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Number Portability for Consumers: Taking Your Wireless Number With You

By Colleen Bryan*

I. Introduction

With over 150 million cellular telephone users nationwide, one of the biggest complaints from consumers about cellular service has been that telephone numbers have always belonged to the carrier, not the customer.¹ But those days are over. Now consumers can take their numbers to competing carriers for better deals.² For years, consumers with landline telephones have been able to switch from one local carrier to another without having to change their telephone numbers.³ Now, this service is available to wireless customers, too.⁴

The fulfillment of this dream has been coming for many years. And, as a result, the Federal Communications Commission (“FCC”) estimates that 2004 will bring more wireless minutes than landline minutes.⁵ Now, consumers fed up with poor cellular service and expensive plans can take their numbers to new companies *almost* hassle-free. Though telephone carriers worry that telephone number

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¹ David Coursey, *Fight for your cell phone rights NOW*, at http://reviews-zdnet.com.com/AnchorDesk/4630-7296_16-5081454.html (last visited Sept. 24, 2003).

² See Jonathan Salant, *Cell phone numbers set to become portable*, at <http://www.seacoastonline.com/2003news/11102003/world/59998.htm> (last visited Feb. 15, 2004).

³ Federal Communications Commission, *FCC Consumer Facts*, at <http://www.fcc.gov/cgb/consumerfacts/wirelessportability.html> (last visited Dec. 2, 2003) [hereinafter *FCC Consumer Facts*].

⁴ *Id.*

⁵ Seth Schiesel, *The Bells Struggle to Survive a Changing Telephone Game*, N.Y. TIMES, Nov. 24, 2003, at C1, available at <http://www.mediareform.net/news.php?id=1779> (last visited Mar. 16, 2004).

portability⁶ will be too expensive,⁷ possibly pushing some smaller companies out of the industry,⁸ many consumers believe that the additional hassles will be worth it when they can walk away from a carrier with their telephone numbers.⁹

Part II of this note will look back at the regulatory changes, detraction attempts,¹⁰ and long-awaited implementation date for cellular number portability. Part III will identify the reasoning behind the Telecommunications Act of 1996 (hereinafter the "1996 Telecom Act")¹¹ and subsequent FCC regulations and identify the changes for consumers and cellular telephone companies. Next, Part IV will speculate about the effects the 1996 Telecom Act and the FCC rules will have on consumers and the national cellular industry. Finally, Part V will address the future of cellular companies and the additional changes consumers still want them to make.

II. The Road to Regulatory Reform

A. The Need for New Regulations

Seven years ago, Congress reexamined the Communications Act of 1934,¹² enacting the 1996 Telecom Act.¹³ The 1996 Telecom

⁶ Telephone number portability is a service that allows residential and business telephone customers to change wireless carriers within the same geographic area, while keeping the existing telephone number. *See FCC Consumer Facts, supra* note 3.

⁷ *Service Switchers Can Keep Cell #s*, at <http://www.cbsnews.com/stories/2003/04/16/tech/main549565.shtml> (last visited June 6, 2003) [hereinafter *Service Switchers*].

⁸ Press Release, Consumers Union, AT&T, Cingular Wireless Merger Could Lead to Higher Prices, Poorer Services (Feb. 17, 2004) (on file with the Consumers Union), available at http://www.consumersunion.org/pub/core_telecom_and_utilities/000866.html (last visited Mar. 16, 2004) [hereinafter *AT&T and Cingular Wireless Merger*].

⁹ Lauren Mayk, *Little Static in Cell Phone Switch*, at <http://www.newscoast.com/apps/pbcs.dll/article?AID=/20031125/NEWS/311250701/1060> (last modified Nov. 25, 2003).

¹⁰ Both wireless and landline carriers have made multiple attempts to stop the implementation of the FCC number portability rules. *See infra* Part II.B.

¹¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified in scattered sections of 47 U.S.C.).

¹² *See* 47 U.S.C. § 151 (1996).

Act was meant to promote competition and reduce regulation in all telecommunications markets.¹⁴ Prior to the 1996 Telecom Act, Congress recognized the inability of customers to switch from one cellular telephone company to another while retaining the same telephone number as a major barrier to telecommunications competition.¹⁵ Therefore, pursuant to the 1996 Telecom Act, Congress imposed the duty to offer telephone number portability on all telecommunications carriers.¹⁶ The FCC, charged with leading the effort, decided soon after that wireless carriers would be required to offer telephone number portability to consumers in the 100 largest United States cities by June 1999.¹⁷

The FCC did not specifically outline the process for implementing number portability; rather, it simply set a minimum standard to which carriers must adhere.¹⁸ Subsequent litigation and roadblocks forced the FCC to extend that deadline three times with the installation of telephone number portability finally occurring on November 24, 2003, in the 100 largest cities in the United States.¹⁹

¹³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹⁴ The purpose of the 1996 Telecom Act is “to 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 telecommunications technologies.” *Id.* (preamble). See also Federal Communications Commission, *Keeping Your Phone Number When You Change Your Service Provider*, available at <http://www.fcc.gov/cgb/consumerfacts/numberport.html> (last visited Dec. 2, 2003) [hereinafter *Keeping Your Phone Number*].

¹⁵ *Id.*

¹⁶ 47 U.S.C.A. § 251(b)(2) (1996).

¹⁷ *Service Switchers*, *supra* note 7.

¹⁸ *In re Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 F.C.C.R. 8352, 8378 (1996), available at 1996 WL 400225.

¹⁹ Press Release, FCC, Federal and State Regulations Agree on Success of Local Number Portability: Joint Statement of FCC Chairman Michael K. Powell and NARUC President Stan Wise (Nov. 21, 2003) [hereinafter Powell & Wise Statement], available at <http://www.fcc.gov/cgb/NumberPortability/> (last visited Mar. 16, 2004). Outside of the top 100 United States cities, wireless carriers must be capable of implementing wireless number portability six months after the November 24, 2003 deadline. Federal Communications Commission, *Timeline for Wireless LNP*, available at <http://www.fcc.gov/cgb/consumerfacts/wirelessportability.html> (last visited Dec. 2, 2003).

B. Multiple Attempts to Detract and Delay

The FCC set its first compliance date for telephone wireless carriers to provide number portability on June 30, 1999.²⁰ On May 30, 1997, Bell Atlantic NYNEX Mobile filed a petition for review of the FCC's wireless number portability rules with the United States Court of Appeals for the District of Columbia, challenging the FCC's authority to impose wireless number portability.²¹ The petition was supported by a number of interveners, including the Cellular Telecommunications and Internet Association ("CTIA").²²

Additionally, on December 16, 1997, the CTIA filed a petition with the FCC seeking temporary forbearance from enforcement of the number portability requirements for wireless carriers until the completion of a five-year, build-out period prescribed by the FCC.²³ On February 9, 1999, the FCC granted the petition and extended the wireless number portability enforcement deadline to November 24, 2003.²⁴

In granting the CTIA's petition, the FCC found that the three-prong test for forbearance under Section 10(a) had been met.²⁵ The FCC specifically found that "wireless number portability was not necessary at the time to ensure just and reasonable charges and practices, because competition in the wireless market had increased significantly."²⁶ The FCC also reasoned that wireless number portability was not necessary to protect consumers at that time, because the demand for number portability among consumers was low.²⁷ Finally, the FCC found temporary forbearance consistent with the public interest because the industry needed additional time to

²⁰ Cellular Telecomm. & Internet Ass'n v. FCC, 330 F.3d 502, 505 (D.C. Cir. 2003).

²¹ Cellular Telecomm. & Internet Ass'n, 330 F.3d at 505.

²² *Id.* at 505. On March 19, 1999, Bell Atlantic and the FCC agreed to dismiss the pending case without prejudice. *Id.* at 506.

²³ *Id.* at 505-06 (citing *In re Cellular Telecomm. Ind. Assoc.'s Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations*, Memorandum Opinion and Order, 14 F.C.C.R. 3093, 3116-17 (1999) available at 1999 WL 58618 [hereinafter Order on CTIA's Petition]).

²⁴ See Order on CTIA's Petition, 14 F.C.C.R. at 3116-17 (1999).

²⁵ *Id.* at 3101-09.

²⁶ *Id.*

²⁷ *Id.*

develop number portability technology and improvements likely to enhance service and competition.²⁸

Then, on July 26, 2001, with the November 2003 enforcement deadline approaching, Verizon Wireless filed a petition with the FCC seeking permanent forbearance from the wireless number portability rules.²⁹ Verizon made the following claims: (1) “the wireless market was already sufficiently competitive;” (2) “that the industry should not be required to implement wireless number portability while attempting to comply with other regulatory requirements;” and (3) “that the costs of implementing wireless number portability would exceed the benefits.”³⁰ The FCC denied Verizon Wireless’s petition but extended the compliance deadline for another year.³¹ The FCC concluded that permanent forbearance was not proper because it would not protect consumers.³²

In 2003, the CTIA brought an action before the D.C. Circuit seeking judicial review of the FCC’s denial of permanent forbearance from the enforcement of the wireless number portability rules.³³ The court held that the FCC’s decision was reasonable and in the best interests of the public.³⁴ Rejecting complaints from the wireless carriers, the court instructed the carriers to adhere to the FCC’s regulations.³⁵

On the other side of the battle, consumer advocates, such as the Consumers Union, publisher of *Consumer Reports*, continued to fight to keep number portability on track with the new deadline.³⁶ The group suggested that number portability would increase competition, resulting in lower cellular bills and greater convenience

²⁸ *Id.* at 3103-04.

²⁹ *Cellular Telecomm. & Internet Ass’n*, 330 F.3d at 506.

³⁰ *Id.* at 506 (citing *In re Verizon Wireless’s Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, Memorandum Opinion and Order, 17 F.C.C.R. 14,972 (2002) [hereinafter *Order on Verizon’s Petition*]).

³¹ *Cellular Telecomm. & Internet Ass’n*, 330 F.3d at 506 (citing *Order on Verizon’s Petition*, 17 F.C.C.R. at 14,981-83).

³² *Id.*

³³ *Id.* at 504.

³⁴ *Id.* at 513.

³⁵ *Service Switchers*, *supra* note 7.

³⁶ *Number Portability*, at <http://www.consumersunion.org/wireless/portability1.html> (last visited Nov. 11, 2003).

for consumers.³⁷

Nevertheless, carriers made a final attempt on November 18, 2003, requesting that the FCC postpone some of the number portability rules, specifically, those applying to landline carriers.³⁸ Led by the United States Telecom Association (“USTA”), the representative for landline carriers, the carriers argued that the FCC’s number portability rules would cause them substantial harm because, as landline carriers, they would be unable to compete for wireless customers.³⁹ Finding this reasoning insufficient, the FCC denied their request.⁴⁰ So, the USTA and the rest of the carriers appealed the matter to the D.C. Circuit, questioning “whether landline carriers have to be able to transfer home telephone numbers to cellular telephone.”⁴¹ Interestingly, the CTIA, representing wireless carriers in other litigation, came out against the USTA’s request, arguing that landline companies should be held to the same level of consumer responsibility as the wireless carriers.⁴² The court denied the USTA’s attempt to block the implementation of the number portability rules on November 24, 2003.⁴³

C. The Final Deadline

Just days before the November 24, 2003 deadline, the FCC and the National Association of Regulatory Utility Commissioners (“NARUC”) together stated, “. . .we reaffirm the basic truth: your phone number belongs to you, and you can take it with you. Companies will now have to use better service, lower prices and

³⁷ *Id.*

³⁸ Joint Petition for Stay Pending Judicial Review of the United States Telecom Association and CenturyTel of Colorado, Inc., *In re Telephone Number Portability* (FCC, Nov. 18, 2003) (CC Docket No. 95-116).

³⁹ See *In re Telephone Number Portability*, CC Docket No. 95-116, Order, at 2 (FCC, Nov. 20, 2003). See also Ben Charney, *FCC rejects number portability delay*, at <http://news.com.com/2100-1037-5110191.html?tag=nl> (last modified Nov. 20, 2003).

⁴⁰ *In re Telephone Number Portability*, CC Docket No. 95-116, Order, at 1 (FCC, Nov. 20, 2003).

⁴¹ *Id.*

⁴² Mayk, *supra* note 9.

⁴³ *Cell Phone Numbers UnShackled*, at http://www.consumeraffairs.com/news03/cell_portability.html (last visited Feb. 15, 2004).

innovation to keep customers.”⁴⁴ Although most carriers filled the days leading up to the deadline with blockades, consumers nationwide were eagerly awaiting the implementation of the FCC’s new rules.⁴⁵

The media hyped the deadline, creating high expectations of customers flooding sales rooms.⁴⁶ The highly anticipated rule change “set off a marketing blitz by the cellular telephone companies, fearful of losing their customers and eager to snare new ones from rivals.”⁴⁷ The mandate spurred heavy competition between cellular carriers to snag customers for lengthy multi-year contracts prior to the deadline.⁴⁸ Airline miles, free telephones, discounts on higher-end telephones, and cash credit were a few of the tactics exercised by the six major national cellular providers.⁴⁹ However, during the months prior to the deadline, many carriers saw a decrease in telephone contract sales.⁵⁰

Cellular customers were waiting for the best deals, and it appears that they still are. Consumers seem to be listening to public and administrative advice, which indicates they should wait before taking advantage of the FCC’s “wireless number portability” policy.⁵¹ This advice specifically suggests that consumers should give the carriers time to resolve potential problems with their computer

⁴⁴ Powell & Wise Statement, *supra* note 19.

⁴⁵ Yuki Noguchi, *One Phone Number to Go: Wireless Firms Working Out Details of Painless Switching Between Carriers*, WASH. POST, Sept. 28, 2003, at F01, available at 2003 WL 62218956.

⁴⁶ Sinead Carew, *U.S. mobile users look but don’t leap*, at <http://uk.news.yahoo.com/031125/80/eeums.html> (Nov. 25, 2003).

⁴⁷ Lisa Picarille, *The Local Number Portability Hype Didn’t Match Reality*, at <http://www.destinationcrm.com/print/default.asp?ArticleID=3653> (Nov. 26, 2003).

⁴⁸ Matt Richtel, *Cellphone Deals Sweeten in Face of New Rule on Keeping Number*, N.Y. TIMES, Oct. 18, 2003, available at http://laniels.org/~slaniel/cell_companies_sweeten_deals.html (last visited Nov. 10, 2003).

⁴⁹ *Id.* The six major national carriers include: AT&T Wireless; Verizon Wireless; Cingular Wireless, a joint venture of SBC Communications and BellSouth; T-Mobile, a subsidiary of Deutsche Telekom; Nextel Communications; and Sprint PCS. *Id.*

⁵⁰ See Picarille, *supra* note 47.

⁵¹ Cynthia Webb, *Cell Switching Starts Slowly But Surely*, available at <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A12905-2003Nov25¬Found=true> (last visited Dec. 2, 2003).

systems as a result of the FCC's new rules.⁵²

While some forecasts suggested that millions of consumers might try to switch carriers on the first day,⁵³ Mobile Competency, a wireless industry research firm, reported that fewer than 100,000 people attempted to port their number on November 24, 2003.⁵⁴ In fact, Ipsos-Insight, a global marketing research firm, found that although 70 percent of wireless customers are aware of the number portability mandate, 73 percent of those questioned are not likely to switch from their current providers during 2004.⁵⁵ Additional research by RBC Capital Markets reported that, from the porting samples it obtained from a variety of carriers, none of the porting requests were completed on the first day.⁵⁶ Yet, a static-free first day was not even expected by the FCC. In fact, the FCC warned consumers to be patient because of potential computer glitches and extended transfer times, advising that wireless-to-wireless transfers could take up to twenty-four hours and landline-to-wireless transfers may take several business days.⁵⁷

It appears the FCC was right. A spokesman for Verizon Wireless said that it had difficulty switching customers who came from a carrier that utilized a different service company.⁵⁸ The FCC recorded almost 2,400 informal complaints during the first month of implementation.⁵⁹ Still, most carriers have been pleased with the initial results, indicating that stores saw two to four times more customers than usual⁶⁰ and that the process should become easier.

⁵² *Id.*

⁵³ Picarille, *supra* note 47.

⁵⁴ *Id.*

⁵⁵ Dan Meyer, *Survey finds LNP won't affect near-term churn*, at <http://rcrnews.com/cgi-bin/news.pl?newsId=16073> (Nov. 26 2003).

⁵⁶ Picarille, *supra* note 47.

⁵⁷ *FCC Consumer Facts*, *supra* note 3.

⁵⁸ Carew, *supra* note 46.

⁵⁹ Ellen Lee, *Cell Users Struggle to Shift Plans*, at <http://www.contracostatimes.com/mld/cctimes/business/7597171.htm> (last visited Jan. 22, 2004). Based on the number of complaints the FCC received, about 1,220 were directed at AT&T Wireless, 518 at Sprint PCS, 406 at Verizon Wireless, 359 at Cingular Wireless, 256 at T-Mobile, and 154 at Nextel Communications. *Id.*

⁶⁰ Carew, *supra* note 46.

III. Understanding the FCC's Reasoning

Under the FCC's wireless portability rules, number portability is a service that allows residential and business telephone customers to change wireless carriers within the same geographic area, while keeping the existing telephone number.⁶¹ However, for consumers moving from one geographic area to another, portability is not available.⁶²

The FCC's primary focus in implementing wireless number portability was to put cellular consumers first by creating a more competitive wireless market.⁶³ By providing number freedom, the FCC reasoned that consumers would not find themselves forced to stay with dissatisfying carriers because the cost of giving up their wireless telephone number to move to another carrier was too high.⁶⁴ No longer will any individual be kept from switching their carrier based on number loyalty. The FCC has rid consumers of this barrier and the D.C. Circuit has upheld its action.⁶⁵

However, this newfound freedom to switch comes with a price tag. "The wireless industry estimates that number portability will cost more than \$1 billion in the first year and \$500 million each year thereafter."⁶⁶ The industry says that this added expense will make it harder to provide better cellular telephone coverage and cheaper telephones.⁶⁷

To offer the type of telephone number portability set forth by Congress through the 1996 Telecom Act, telephone companies were forced to upgrade their networks.⁶⁸ In 1998, the FCC evaluated the cost involved in number portability and determined that the new

⁶¹ *FCC Consumer Facts*, *supra* note 3. The 1996 Telecom Act defines number portability 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." See 47 U.S.C.A. § 153(30) (1996).

⁶² *Id.*

⁶³ Powell & Wise Statement, *supra* note 19.

⁶⁴ *Cellular Telecomm. & Internet Ass'n*, 330 F.3d at 513.

⁶⁵ *Id.*

⁶⁶ *Service Switchers*, *supra* note 7.

⁶⁷ *Id.*

⁶⁸ *Keeping your Phone Number*, *supra* note 14.

feature would require additional financing.⁶⁹ The FCC told wireless carriers that they were allowed, but not required, to recover the costs of implementing and providing telephone number portability.⁷⁰ The FCC has offered carriers two types of charges as a means of recovery for the implementation costs of number portability.⁷¹ Wireless carriers can either: (1) charge other wireless carriers to use their number portability facilities to process calls; or (2) charge a small, fixed monthly amount on all wireless customers.⁷²

The FCC has issued several guidelines to smooth customer transfers.⁷³ First, consumers should not disconnect their current carrier; rather, they should contact the new carrier, which will initiate the switch-over process for them.⁷⁴ Second, consumers should be aware that the transfer to a new carrier does not eliminate termination fees or outstanding balances owed to the old carrier.⁷⁵ Nevertheless, outstanding fees cannot enable a current carrier to disallow a transfer.⁷⁶ Both carriers must adhere to the transfer but facilitate fee collection individually.⁷⁷

IV. The Effects of Wireless Number Portability

Whereas only consumers in the 100 largest United States metropolitan areas currently have number portability available,⁷⁸ the feature should be available to consumers nationwide by May 24, 2004.⁷⁹ Whether number portability will actually improve customer

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Federal Communications Commission, *FCC Consumer Facts Wireless Local Number Portability*, at <http://www.fcc.gov/cgb/consumerfacts/wirelessportability.html> (last visited Dec. 2, 2003).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Federal Communications Commission, *Wireless Local Number Portability (WLNP) Frequently Asked Questions*, at <http://www.fcc.gov/cgb/NumberPortability/#earlyfee> (last visited Mar. 5, 2004).

⁷⁸ *Id.*

⁷⁹ See Salant, *supra* note 2.

service by making carriers “empowered to actively retain existing customers and not just gear any new promotion to new customers,”⁸⁰ or have long-term detrimental effects on telecommunication competition, is yet to be determined.

A. The Consumer’s Point of View

With the consumer’s best interests in mind, the FCC and Consumers Union continue to fight for cellular freedom⁸¹ and consumer rights. Among the rights that the Consumers Union is advocating are: (1) better information about where their cell phones will work before purchasing a plan; (2) pro-rated early termination charges; (3) the ability to keep the same cellular phone when switching to compatible carriers; and (4) knowledge of the number and types of customer complaints filed against individual carriers with the FCC.⁸²

Consumers considering the transfer decision are advised to follow the FCC’s tips for transferring cellular telephone numbers and to fully research the competitors before making a switch.⁸³ Intense marketing and giveaways are making it extremely difficult for consumers to choose between carriers.⁸⁴ Other than vendor websites,⁸⁵ there is not a specific source that consumers can utilize to compare the packages of competing carriers.

Also, consumers need to be conscious of contract termination fees.⁸⁶ Although some carriers are picking up the cost, the FCC has not required such action, and consumers should not expect carriers to anytime soon.⁸⁷

⁸⁰ *Court Upholds Cell Phone Portability*, at <http://www.garth.org/archives/p/14> (last visited Dec. 2, 2003).

⁸¹ Press Release, Consumers Union, *available at* <http://www.consumersunion.org/telecom/cr-cell0104.htm> (last visited Jan. 22, 2004).

⁸² *Id.*

⁸³ Federal Communications Commission, *Your Phone Number, You Can Take It With You!*, *available at* <http://www.fcc.gov/cgb/NumberPortability/checklist.html> (last visited Mar. 5, 2004).

⁸⁴ *FCC Consumer Facts*, *supra* note 3.

⁸⁵ See <http://numberportability.com/> (last visited Jan. 25, 2004).

⁸⁶ *FCC Consumer Facts*, *supra* note 3.

⁸⁷ *Keeping Your Phone Number*, *supra* note 14.

In addition, consumers need to be aware that a large portion of the upgrading costs for the carriers are paid through charges tacked on to their individual bills.⁸⁸ Carriers are charging fees ranging from 32 cents to \$1.75 a month for number portability costs.⁸⁹ Although companies are not required to recover upgrading costs, the FCC does allow them to do so, and carriers are taking advantage of the allowance.⁹⁰ In fact, some carriers began charging the fees to current customers well before the deadline realization.⁹¹

Finally, number portability is not functioning static-free. Consumers making the switch during the first year need to expect potential mishaps and frustrations with individual transfers. Some portability advocates warn that carriers will make transferring out of their services as difficult and expensive as possible in an effort to keep current customers.⁹² For example, one man, who splits his year between Florida and Minnesota, made the switch on November 24, 2003, from AT&T to Sprint PCS.⁹³ The in-store porting process took him fifty minutes, but he wasn't free of his old carrier quite so soon.⁹⁴ For the next 24 hours, he could dial out on his new phone, but still had to carry his old one to receive calls.⁹⁵ Other consumers trying to make the switch were sent home and told that they would be notified when the transfer occurred through the system.⁹⁶ For many consumers, the switch has taken several days.⁹⁷

⁸⁸ *Id.*

⁸⁹ Bruce Meyerson, *Verizon to Charge Double Expected Fee to Cover Portability Costs*, USA TODAY, Nov. 26, 2003, available at http://www.usatoday.com/tech/news/2003-11-26-verizon-port-charge_x.htm (last visited Dec. 2, 2003). The FCC does not regulate these amounts. Therefore, carriers can raise or decrease these amounts to fulfill their needs. See *FCC Consumer Facts*, *supra* note 3.

⁹⁰ *FCC Consumer Facts*, *supra* note 3.

⁹¹ Meyerson, *supra* note 89. "Sprint, for example, has been charging about 18 million customers an extra 63 cents per month since July, for a total of more than \$65 million collected through November." *Id.*

⁹² Noguchi, *supra* note 45.

⁹³ Mayk, *supra* note 9.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Mayk, *supra* note 9.

⁹⁷ *AT&T Wireless Leads in Number Portability Problems*, at http://www.consumeraffairs.com/news03/att_cell_numbers.html (last visited Dec.

These matters may seem trivial to overly excited consumers not nearly outweighing the benefits of number portability. Yet, strong consideration must be given to the potential downside of the new FCC rules.

B. Carrier Considerations

Superficially, this mandate appears to represent a win for the consumer and a loss for the carrier, but it's not quite that simple. This mandate may potentially backfire for consumers. First, the expense of the mandate could filter out smaller companies that cannot afford the additional costs,⁹⁸ risking a decrease in competition and leaving only the largest to survive. In such a situation, the very goals of the FCC and Congress, based on the 1996 Telecom Act, would be negated. For example, Armstrong Telephone Company, a small privately-owned carrier, has its home base within the Baltimore area, making it susceptible to the new regulations.⁹⁹ For such a small company, the cost of compliance could be overwhelming and potentially fatal. This situation is especially true during the first few months of trial and error for the new systems.¹⁰⁰ Unlike previous mandates, where the FCC allowed additional time for smaller companies to comply, the FCC is not currently providing such an option.¹⁰¹ Consequently, this could cost many companies their futures.¹⁰²

Furthermore, a substantial focus on number portability over the past few years has not met consumers' immediate needs, which have included requests for fewer drop zones and lower costs.¹⁰³ No cellular provider is flawless and each carrier has too many calls

10, 2003).

⁹⁸ Cheryl Johnston, *FCC portability rules are a big order for tiny phone company*, at <http://www.gazette.net/200348/business/news/190195-1.html> (last visited Nov. 28, 2003).

⁹⁹ *Id.* Geographically, Armstrong Telephone Company falls within the mandated area, but it is technically considered a rural telephone company. This may allow the company to comply by the May deadline. *Id.*

¹⁰⁰ *Id.*

¹⁰¹ See Johnston, *supra* note 98.

¹⁰² *Id.*

¹⁰³ David Kirkpatrick, *Fast Forward: Let's Hang Up On Bad Cellphone Service*, FORTUNE MAG., Nov. 26, 2003, available at <http://www.fortune.com/fortune/print/0,15935,551469,00.html> (last visited Dec. 2, 2003).

dropped in too many places.¹⁰⁴ Offering the ability to change carriers has done nothing for improving carrier quality. The FCC should have also considered that number portability might push too many consumers to go completely wireless too soon. The industry is not capable of adequately supporting consumers who leave the landline completely behind.¹⁰⁵

Finally, the FCC rules are expected to accelerate customer turnover from carrier to carrier, forcing carriers that actually survive the mandate to become more competitive.¹⁰⁶ In fact, competition has already increased over the past few months as major carriers try to draw in new customers with better packages.¹⁰⁷ “Wireless carriers will have to compete even more fiercely in a very competitive environment,” said Verizon Wireless spokesman Howard Waterman.¹⁰⁸ For example, customers can bring their own number to Cingular Wireless and benefit from “rollover” minutes.¹⁰⁹ T-Mobile is the only provider offering a transfer for no additional cost.¹¹⁰ Recognizing the potential of gaining new customers through easy transfer “in” options, many carriers are simplifying the switch to their services. For example, Cingular Wireless’ website illustrates a five-step, user-friendly transfer guide.¹¹¹ Verizon Wireless allows consumers to use its website for porting questions and checking porting status.¹¹²

However, wireless carriers are not going to let the transfer “out” be quite so simple, at least, not without a dip into consumers’ pockets. Carriers are pushing longer contracts and charging bigger

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Meyer, *supra* note 55.

¹⁰⁷ See Salant, *supra* note 2.

¹⁰⁸ *Id.*

¹⁰⁹ See generally http://www.cingular.com/customer_service/LNP_QA (last visited Mar. 19, 2004).

¹¹⁰ See <http://www.t-mobile.com/switch/default.asp> (last visited Jan. 12, 2004). See also Meyerson, *supra* note 89.

¹¹¹ See http://www.cingular.com/customer_service/LNP (last visited Mar. 19, 2004).

¹¹² See <http://www.verizonwireless.com/b2c/LNPControllerServlet> (last visited Jan. 12, 2004).

termination fees.¹¹³ The average monthly bill is \$49.46, whereas the average termination fee is around \$150.¹¹⁴ In fact, a group of class-action attorneys in California are engaged in lawsuits, insisting that the tactics carriers are using to keep customers locked in to their plans violate state consumer protection laws.¹¹⁵ Currently, the FCC has not decided whether to get involved and to regulate these issues.¹¹⁶

Still, signs of a potential *decrease* in competition have already started to appear on the wireless horizon.¹¹⁷ Most recently, AT&T and Cingular Wireless, two of the biggest wireless carriers,¹¹⁸ have proposed a potential merger.¹¹⁹ The Consumers Union warns that this merger could lead to a dangerous consolidation trend, resulting in poorer service and higher prices for consumers, and ultimately, defeating the reasoning behind the new FCC rules.¹²⁰ So, for now what may have been a good idea for the consumer initially is turning out to be a financial benefit for the carriers in the long run.

V. Looking to the Future

The FCC decided that wireless number portability is necessary to retain consumer choice and enhance competition among wireless carriers and between the wireless and landline industries.¹²¹ Still, many carriers do not see the justification for such regulation in

¹¹³ Todd Wallack, *Cell firms keep tight hold on users: Critics say tactics keep millions from switching carriers*, SAN FRANCISCO CHRON., Dec. 22, 2003, at E-1, available at 2003 WL 3771454.

¹¹⁴ Jon Van, *Number is sole constant in cell phone switch*, CHI. TRIB., Jan. 11, 2004, at 5, available at 2004 WL 56077010.

¹¹⁵ See Wallack, *supra* note 113. In the class actions, the consumers claim that the carriers are violating state law by: (1) charging stiff early termination fees, (2) locking customers into lengthy contracts; and (3) rigging cellular handsets so they cannot be used by another carrier. Lawfully, wireless carriers have the right to collect for their losses, but this suit claims that carriers' charges are significantly higher than their losses. *Id.*

¹¹⁶ *Id.*

¹¹⁷ See AT&T and Cingular Wireless Merger, *supra* note 8.

¹¹⁸ See Richtel, *supra* note 48.

¹¹⁹ See AT&T and Cingular Wireless Merger, *supra* note 8.

¹²⁰ *Id.*

¹²¹ Coursey, *supra* note 1.

an arena that already experiences healthy competition.¹²² Hence, the fight between the FCC and wireless carriers might not be over yet. Wireless carriers say that, out of the millions of cellular customers nationwide, about one third currently change carriers per year.¹²³ However, unless there is a regulatory change, all major carriers are focused on complying with the mandate and increasing their customer base.

Despite the FCC mandate, the United States is still behind other countries that offer number portability.¹²⁴ Many cellular telephone users outside the United States, in places such as Britain, Australia, and Hong Kong, already have the option of keeping their numbers when they switch carriers.¹²⁵ In fact, when Hong Kong's six major wireless carriers began to allow users to keep their numbers in 1999, customers began changing their service on an average of once every 10 months.¹²⁶ This is a testament to the very competitive market that the FCC wants to create.

Additionally, landline carriers are feeling the pressures of the mandate as they await a ruling from the D.C. Circuit on the effects the 1996 Telecom Act and the FCC's rules will ultimately have on them.¹²⁷ For years, landline carriers have simply been surviving in a market overcome with wireless telephones, digital subscriber lines, and new local line competitors.¹²⁸ Wireless telecommunications is one of the leading challenges landline carriers face.¹²⁹ Landline carriers experience an even more difficult situation because they are arranged in smaller geographic zones than wireless carriers.¹³⁰ Landline carriers are worried that the new regulations will force them

¹²² *Id.*

¹²³ *Service Switchers, supra* note 7.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Noguchi, *supra* note 45.

¹²⁷ Johnston, *supra* note 98.

¹²⁸ Schiesel, *supra* note 5.

¹²⁹ Red Herring, *Cutting the Cord*, at <http://www.redherring.com/Article.aspx?f=articles/2004/01/5f498af0-3c8f-4dd8-86a9-c8eef386ed97/5f498af0-3c8f-4dd8-86a9-c8eef386ed97.xml> (last visited Jan. 5, 2004). Yankee Group research found that "43 percent of all long-distance telephone calls made in 2003 were exclusive to cell phones, up from 26 percent in 2002" and "35 percent of all 2003 local calls were made by wireless telephone, up from 22 percent in 2002." *Id.*

¹³⁰ Salant, *supra* note 2.

to transfer outside of their zoning, which they are not technologically or financially prepared to do.¹³¹

As service providers perfect number portability, consumers must learn how to take advantage of their newfound freedom.¹³² That freedom may include leaving their landlines behind, eventually becoming entirely mobile. Today, 20% of Americans have considered going fully wireless, and 2% have already done so.¹³³ Young adults make up a high percentage of consumers who are beginning to leave the landline telephones behind.¹³⁴ Thus, as America's youth continues to grow, so will the desire for complete mobility. The issue now facing carriers is how to provide better coverage to pull those consumers in. Currently, cellular telephones are less reliable than conventional telephones because of frequent drop zones¹³⁵ and failure during power outages.¹³⁶ Until significant advances are made in telecommunications technology, consumers should think twice before hanging up on their traditional lines.

VI. Conclusion

The mandate to provide telephone number portability was warranted, and it was in the best interest of consumers. The FCC is expecting that its new regulations will lower the cost of switching carriers, resulting in better quality service and lower prices due to increased competition.¹³⁷ Ultimately, the timing of the mandate may not be the most important aspect of its installation. With all the other issues that cellular telephone companies need to measure up to for consumer satisfaction, it is only a small step towards achieving the FCC's goal: the creation of a more competitive atmosphere in the marketplace. In addition to changing carriers, many consumers should view the mandate as an opportunity to bargain for an upgrade

¹³¹ *Id.*

¹³² Van, *supra* note 114.

¹³³ Kirkpatrick, *supra* note 103.

¹³⁴ Stacy Wright, *Phone-number portability may boost trend of cutting landlines*, COLONY COURIER-LEADER, Nov. 26, 2003, available at http://www.zwire.com/site/news.cfm?newsid=10584038&BRD=1426&PAG=461&dept_id=528208&rfl=8 (last visited Dec. 2, 2003).

¹³⁵ Kirkpatrick, *supra* note 103.

¹³⁶ Noguchi, *supra* note 45.

¹³⁷ See Powell & Wise Statement, *supra* note 19.

with current carriers. Better telephones and more minutes, which had always been controlled by the carriers, are now part of the consumer's bargaining power.