

Before the Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of: )  
)  
Forbearance From CMRS Number )  
Portability Requirements )  
)

CC Docket 95-116

**Comments of AirTouch Communications**

**INTRODUCTION**

AirTouch Communications, Inc. ("AirTouch") respectfully submits its comments in support of the CTIA petition filed in the above-captioned proceedings.<sup>1</sup> AirTouch is a wireless communications company with interests in cellular, paging, personal communications services, satellite, and other operations. CTIA requests that the Commission employ its authority under Section 10 of the Communications Act of 1934, as amended, to forbear from enforcing the local number portability ("LNP") requirements for CMRS providers adopted in the Commission's regulations.

AirTouch agrees with CTIA that the forbearance test is met in this case. In its comments, AirTouch also documents the costs associated with LNP and explains why these costs far outweigh any consumer benefits to be obtained by CMRS implementation of LNP. CMRS carriers' first responsibility is to provide advances in the things that customers want: better prices and coverage, and new features such as calling party pays. Number portability has simply not a priority for American consumers. Resources diverted to number portability stifle carriers' efforts to respond to these consumers interests.

AirTouch also believes it is important to clarify the specific scope of forbearance requested. Since wireline LECs are also required to implement LNP, CMRS carriers will be required to make certain technical modifications in order to deliver calls to ported numbers. AirTouch does not understand CTIA's Petition to be requesting forbearance with respect to

<sup>1</sup>See, e.g., "In the Matter of Telephone Number Portability," First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116 (released July 2, 1996)("First LNP Order").

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this aspect of number portability. Rather, the Commission should forbear from its decision to require CMRS carriers to implement the ability to port numbers in and out of their networks.<sup>2</sup>

### **I. The Costs To CMRS Carriers of Local Number Portability Are Significant**

The CTIA Petition emphasizes a key truth of public policy: that business resources are finite. A dollar spent on one thing cannot be spent on another.<sup>3</sup> This point was also recently emphasized (in a different context) by Commissioner Powell.<sup>4</sup> Local number portability implementation for CMRS carriers represents a significant detour of scarce dollars for all carriers, including broadband CMRS carriers. In conducting its forbearance analysis, the magnitude of these costs should be weighed against the potential benefits.

AirTouch's own internal cost analysis and LNP strategy rely on competitively sensitive data, and cannot be described in detail here. Depending on certain decisions, AirTouch estimates that it will incur costs estimated to be between \$55 to \$75 million dollars over the next five years. These costs are derived from the following general technical modifications required to implement the ability to port numbers in and out of the AirTouch network<sup>5</sup>:

- LNP Software upgrades to each Mobile Switching Center (MSC);
- LNP upgrades to all Signaling Transfer Point (STP) pairs;
- Develop new administrative processes to de-couple Mobile Station Identifier (MSID) (a service provider specific number) and Mobile Directory Number (MDN) (10 digit number)

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<sup>2</sup>First LNP Order, para. 166. In para. 165 of that Order, the Commission ordered all cellular, broadband PCS, and covered SMR carriers to have the capability of querying appropriate number portability database systems in order to deliver calls from their networks to ported numbers anywhere in the country by the time that wireline LECs complete implementation of LNP in the largest 100 MSAs. Since this is a technical service necessity, there is no need to consider forbearance from this requirement.

<sup>3</sup>CTIA Petition at 4.

<sup>4</sup>See "Lessons from the Underground Railroad," Remarks of Commissioner Michael Powell, delivered to the Douglas Policy Institute (February 17, 1998)("We must always keep in mind that one dollar out of a carrier's hand is a dollar they cannot use to enter new markets, bring new innovations to market and otherwise expand and energize competition").

<sup>5</sup>AirTouch also must perform technical modifications needed to terminate calls to ported numbers. Every call to a ported NXX will require a database look-up. AirTouch must either construct its own such database and obtain connectivity with regional Number Portability Administrative Center (NPAC)/Local Service Management System (LSMS) or pay a per-query charge to a third party on every call. As noted above, AirTouch must incur these expenses even with forbearance.

used to dial the customer). This requires additional software and hardware modifications to MSCs and to Signaling Control Point/Home Location Register equipment (SCP/HLR);

- Assess impacts and make appropriate modifications as needed to all Operational Support Systems (OSS), including billing systems, sales automation, toll rating, inventory systems, customer care systems, reseller processing systems, roamer processing systems, telephone number inventory and monitoring, sales commission tracking, fraud control, and calling party pays systems.

Each of these technical changes creates additional administrative and overhead costs, may require new training and/or new personnel, and disrupts AirTouch efforts to implement cost reductions and improve efficiency elsewhere. Local number portability represents a significant expenditure of costs which would not necessarily be undertaken by a CMRS carrier exercising independent business judgment. CMRS carriers simply cannot be expected to invest in new and better basic network coverage, deploy digital network overlays, develop innovative technologies and applications, implement price reductions, and consider entry into the local exchange marketplace to the fullest degree possible where the Commission's regulations impose the costs of LNP. Given the impact on these other important public interest goals, government mandates to incur such significant costs must be justified by more than theoretical or marginal benefits to consumers.

## **II. Local Number Portability for CMRS Carriers Will Create Few Benefits For Consumers and Stifle Competition**

The primary basis for the Commission's existing regulations requiring CMRS carriers to deploy LNP capabilities is that the Commission believed doing so would promote competition among CMRS carriers. The Commission also intended to promote competition between broadband wireless carriers and landline local exchange carriers. Thus, for example, the only CMRS carriers required to implement LNP are those "that are expected to compete in the local exchange market," *i.e.*, broadband cellular, PCS and ESMR providers.<sup>6</sup>

As CTIA points out, consumers are unlikely to get the same level of competitive benefits from CMRS investment in LNP as where CMRS carriers invest in price competition

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<sup>6</sup>First LNP Order, para. 155.

and network buildout.<sup>7</sup> The fact that LNP will promote competition is not sufficient to mandate its deployment. CMRS carriers, like other businesses in competitive markets, must balance cost control, service quality, and price reductions in order to both win customers and also attract investment capital. CMRS carriers cannot simply be required to make new investments in LNP without cutting back elsewhere to meet the demands of the marketplace. Consequently, the relevant question is not whether LNP would promote competition, but what regulatory actions, including forbearance, produce the biggest “bang for the buck” in terms of consumer benefits.

As both the First LNP Order and the CTIA Petition discuss, requiring LNP for CMRS carriers was initially seen as necessary to enable new entrant PCS carriers to compete.<sup>8</sup> But the CTIA Petition states that PCS carriers apparently no longer support this rule. These carriers have apparently concluded that CMRS number portability is more of a financial burden than a competitive benefit. In addition to the significant capital requirements of LNP on one side of the equation, there is the corresponding question of what consumers value most: price, service quality and coverage area, or the ability to keep their wireless phone number when changing carriers. PCS carriers have apparently concluded that consumers value the first three items considerably more than the fourth.

AirTouch’s own market experience supports this conclusion. Based on AirTouch’s market analysis (the data for which is proprietary and competitively sensitive), consumers who are considering purchasing broadband CMRS service consider the following attributes to be most important when selecting a carrier:

- 1) Reliable Call Transmission;
- 2) Price and Pricing Flexibility;
- 3) Clear call quality;
- 4) Good coverage of calling area;
- 5) Ability to Resolve Customer Problems.

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<sup>7</sup>See, e.g., CTIA Petition at 3.

<sup>8</sup>See First LNP Order, para. 159, CTIA Petition at 4.

Other attributes include the reputation of the carrier, whether the carrier offers digital service, and whether they offer particular features such as first-minute free for incoming calls. Consequently, carriers' ability to meet these consumer concerns is most likely to produce the benefits desired by the Commission. AirTouch agrees with CTIA that consumers are less likely to obtain the benefits of competition if resources are diverted to the introduction of number portability.<sup>9</sup>

The absence of LNP is very likely a minimal barrier, if any, to competition in the CMRS market. One of the premises of the decision to require LNP was that broadband PCS had only been offered for a short time; the Commission believed that there was only "limited competition" in the cellular duopoly.<sup>10</sup> Service provider portability was thought to be a major factor in creating the competition that would then create incentives for carriers to reduce prices and invest in innovative technologies.<sup>11</sup> That premise is clearly no longer valid. LNP has proven to be unnecessary to stimulate the growth of these competitive benefits for consumers.

As the Commission has recognized, competition in the CMRS market is substantially vigorous.<sup>12</sup> Only recently, the Chairman of the FCC noted that wireless telephone prices are dropping rapidly - emphasizing a decrease of 12% for low volume users of cellular and PCS services, and over 31% for high volume customers.<sup>13</sup> Given the level of competition in the CMRS market, it is unlikely that there are any meaningful barriers to competition created by the absence of LNP. The CMRS market has also been characterized by increased demand caused by technological improvements in handsets and other equipment, and by improved

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<sup>9</sup>See CTIA Petition at 9.

<sup>10</sup>First LNP Order, para. 158.

<sup>11</sup>First LNP Order, para. 160.

<sup>12</sup>See, e.g., CTIA Petition at 5; "Second Competition Report," March 25, 1997, at page 43 (PCS providers are competing aggressively with cellular operators on price and service quality).

<sup>13</sup>Remarks of Chairman William E. Kennard before the National Association of State Utility Consumer Advocates, February 9, 1998.

service quality.<sup>14</sup> A regulatory mandate to implement LNP in order to increase competition in the CMRS market is unnecessary.<sup>15</sup>

Given the class of CMRS carriers covered by the LNP requirement, as well as the other arguments made in the First LNP Order, the Commission intended LNP to be part of the development of competition between CMRS and wireline service providers. But LNP restricts the development of such competition by restricting the ability of CMRS carriers to offer lower prices, expanded coverage, or to undertake new investments. Competing on price with wireline carriers is particularly difficult for CMRS carriers. Wireline carriers and their basic service rates are heavily cross-subsidized, both internally and through external subsidies supported by taxes on all telecommunications carriers (including CMRS). In order to win customer subscriptions away from wireline carriers (thus triggering a customer's need for LNP), CMRS networks must also be able to accommodate substantially higher levels of traffic. Requiring CMRS carriers to deploy LNP in order to promote CMRS-LEC competition not only counts the chickens while the eggs are not yet hatched but likely harms the development of eggs that are still incubating.

The Commission's LNP requirement was premised on certain conclusions about the degree to which CMRS carriers would compete with LECs that may no longer be valid. In the First LNP Order, the Commission concluded that in order to compete with wireline carriers, CMRS providers will change their pricing structures to resemble more closely wireline pricing structures, including an environment where "calling party pays" is the rule, rather than the exception.<sup>16</sup> Although some CMRS carriers, including AirTouch, have sought to introduce a "calling party pays" option, a CMRS environment where calling party pays is the rule has not yet developed. Generally, consumers do not distribute their wireless telephone numbers or have the same "equity" stake in a particular broadband CMRS telephone numbers as with a

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<sup>14</sup>"Second Competition Report," at page 48.

<sup>15</sup>The forbearance analysis asks the Commission to determine whether a particular statutory provision or regulation is "necessary" to protect consumers. 47 U.S.C. § 160(a).

<sup>16</sup>First LNP Order, para. 161.

wireline number. This is an additional reason why it is premature to require CMRS carriers to implement LNP.

### **III. The Statutory Criteria for Forbearance Are Clearly Met**

As explained in the CTIA petition, Congress gave the Commission authority to forbear from any section of the Communications Act or any Commission regulation provided three criteria are met:

- Enforcement of the regulation is not necessary to ensure that the charges or practices of a carrier or service are just and reasonable;
- Enforcement is not necessary to protect consumers;
- Forbearance is in the public interest.

Also, the Commission shall consider whether forbearance will promote competition when making its public interest determination.<sup>17</sup> Congress intended this forbearance authority to be used when changed circumstances or other reasons warrant removal of unnecessary regulatory burdens. By providing specific forbearance authority, Congress established that a full Section 553 rulemaking and its associated standards need not govern a de-regulatory change in rules, thereby facilitating creation of the “de-regulatory” national policy framework Congress intended in the 1996 Telecommunications Act.<sup>18</sup>

As described above, the CMRS market is highly competitive; such competition has resulted in charges and practices that are just and reasonable. In fact, Congress has preempted state regulation of CMRS carriers’ rates and the Commission has elected not to regulate such rates directly.<sup>19</sup> Competition is more than sufficient to ensure that the rates for CMRS services are just and reasonable. Consequently, it is even less necessary to require measures like LNP

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<sup>17</sup>47 U.S.C. § 160(a), (b).

<sup>18</sup>See Conference Report, H.R. No. 104-458 (January 31, 1996), at 1 (Telecommunications Act of 1996 is intended to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications).

<sup>19</sup>See generally “Petition of the Connecticut Dept. of Public Utility Control,” 10 FCC Rcd 7025, aff’d sub. nom., Connecticut Dept. of Public Utility Control v. FCC, 78 F.3d 842 (2d Cir. 1996); “Implementation of Sections 3(n) and 332 of the Communications Act,” Second Report and Order, 9 FCC Rcd 1411 (1994).

for CMRS carriers. The implementation of LNP by CMRS carriers may very well inhibit more aggressive competition on price and quality.

For the same reasons, LNP is not required to protect CMRS consumers. CMRS consumers have a number of effective competitive options. Consumers are able to change CMRS carriers and do change carriers even without LNP. Consumers generally do not widely distribute or advertise their broadband CMRS telephone numbers as they do wireline numbers; consequently consumers are unlikely to forsake a change of carrier they would otherwise make because they must obtain a new number. Moreover, consumers change CMRS carriers despite the existence of more significant disincentives than the lack of LNP, *e.g.*, the necessity to change handsets when changing carriers. The absence of LNP is not a significant barrier to consumer choice regarding CMRS carriers.

Finally, forbearance is in the public interest. As CTIA points out, forbearance from LNP deployment requirements will enable CMRS carriers, including the new entrant PCS providers the rule was intended to benefit, to re-direct capital to the areas consumers value most: price discounts and network coverage. The statute specifically requires the Commission to consider whether forbearance will promote competition in its public interest analysis. Here, it is clear that forbearance will promote CMRS competition.

Forbearance is also appropriate to allow other steps more central to developing CMRS as a competitor for wireline services to occur. Reforming the LEC pricing structure, greater capacity in CMRS networks, the introduction of a calling party pays option, regulatory certainty with respect to state authority over CMRS carriers who compete with LECs – all of these measures are more important than LNP to promoting CMRS competition with wireline LECs.

Congress, of course, did not require CMRS carriers to offer LNP or to assume other obligations applicable to LECs. Rather, Congress expressly limited the LNP requirement to “local exchange carriers,” and defined the term “local exchange carrier” carriers so as to expressly exclude broadband CMRS.<sup>20</sup> Leaving aside the question of whether the Commission

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<sup>20</sup>47 U.S.C. § 153(44).

was authorized or correct in its initial decision to require CMRS carriers to deploy LNP, the premises upon which the Commission based that decision are no longer valid. These are precisely the circumstances for which Congress granted the Commission forbearance authority; that authority should be exercised here.

## CONCLUSION

For the reasons stated in the CTIA petition, and in these comments, the Commission should exercise its authority granted under Section 10 of the Communications Act to forbear from the LNP deployment requirements applicable to certain broadband CMRS carriers adopted in paragraph 166 of the First LNP Order that require CMRS carriers to develop and implement the ability for consumers to port numbers in and out of CMRS networks.

Respectfully submitted,

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