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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
Federal Communications Commission

In the Matter of	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116

COMMENTS OF SOUTHWESTERN BELL MOBILE SYSTEMS, INC., AND PACIFIC BELL MOBILE SERVICES

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SUMMARY

SBMS supports the CTIA Petition for Forbearance with regard to the Commission requirement that wireless carriers implement service provider number portability. Section 10 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, directs the Commission to forbear from applying a statute or regulation to a class of telecommunications carriers or services where the Commission determines that the standards contained in Section 10 are met. The standards for Section 10 forbearance clearly are met with regard to wireless number portability. The wireless industry is highly competitive and such competion assures that the consumers are protected and that the charges, practices, classifications or regulations by wireless carriers are just, reasonable and nondiscriminatory. Forbearance also is consistent with the public interest in that it will promote competition, allowing new entrants to allocate resources to activities that will help them gain customers, including buildout of their networks and marketing. Forbearance from requiring the implementation of wireless number portability clearly is appropriate under Section 10, and SBMS urges the Commission to exercise its authority to forbear.

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Southwestern Bell Mobile Systems, Inc., and Pacific Bell Mobile Services (collectively "SBMS"), file these comments in support of the Petition for Forbearance of the Cellular Telecommunications Industry Association ("CTIA"), concerning the Federal Communications Commission ("Commission") requirement that commercial mobile radio services ("CMRS") providers implement service provider number portability.[1]

CTIA requests that the Commission, under its authority in Section 10 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, forbear from imposing service provider number portability requirements upon CMRS providers, at least until the expiration of the five-year buildout period for the last of the PCS carriers. CTIA contends that number portability not only is not necessary for the promotion of competition in the wireless industry, but actually is counterproductive to the goal of increasing competition. SBMS concurs with CTIA and urges the Commission to exercise its authority to forbear from requiring CMRS providers to implement number portability.

[1] Number portability, as applied to wireless carriers through the FCC's orders, is the ability of a user of telecommunications service to retain the same telephone number when switching to a different service provider.

A. The Telecommunications Act of 1996 Grants the Commission Forbearance Authority in the Interest of Promoting Competition.

The heart of the Telecommunications Act of 1996 (the Act) is the promotion of competition in telecommunications; the Act grants the Commission corresponding regulatory flexibility to facilitate achievement of competitive goals. An essential ingredient of this increased regulatory flexibility is Section 10 of the Act, which authorizes the Commission to forbear from applying regulations or statutes where such forbearance is necessary and appropriate to promote unfettered competition.[2] This section, entitled Competition in Provision of Telecommunications Services, provides as follows:

> (a) Regulatory flexibility. . . . the Commission shall forbear from applying any regulation or any provision of this Act to a . . . class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that—
>
> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.
>
> (a) Competitive Effect to Be Weighed—In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition

[2] Congress did not require wireless number portability - wireless number portability is not part of any express statutory mandate. Rather, the Commission promulgated requirements for wireless number portability as part of this docket implementing landline number portability. The Commission's promulgation of wireless number portability requirements has been challenged in an appeal currently pending before the United States Court of Appeals for the Tenth Circuit (Bell Atlantic Nynex Mobile, Inc. v. FCC, et al.). In supporting CTIA's Petition for Forbearance, SBMS does not waive any position it has taken in the appeal.

> among providers of telecommunications services, the determination may be the basis of a Commission finding that forbearance is in the public interest.

47 U.S.C. Section 10. CTIA has shown in its Petition for Forbearance that Commission forbearance from application of the Act to require CMRS providers to implement service provider number portability clearly satisfies each of the standards set forth in Section 10. Commission forbearance in this instance would demonstrate its commitment to the facilitation of competition, by relieving regulatory burdens in circumstances for which Section 10 of The Act was intended.

B. Requiring CMRS Providers to Implement Number Portability Is Not Necessary Either To Ensure That the Charges and Practices of CMRS Providers Are Just and Reasonable or To Protect Consumers.

In deciding to require number portability for CMRS providers, the Commission concluded "that number portability will facilitate the entry of new service providers, such as PCS and covered SMR providers, into CMRS markets currently dominated by cellular carriers, and thus provide incentives for incumbent cellular carriers to lower prices and increase service choice and quality."[3] The evidence shows, however, that these goals already are being met without number portability. Competition in CMRS markets is increasing dramatically, prices are dropping, and the new entrants—PCS providers—are enjoying significant demand. The following are just a few examples of this demand:

- Wireless Week reports that personal communications services "have been grabbing wireless customers." Sprint, "the leader of the PCS pack", "has no plans for slowing its network expansion," and "plans to boost employment by 5 percent during 1998."[4]

[3] Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, June 27, 1996, para. 159 ("Report and Order").
[4] Wireless Week, February 9, 1998; p. 1.

The article reports further that "PCS carriers are attracting a higher usage type of customer, including existing cellular users.... It's having a real impact on the cellular operators themselves."[5] While cellular operators' revenue growth has been slowing, "PCS accounted for 35 percent of the industry net adds during the fourth quarter..."[6]

- Sprint PCS announced recently that its wireless service, widely available in Southern California, is now available via America Online. Mr. Bruce Crair, vice president and general manager, Sprint PCS Southern California/Nevada, indicated that "we have seen an overwhelming demand for our PCS digital phone service, and Los Angeles' customers were literally lined up outside stores when we launched last month."[7]
- Wireless online indicates that "[s]ome analysts predict the availability of PCS to 170 million people in the United States by year's end." PCS carriers are pursuing a challenging schedule for rollout of their services.[8]
- Last month, Lucent Technologies announced contracts to build PCS wireless networks for three PCS providers—Southern Wireless L.P., Georgia Independent PCS Corp., and Savannah Independent PCS Corp.--in Georgia and South Carolina. The total value of the contracts is $44.8 million over the next five years. Ms. Doris Jean Head, Lucent Sales Vice President, stated that "the PCS marketplace is emerging as one of the hottest arenas in telecommunications."[9]

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[5] Id., p. 10.
[6] Id.
[7] Business Wire via Down Jones, December 18, 1997.
[8] Wireless online, February 5, 1998.
[9] Federal Filings via Down Jones, January 15, 1998.

- The PCS industry has made terrific inroads in a short time. The United States quickly has accepted PCS technology, and cheap pricing plans have contributed to this acceptance.[10]

This increased competition, and the resultant benefits to consumers, has occurred without service provider number portability. Most dramatically, the price for wireless service has dropped significantly. The CTIA's Annualized Wireless Industry Data Survey Results, available through "Wireless Statistics" (copy attached), show that the Average Local Monthly Bill for wireless service has dropped from $95.00 in 1988 to $43.86 in 1997, a reduction of 54%. This same report shows that the number of cell sites, which enhances the quality and availability of cellular services for consumers, has increased from 599 in 1985 to 97,039 in 1997.

Another effect of wireless competition is improved customer service. The churn rate in the wireless industry is as high as 3 to 4 percent per month, significantly higher than in other industries. Customer retention is a priority in this increasingly competitive environment. Besides offering competitive prices and high quality wireless service and features, to retain customers wireless carriers are enhancing customer care by focusing on their customer service representatives--increasing their training and empowering them to solve problems and satisfy the customer without having to go up the chain of command.[11]

Under the standards contained in parts (1) and (2) of section 10(a) of the Act, the Commission should forbear from applying to CMRS providers the requirement that they implement number portability. The intense competition in the wireless industry, from

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[10] RCR; January 26, 1998; p.12.
[11] RCR, Article Archive, CINEWS, February 17, 1998.

cellular carriers and PCS providers, clearly protects the consumer. The forces of competition in the wireless marketplace demonstrably have ensured that the charges for wireless service are just, reasonable and nondiscriminatory and that customer service is optimal. No wireless carrier would survive in the competitive marketplace if it attempted to engage in unjust or unreasonable practices. Wireless number portability simply is not needed at this time to promote competition.

C. Forbearance from Requiring Number Portability is Consistent with the Public Interest.

The third criterion for the Commission to weigh in determining whether to forbear from application of a regulation or statute is whether "forbearance . . . is consistent with the public interest." [47 U.S.C. Section 10(a)(3)] In evaluating the public interest, the Act directs the Commission to

> consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, the determination may be the basis of a Commission finding that forbearance is in the public interest.

47 U.S.C. Section 10(b).

Under the terms of this statute, if the Commission decides that forbearance from enforcing the wireless number portability requirement will enhance competition among CMRS providers, the Commission may find that forbearance is in the public interest. That forbearance from requiring number portability will enhance competition among CMRS providers is abundantly clear, as discussed below.

First and foremost, PCS carriers desire to devote as much capital as possible to network buildout and marketing, because the market has shown that the buildout of their networks and aggressive marketing are the keys to enhancement of their competitive status. This has been SBMS's experience in its PCS markets and the experience cited by the other PCS providers.[12] The higher cost associated with implementing number portability, including supporting nationwide seamless roaming, diverts the carriers' resources from these essential activities.[13]

The Personal Communications Services Buildout Report indicates that four years after legislation authorizing auctions for PCS spectrum, carriers have spent $20 billion and are pursuing a challenging rollout schedule. According to the predictions of some analysts, PCS may be available to 170 million people in the United States by the end of 1998.[14]

A "Personal Communications Special Report" discussed the intense "launching and growth" activity of PCS operators in the A-and B-block arena, observing that "AT&T Wireless Services, which launched a small number of its 21 PCS markets last year, will come on strong this year. . . while Sprint Spectrum L.P., a nationwide PCS licensee, will continue its aggressive rollout strategy in 1998, with the goal of launching service in 100 more cities this year. Sprint PCS ended 1997 with launches in 134 cities."[15] The

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[12] See, Comments filed in this docket in response to the CTIA Petition for Extension of Implementation Deadlines for Wireless Number Portability, filed by PrimeCo; AT&T Wireless; Sprint Spectrum L.P. d/b/a Sprint PCS.

[13] Number portability also diverts analog carriers' resources from the important competitive activity of implementing digital technology.

[14] Wireless Week, "industry info and stats," Personal Communications Services Buildout Report, February 5, 1998.

[15] Personal Communications Special Report, RCR, January 26, 1998, pp. 16-17.

Report, which stressed that "coverage is king,"[16] made no mention of number portability as a factor in the competitive success of PCS providers.

Besides coverage, another highly important factor to consumers in selecting a wireless carrier is the price of service. The increased competition in the wireless marketplace has had the effect of lowering prices, which obviously has served the public interest. The imposition of additional costs on CMRS providers to implement number portability—which has been shown to be extremely challenging and complicated technologically—expressly contravenes the public interest in lower prices.

The costs of number portability would be a tremendous financial burden for wireless providers and, ultimately, wireless consumers to bear, with very little accompanying benefit. SBMS estimates that the annual cost of querying alone, in order to identify a ported number once the landline market implements number portability, will be in the tens of millions of dollars. Although large, this expense is a mere fraction of the investment in infrastructure that will be required to implement the ability to port numbers. The challenges associated with implementing wireless number portability in a manner that continues to support nationwide seamless roaming are documented in this docket.[17] Further, while number portability is to be implemented initially only in the top 100 MSAs, wireless customers roam everywhere. Thus, the changes to the nationwide seamless roaming process being required by wireless number portability affect all wireless carriers nationwide--not just those in the top 100 MSAs. To require number

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[16] Id., p. 16.

[17] See, e.g., CC Docket No. 95-116, CTIA Petition for Extension of Implementation Deadline for Wireless Number Portability, SBC Comments, pp. 6, 15, and Affidavit attached thereto; AT&T Wireless Comments pp. 2, 4 and attached Affidavit, filed September 15, 1995.

portability, where the costs are substantial and well-documented and the benefits merely speculative, would be inconsistent with the public interest.

Forbearance from requiring number portability will enhance competition by allowing new entrants to devote financial resources to the vital activity of building their networks. Just as clearly, the absence of number portability has not impeded competition. Number portability is insignificant to the process of acquiring wireless customers. Competition is thriving in the wireless marketplace, without the availability of number portability. Quite simply, consumers do not become as attached to their mobile number as they may be to their landline phone number. They tend not to include their mobile numbers in phone directories or in directory assistance databases. The change of their existing mobile number has not deterred consumers from switching from one CMRS provider to another, as indicated by industry churn numbers, discussed above.

The Commission's number portability requirements for wireless are based upon the premise that number portability will enhance opportunities for new entrants. The greatest proof that number portability will not have such an effect for new entrants is the fact that the CEOs of the majority of PCS carriers voted to authorize CTIA to file the Petition for Forbearance.[18] Competition is thriving among CMRS providers -- without number portability. Forbearance from requiring CMRS providers to implement number portability will promote competition, by allowing carriers, especially new entrants, to devote their resources to building their networks and maximizing their coverage, while keeping their prices competitively low. Therefore, under Section 10(a) and (b) of the Act,

[18] CTIA Petition, p. 4.

forbearance from requiring wireless carriers to implement number portability is consistent with the public interest, and the Commission should exercise its authority to forbear.

D. Conclusion.

In adopting Section 10 of the Act, the legislators made clear that the intent of the Act is to promote competition in telecommunications, and that one way to help achieve this goal is by granting the Commission much-needed regulatory flexibility. The Act directs the Commission to forbear from applying a regulation or statute to a class of telecommunications carriers or services where the Commission determines that the standards set forth in Section 10 are met. Section 10 is tailor-made for the issue of the application of number portability requirements to CMRS carriers. Enforcement of wireless number portability requirements clearly is not necessary to ensure that the charges, practices, classifications or regulations by CMRS providers are just, reasonable and nondiscriminatory or to ensure the protection of consumers. The highly competitive wireless marketplace is ensuring that these conditions are met. Further, forbearance from requiring wireless number portability will promote competition among wireless providers—in particular, permitting new entrants to devote their resources to activities that will help them gain customers—and is therefore, under the Act, consistent with the public interest. As CTIA suggests, after the last PCS provider has completed its build-out obligations, the Commission could evaluate the status of competition in the industry at that time, and determine if forbearance remains appropriate. SBMS urges the Commission now to take advantage of this opportunity to exercise the regulatory flexibility it has been granted under the Act and, in the interest of enhancement of

wireless competition, forbear from requiring CMRS carriers to implement number portability.

Respectfully submitted,

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WIRELESS STATISTICS

CTIA's ANNUALIZED WIRELESS INDUSTRY DATA SURVEY RESULT

June 1985 to June 1997

Reflecting Domestic U.S. Commercially-Operational Cellular, ESMR and PCS Providers

Date	Estimated Total Subscribers	Annualized Total Service Revenues (in 000s)	Annualized Roamer Revenues (in 000s)	Cell Sites	Direct Service Provider Employees	Cumulative Capital Investment (in 000s)	Average Local Monthly Bill
1985	203,600	$354,316	n/a	599	1,697	$588,751	n/a
1986	500,000	$666,782	n/a	1,194	3,556	$1,140,163	n/a
1987	883,778	$941,981	n/a	1,732	5,656	$1,724,348	n/a
1988	1,608,697	$1,558,080	n/a	2,789	9,154	$2,589,589	$95.00
1989	2,691,793	$2,479,936	$210,699	3,577	13,719	$3,675,473	$85.52
1990	4,368,686	$4,060,494	$365,549	4,768	18,973	$5,211,765	$83.94
1991	6,380,053	$5,075,963	$565,989	6,685	25,545	$7,429,739	$74.56
1992	8,892,535	$6,688,302	$838,077	8,901	30,595	$9,276,139	$68.51
1993	13,067,318	$9,008,700	$1,124,493	11,551	36,501	$12,775,967	$67.31
1994	19,283,306	$12,591,936	$1,551,385	14,740	45,606	$16,107,920	$58.65
1995	28,154,415	$16,460,516	$2,173,003	19,833	60,624	$21,709,286	$52.45
1996	38,195,466	$21,525,861	$2,737,177	24,802	73,365	$26,707,046	$48.84
1997	48,705,553	$25,575,276	$2,858,432	38,650	97,039	$37,454,294	$43.86

CERTIFICATE OF SERVICE

I, Susan Ford, hereby certify that on this 23rd day of February, 1998, a copy of the foregoing was mailed by U.S. mail, postage prepaid, or otherwise delivered to the parties listed below.

Susan Ford

Susan Ford

Dated: February 23, 1998

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