competitive, the benefits of technological advances, such as WLNP, will outweigh the burden of enhanced competition.

This Comment begins by examining the origins and current state of local number portability. Sec-

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

I. THE DEVELOPMENT OF LOCAL NUMBER PORTABILITY

Local Number Portability ("LNP") is defined within the Telecommunications Act of 1996 ("1996 Act") as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."²⁰ It has been described as a "huge undertaking" that requires an extraordinary amount of collaboration among wireline and

ell, Chairman, FCC (Nov. 19, 2001) [hereinafter Lynch Letter] (on file with author) (explaining that the opinion that there is already too much competition in the wireless industry is without merit). As Ms. Lynch explained, "This view suggests that once a certain level of competition exists for a product or service, it is reasonable for regulators to approve technical restrictions that impede the development of further competition simply because there is already 'enough' competition. This is anathema to the very concept of competitive markets." *Id.* at 4.

¹³ Mark Dziatkiewicz, *Local Number Portability Pits Practicality v. Probability*, AM. NETWORK, Mar. 15, 1994, at 22 (explaining that number portability is critical to achieving local competitive goals within the telecommunications industry).

¹⁴ See Christian Berg, *A Rule Cell Users Can Identify With; FCC Move Lets Phone Owners Transfer, Keep Their Same Numbers*, ALLENTOWN MORNING CALL (Allentown, Pa.), Aug. 17, 2003, at D1 (providing a general overview of the potential benefits and difficulties that may occur once WLNP is fully implemented).

¹⁵ Lynch Letter, *supra* note 12, at 1.

¹⁶ See Kris Hudson, *Numbers on the Line: Convenience, Cost Hang in Balance*, DEN. POST, Aug. 31, 2003, at K1 (noting some of the potential difficulties associated with WLNP, par-

ticularly wireline-to-wireless number porting); see also Charles Mason, *The Burden of Number Portability: No Other Issue Will Cost Wireless Carriers More in Labor and Dollars. Are They Ready? Nope*, AMERICA'S NETWORK, Aug. 1, 1999, at 58 (explaining that WLNP will cost a large amount of money for telecommunications providers to implement).

¹⁷ Hudson, *supra* note 16, at K1.

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

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

²⁰ 47 U.S.C. §153(30) (2000).

wireless carriers.²¹ Originally, the Federal Communications Commission ("FCC" or "Commission") implemented LNP in early trials in 1994 and 1995.²² However, it was not until the 1996 Act that the FCC took a serious look at making LNP available to the public.²³ Pursuant to Section 251(b), all local telephone companies offering service exclusively in particular areas, commonly called local exchange carriers ("LECs"),²⁴ have "[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."²⁵ Based on this statute, the FCC initiated proceedings to implement LNP and to bring competition to telephony.²⁶

A. The Procedural History of WLNP

1. *The Beginnings of Telephone Number Portability Regulation*

In its *First Report and Order*, the FCC recognized that number portability was critical to promoting competition.²⁷ Therefore, the FCC mandated that

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

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

²³ *Id.*

²⁴ NAT'L COMMUNICATIONS SYSTEM TECH. & STANDARDS DIR., GENERAL SERVICES ADMN. TELECOMMUNICATIONS: GLOSSARY OF TELECOMMUNICATIONS TERMS, FEDERAL STANDARD 1037 C, (Aug. 7, 1996) [hereinafter GLOSSARY OF TELECOMMUNICATIONS TERMS]. A local exchange carrier is defined as "[a] local telephone company, *i.e.*, a communications common carrier provides ordinary local voice-grade telecommunications service under regulation within a specified service area." *Id.*

²⁵ 47 U.S.C. §251(b)(2).

²⁶ See *In re Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 8352, 8353, para. 1 (1996) [hereinafter *First Report and Order*].

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

all LECs within the 100 most heavily populated areas of the United States, referred to as Metropolitan Statistical Areas ("MSAs"), were required to meet its guidelines for long-term service-provider portability by October 1, 1997 and to deploy such portability by December 31, 1998.²⁸ Although the 1996 Act did not explicitly mention commercial mobile radio service ("CMRS") providers,²⁹ such carriers would also have to implement number portability, but they were given until June 30, 1999 to offer this service to their customers.³⁰

Another issue addressed by the FCC in the *First Report and Order* was the type of methodology required.³¹ This was significant as some carriers sought to have uniformity in implementing LNP.³² The FCC described all suggested methods for porting numbers,³³ but declined to adopt any one of these methods because there did not appear to be enough of a national calling for compatible methods to be utilized.³⁴ The FCC also feared that requiring telecommunications carriers to adopt a particular methodology could inhibit the deployment of LNP services to consumers.³⁵

quick as light.").

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

²⁹ A CMRS is a wireless service provider that works for profit. See 47 C.F.R. §20.3 (2002) (providing a complete and precise definition of what traits a carrier must possess to qualify as a CMRS by the FCC).

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

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

³² See *id.* at 8355, para. 4.

³³ *Id.* at 8359, para. 13.

³⁴ See *id.* at 8377, para. 46.

³⁵ See *id.* The FCC did not want its stamp of approval on

Furthermore, a specific methodology could deter telecommunications providers from attempting to improve current methods and it could also delay service providers from creating new hybrids from available methodologies.³⁶ Thus, instead of adopting a particular portability methodology, the FCC decided it would best serve the public interest to adopt mandatory performance criteria for all wireline and wireless carriers. The FCC believed this criteria would provide uniformity among carriers without discouraging them from developing new ideas that would aid the implementation of LNP.³⁷

After the *First Report and Order* was released, wireless carriers, as well as some wireline carriers, were strongly opposed to the FCC's LNP mandate.³⁸ Wireless carriers were especially enraged because the 1996 Act only specifically required that LECs implement number portability.³⁹ No provision of the 1996 Act explicitly called for CMRS providers to implement LNP.⁴⁰ Thus, wireless carriers believed the FCC had overstepped its authority in ordering them to offer LNP to their

customers.⁴¹ Many wireless and wireline providers filed comments, petitions, and oppositions.⁴² In response, the FCC released its *First Memorandum Opinion and Order on Reconsideration* ("*First Memorandum Opinion*").⁴³

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

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

³⁶ *First Report and Order*, *supra* note 26, at 8377, para. 46.

³⁷ *Id.*

³⁸ Annie Lindstrom and Andrew Braunberg, *We Don't Want Any; Local Number Portability; Local Number Portability: A Bold New World*, AMERICA'S NETWORK, Oct. 1, 1997, at S9 (explaining how aggravated and angry wireless service providers were about being told they must implement local number portability, just like their wireline counterparts, and are "kicking and screaming all the way to the LNP starting line") [hereinafter Lindstrom & Braunberg].

³⁹ See *First Report and Order*, *supra* note 26, at 8355, para. 4.

⁴⁰ *Id.*; see also *In re Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 7236, 7315, para. 141 (1997) [hereinafter *First Memorandum Opinion*]. While the FCC recognized that the 1996 Act did not include CMRS providers in the definition of a LEC, the agency still asserted it had "independent authority under Sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, to require CMRS providers to provide number portability as we deem appropriate." *Id.*

⁴¹ See Lindstrom & Braunberg, *supra* note 38, at S9 (quoting Fran Malnati, the director of government affairs for Bell Atlantic Mobile, as saying that the imposition of WLNP was done with "a very minimal record, and a record that did not support whether or not number portability was, in fact, required to add competition to the wireless industry.").

⁴² See, e.g., SBC Communications, Inc., *Petition for Reconsideration*, CC Dkt No. 95-116, at 12 (Aug. 26, 1996) (arguing that CRMS providers should be granted an extension of the June 30, 1999 deadline for WLNP deployment); *Petition for Clarification and/or Reconsideration of The Cellular Telecommunications & Industry Association*, CC Dkt No. 95-116, at 5

(Aug. 21, 1996) (asking that the Chief of the Wireless Telecommunications Bureau of the FCC be able to extend the deadline for wireless providers to deploy LNP in longer than nine months).

⁴³ *First Memorandum Opinion*, *supra* note 40, at 7237, para.1. A significant amount of service providers filed their opinions and requests with the FCC. In total, the FCC heard from fifty-seven commenters. *Id.*

⁴⁴ See *id.* at 7247-7248, para. 19. The FCC dismissed the performance criteria that specifically called for a number portability methodology, which would call for telecommunications carriers to rely on each other for access to one another's materials and equipment for efficiently deploying LNP. *Id.*

⁴⁵ *Id.*

⁴⁶ See, e.g., *First Memorandum Opinion*, *supra* note 40, at 7294-7295.

⁴⁷ *Id.* at 7272, para. 59. The FCC adopted this approach because it was necessary for LECs to "avoid expenditures in areas within an MSA in which competitors are not currently interested." *Id.*

⁴⁸ *Id.* at 7273, para. 60. The FCC required telecommunications carriers to meet the following:

[A]ny wireline carrier that is certified, or has applied for certification, to provide local exchange service in the relevant state, or any licensed CMRS provider, must be allowed to make a request for deployment; (2) requests for deployment must be submitted at least nine months before the deadline in the Commission's deployment schedule for that MSA; (3) carriers must make available lists of their switches for which deployment has and has not been requested; and (4) additional switches must be deployed upon request within the time frames described below.

Id.

One particularly relevant topic the FCC discussed in its *First Memorandum Opinion* was the LNP implementation schedule for both wireline and wireless providers.⁴⁹ For wireline carriers, the end date for the initial phase of LNP implementation was extended by three months to March 31, 1998, with allowance for the second phase to commence as late as May 15, 1998.⁵⁰ As for wireless carriers, the FCC found their WLNP schedule to be "sufficient" and "reasonable."⁵¹ Thus, no extension beyond that which was given to wireline carriers for implementation of LNP was granted to wireless customers.⁵²

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

In the *Third Report and Order*, adopted in May of 1998, the FCC determined how wireline and wireless carriers would recover costs associated with

LNP.⁵⁶ Essentially, it attempted to determine how to implement Section 251(e)(2) of the 1996 Act.⁵⁷ The report had "far reaching implications" for some telecommunications service providers,⁵⁸ but it would ultimately be the end-users (*i.e.*, consumers) who would bear the burden of paying for LNP.⁵⁹

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

During these proceedings, many wireless carriers petitioned the FCC to stay the LNP implementation deadlines.⁶³ Initially, the FCC agreed to extend the deadline from June 1999 to March 2000.⁶⁴ However, wireless providers still did not feel they would be able to provide adequate number portability services by this date. They petitioned again and the FCC granted their request. CMRS providers would not have to deploy WLNP until November 24, 2002.⁶⁵ The FCC acquiesced

⁴⁹ *Id.*

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

⁵¹ *Id.* at 7312, para. 134.

⁵² *Id.*

⁵³ *In re Telephone Number Portability, Second Report and Order*, 12 FCC Rcd. 12281, 12283, para. 2 (1997) [hereinafter *Second Report and Order*].

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

⁵⁵ *Second Report and Order, supra* note 52, at 12283, para. 3.

⁵⁶ *In re Telephone Number Portability, Third Report and Order*, 13 FCC Rcd. 11701 (1998) [hereinafter *Third Report and Order*].

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

mined by the Commission.").

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

⁵⁹ See, e.g., *Third Report and Order, supra* note 55, at 11704, 11707, at paras. 4, 9.

⁶⁰ *Id.* at 11776, para. 142.

⁶¹ *Id.*

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

⁶³ See *In re Telephone Number Portability, Petition for Extension of the Implementation Deadlines of the Cellular Telecommunications Industry Association, Memorandum Opinion and Order*, 13 FCC Rcd. 16315 (1998).

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

⁶⁵ See *In re Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations and Tele-*

because maintaining the current implementation schedule was unnecessary to protect customers from high and irrational prices,⁶⁶ and would not impair consumer demand for WLNP.⁶⁷ While the FCC also mentioned that it did not believe WLNP would always be a non-issue for consumers, it speculated that as wireless phones become more popular, customers would be eager to reap the benefits of WLNP.⁶⁸

In July 2002, wireless carriers were again granted forbearance from implementing WLNP,⁶⁹ which meant that they were free from any type of regulation by the FCC regarding this matter.⁷⁰ The FCC agreed to extend the date of LNP deployment by one year but it declined to grant Verizon Wireless's ("Verizon") petition for permanent forbearance.⁷¹ The Commission determined that permanent forbearance would be inconsistent with the goal of consumer protection⁷² and would not be in the public interest because it would increase competition in the telecommunications industry.⁷³ According to the FCC, consumers were entitled to receive the benefits of enhanced competition, such as more choices in areas of "price, service, and coverage,"⁷⁴ but issues still existed, which merited another temporary stay from LNP deployment.⁷⁵ As a result, the FCC issued another stay until November 24, 2003 to ensure customers would be able to have their numbers ported without any delays or other problems.⁷⁶

phone Number Portability, *Memorandum Opinion and Order*, 14 FCC Rcd. 3092, 3093, para. 1 (1999) [hereinafter *Memorandum Opinion and Order*] (asserting that CMRS providers were granted the stay in implementing LNP for both "technical" and "competitive" reasons).

⁶⁶ *Id.* at 3101, para. 19 ("As a threshold matter, we note that LNP would not play a direct role in ensuring that a carrier's rates are just and reasonable.").

⁶⁷ *Id.* at 3103, para. 22 (stating that consumers were less concerned with WLNP than they were with competitive pricing and service offerings available throughout the telecommunications industry).

⁶⁸ *Id.* at 3103, 3104, para. 23.

⁶⁹ See *In re Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability*, *Memorandum Opinion and Order*, 17 FCC Rcd. 14972 (2002) [hereinafter *Petition for Partial Forbearance*].

⁷⁰ HARRY NEWTON, *NEWTON'S TELECOM DICTIONARY* (CMP Books 19th ed. 2003) (defining forbearance as "the power of a regulator not to regulate a service or market if it believes the market is 'workably competitive'").

⁷¹ See *Memorandum Opinion and Order*, *supra* note 64, at 3104, para. 23. The FCC believed that allowing wireless carri-

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

Although wireless carriers were given from June 1999 until November 2003 to deploy WLNP to their customers, they still did not think they were adequately prepared to meet the FCC ruling.⁷⁷ The biggest effort to achieve permanent forbearance from WLNP deployment came in June 2003. The CTIA, in association with Verizon, took the FCC to court in *Cellular Telecommunications & Internet Association v. FCC*.⁷⁸ The United States Court of Appeals for the District of Columbia focused on two issues raised by CTIA and Verizon. First, both carriers argued that the FCC did not have the statutory authority necessary to impose WLNP on wireless carriers because the requirement of implementing number portability only pertained to LECs and not CMRS providers.⁷⁹ The court dismissed this contention holding that the issue was barred by the statute of limitations.⁸⁰

Second, CTIA and Verizon argued that the FCC misconstrued and misapplied Section 160(a) of the 1996 Act.⁸¹ This Section deals with the three-pronged conjunctive forbearance test. In order for the FCC to allow a carrier forbearance from one of its regulations, the carrier must first show that enforcement is unnecessary to ensure that carriers are acting indiscriminately when they promulgate any regulations, fees, and the like.⁸² Second, the carrier must show that enforcement of

ers an additional year to comply with WLNP guidelines would be sufficient for them to resolve any and all outstanding issues, such as public safety. *Id.*

⁷² See *Petition for Partial Forbearance*, *supra* note 68, at 14978, paras. 16, 18. "We find that by denying permanent forbearance from the wireless LNP requirements, we ensure that as the wireless industry continues to mature, and wireless subscribers become significantly more invested in their phone numbers, they will be able to experience the benefits of LNP." *Id.*

⁷³ *Id.* at 14980, para. 20.

⁷⁴ *Id.* at 14981, para. 22.

⁷⁵ *Id.*

⁷⁶ *Id.* at 14981, para. 23.

⁷⁷ See, e.g., Heather Forsgren Weaver, *Carriers Ask Court To Stay WLNP*, RCR WIRELESS NEWS, Aug. 25, 2003, at 3 (discussing a request made by a few wireless carriers to stay the deadline date for WLNP implementation).

⁷⁸ 330 F.3d 502 (D.C. Cir. 2003).

⁷⁹ *Id.* at 505.

⁸⁰ *Id.* at 508; see also 47 U.S.C. §160(a) (2000).

⁸¹ 47 U.S.C. §160(a).

⁸² *Id.*

the regulation by the FCC is not necessary to protect consumers from harm.⁸³ Third, the carrier must show that it is in the public interest to allow for the forbearance.⁸⁴ According to the court, enforcement of WLNP was necessary to protect consumers. Therefore, since CTIA and Verizon failed the second prong of the conjunctive test, the FCC was correct in its decision to deny wireless carriers permanent forbearance from WLNP.⁸⁵

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

issues were later clarified in the FCC's *Memorandum Opinion and Order*, released on October 7, 2003.⁹¹ For example, the Commission declared that while providers were able to contract with their customers, they could never deny them their right to port their numbers upon making a valid request.⁹² Additionally, interconnection agreements, which are arrangements made between telephone carriers to allow their subscribers to dial each other,⁹³ were unnecessary and if two wireless providers could not agree to certain terms, they still had to unconditionally port the customer's phone number.⁹⁴

Attempts continued to be made by telecommunications carriers to delay or permanently forbear the implementation of WLNP. For example, the wireless industry had been accused of trying to pass an amendment that would allow for WLNP to be delayed by sixty days—meaning consumers would not be able to port their numbers until after the start of 2004.⁹⁵ In addition, on October 29, 2003, the United States Court of Appeals for the District of Columbia denied wireless carriers' petition for mandamus seeking relief from WLNP.⁹⁶ Another petition, filed by CTIA, asked that the

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Cellular Telecomms. & Internet Ass'n*, 330 F.3d 502, 512 (D.C. Cir. 2003).

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

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

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

⁸⁹ See *In re Telephone Number Portability, Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association*, CC Dkt No. 95-116, May 13, 2003.

⁹⁰ Letter from John B. Muleta, Chief of the Wireless Telecommunications Bureau of the FCC, to John T. Scott III, Vice President and Deputy General Counsel for Verizon Wireless, and Michael F. Altschul, Senior Vice President and General Counsel for CTIA (July 3, 2003) (on file with author) (addressing issues concerning the porting interval period that may create havoc with enhanced 911 (E-911) ser-

vice and also whether carriers may place restrictions on consumers before allowing them to port their numbers). See also Heather Forsgren Weaver, *Carriers Fight Mandate that Forces Them to Port Delinquent Consumers*, RCR WIRELESS NEWS, Aug. 11, 2003, at 9 (detailing telecommunications carriers' reactions to Muleta's letter regarding the porting of customers who still have outstanding balances).

⁹¹ *In re Telephone Number Portability Carrier Requests for Clarification of Wireless-Wireless Porting Issues, Memorandum Opinion and Order* (2003) [hereinafter *Carrier Requests for Clarification*].

⁹² *Id.* at para. 14. The FCC asserted that carriers were not permitted to hold on to a customer, regardless of the status of a customer's account. However, the FCC also stated that it would not interfere with service providers' rights to certain contract terms, such as "early termination fees, credit requirements, or other similar provisions." *Id.*

⁹³ See NEWTON, *supra* note 69 (providing a definition for interconnection agreements).

⁹⁴ See *Carrier Requests for Clarification, supra* note 89, at para. 21. ("Of course, nothing would prevent carriers from entering into interconnection agreements on a voluntary basis; however, no carrier may unilaterally refuse to port with another carrier because that carrier will not enter into an interconnection agreement.") *Id.*

⁹⁵ See, e.g., *Wireless*, COMM. DAILY, Oct. 30, 2003, at 10. According to James Guest, the Chief Executive Officer of the Consumers Union, "This move is particularly disingenuous for the companies who have publicly told their customers they are prepared for Nov. 24th while they are privately negotiating eleventh-hour deals to stave off competition . . . Our question is simple: What are they afraid of? Competition?" *Id.*

⁹⁶ See *id.* (detailing how a request for mandamus against

FCC be compelled to respond to other outstanding questions.⁹⁷ However, despite all of the carriers' complaints and filings, the FCC permitted consumers to gain the advantages of true competition by making WLNP a reality on November 24, 2003.⁹⁸

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

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

A. The Role of the 1996 Act in Stimulating Competition

On February 8, 1996, then United States President Bill Clinton signed the 1996 Act into law.¹⁰¹ Prior to the passage of the 1996 Act, the Commu-

nications Act of 1934 ("1934 Act")¹⁰² was the sole piece of legislation focusing on telecommunications regulation.¹⁰³ The goals of the 1996 Act are "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new communications technologies."¹⁰⁴ It was primarily intended to bring about a period of "boom time" for the telecommunications field.¹⁰⁵

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

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

the FCC by some wireless carriers was denied).

⁹⁷ See *Telecom Notes*, COMM. DAILY, Oct. 31, 2003, at 6. In opposition to CTIA's petition, the FCC declared that it was not critical that CTIA's concerns be addressed because WLNP could be implemented without further clarification on Nov. 24. The federal agency also mentioned that it was under no obligation to answer CTIA's petitions by a "specific statutory deadline" and it did not have time to focus specifically on WLNP because it had other issues to investigate. See also *Telecom Notes*, COMM. DAILY, Oct. 29, 2003, at 6. Members of the U.S. Senate sent a letter dated Oct. 28, 2003 to FCC Chairman Michael Powell asking that the federal agency "redouble its efforts to resolve outstanding wireline-wireless porting issues as quickly as possible." *Id.*

⁹⁸ See Dan Thanh Dang, *Soon Keep Your Cell Number, Leave Your Carrier: Deregulation is Expected to Spur More Competition*, BALT. SUN, Oct. 12, 2003, at 1A (explaining how the FCC reaffirmed its commitment to the Nov. 24th deadline for WLNP implementation in the face of substantial opposition).

⁹⁹ See generally Bruning, *supra* note 27, at 1255 (discussing the origins of the 1996 Act and explaining what the telecommunications landscape was like prior to this legislation).

¹⁰⁰ See *id.*

¹⁰¹ *President Clinton Signs Telecommunications Act at Library of Congress: Library's National Digital Library Program Receives Praise*, LIBRARY OF CONGRESS, at <http://lcweb.loc.gov/today/pr/1996/96-023.html> (Feb. 8, 1996) (describing President Clinton's signing of the 1996 Act in the Library of Congress).

¹⁰² Communications Act of 1934, 47 U.S.C. §151 (2000).

¹⁰³ See Bruning, *supra* note 27, at 1256.

¹⁰⁴ 47 U.S.C. §151 et seq.

¹⁰⁵ Amy Boardman, *Law Firms At the Ready; A Hot Practice Area Just Got Hotter*, LEGAL TIMES, Feb. 12, 1996, at 1 (quoting

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

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

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

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

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

¹¹⁰ See Written Statement of Michael K. Powell, Chairman, Federal Communications Commission, on *Competition Issues in the Telecommunications Industry*, Before the Committee on Commerce, Science, and Transportation, United States Senate, Jan. 14, 2003 [hereinafter Powell].

try to achieve Congress' order by making a conscious effort to encourage developments and trends in telephony, such as WLNP, in order to achieve this goal.¹¹¹ To this end, federal regulators cite the vast growth of wireless subscribers in America.¹¹² For instance, they reported that as of June 2002, there were 129 million wireless customers, 6.5 million of whom used their cellular phone as their only telephone service provider, stimulating competition for wireline carriers.¹¹³ However, others have cautioned and warned of the "boom and bust" cycle that the telecommunications industry has seen since the passage of the 1996 Act.¹¹⁴ Some have even feared that rather than ushering in a "new era of competition," the 1996 Act may eventually lead to consolidation in telephony where large powerful carriers dominate the market.¹¹⁵ Whether these concerns are justified is still the subject of much debate. Nevertheless, despite the economic downturn of the telecommunications industry at the end of the twentieth century, it appears that the 1996 Act has been successful in promoting competition among telecommunications carriers, especially between wireline and wireless providers.¹¹⁶

III. THE EVOLUTION OF WIRELINE AND WIRELESS COMMUNICATIONS

Since the introduction of telephony services to the American public, competition has played an important role in shaping the telecommunica-

tions industry.¹¹⁷ However, wireline and wireless services did not develop at the same pace or confront the same challenges.¹¹⁸ Each had unique experiences as competition called for the expansion of their capabilities and offerings. Thus, to fully understand how competition has shaped the telecommunications industry it is essential to consider the background of both wireline and wireless services.

A. Development of Wireline Services

The history of wireline communications began with the creation of the telegraph¹¹⁹ in the mid-nineteenth century.¹²⁰ Since this form of wireline communication caught on rapidly,¹²¹ Congress in 1866, offered telegraph companies certain privileges, provided they agree to serve all potential clients indiscriminately.¹²² At this time, telegraph companies became viewed as common carriers;¹²³ thus, they were subject to judicial decrees and legislation.¹²⁴ As a result, the regulation of telecommunications began.

In 1876, Alexander Graham Bell created a new device that would forever change the way individuals communicated with one another—the telephone.¹²⁵ Once the telephone became available to the general public, telephony spread swiftly throughout the country.¹²⁶ After Bell's patent expired, American Telegram & Telephone Co. ("AT&T") acquired the Bell telephone system.¹²⁷ AT&T quickly monopolized telephony by

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Statement of Michael J. Copps, Commissioner, Federal Communications Commission, on *Competition Issues in the Telecommunications Industry*, Before the Committee on Commerce, Science, and Transportation, United States Senate, Jan. 14, 2003.

¹¹⁵ See Eric Thoreson, Comment, *Farewell to the Bell Monopoly? The Wireless Alternative to Local Competition*, 77 OR. L. REV. 309, 311 (1998). "[R]ather than fostering a new era of competition, the Act may instead steer the telecommunications industry full circle, encouraging such extensive consolidation of telecommunications companies that a small number of giants come to dominate the industry. . . ." *Id.*

¹¹⁶ See Powell, *supra* note 108, at ii; see also Copps, *supra* note 112, at 1, 2.

¹¹⁷ See generally Thoreson, *supra* note 115.

¹¹⁸ *Id.*

¹¹⁹ The telegraph provided a method for people to communicate with one another through electrical wires and Morse code.

¹²⁰ See Fred H. Cate, *Telephone Companies, the First Amendment, and Technological Convergence*, 45 DEPAUL L. REV. 1035,

1036 (1996) (explaining how wireline developed over the years).

¹²¹ *Id.* at 1036-1037 (describing how fifty telegraph businesses were operating within America by 1851).

¹²² *Id.* at 1037 ("Congress . . . offered telegraph companies rights of way along post roads and across public lands and permitted the companies to cut trees for poles on public lands without charge.").

¹²³ See GLOSSARY OF TELECOMMUNICATIONS TERMS, *supra* note 24. The Federal Standard defines a common carrier as "a telecommunications company that holds itself out to the public for hire to provide communications transmission services . . . such companies are usually subject to regulation by federal and state regulatory commissions." *Id.*

¹²⁴ See Cate, *supra* note 118, at 1037.

¹²⁵ See Eric M. Swedenburg, *Promoting Competition in the Telecommunications Markets: Why the FCC Should Adopt a Less Stringent Approach to Its Review of Section 271 Applications*, 84 CORNELL L. REV. 1418, 1423 (1999) (providing in part an overview of the development of telecommunications and the FCC in America).

¹²⁶ See Cate, *supra* note 118, at 1038.

¹²⁷ See Swedenburg, *supra* note 123, at 1424 (describing the formation of the monopoly on telephony that AT&T cre-

purchasing small local telephone companies and restricting competitors from completing calls, unless an agreement had been negotiated.¹²⁸ Most often, AT&T refused to negotiate such a contract, and if it did, it would charge high interconnection rates. As a result, the competitor would almost always be forced out of business.¹²⁹

In the early part of the twentieth century, Congress imposed regulations on AT&T to curb its monopoly,¹³⁰ but these efforts had little success.¹³¹ In a further attempt to limit AT&T's monopolization, Congress passed the Communications Act of 1934. The 1934 Act created the FCC to regulate the telecommunications industry and in doing so gave it jurisdiction over all interstate communications.¹³² However, state public utility commissions ("PUCs") still maintained their role as regulators over all intrastate communications.¹³³ Unfortunately, neither the FCC nor the state PUCs were able to break up AT&T's monopoly¹³⁴ and competition remained nonexistent.

Over the years, numerous complaints were brought against AT&T for unfair competition¹³⁵ but it was not until August 1982 that a significant step was taken to strip AT&T of its domination. At that time, the Department of Justice filed an antitrust lawsuit against AT&T.¹³⁶ As a result, the United States District Court for the District of Columbia issued a modification of final judgment

ated in the early twentieth century and held until the mid-1980s).

¹²⁸ *Id.* ("[A]ny telephone service carrier wanting to complete calls for its customers that lived in an area with an AT&T-controlled LEC had to negotiate an 'interconnection' agreement with AT&T.")

¹²⁹ *Id.*

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

¹³¹ *See* Swedenburg, *supra* note 125, at 1425. "In particular, both state and federal courts permitted AT&T to refuse interconnection to rival local service providers, leaving AT&T ample leeway to pursue its monopolistic ambitions." (footnote omitted). *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* AT&T's monopoly continued to grow more and more powerful because regulators were too busy fighting among themselves for regulatory control of the telecommunications industry. *Id.*

¹³⁵ *See* Stacy Schwartz, *Telephone Competition Under the 1996 Telecommunications Act*, 9 MEDIA L. & POL'Y 33, 34

("MFJ").¹³⁷ The MFJ provided that AT&T would divest itself of its twenty-two Bell operating companies ("BOCs") into seven independent regional BOCs ("RBOCs"), which would serve as LECs.¹³⁸ In exchange for its divestiture, AT&T was allowed to provide long-distance telephone services without restriction.¹³⁹ Moreover, the RBOCs were neither allowed to offer any type of long-distance or information service, nor were they authorized to manufacture any type of telephony equipment.¹⁴⁰

While the MFJ brought an end to AT&T's monopoly, it did little to effectuate actual competition in the telecommunications market. Under the MFJ, RBOCs were unable to compete with AT&T because they were prohibited from offering long-distance services.¹⁴¹ Additionally, if the RBOCs sought to entice customers with new services, they had to endure a lengthy process in the courts.¹⁴² Therefore, true competition did not enter the wireline industry until the passage of the 1996 Act, which allowed for the RBOCs to obtain significant gains by permitting them to offer long distance services.¹⁴³

B. The Creation of Wireless Telephony

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

(2001). Complaints arose not only because of AT&T's virtual monopoly on telephone companies, but also because of their domination over the "manufacture and distribution" of telephone parts. *Id.*

¹³⁶ *See* United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131 (D.C. 1982) (stripping AT&T of its monopoly over the telecommunications industry).

¹³⁷ *Id.*

¹³⁸ *See* Schwartz, *supra* note 135, at 35.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* (asserting that while AT&T no longer dominated the telecommunications arena as it once had, competition still had yet to arrive on the scene).

¹⁴² *See* Schwartz, *supra* note 135, at 35. The procedure required that the RBOC explain to the judiciary why it should be permitted to expand its offerings to its customers and why such an extension would not burden competition within the telecommunications industry. *Id.*

¹⁴³ *Id.* at 36. Section 271 of the 1996 Act allows for RBOCs to provide long-distance telephony services to customers within its particular region provided that certain requirements are met. *Id.* *See also* Christian DeFrancia, *Local Competition and Telecommunications Convergence: Gauging the Need for New Legislation*, 17 J.L. & POL'Y 739, 761 (2001). Section 251 of the 1996 Act requires that incumbent local exchange carriers ("ILECs") open up their wires for use by the competitive local exchange carriers ("CLECs").

try. The advent of wireless communications began in 1896 when Guglielmo Marconi received a patent for the first wireless transmitter—a radio.¹⁴⁴ A few years later, in 1906, the first “wireless telephone” was brought into existence when a radio communication of an individual’s voice traveled from America out into the Atlantic Ocean.¹⁴⁵ However, wireless telephony as we know it today would not be available for many years.

In 1947, Bell Labs first worked out the concept of wireless telecommunications,¹⁴⁶ but deployment of these services would not be available to consumers for almost another thirty years.¹⁴⁷ The technology necessary for the development of cellular telecommunications was simply not available. There was not enough continuous range of frequencies, often referred to as spectrum,¹⁴⁸ to hold a significant amount of wireless customers.¹⁴⁹ For instance, a single-cell transmitter would only allow for twenty-five channels and approximately only half of that amount could be used at any given time.¹⁵⁰

In 1977, the FCC decided to encourage the deployment of wireless communications by opening up additional spectrum to wireless carriers; however, the Commission put a limit on the number of licenses it would grant in a service area.¹⁵¹ This prohibition was soon found to be inefficient, as the Commission was besieged with applications from prospective competitors.¹⁵² In 1994, the FCC decided to change its course by sectioning off radio spectrum for wireless providers “per market

area through an open-bidding process.”¹⁵³ With this announcement, the wireless boom began and competition fiercely entered the market as carriers sought out new customers.¹⁵⁴

IV. OVERVIEW OF THE COMPETITIVE PLAYING FIELD PRIOR TO WLNP

Studies show that there are currently about 150 million cellular subscribers in America and this number is expected to increase.¹⁵⁵ In contrast, in 2002, there were approximately 223 million landline customers and this number is likely to decrease.¹⁵⁶ In addition, approximately 4% of American households use only cellular phones and this figure is expected to increase rapidly within the next few years.¹⁵⁷ Since there is already a significant amount of competition in the telecommunications market, it would not have made sense to permanently forbear WLNP. There can never be too much competition when it allows consumers to benefit from lower prices and encourages companies to develop higher quality services and more innovative products that ultimately assist the public at large.¹⁵⁸

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

Since the introduction of cellular phones, wireline carriers’ subscription rates have declined.¹⁵⁹ Recently, as many as 7.5 million people have

system.” *Id.*

¹⁵² *Id.* at 646-47.

¹⁵³ *Id.* at 647.

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

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

¹⁵⁶ *Id.*

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

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

¹⁵⁹ See Judy Newman, *Landlines Not Needed, Some Phone Users Decide; The Percentage of Cell Phone Users, Meanwhile, Con-*

¹⁴⁴ See Gregory M. Kratofil, Jr., *The Telecommunications Act of 1996 and Section 704: A “Boom” or “Bust” for the Mobile Telephone Industry*, 16 ST. LOUIS U. PUB. L. REV. 499, 500 (1997) (describing the development of cellular communications in America).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 501.

¹⁴⁷ See Stephanie E. Niehaus, *Bridging the (Significant) Gap: To What Extent Does The Telecommunications Act of 1996 Contemplate Seamless Service?*, 77 NOTRE DAME L. REV. 641, 646 (2002) (providing a brief history of wireless technology).

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

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

¹⁵⁰ *Id.*

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

switched from a wireline to a wireless service provider.¹⁶⁰ Also, it is estimated that 38% of Americans are considering making wireless their only phone service.¹⁶¹ More staggering statistics abound concerning the decline of landline usage. For instance, the number of telephone lines is shrinking and expected to continue to decline at a rate of 0.5% to 2% every year.¹⁶² Even more disheartening for wireline carriers is the FCC's announcement in June 2003 that the amount of landline phones has decreased by more than 5 million.¹⁶³

One answer for why wireline service providers are slowly disappearing from the marketplace is convenience. Unlike landlines, cellular phones can follow their owners anywhere they go.¹⁶⁴ Another disadvantage that may be costing wireline customers their business is excessive regulation.¹⁶⁵ Wireless providers are able to offer more specials and services than their wireline counterparts because they are not subject to the same regulations.¹⁶⁶ Thus, for the most part, wireline service providers are heavily regulated, whereas wireless carriers appear to have free reign.¹⁶⁷ One example of a special service offered by wireless carriers is a promotional plan that allows a consumer to talk for "free" at night and on weekends to anyone, anywhere in the United States.¹⁶⁸ Similar service plans for wireline customers have not been

made available.¹⁶⁹

Although there are many forces that may render landlines extinct, there are still qualities about wired phones that may ensure their survival in the telecommunications market. Traditional wired phones offer consumers some benefits that wireless providers simply cannot extend to their customers.¹⁷⁰ For instance, when a power outage strikes, wired phones are often the only telephones that function.¹⁷¹ Another reason why most people are hesitant to part with their landline is because they do not want to deal with the traditional problems associated with wireless phones—dead spots, lost calls, poor reception and dead batteries.¹⁷²

While wireless phones may not necessarily lead to the demise of landlines, questions still remain as to what effect, if any, competition among wireline providers will have on their future. Most telecommunications leaders agree that a significant problem facing wireline carriers is that there is not enough competition among themselves.¹⁷³ However, many regulators believe an effective way of remedying this situation is through implementation of WLNP.¹⁷⁴ They argue that not only will WLNP lead to more competition among wireline and wireless service providers, but it will also encourage wireline carriers to compete with each other in a way that is currently lacking in the tele-

tinues to Soar, Wis. St. J., Aug. 10, 2003, at A1 (discussing the decline in wireline service usage in favor of wireless communications).

¹⁶⁰ See *More People Cutting Cords to Phones; Wireless Only Use Rising Among Young*, PATRIOT-NEWS, Aug. 11, 2003, at A01 [hereinafter *More People Cutting Cords*] (detailing the decline of wireline subscribers as the market becomes increasingly inundated with individuals desiring to have their cellular phones as their primary and in some cases, their only telephone).

¹⁶¹ See Barry M. Aarons, *Does Phone Competition Still Matter?*, CONSUMERS' RES. MAG., Apr. 1, 2003, at 24 (describing the current status of telephony in the United States).

¹⁶² *Id.*

¹⁶³ See *More People Cutting Cords*, *supra* note 160, at A01.

¹⁶⁴ See Newman, *supra* note 159, at A1.

¹⁶⁵ See Raymond Gifford, Editorial, *Ground Line Versus Wireless: Idaho Wins With Deregulation*, ID. STATESMAN, July 25, 2003, at 6 (discussing the advantages that the wireless industry has over traditional wired phones).

¹⁶⁶ See, e.g., Victoria A. Ramundo, *Symposium: The State Role in Telecommunications Regulation: The Convergence of Telecommunications Technology and Providers: The Evolving State Role in Telecommunications Regulation*, 6 ALB. L.J. SCI. & TECH. 35, 44 (1996) (stating how federal and state authorities have not strongly regulated promising wireless services).

¹⁶⁷ See Fred O. Williams, *Staving Off Regulation? The Cell Phone Industry Will Unveil Self-Imposed Standards on Tuesday*,

BUFF. NEWS, Sept. 7, 2003, at B11. "The cell phone industry is like the Wild West; there's no regulation because it's a brand new industry." *Id.* (quoting Sen. Charles Schumer, D-NY).

¹⁶⁸ See e.g., Verizon Wireless, *America's Choice Calling Plans*, at <http://www.verizonwireless.com> (last visited Nov. 9, 2004) (on file with author) (providing links to particular calling plans, which give customers free minutes at night and on weekends).

¹⁶⁹ See Newman, *supra* note 159, at A1.

¹⁷⁰ See Sabatini, *supra* note 157, at E1.

¹⁷¹ See Christopher Stern & Yuki Noguchi, *Traditional Phones Gain New Respect; Power Failures Cut Cell Signals*, WASH. POST, Sept. 20, 2003, at E01 (detailing how traditional wired phones were able to keep people connected with one another via telephony during Hurricane Isabel).

¹⁷² *Id.* (stating some of the benefits that traditional wireline phones offer over their cellular counterparts); see also Sabatini, *supra* note 157, at E1; see also Newman, *supra* note 159, at A1; Williams, *supra* note 167, at B11.

¹⁷³ See Williams, *supra* note 167, at B11. Leaders in the wireless business have argued that competition, which is good for consumers, is lacking amongst wireline service providers. *Id.*

¹⁷⁴ See, e.g., Lynch Letter, *supra* note 12. Lynch argues in her letter to FCC Chairman Michael K. Powell that number portability is essential to promoting competition among all telecommunications providers—wireline and wireless alike. *Id.*

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

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

Currently, "the most visible communications service"¹⁷⁷ in America is enjoying a period of enormous growth.¹⁷⁸ America has six national cellular providers and a variety of regional wireless carriers.¹⁷⁹ There are 1,500 wireless phone systems set up in 750 national areas and research suggests that wireless penetration in America may reach 80% by 2005.¹⁸⁰ In addition, a study conducted by the Yankee Group found that cellular customers spend more time talking on their telephones than wireline subscribers.¹⁸¹ Additionally, in today's society, CTIA reports that approximately 93% of Americans can choose between three wireless carriers.¹⁸²

As a result, fierce competition has developed among cellular providers and their wireline counterparts. For instance, Verizon, the number one wireless carrier in America, spends \$4 billion a year on enhancing its cellular system for its consumers.¹⁸³ While this issue is important, it is not excessive for providers who are fixated on revenues.¹⁸⁴ Moreover, these providers understand

that if they want to maintain their dominance in telephony, they must be willing to contribute a significant amount of funds to improve services and keep consumers satisfied.¹⁸⁵

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

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

¹⁷⁵ *Id.*

¹⁷⁶ *See* Rosenbluth, *supra* note 19.

¹⁷⁷ *See* Aarons, *supra* note 161, at 24.

¹⁷⁸ *See id.*

¹⁷⁹ Written Statement of Kathleen Q. Abernathy, Commissioner, Federal Communications Commission, on *The State of Competition in the Telecommunications Industry*, Before the Committee on Commerce, Science, and Transportation, United States Senate, at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-230241A3.pdf (Jan. 14, 2003) [hereinafter Abernathy Statement].

¹⁸⁰ *See* Aarons, *supra* note 161, at 24.

¹⁸¹ *See* Williams, *supra* note 167, at B11 (citing a study by the Yankee Group, which found that wireless consumers spent 500 minutes on their telephones—more time than was spent on the telephone than landline users). The Yankee Group, Company Background, at <http://www.yankee.com/public/about/about.jsp>. (last visited Nov. 9, 2004) The Yankee Group, which is headquartered in Boston, is a company focusing on network research and consulting within the communications field. *Id.*

¹⁸² *Id.*

¹⁸³ *See* Newman, *supra* note 159, at A1. While Verizon does spend a great deal of money on improving its services, as the "nation's No. 1 wireless phone company" its customers can help ease the expenses it incurs. *Id.*

¹⁸⁴ *See* Williams, *supra* note 167, at B11.

¹⁸⁵ *See id.*

¹⁸⁶ *See generally* Newman, *supra* note 159, at A1. Consumers should not be worried with these problems, especially dropped calls, according to individuals, such as Travis Larson, a spokesman for CTIA. "A wireless phone is only a fancy radio, and just like a car radio sometimes loses its connection, a wireless phone can sometimes lose its connection . . . in the end, we're all battling the laws of physics." *Id.*

¹⁸⁷ *See* Williams, *supra* note 167, at B11. In fact, Verizon plans its wired network for 99.99% reliability. *Id.*

¹⁸⁸ *See* Newman, *supra* note 159, at A1.

¹⁸⁹ *Id.* During the first three months of 2003, the FCC received 4,119 complaints from wireless subscribers. However, the FCC also receives complaints regarding wireline service. *See also* *Wireless*, COMM. DAILY, Oct. 20, 2003, at 11. Even Congress has taken notice of the plight of cell phone users. For example, Senator Charles Schumer (D-NY) has introduced a "cell phone users bill of rights," which purports to assist wireless subscribers in their struggles with their service providers. *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *See* Lauren Mayk, *Mobile Phones, Mobile Numbers: Starting Nov. 24, When You Switch to a New Wireless Phone Carrier, Your Number Can Go with You*, SARASOTA HERALD-TRIB. (Fla.), July 27, 2003, at D1.

¹⁹² *See* Lynch Letter, *supra* note 12, at 1.

¹⁹³ *Id.*

demise in the marketplace.¹⁹⁴

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

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

The vast majority of those in favor of WLNP are consumers and their advocates, such as federal and state regulators.¹⁹⁷ They assert that WLNP will create more competition in the telecommunications industry generating lower prices, greater offerings, and better service.¹⁹⁸ Consumers, however, are not the only ones who stand to benefit from WLNP.¹⁹⁹

While most major wireline and wireless carriers vehemently oppose WLNP, a few companies recognize the benefits. These carriers realize they could use WLNP to entice customers away from their competitors and expand their own business and profits.²⁰⁰ They view WLNP as an opportunity

to be seized and not something to be fought against.²⁰¹

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

A. The Appeal of WLNP

1. How Consumers Will Benefit from WLNP

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

¹⁹⁴ See Hudson, *supra* note 16, at K1.

¹⁹⁵ See Richtel, *supra* note 6, at A1.

¹⁹⁶ See Backover, *supra* note 5, at 1B (detailing how consumers will benefit from WLNP).

¹⁹⁷ *Id.* (describing some consumers' bliss at being able to keep their phone number while switching telecommunications service providers); see also Boyle, *supra* note 5 (stating "[c]ustomers should have the ability to change carriers without the inconvenience of changing numbers").

¹⁹⁸ See Berg, *supra* note 14, at D1 (detailing how consumers stand to gain from the "unprecedented choices" that greater competition, via WLNP, will bring to the telecommunications industry), see also Letter from Judy Mucasey to the Federal Communication Commission (Oct. 16, 2003) (on file with the FCC).

¹⁹⁹ See Jim Krane, *Numbered Among Their Assets: Wireless Carriers at Odds with FCC (and Each Other) Over Portability*, SOUTH FL. SUN-SENTINEL, Feb. 3, 2002, at 3G (exploring the different stances that wireless carriers have taken on WLNP and offering some suggestions on how these carriers stand to benefit from the service).

²⁰⁰ See Mark Wigfield, *Wireless Callers Can't Take Numbers With Them*, WALL ST. J., Jan. 23, 2002, available at 2002 WL 3383648 (explaining how some smaller-sized carriers hope to lure customers away from the "big boys").

²⁰¹ See Martha McKay, *Portability Will Have Wireless Users Doing the Wave*, REC. N. N.J., Aug. 10, 2003, at B01.

²⁰² See, e.g., Bruce Meyerson, *Fees for Cell Number Switch Seem Sure to Ring Up Profits for Carriers*, COMM. APPEAL (Memphis, TN), Aug. 15, 2003, at C2 (detailing how much consumers will be charged for the fees that wireless carriers are incurring to implement WLNP).

²⁰³ See generally Rosenbluth, *supra* note 19.

²⁰⁴ See, e.g., Wigfield, *supra* note 198 (stating that consolidation could occur within the wireless industry as a result of WLNP); see also Dan Meyer, *LNP Costs Could Trigger Consolidation*, RCR WIRELESS NEWS, Sept. 8, 2003, at 3 (explaining how WLNP could result in consolidation among carriers within the telecommunications industry).

²⁰⁵ See generally Christopher Waldron, Comment, *Permanent Number Portability: A Necessary Element for Effective Local Competition*, 5-WTR MEDIA L. & POL'Y 17 (1996). "Without number portability there will be no true local competition." *Id.*

²⁰⁶ See Vikas Bajaj, *Loyalty is on the Line: Cellular Firms Fight to Keep Clients in Advent of Number Portability*, DALLAS MORN. NEWS, Oct. 25, 2003, at 1D. Ivan Seidenberg, a chief executive of Verizon Communications, Inc. argued that WLNP will be a "customer's dream" because telecommunications providers will vie for consumers' business. *Id.*

²⁰⁷ *Id.*

²⁰⁸ See, e.g., Adam Cataldo, *Be Wary of Cell Service Switch*, SCHUMER WARMS, N.Y. SUN, Oct. 20, 2003, at 3 (quoting Sen. Charles Schumer (D-NY) as saying, "It may seem like good

stated:

When you think about today's environment, when you leave carrier X and go to carrier Y, you have to buy a new phone and change your number . . . It's a real pain. With this inhibitor gone, companies have a choice between using a carrot or a stick to get you to stay or lure you to move. I think you're going to see companies focusing on having great customer service, great coverage, fewer line drops, bill accuracy, and more convenience in monthly plans.²⁰⁹

As a result, wireline and wireless carriers, desperate to keep their profits strong and steady, will provide customers with the benefits of lower prices, better services, and a wider array of innovative features.²¹⁰

2. Convenience

Prior to the implementation of WLNP, individuals were not likely to switch to different service providers because of the inconvenience and costs associated with such a move.²¹¹ They had placed their phone number on their résumés, business cards, and stationery.²¹² They had also given their phone number out to their family members, friends, and associates. The benefits of switching carriers were clearly outweighed by burdens.

WLNP now frees consumers of these troubles. It allows for individuals to port their numbers to different wireline and wireless carriers, when they so desire. Customers no longer have to pay for

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

3. Lower Prices and More Choices

WLNP is anticipated to promote strong competition among telecommunications providers. In turn, this competition is expected to lead to lower prices for consumers as wireline and wireless carriers struggle to maintain a viable presence in the telephony industry.²¹⁵ In fact, some telecommunications experts believe a "price war" will erupt among carriers.²¹⁶ However, all agree that consumers will come out on top now that WLNP has been implemented.²¹⁷ Even if service providers do not offer their customers outright cheaper rates, WLNP provides customers with a powerful negotiating tool, which helps to ensure that they receive the best service at the lowest prices.²¹⁸

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

new cell phone offers are raining down on you today, but when the cell phone companies face real competition next month, it's going to be like Niagara Falls.").

²⁰⁹ See Dang, *supra* note 98, at 1A (quoting Randy Mysliviec, Convergys Corp.'s president of wireless solutions, regarding the effects that number portability will have on the telecommunications market).

²¹⁰ See Cataldo, *supra* note 208, at 3. Many cellular carriers are hoping to maintain and attract new customers by expanding their service offerings to include features such as "push to talk," a walkie-talkie type feature. *Id.*

²¹¹ See Backover, *supra* note 5, at 1B. See, e.g., Dziatkiewicz, *supra* note 13, at 22 (quoting Tony Pomilla, director-access vendor and policy development for MCI, saying that number portability is "critical to competition because people get attached to their phone numbers and are reluctant to make a change.").

²¹² See Backover, *supra* note 5, at 1B (explaining how one couple, who owned a small business, felt trapped to stay with their wireless carrier, despite billing problems, because they had spent a great deal of money, e.g., over \$8,000, on business supplies featuring their cell phone number); see also John Moran, *Providers Set for Cell Phone Price War*, HARTFORD COURANT, Sept. 18, 2003, at D3 (discussing how telephone service subscribers should be "thrilled" with WLNP because having to receive a new telephone number each time they switch has been a huge problem that will finally be over-

come).

²¹³ See Backover, *supra* note 5, at 1B.

²¹⁴ See *id.*

²¹⁵ See Berg, *supra* note 14, at 1B. Number portability is expected to increase competition amongst telecommunications providers, which will lead to cheaper deals on telephone service plans for consumers. *Id.*

²¹⁶ See Jon Van, *Cell Service Price War Predicted; Number Portability Will Soon Unleash Customers*, CHI. TRIB., Oct. 30, 2003, at C1 (detailing how telecommunications industry insiders believe a "price war" will begin between service providers once WLNP has been implemented).

²¹⁷ *Id.* (quoting Delly Tamer, chief of LetsTalk, as saying, "I fully anticipate a price war will start . . . There are six national services and some regional services . . . We don't know who the winners will be among the carriers, but the consumers will definitely be the winners.").

²¹⁸ See Jane Spencer, *Cell Phone Services Brace for New Era: Frustrated Customers Gain Leverage as Numbers Finally Become 'Portable': Assessing the Deals*, WALL ST. J., Sept. 11, 2003, at D1 (explaining how WLNP is giving customers a "powerful bargaining chip" to negotiate with their telephone service providers for better deals).

²¹⁹ *Id.* It is important to note that telecommunications carriers are fighting especially hard to retain their existing customers because it costs more to sign up new clients. A study by the Yankee Group found that "[s]igning up a new

line miles to some of their more valuable customers,²²⁰ and Sprint PCS offers consumers "free" air-time minutes starting at 7:00 p.m., rather than the traditional industry standard time of 9:00 p.m.²²¹ In addition, many service providers are also giving customers new phones and more peak-time minutes at cheaper rates.²²² Thus, it is clear that WLNP provides consumers with a vast amount of deals and services that have never before been offered.

4. Innovative Services

To ensure their survival in an enhanced competitive playing field, wireline and wireless carriers are developing new and creative products that they hope will garner attention and interest by both their potential and existing clients.²²³ For instance, Cingular Wireless ("Cingular"), in conjunction with SBC Communications ("SBC"), and Bell South have introduced a service called FastForward.²²⁴ With FastForward, wireless calls are forwarded to an individual's wireline phone without using any of the wireless user's minutes.²²⁵ Another inventive service is "push to talk."²²⁶ This service equips consumers' cellular

customer costs a wireless carrier about \$320 on average, once marketing costs and handset subsidiaries are factored in." *Id.*

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

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

²²² *Id.*

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

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

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

phones with walkie-talkie type features.²²⁷ FastForward and "push to talk" are not the only features that carriers are developing for their consumers.²²⁸ Interestingly, as WLNP generates increasingly more competition in the telecommunications industry, wireline and wireless carriers will continue to create innovative services to remain competitive.²²⁹

5. How the Telecommunications Industry Will Benefit From WLNP

While many wireline and wireless carriers strongly oppose WLNP, a few have recognized that it may lead to potential gains for their businesses.²³⁰ These carriers believe that WLNP will present them with a unique opportunity to distinguish themselves from their competitors and attract new customers in the process.²³¹ Wireless carriers are especially eager to lure customers away from their wireline counterparts and from each other. They think WLNP presents them with the substantial prospect of being able to expand their clientele in a way that has never before happened.²³² Also, many smaller telecommunications carriers hope that WLNP will encourage many

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

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

²²⁸ *Id.*

²²⁹ See *id.*

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

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

²³² See, e.g., Krause, *supra* note 226, at A04. Some wireless carriers have expressed their belief that landline customers are unlikely to switch service providers unless they can

consumers to switch from their larger service providers.²³³

In addition to wireline and wireless carriers, others associated with the telecommunications industry stand to benefit from WLNP. Businesses that specialize in making telephony equipment,²³⁴ and companies with programs designed to aid the telecommunications industry with technical support should realize higher profits with the deployment of WLNP.²³⁵

B. The Burdens of WLNP

1. How WLNP Will be Problematic for Consumers

While consumer advocates have praised WLNP for its benefits, many opponents have countered that the service creates more harm than good to customers and the telecommunications industry.²³⁶ They argue that consumers are being forced to pay for WLNP through fees established by wireline and wireless carriers to offset the costs

keep their phone number, thus, they believe WLNP will prove to be beneficial to them in securing a new type of customer base—dissatisfied wireline subscribers; see also Eric Hellweg, *Number Portability Cometh*, CNNMONEY.COM, Oct. 27, 2003, at <http://money.cnn.com/2003/10/27/technology/techinvestor/hellweg> (commenting that WLNP could prove to be a victory for wireless carriers as it may provide wireline customers with additional incentive to let go of their landlines in favor of cellular phones).

²³³ See Krane, *supra* note 199, at 36; see also Valerie Lewis, *Porting Without a Wire: Wireless Providers Confront Issues and Opportunity as WNP-Compliance Draws Near; Wireless Number Portability*, Oct. 1, 2001, at 45.

²³⁴ See, e.g., Krause, *supra* note 226, at A04 (explaining that mobile phone makers could see their businesses flourish because while WLNP will allow for consumers to keep their phone numbers, they will still be required to buy new telephones when they switch service providers).

²³⁵ See Matthew Miller, *Making Money from the Coming Wave of Unfaithful Cell Phone Customers*, FORBES, Oct. 27, 2003, at 212 (describing how Telecordia Technologies will assist five of the nation's top wireless carriers, i.e., Verizon, Nextel, Cingular, Sprint PCS, and T-Mobile, in number switching once WLNP takes effect on Nov. 24, 2003; see generally *FutureDial Launches Wireless Local Number Portability Solution for Wireless Carriers, Retailers, and Corporations; Wireless Carriers, Retailers, and Corporate Telecom Departments Can Now Get Ready for Wireless Local Number Portability with the New Cell Phone Service Station*, PR NEWSWIRE, Oct. 20, 2003, at 1 FutureDial, Inc., a wireless software developer, has created a new service offering to assist with number portability, called Cell Phone Service Station. This service will help wireless carriers' staffs with transferring information between mobile phones once a number portability request has been made by a consumer. *Id.*

²³⁶ See, e.g., Greg Scoble, *Verizon, WCG Trade FCC Filings Over Local Number Portability*, Sept. 1, 2003, at 73 (mentioning some of the costs that the service providers will pass on to

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

a. Expenses

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

consumers and discussing other problems that may occur because of WLNP).

²³⁷ See Reddy, *supra* note 223 (detailing some of the fees that telephone service providers have started charging their customers for WLNP).

²³⁸ See generally John L. Guerra, *Most Carriers Won't Meet Wireless LNP Deadline*, BILLING WORLD AND OSS TODAY, July 2003, at 12 (describing how implementing WLNP may be a challenging task for wireline and wireless carriers).

²³⁹ See, e.g., Jonah Freedman, *The Portability Price*, MONEY, Nov. 1, 2003, at 35. There are many problems that consumers may experience while porting their phone numbers. "If you're in mid-contract, you'll pay a termination fee of \$150 or more, plus an activation fee with a new carrier. . . . You'll need a new phone, as most won't work with other carriers' networks. And you may have no service for a few days while carriers process the switch." *Id.*

²⁴⁰ See Dan Meyer, *Groups Argue Whether Users Want LNP; New Survey Says 6 Percent of Subs Will Churn Nov. 25*, RCR WIRELESS NEWS, June 23, 2003, at 6.

²⁴¹ See Jeff Smith, *Fee Frenzy: Taxes and Surcharges Can Add Up to 25% or More of Your Total Phone Bill*, ROCKY MTN. NEWS, Aug. 4, 2003, at 1B (providing an in-depth look at the charges consumers pay each month on their phone bills).

²⁴² See Hudson, *supra* note 16, at K1 (discussing how WLNP is creating expenses for wireless subscribers).

²⁴³ See Meyer, *supra* note 240. Each service provider has calculated the number portability fees which have been passed on to consumers differently. Also, each carrier has decided when to begin charging their customers for this service. For instance, "Nextel has been charging its subscribers \$1.55 per month since October," whereas since April 2003, Cingular has been charging customers anywhere from \$.32 to \$1.25 monthly for WLNP expenses. *Id.* See also Reddy, *supra* note 223 (providing a breakdown of how some of the major wireless carriers are charging their subscribers for WLNP).

intend on using the service. At this point, the federal government has not set a cap on how much carriers can charge their subscribers for WLNP.²⁴⁴ Additionally, the FCC has not investigated how much wireline and wireless carriers are charging consumers for number portability expenses.²⁴⁵ Thus, consumers are being arbitrarily charged for number portability and no one is monitoring whether they are paying too much money to their service providers.

b. *Service Delays and Lower Quality Service*

If consumers would like to keep their phone number when switching carriers, they should expect a delay in the time in which they have telephone service. This delay could last anywhere from a few hours to a few days.²⁴⁶ While this may not seem like a big problem for many, it could be a huge burden for those individuals wishing to retain access to emergency services, such as 911, during the porting interval.²⁴⁷ This delay may discourage many subscribers from switching providers, which would circumvent the goal of WLNP.²⁴⁸ Many individuals believe that customers must choose between number portability and better service capabilities.²⁴⁹ This stems from the fact that the funds devoted to improving services will be over-shadowed by the expenses of number portability.²⁵⁰

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

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

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

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

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

²⁴⁹ See Meyer, *supra* note 240, at 6.

2. *How WLNP Will Be Problematic for Telecommunications Carriers*

Wireline and wireless carriers are also burdened by WLNP. Many wireless carriers argue that the industry is already too competitive and now that WLNP has been implemented, service providers will be forced to dissolve or consolidate.²⁵¹ Wireline carriers also fear WLNP because they believe it may give consumers additional incentive to remove their landlines in favor of their cellular phones.²⁵² Enhanced competition is also expected to lead to higher churn rates.²⁵³ In addition, WLNP was expensive to implement and is costly to deploy to consumers.²⁵⁴ Carriers have to absorb these costs initially, although they are permitted to charge consumers a fee for porting their numbers.²⁵⁵ These issues clearly show that WLNP is not necessarily an outright blessing for the telecommunications industry or its consumers.

C. Hyper-Competitive Market

1. *Wireless*

Wireless carriers argue that WLNP is unnecessary because competition within the industry is already strong.²⁵⁶ Currently, the major national wireless companies and smaller regional carriers

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

²⁵¹ See Meyer, *supra* note 240, at 6.

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

²⁵³ See *iGillottResearch Says Wireless Number Portability Could Cost the Industry More than \$20 Billion*, BUS. WIRE, Sept. 3, 2003, at 5140 [hereinafter *iGillottResearch*].

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

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

²⁵⁶ See Ratner, *supra* note 10, at 1E.

aggressively compete with one another for customers.²⁵⁷ Wireless industry leaders also argue that WLNP is not needed because any more competition could lead to further consolidation.²⁵⁸

2. Wireline

WLNP is also meant to increase intermodal portability, which is the ability of a consumer to switch their phone number from their landline phone to a cellular phone, and vice versa.²⁵⁹ Portability is expected to generate some chaos in the telecommunications industry.²⁶⁰ For instance, now that WLNP has been implemented, wireline carriers stand to lose even more customers and revenue to their wireless counterparts.²⁶¹ On the other hand, wireless carriers are fearful that their wireline competitors will not cooperate with the FCC mandate.²⁶² Wireless carriers insist that issues pertaining to intermodal portability, *i.e.*, rate center disparities, create an uneven competitive playing field between themselves and wireline providers.²⁶³ However, wireline carriers believe

that their wireless counterparts' fears are "extremely one-sided."²⁶⁴ Wireline carriers argue that they have more to lose from WLNP.²⁶⁵ The FCC has recognized these concerns and has stated, "We have two systems that have grown up under different regulatory paradigms. We want to give consumers more choices about service providers."²⁶⁶ While these are great intentions, it is apparent that wireline carriers are going to be somewhat disadvantaged by WLNP.²⁶⁷

3. Higher Churn Rates

As of 2003, the wireless industry had a churn rate of 30%. Carriers argue that this is proof that more competition, via WLNP, is unnecessary.²⁶⁸ In addition, wireline carriers are also losing a large number of customers to their cellular counterparts.²⁶⁹ Now that WLNP has become available, customer churn is expected to increase substantially.²⁷⁰

Every year, increases in churn create \$2 to \$3 billion in expenses for wireline and wireless carri-

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

²⁵⁸ See Wigfield, *supra* note 200.

²⁵⁹ See Guerra, *supra* note 238, at 12.

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

²⁶¹ See Douglass, *supra* note 6, at C1 (noting that regulators believe that once consumers can port their numbers between wireline and wireless carriers, many customers will be motivated to "cut the cord" and use only their cellular phones for telephone services); see also Rosenbluth, *supra* note 19 (arguing that intermodal portability will irreparably harm all wireline carriers as they struggle to maintain their presence in the telecommunications industry).

²⁶² See Mayk, *supra* note 191, at D1 (explaining how wireless carriers stand to gain many more subscribers as a result of wireline to wireless number portability, but noting that wireless providers are afraid that their wireline counterparts will not adhere to the FCC's order to implement WLNP).

²⁶³ See *Wireline Carriers Oppose CTIA Bid to Boost Wireline-to-Wireless LNP; States Want No Delay*, TELECOMM. REP., Mar. 15, 2003, at 28 (describing that the problem regarding rate cen-

ters is that under current FCC guidelines, LECs are only required to port numbers to wireless carriers when that carrier has a switch in the consumer's rate center.) [hereinafter *Wireline Carriers*].

²⁶⁴ *Id.* (quoting Bell South in its assertion that CTIA's belief of being competitively disadvantaged is "extremely one-sided").

²⁶⁵ See *id.*

²⁶⁶ See Van, *supra* note 155, at C1 (quoting John Muleta, chief of the Wireless Telecommunications Bureau, at the FCC); see also Mark Wigfield, *Key Senator Won't Delay Wireless Number Portability Now*, DOW JONES NEWS SERV., Oct. 30, 2003, (on file with author) (discussing how four United States senators sent a letter to FCC Chairman Michael Powell asking that the FCC resolve issues pertaining to intermodal portability).

²⁶⁷ See generally *Wireline Carriers*, *supra* note 263, at 28; see also *USTA Asks FCC for 'Workable' LNP Approach*, COMM. TODAY, Aug. 14, 2003, at 1 (discussing how WLNP can create problems for wireline carriers). *But cf.* Williams, *supra* note 165 (quoting Roberta Wiggins, the director of wireless research for the Yankee Group, as saying "[p]eople are loath to let go of their wireline phones").

²⁶⁸ See Bischoff, *supra* note 257 (discussing the viewpoints of wireless carriers with divergent ideas, such as Verizon Wireless and Nextel); see also Ratner, *supra* note 10, at 1E (describing how wireless carriers believe that they will lose more customers once WLNP is implemented).

²⁶⁹ See Newman, *supra* note 159, at A1.

²⁷⁰ See, e.g., Tim McElligott, *Churn Plus Portability Equals Y2K-03*, WIRELESS REV., Sept. 1, 2003, available at 2003 WL 9297710 (noting that an estimated 45% of wireless customers will switch service providers within the first six months after WLNP becomes available).

ers.²⁷¹ To halt customer churn, carriers must be willing to spend a significant amount of money to preserve their customer base and entice new clients.²⁷² If telecommunications providers cannot amass these fees they may lose their business.²⁷³ Since WLNP is expected to increase churn by ten percent within the next year alone,²⁷⁴ this new service could lead to a major shakedown of the telecommunications industry—leaving only a few carriers behind.²⁷⁵

4. Costs

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

Now, that WLNP has become a reality, many costs remain.²⁸⁰ These costs include initial ex-

penses, fees associated with maintaining and attracting new customers, and charges accrued from maintenance of the porting technology and equipment. With all of these expenses, telecommunications carriers face significant struggles in maintaining their viability in the industry. If these costs cannot be met, wireless and wireline carriers will be forced into dissolution or consolidation.²⁸¹ Thus, it appears that WLNP is not a "dream" for many telecommunications service providers.

VI. CONCLUSION

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

Despite these benefits, porting telephone numbers has not been an easy task for either carriers or consumers. In fact, as of March 25, 2004, the FCC had received a total of 6,640 complaints regarding WLNP.²⁸³ However, consumers remain satisfied with the service despite what has been a

²⁷¹ *Id.*

²⁷² See Backover, *supra* note 5, at 1B (explaining how carriers will attempt to prevent costs from rising exponentially—they will offer customers better deals and equipment).

²⁷³ See McElligott, *supra* note 14, at D1.

²⁷⁴ See Berg, *supra* note 14, at D1.

²⁷⁵ See *id.*; but cf. Miller, *supra* note 235, at 212. Some suspect that the telecommunications industry will remain fixated as 65% of consumers are locked into long-term contracts that they will probably adhere to in order to avoid paying hefty early termination fees. *Id.*

²⁷⁶ See Mayk, *supra* note 191, at D1.

²⁷⁷ See *iGillottResearch*, *supra* note 253, at 5140.

²⁷⁸ See Reddy, *supra* note 223 (discussing how much some wireless carriers will spend to make sure their networks are correctly configured to allow for customers to port their numbers if they so desire). Cingular expects to pay \$50 million a year for the next five years to maintain its ability to port numbers upon valid requests by consumers. *Id.*

²⁷⁹ *Id.* Verizon Wireless estimates that it will spend between \$60 million to \$80 million initially on WLNP implementation. *Id.*

²⁸⁰ Nguyen Q. Le, *Lights! Camera! What Happened?*, ORANGE COUNTY METROPOLITAN (Newport Beach, C.A.), Feb. 5, 2004, at 42, "Carriers maintain three costs when it comes to wireless portability, upfront costs, maintenance costs and costs associated with subscriber churn."; see also Hudson,

supra note 16, at K1. Travis Larson, a spokesman for CTIA, has said, "There's a huge range of projected costs out there. All we know is that it's an expensive mandate." *Id.*

²⁸¹ See Meyer, *supra* note 240, at 6 (explaining that iGillott Research suggested that if carriers cannot meet the economic hardships placed upon them as a result of WLNP they can be forced into consolidation because otherwise they would not be able to "shoulder the financial burden"). See also Cingular to Pay \$41 Billion for AT&T Wireless in All-Cash Deal, COMM. DAILY, Feb. 18, 2004 available at 2004 WL 60705118 [hereinafter Cingular] (describing Cingular's acquisition of AT&T Wireless). WLNP can be inferred to have had an impact on this merger between two of the nation's largest wireless carriers.

²⁸² See Teresa McUsic, *Got Phone? Now That You Can Easily Switch Cell Phone Plans, the Question is Whether you Should*, FT. WORTH STAR-TELEGRAM, March 5, 2004, at 1 (describing how competition has increased in the telecommunications industry as a result of WLNP providing customers with many options regarding their telecommunications carriers).

²⁸³ *Wireless*, COMM. DAILY, March 30, 2004 available at 2004 WL 60705528. "The wireless carriers most often mentioned in the complaints to date are AT&T Wireless, 2,293 times; Sprint PCS, 1,585 times; Verizon Wireless, 990 times; T-Mobile, 914; Cingular Wireless, 900; and Nextel 452." Most of these complaints concerned the time it took for carriers to port numbers between each other. *Id.*

burdensome procedure in many instances.²⁸⁴ Thus, while some problems may plague the deployment of WLNP, it has shown itself to be of great value to the American public. In the words of Mark Lowenstein, managing director of Mobile Ecosystem, “[T]he wireless consumer is in the

²⁸⁴ See, e.g., Le, *supra* note 280, at 42 (describing customer Catherine Owen’s hassle with porting her telephone number). Regardless of the burdens, Owen has said, “I would

driver’s seat like never before.” This was the goal the FCC envisioned when it mandated WLNP—a telecommunications industry ripe with competition leading to incredible benefits for consumers across the country.

do it over again because in the end, it turned out fine.” *Id.* However, Egan of Mobile Competency argues that WLNP “is a disaster and it continues to be chaos.” *Id.*

