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**EX PARTE FILING**

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229

Dear Ms. Salas:

By this letter, AT&T Wireless Services, Inc. ("AWS") responds to the questions raised by the Commission in its Order, released December 16, 1998, in the above-referenced proceeding.[1/] In that Order, the Commission extended until March 16, 1999 the date on which the petition for forbearance filed by the Cellular Telecommunications Industry Association ("CTIA") would be deemed granted in the absence of a Commission decision. To help it respond to CTIA's petition during this 90-day period, the Commission asked parties to:

- address whether it is appropriate from a legal, policy, or technical standpoint to consider numbering resource optimization concerns in evaluating CTIA's petition;
- provide information regarding current utilization of numbering resources by wireless carriers (particularly in the 100 largest MSAs) and how such utilization compares to that of other classes of carriers (*e.g.*, ILECs, CLECs); and
- offer proposals for wireless carriers to promote efficient use of numbering resources before implementing LNP.

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1/ Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229, Memorandum Opinion and Order, FCC 98-330 (rel. Dec. 16, 1998) ("Order").

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AWS will provide the requested utilization data concurrently herewith. As discussed below, however, AWS believes that the Commission should grant an extension of the wireless local number portability ("LNP") requirements without consideration of number resource optimization issues. CTIA's request was grounded on technical and competitive concerns and the potential benefits of LNP technology to number conservation have never been raised in this context. Nor is it appropriate to impose number conservation requirements solely on wireless carriers at this point because they lack LNP capability. Wireless-specific requirements would be premature at best, considering that even LNP-capable carriers will not be in a position to implement pooling and other LNP-dependent measures until the Commission evaluates the record in its pending number optimization proceeding and: (1) determines whether such measures are warranted; and, if so, (2) establishes national standards and guidelines for their implementation and operation.

## I. THERE IS NO LEGAL, POLICY, OR TECHNICAL RATIONALE FOR THE COMMISSION TO BASE ITS WIRELESS LNP FORBEARANCE/EXTENSION DECISION ON NUMBER CONSERVATION CONCERNS

From a legal, policy, and technical perspective, it is entirely inappropriate to tie the requested wireless LNP extension to the potential number conservation benefits of LNP technology. The Commission's decision to order the implementation of LNP by wireless carriers was based solely on competitive concerns and, until the December 16 Order was issued, number conservation had never been raised by the Commission as a rationale for requiring LNP. Wireless carriers have consistently explained that their extension requests are based upon the technical hurdles unique to wireless porting and the lack of a demonstrated need for LNP to promote wireless competition.[2/] The dearth of a record on this issue or any notice to carriers that they will now have to satisfy new hurdles calls into question the Commission's legal authority either to base its forbearance/extension decision on whether or not more expeditious implementation of wireless LNP might bolster number optimization efforts or to adopt number conservation rules specifically for wireless carriers in this proceeding.

More fundamentally, AWS emphasizes that CTIA's petition is not the appropriate vehicle to make such sweeping decisions. The Commission has commenced a proceeding to examine numerous numbering resource optimization proposals set forth by the North American Number Council ("NANC") and should make any decisions regarding number conservation measures for all carriers in the broader context of that proceeding. It makes sense to look at these issues globally instead of engaging in piecemeal policy-making in this 90-day period. Indeed, the Commission itself acknowledges that the results of the NANC proceeding are critical:

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[2/] See, e.g., Letter to Magalie Roman Salas, Secretary, FCC, from Howard J. Symons, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., CC Docket No. 95-116, and attached Declaration of Carol Peters, AT&T Wireless Services, Inc. (May 26, 1998).

> [B]efore making a decision regarding CTIA's petition, we should have the opportunity to consider the comments filed in response to the NANC Report concerning both LNP-based and non-LNP-based number optimization methods.[3/]

A complete record will be developed in the NANC proceeding and the Commission will then have ample opportunity to adopt comprehensive regulations to help alleviate number exhaust problems. There is absolutely no reason for the Commission to act precipitously here, either by ordering wireless carriers to implement LNP before they have the technical capability to do so, or by crafting alternative number optimization measures for wireless carriers alone.

Nor has the Commission shown any practical reason for basing its forbearance decision on whether or not wireless carriers can participate in LNP-dependent conservation measures. As AWS has emphasized on numerous occasions, a staggered roll-out of LNP capability for various carriers will have a negligible impact on the implementation or the usefulness of LNP-based number optimization methods or on the rate of NPA exhaust. Unlike wireline carriers, wireless carriers do not need to obtain numbers in every rate center in which they expect to do business because they can serve customers over a broad geographic area from a limited number of rate centers. Thus, wireless carriers are able to use numbers comparatively efficiently. Number pooling is expected to be most beneficial to those carriers that, because of competitive, interconnection, and porting reasons, are required to obtain numbering resources in every rate center where they expect to offer service. Carriers that already have numbering resources in these rate centers are expected to be the main source of numbers for the pool, and carriers yet to obtain number resources are likely to be the main recipients. Because wireless carriers are not required to match the existing rate center structure, the impact on the pool due to their participation or lack thereof should be minimal.

AWS recognizes the need for wireless industry participation in the effort to identify, develop, and implement number conservation methods. As such, AWS has participated in area code relief/jeopardy industry meetings and cooperates with state commissions to design solutions. AWS has supported the adoption of pre-pooling conservation and number management measures and, although it has requested an exemption from pooling until it is LNP-capable, it has supported pooling both in theory and in practical trials. Wireless carriers have taken measures to administer their own number inventories responsibly and – to the extent their systems allow – in a manner that prepares for eventual pooling. In this regard, AWS complies with all industry or commission mandated thousands block number management requirements.

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[3/] Order at ¶ 5.

Finally, wireless carriers, including AWS, typically use shorter aging intervals than most telecommunications carriers, thus ensuring that numbers get "recycled" as quickly as possible.[4/]

The Bureau's apparent desire to rush to judgment on this small component of an extremely complex issue is troubling. AWS urges caution and reasoned consideration before burdensome and, most likely, unproductive requirements are placed on one segment of the telecommunications industry.

## II. ANY WIRELESS-SPECIFIC NUMBER OPTIMIZATION MEASURES SHOULD BE NARROWLY TAILORED

The only reason AWS can fathom that the Commission would impose number conservation requirements on wireless carriers in this proceeding is its belief that a delay in LNP (and, therefore, pooling) capability would have a negative impact on overall number conservation efforts. If that is the case, AWS submits that any wireless-specific requirements adopted here should be specifically tailored to carriers' inability to participate in pooling. This means that, at a minimum, compliance with such measures should (1) not commence until pooling is implemented and (2) apply only in areas where pooling has been implemented and is effectively conserving numbers. Until LNP-capable carriers begin to use that capability to conserve numbers, there is no rationale whatsoever for holding the wireless industry to a higher standard.

If the Commission believes that some sort of measures must be adopted for wireless carriers, AWS urges that they be the least burdensome necessary to accomplish the Commission's goals. In this regard, AWS requests the Commission not to adopt a "utilization threshold" for carriers to qualify for additional numbers. Even if carefully crafted, a utilization rate likely would not provide wireless carriers with enough flexibility to meet demand. It also could undermine the Commission's conservation objectives because utilization thresholds bear no relationship to when a carrier should reasonably be expected to need additional numbers.

By way of example, assume two carriers have five NXX codes each in a particular rate center in a particular NPA. Carrier A has an activation rate of 1000 subscribers a month and expects that rate to stay constant for the next six months. Carrier B is activating 5000 customers a month. Under a utilization threshold of 70 percent, Carrier A could request new numbers when it still has 15,000 numbers and 15 months to exhaust. Carrier B, however, would not be able to request an additional code until it reached three months to exhaust. Given that it takes 66 days to activate a code in the LERG, Carrier B would have just enough time to activate a new code before it ran out of numbers. (Note this assumes that there is a code available for assignment

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[4/] AWS' standard aging interval is 90 days. In cases of extreme number shortage (e.g., Philadelphia), however, it has shortened its aging cycle to 30 days.

when Carrier B makes its request; in jeopardy situations this is often not the case). In addition, Carrier B would be not be able to prepare for holiday buying seasons or other company-specific promotions. There are significant administrative costs to carriers associated with "just-in-time" number management such as that facing Carrier B, and permitting Carrier A to order new codes long before its projected exhaust thwarts the Commission's optimization efforts.

For these reasons, AWS believes that an approach based on forecasted demand would serve the needs of both carriers and the Commission much more efficiently. The telecommunications industry had originally considered using a utilization rate but ultimately rejected that approach in favor of a "months to exhaust" mechanism.[5/] The industry recognized that forecasting directly reflects carriers' need for numbers because it is based on historical activation rates, known promotions, and lumpiness in demand.

The months to exhaust regime in place today helps ensure that carriers request only those growth codes they will actually need to meet demand. In non-jeopardy situations, each code holder must certify that existing codes will exhaust within twelve months and must retain documentation of the numbers currently in its inventory, its growth history for the preceding six months and projected demand for the next twelve months.[6/] After jeopardy has been declared, a carrier must demonstrate that existing reserves will exhaust in six months. The code administrator has the authority to request additional information from requesting carriers and can initiate an audit if warranted.

In recognition of the Bureau's concerns about potential unused inventory, AWS would be willing to reduce the months to exhaust from twelve to six months even in non-jeopardy situations. In addition, to alleviate fears about the accuracy of wireless carrier forecasts, AWS would be willing to provide historical activation rates to the NANPA with each code request and, to the extent the code request significantly exceeds the historical activation rate, AWS would provide further support.[7/] To police code requests, the NANC has recently provided the NANPA with authority to withhold code assignments from carriers that do not comply with the Central

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[5/] Illinois, to the best of AWS' knowledge, the only state to adopt a utilization threshold, recognized the inherent limitation associated with such a plan and created an exception based on forecasted demand. See Citizen Utility Board, Petition to Implement a Form of Number Conservation known as Number Pooling within the 312, 773, 847, 630, and 708 Area Codes; Illinois Bell Telephone Company, Petition for Approval of an NPA Relief Plan for the 847 NPA, Nos. 97-0192, 97-0211, Order of the Illinois Commerce Commission, at 26 (rel. May 6, 1998).

[6/] See Central Office Code Assignment Guidelines, INC 95-0407, 008, at § 4.2.1.

[7/] For example, a carrier could demonstrate a sharp increase in demand for the preceding Christmas season to justify a need for more codes in the fourth quarter of this year.

Office Code Guidelines. AWS would support extension of the NANPA's authority to oversee enforcement of the three additional requirements outlined in this paragraph.

If despite the superiority of a months to exhaust regime, the Commission decides to adopt a utilization threshold, AWS requests that it implement the approach set forth by CTIA. CTIA proposes that in a jeopardy situation, telecommunications carriers may only request numbering resources for a given rate center when at least 60 percent of their total numbers are "unavailable" in that rate center. This threshold would increase to 65 percent on July 1, 2000, and 70 percent on July 1, 2001. Under CTIA's proposal, only "mature" codes – those that have been available for use for 90 days or more – would be counted toward existing inventory.[8/] In addition, carriers that have not reached the utilization threshold may request additional numbers upon bona fide request based on historical activation data or other credible evidence. CTIA also provides an exception for codes for "special services" such as FEMA priority codes and prepaid services.

Only if the Commission determines compliance with its threshold based on rate center usage and grants exceptions when shown to be necessary will carriers have the flexibility to meet their customers' demand. Given that the purpose of instituting conservation measures is to ensure the availability of numbering resources to all carriers, it would be counterproductive and discriminatory to institute measures that make it impossible for one class of carrier – wireless providers – to serve their subscribers.

## CONCLUSION

For the foregoing reasons, AWS respectfully requests that the Commission grant the wireless industry's LNP extension requests based on the substantial technical hurdles and lack of competitive harm set forth in the CTIA Petition and other documents submitted to the agency. The Commission should not, however, condition that grant on compliance with number conservation measures applicable solely to wireless carriers. Number conservation should be

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[8/] In telephone conversations and meetings, members of the Bureau staff acknowledged that codes that had not been assigned within the past 90 days should not be considered "available".

addressed globally in the Commission's pending proceeding evaluating the NANC recommendations rather than on a piecemeal basis with limited time for reasoned evaluation. If the Commission nevertheless deems some sort of wireless-specific conservation measures necessary, it should ensure that those measures do not impair wireless carriers' ability to obtain numbers and provide service to their customers.

Sincerely,

Douglas I. Brandon / by SFS

Douglas I. Brandon

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