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

In the Matter of	)	
	)	
Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations	)	WT Docket No. 98-229
	)	
and	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116

ORDER ON RECONSIDERATION

Adopted: February 9, 2000 **Released: February 23, 2000**

By the Commission: Commissioner Furchtgott-Roth issuing a statement.

I. INTRODUCTION

1. On May 27, 1999, four parties filed petitions for reconsideration or clarification of the Commission's Order forbearing from imposing service provider local number portability (LNP) requirements on commercial mobile radio service providers (CMRS providers)[1] until November 24, 2002.[2] We deny these petitions for the reasons discussed below.

II. BACKGROUND

2. Under the Commission's prior LNP decisions, CMRS providers were required to implement LNP in the top 100 Metropolitan Statistical Areas (MSAs) and to support nationwide

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[1] In this Order, we use "CMRS" to refer only to broadband personal communications services (PCS), cellular, and specialized mobile radio service (SMR) carriers that are subject to service provider LNP requirements. "Covered" services that must support LNP consist of systems offering real-time, two-way switched voice services that are interconnected with the public switched network and that utilize in-network switching facilities, enabling the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Thus, number portability must be provided by PCS, cellular, and SMR licensees only if they provide "covered" services under this definition. Telephone Number Portability, *Second Memorandum Opinion and Order on Reconsideration*, CC Docket No. 95-116, 13 FCC Rcd 21204, 21228-30, ¶¶ 52-57 (1998).

[2] 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*, 14 FCC Rcd 3092 (1999) (*CMRS LNP Forbearance Order*). GTE Service Corporation (GTE), MCI WorldCom Inc. (MCI WorldCom), and the Telecommunications Resellers Association (TRA) filed petitions for reconsideration, and the Pennsylvania Public Utility Commission (Pennsylvania Commission) filed a petition for reconsideration and/or clarification. We will refer to the Pennsylvania Commission's petition, as well as the other petitions, as "petitions for reconsideration."

roaming by March 31, 2000.[3] Implementation of LNP by CMRS providers would enable wireless customers to "port" their telephone numbers in the event that they switch from one wireless carrier to another, or from a wireless to a wireline carrier.

3. In the *CMRS LNP Forbearance Order*, we granted a petition filed by the Cellular Telecommunications Industry Association (CTIA) requesting forbearance from the Commission's service provider LNP requirements for CMRS providers until the expiration of the five-year buildout period for broadband PCS carriers.[4] We found that the limited forbearance granted in the *CMRS LNP Forbearance Order* satisfied the three-prong test for granting forbearance set forth in section 10 of the Communications Act.[5] Accordingly, we extended the deadline for CMRS providers to support service provider LNP in the top 100 MSAs until November 24, 2002.[6] We also stated our intention to promptly initiate a rulemaking proposing certain non-LNP based numbering optimization techniques applicable to all telecommunications carriers and to develop standards for other number conservation methods, possibly including one or more pooling methods.[7] On June 2, 1999, we released a Notice of Proposed Rulemaking on

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[3] For a discussion of the Commission's prior LNP decisions, *see CMRS LNP Forbearance Order*, 14 FCC Rcd at 3093-3095, ¶¶ 3-6.

[4] *See CMRS LNP Forbearance Order*, 14 FCC Rcd 3092. CTIA's petition requested forbearance from the requirement in section 52.31(a) of the Commission's rules, 47 C.F.R. § 52.31(a), that CMRS carriers provide a long-term database method for number portability, including the ability to support roaming, in the top 100 MSAs, in switches for which another carrier has made a specific request for the provision of number portability. *See* Petition for Forbearance of the Cellular Telecommunications Industry Association in CC Docket No. 95-116, at 3 (filed Dec. 16, 1997) (CTIA Petition for Forbearance). CTIA's petition did not request forbearance from the requirement in section 52.31(b) of the Commission's rules, 47 C.F.R. § 52.31(b), that CMRS carriers develop by December 31, 1998, the capability to obtain routing information, either by querying the appropriate database themselves or by making arrangements with other carriers that are capable of performing database queries, so that they can deliver calls from their networks to any party that has retained its number after switching from one telecommunications carrier to another. *See* CTIA Petition for Forbearance at 3 n.7. The capability to obtain routing information, as outlined in section 52.31(b), is known as "Phase I" of LNP deployment, and the capability to provide a long-term database method for number portability, as outlined in section 52.31(a), is known as "Phase II" of LNP deployment.

[5] 47 U.S.C. § 160(a). Section 10 provides that the Commission must forbear from applying any regulation or provision of the Act to a telecommunications carrier 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 regulation or provision is consistent with the public interest.

[6] We noted that the five year PCS buildout deadline is in fact not uniform for all PCS carriers because the different blocks of broadband PCS spectrum have been licensed in phases and some PCS spectrum remains subject to future reauction. However, we concluded that it is appropriate to designate November 24, 2002 as a uniform "benchmark" PCS buildout date for purposes of setting the implementation deadline for wireless LNP. *CMRS LNP Forbearance Order*, 14 FCC Rcd at 3112, ¶ 39.

[7] *Id.* at 3116, ¶¶ 47-48. Telephone number pooling addresses one of the causes of area code exhaust: the allocation of numbers in full central office code (NXX) blocks of 10,000. Historically, network routing mechanisms are based upon the understanding that geographic numbers are assigned on an NXX code basis and associated with a specific switch, and, correspondingly, that the network address to which the call must be routed is embedded in the first six digits (NPA-NXX) of the called number. Number pooling allows service providers in a given area to receive numbers in blocks smaller than 10,000 by breaking the association between the NPA-NXX and the service provider to whom the call is routed.

numbering resource optimization, and we are currently considering the record developed in response to that Notice.[8]

4. In their petitions for reconsideration of the *CMRS LNP Forbearance Order*, MCI WorldCom, the Pennsylvania Commission, and TRA argue that the Commission should not have forborne from imposing these requirements on CMRS providers for any length of time.[9] GTE's petition for reconsideration of the *CMRS LNP Forbearance Order*, on the other hand, contends that the Commission should have forborne indefinitely from imposing service provider LNP requirements on CMRS providers. Four parties submitted comments or oppositions to these petitions,[10] three parties submitted replies,[11] and three parties submitted *ex parte* filings.[12]

III. DISCUSSION

5. As discussed below, we find that none of the petitions raises arguments that warrant reconsideration of our decision in the *CMRS LNP Forbearance Order* to forbear from imposing service provider LNP requirements on CMRS providers until November 24, 2002.[13] Generally, the petitioners raise four challenges to our *CMRS LNP Forbearance Order*: (1) it did not properly consider the effect of LNP forbearance on number conservation; (2) it did not properly consider the effect of LNP forbearance on competition in the wireless industry; (3) it failed to evaluate TRA's alternate LNP proposal; and (4) it failed to properly apply section 10 of the Communications Act. We address these challenges in turn.

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[8] *See* Numbering Resource Optimization, CC Docket No. 99-200, *Notice of Proposed Rulemaking*, 14 FCC Rcd 10322 (1999) (*Numbering Resource Optimization Notice*).

[9] The Pennsylvania Commission notes that its comments on CTIA's petition for forbearance were not filed during the pleading cycle established for that petition. *See* Pennsylvania Commission Petition at 1-2 and n.1. Under section 1.106(b)(1) of our rules, 47 C.F.R. § 1.106(b)(1), any party to the proceeding or any other person whose interests are adversely affected by any action taken by the Commission may file a petition for reconsideration, subject to certain limitations. If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for the person to participate in the earlier stage of the proceeding. 47 C.F.R. § 1.106(b)(1). Although the Pennsylvania Commission did not file comments on the CTIA petition for forbearance during the pleading cycle, and thus was not a party to this proceeding, we find that the Pennsylvania Commission has demonstrated its interest in this proceeding, as it relates to number conservation efforts, and has shown good reason why it was unable to participate at an earlier stage.

[10] AT&T Wireless Services, Inc. (AT&T Wireless), CTIA, and TRA filed oppositions and MCI WorldCom filed comments. These oppositions and comments were filed on June 25, 1999.

[11] GTE, MCI, and TRA filed replies. We note that the replies by GTE and MCI were filed on July 8, 1999, two days after the deadline for filing replies. *See* Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, *Public Notice*, Report No. 2333, released June 3, 1999, published in the Federal Register June 10, 1999, 64 Fed. Reg. 31222. In the interest of developing a comprehensive record in this proceeding, however, we have considered all arguments raised in the replies filed by GTE and MCI, as well as all arguments raised in other pleadings and *ex parte* filings in this proceeding.

[12] SBC Communications Inc. (filed March 3, 1999); TRA (filed May 28, 1999); Sprint Corporation (filed Aug. 30, 1999).

[13] *See CMRS LNP Forbearance Order*, 14 FCC Rcd 3092.

6. Number Conservation. MCI WorldCom, TRA, and the Pennsylvania Commission argue that the Commission's decision to extend the CMRS LNP deadline until November 24, 2002 will hamper the implementation of number optimization solutions that require LNP technology, such as thousands-block number pooling.[14] We disagree. In the *CMRS LNP Forbearance Order*, we reserved the authority to require wireless participation in pooling at an earlier date if we decide in a future rulemaking proceeding that number pooling requirements should be adopted and that wireless participation in pooling is necessary to address specific number exhaust problems.[15] We also stated that our decision to grant forbearance similarly does not limit our ability to invoke number exhaust remedies that may provide relief only for carriers that are LNP-capable. In the *Numbering Resource Optimization Notice*, we sought comment on these issues and will resolve them in the context of that rulemaking.[16]

7. In GTE's petition for reconsideration, GTE argues that the Commission's consideration of number conservation issues as a basis for limiting forbearance was impermissible speculation.[17] In particular, GTE contends that the Commission failed to raise number conservation as one of the rationales to support its original decision to impose LNP obligations on CMRS carriers and that, accordingly, the Commission lacked an adequate record in this proceeding to evaluate the effect of wireless LNP capability on number conservation efforts.[18] Moreover, GTE argues that it was improper for the Commission to limit forbearance on the basis of a link between CMRS LNP implementation and number pooling because the Commission has not yet determined that number pooling generally, or CMRS participation in number pooling specifically, is necessary to address number exhaust problems.[19]

8. We disagree that GTE's contentions require reconsideration. The third prong of the section 10 forbearance test requires that we consider whether forbearance from applying a Commission rule is consistent with the public interest.[20] As explained in the *CMRS LNP Forbearance Order*, there is a strong public interest in addressing number exhaust problems, and certain important number optimization strategies, including number pooling, are based on existing LNP architecture.[21] We do not believe that the public interest analysis required by

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[14] *See* MCI WorldCom Petition at 2-3; TRA Petition at 5, 15; Pennsylvania Commission Petition at 2-6. Thousands-block number pooling permits the allocation of numbers in blocks of a thousand, rather than the traditional allocation in blocks of ten thousand. For a description of thousands-block number pooling, *see Numbering Resource Optimization Notice*, 14 FCC Rcd at 10383, ¶¶ 136-37. For a description of number pooling generally, *see supra* note 7.

[15] *See CMRS LNP Forbearance Order*, 14 FCC Rcd at 3116, ¶ 48.

[16] *See Numbering Resource Optimization Notice*, 14 FCC Rcd at 10395-96, 10399, ¶ 168 (seeking comment on whether an accelerated schedule for CMRS LNP implementation is necessary to address specific number exhaust problems). *See also id.* at 10399, ¶ 176 (seeking comment on a non-discriminatory number allocation method for markets in which non-LNP-capable carriers continue to receive numbers in full NXX blocks while LNP-capable carriers draw smaller blocks of numbers from a pool).

[17] GTE Petition at 13-16.

[18] *Id.* at 14-15.

[19] *Id.* at 13-14.

[20] 47 U.S.C. § 160(a)(3).

[21] *CMRS LNP Forbearance Order*, 14 FCC Rcd at 3095-97, ¶¶ 7-8.

section 10 is necessarily limited to issues we raised in the proceeding in which the rule at issue was adopted. Nonetheless, in this case, we expressly raised number conservation issues in the LNP rulemaking.[22] We also do not believe that it was necessary to conclude definitively that CMRS LNP implementation is necessary to address number conservation issues before considering the potential impact of CMRS LNP implementation on number conservation as part of the public interest analysis required by section 10. As discussed more fully below,[23] we find that the record in this proceeding contained sufficient evidence of a link among LNP, number pooling, and number conservation to warrant our consideration of this relationship as part of our section 10 public interest analysis.

9. GTE also contends that, even if it were permissible for the Commission to consider number conservation issues as a basis for limiting the forbearance granted, the Commission incorrectly determined that continued LNP implementation by CMRS carriers is a necessary precondition for CMRS providers to participate in number conservation efforts generally.[24] We disagree. We did not find in the *CMRS LNP Forbearance Order* that continued implementation of service provider LNP by CMRS carriers is necessary for such carriers to participate in number conservation efforts generally. In fact, we recognized that there are many number conservation methods that are not based on LNP architecture, and we subsequently sought comment on these methods in the *Numbering Resource Optimization Notice*.[25]

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[22] We explicitly noted from the outset of the rulemaking that one of the public interest benefits of LNP is its potential to further the efficient use of numbering resources. *See id.* at 3116, ¶ 48, citing Telephone Number Portability, CC Docket No. 95-116, *Notice of Proposed Rulemaking*, 10 FCC Rcd 12350, 12362, ¶ 31 (1995); *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, 8370-71, 8431-32, ¶¶ 36-37, 153 (1996) (*LNP First Report and Order*). Moreover, we deferred our decision on CTIA's petition for an additional 90 days in order to develop a comprehensive record in the instant forbearance proceeding on the impact that extending the LNP timetable for CMRS providers would have on number conservation efforts. *See* Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, *Memorandum Opinion and Order*, WT Docket No. 98-229, 14 FCC Rcd 1291 (1998) (*Extension Order*). In the *Extension Order*, we exercised our authority under Section 10(c) of the Act to extend until March 16, 1999, the date on which CTIA's petition would be deemed granted in the absence of a Commission decision that the petition did not meet the standard for forbearance under section 10(a). We noted that the report on numbering resource optimization by the North American Numbering Council (NANC), a federal advisory committee to the Commission on numbering policy issues, had been submitted to the Common Carrier Bureau on October 21, 1998, and that comments on the NANC Report were due on December 21, 1998. As the comment deadline was five days after the one-year deadline for acting on CTIA's petition, we stated that we would defer a decision on the petition so that we would have the opportunity to consider responsive comments on both LNP-based and non-LNP-based number optimization methods. We also urged wireless carriers and other interested parties to (1) address whether it is appropriate from a legal, policy, or technical standpoint to consider numbering resource optimization concerns in addressing CTIA's petition; (2) provide information on current utilization of numbering resources by wireless carriers (particularly in the 100 largest MSAs); and (3) offer proposals for wireless carriers to promote efficient use of numbering resources before implementing LNP.

[23] *See infra* para. 11.

[24] GTE Petition at 4, 16.

[25] *See CMRS LNP Forbearance Order*, 14 FCC Rcd at 3115-16, ¶ 47. *See also Numbering Resource Optimization Notice*, 14 FCC Rcd at 10338-68 ¶¶ 36-104 (administrative measures, including reporting requirements, audits, and reclamation of NXX blocks), 10370-76 ¶¶ 111-121 (rate center consolidation), 10376-80 ¶¶ 122-129 (mandatory ten-digit dialing and related measures), 10416-23 ¶¶ 225-240 (pricing options).

10. In addition, GTE contends that the Commission incorrectly determined that continued LNP implementation by CMRS carriers is a necessary precondition for CMRS providers to participate in thousands-block pooling specifically.[26] In particular, GTE argues that the only part of LNP infrastructure that is necessary for CMRS participation in thousands-block pooling has already been implemented by CMRS providers in Phase I of LNP deployment.[27] Moreover, GTE argues that further implementation of LNP infrastructure by CMRS providers under Phase II, which involves the separation of the Mobile Directory Number (MDN) from the Mobile Identification Number (MIN), is an inefficient mechanism for CMRS providers to develop the capability to participate in thousands-block number pooling.[28]

11. We disagree with these contentions. GTE has not demonstrated that CMRS providers could develop the capability to participate fully in thousands-block number pooling without continued Phase II LNP implementation through the separation of the MDN from the MIN, a process which the CMRS industry has yet to complete. The record developed in response to CTIA's petition amply supported our conclusion in the *CMRS LNP Forbearance Order* that continued LNP implementation by CMRS providers is a necessary precondition for CMRS participation in number pooling techniques.[29] Moreover, in July, the NANC's Wireless Number Portability Subcommittee identified significant limitations on the ability of CMRS providers to participate in thousands-block number pooling absent the separation of the MDN from the MIN. For instance, the Subcommittee concluded that, absent the separation of the

[26] GTE Petition at 4, 16-18, Appendix A.

[27] *See id.* at 17, Appendix A at ¶¶ 7,8. As discussed in note 4 *supra*, CMRS providers were required to complete Phase I of LNP deployment (*i.e.*, develop the capability to obtain routing information) by December 31, 1998. *See* 47 C.F.R. § 52.31(b).

[28] *See* GTE Petition at 17, Appendix A at ¶¶ 7,8. As discussed in note 4 *supra*, CMRS are required to complete Phase II of LNP deployment (*i.e.*, develop the capability to provide a long-term database method for number portability) by November 24, 2002. *See* 47 C.F.R. § 52.31(a). The method chosen by the CMRS industry to implement Phase II of LNP deployment is the separation of the Mobile Directory Number (MDN), the number that is dialed to reach the mobile unit, from the Mobile Identification Number (MIN), which is used to identify the mobile unit to the carrier's network and to the networks of the carrier's roaming partners. *See CMRS LNP Forbearance Order*, 14 FCC Rcd at 3105-06, ¶ 28. For AMPS, CDMA, and TDMA-based carriers, the MDN and the MIN are currently the same for each subscriber, and are associated with a particular carrier. To implement number portability, however, the industry proposes to configure all wireless networks so that the MIN and the MDN of any mobile unit can be separated when a customer ports from one wireless carrier to another. Under this scenario, the MDN will be ported by the customer when the customer switches carriers, but the MIN (a ten-digit non-dialable number) can then be reused (with another MDN) by the customer's old carrier.

[29] *See CMRS LNP Forbearance Order*, 14 FCC Rcd at 3113 and n.120, ¶ 43. The 1998 NANC Numbering Resource Optimization Report indicates that number pooling techniques and LNP share a common technological architecture, and a number of state commissions noted that continued CMRS LNP implementation is necessary for CMRS participation in number pooling. *See* Number Resource Optimization Working Group Modified Report to the North American Numbering Council on Number Optimization Methods, October 21, 1998, at Executive Summary, §§ 4.1, 5.1.2 (1998 NANC Numbering Resource Optimization Report) (available at <http://www.fcc.gov/ccb/Nanc/nanccorr.html>). *See also CMRS LNP Forbearance Order*, 14 FCC Rcd at 3093, 3096-97, 3113 and n.120, ¶¶ 2, 8, 43. In the *Extension Order*, we specifically sought comment from wireless carriers and other interested parties on, among other things, whether it is appropriate from a legal, policy, or technical standpoint to consider numbering resource optimization concerns in addressing CTIA's petition. *See supra* note 22. None of the commenters that filed in response to the *Extension Order* asserted that, from a technical standpoint, continued CMRS LNP implementation is not necessary for CMRS participation in number pooling.

MDN from the MIN, CMRS participation in pooling would permit only one CMRS provider per pooled NPA-NXX to receive numbers in thousands-blocks.[30] The record and the NANC's findings support our view that continued Phase II LNP implementation by CMRS providers is necessary to ensure that all CMRS providers are capable of participating in thousands-block number pooling.

12. Finally, and perhaps most importantly, regardless of number conservation issues, we found, and reaffirm our finding, that granting forbearance from applying LNP requirements to CMRS carriers until November 24, 2002, but not beyond that date, was independently justified on competitive grounds. Specifically, we found that, separate and apart from number conservation concerns, the competitive reasons that led us to mandate wireless LNP remained fundamentally valid.[31] We observed that the wireless LNP requirement had been imposed to promote both wireless-to-wireless and wireless-to-wireline competition for the benefit of consumers.[32] However, we rejected the view of some commenters that if consumer demand for wireless LNP were to develop, market forces alone would be sufficient to ensure its development and implementation. We found that in the absence of a regulatory requirement, carriers who feared losing customers might not have a market-based incentive to develop LNP. We also determined that a regulatory requirement was necessary to ensure that wireless networks would support nationwide roaming by wireless customers with ported numbers.[33] Finally, we concluded that retaining a uniform regulatory deadline for wireless LNP implementation would provide the wireless industry with needed certainty and would promote steady progress in the development of standards, testing hardware and software, and deployment.[34]

13. In its petition for reconsideration, the Pennsylvania Commission requests clarification on how the forbearance granted in the *CMRS LNP Forbearance Order* will affect the authority of state commissions to implement number conservation measures for telecommunications carriers generally and wireless carriers specifically.[35] The Pennsylvania Commission also requests clarification that states can implement number conservation methods which may provide relief only for LNP-capable carriers.[36] As an initial matter, we note that whether, and the extent to which, we should delegate additional authority to states to implement various numbering optimization measures is the subject of the *Numbering Resource Optimization* proceeding.[37] We emphasize that our decision to grant forbearance in the *CMRS*

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[30] *See* NANC Meeting Minutes, July 20-21, 1999, at 3-4, http://www.fcc.gov/ccb/Nanc. *See also* AT&T Opposition at 14.

[31] *See CMRS LNP Forbearance Order*, 14 FCC Rcd at 3112-13, ¶¶ 40-42.

[32] *See id.* at 3112-13, ¶ 40.

[33] *See id.* at 3113, ¶ 41.

[34] *See id.* at 3113, ¶ 42.

[35] Pennsylvania Commission Petition at 8.

[36] *Id.* at 7.

[37] *See Numbering Resource Optimization Notice*, 14 FCC Rcd at 10350, 10360, 10362-63, 10366-67, 10385, 10386-87, 10412, ¶¶ 63, 88, 93-94, 100, 142, 145-47, 210. *See also* Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, NSD File No. L-97-42, *Memorandum Opinion and Order and Order on Reconsideration*,

LNP Forbearance Order does not preclude our ability to delegate additional authority to implement various optimization measures, including measures thay may provide relief only for carriers that are LNP-capable. We also note that we recently granted in part five state petitions for additional delegated authority to implement various optimization measures, such as thousand-block pooling trials on an interim basis, subject to the national guidelines, standards, and procedures for numbering optimization that the Commission will adopt in the *Numbering Resource Optimization* proceeding.[38]

14. The Pennsylvania Commission also requests that the Commission clarify that states have authority to develop "default systems, procedures and determinations" for the implementation of wireless LNP, such as a standard for the separation of the MIN from the MDN, if the wireless industry is not able to reach consensus on these standards.[39] Moreover, the Pennsylvania Commission requests that the Commission agree to be an "arbiter of those measures developed by the [wireless] industry," as well as "an arbiter of any action the state commissions opt to take if the industry fails to internally develop such measures."[40] In addition, MCI WorldCom recommends that we require the top ten wireless carriers to report quarterly to the Commission on their individual progress in implementing LNP.[41]

15. We believe it is premature to consider mandating specific wireless LNP implementation measures or reporting requirements at this time before the wireless industry has had an opportunity to develop and implement such measures.[42] We note that the Pennsylvania Commission recognizes that the wireless industry has the expertise to decide technical issues

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13 FCC Rcd 19009 (1998) (petitions for reconsideration pending, including petition filed by the Pennsylvania Commission on December 15, 1998).

[38] *See* Maine Public Utilities Commission Petition for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket No. 96-98, *Order*, FCC 99-260 (rel. Sept. 28, 1999); California Public Utilities Commission Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures, CC Docket No. 96-98, *Order*, FCC 99-248 (rel. Sept. 15, 1999); Florida Public Service Commission Petition to Federal Communications Commission for Expedited Decision for Grant of Authority to Implement Number Conservation Measures, CC Docket No. 96-98, *Order*, FCC 99-249 (rel. Sept. 15, 1999); Massachusetts Department of Telecommunications and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes, CC Docket No. 96-98, *Order*, FCC 99-246 (rel. Sept. 15, 1999); New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket No. 96-98, *Order*, FCC 99-247 (rel. Sept. 15, 1999).

[39] Pennsylvania Commission Petition at 9.

[40] *Id.*

[41] MCI WorldCom Comments at 5; MCI Reply at 1-2.

[42] We note that our authority over CMRS LNP implementation is based on sections 1, 2, 4(i), and 332 of the Communications Act, 47 U.S.C. §§ 1, 2, 4(i), 332. *See CMRS LNP Forbearance Order*, 14 FCC Rcd at 3094, ¶ 4, citing *LNP First Report and Order*, 11 FCC Rcd at 8433, ¶ 155. Bell Atlantic Mobile's challenge to the Commission's statutory authority to impose number portability requirements on CMRS providers was dismissed, upon joint motion of the parties, on March 24, 1999. *See Bell Atlantic NYNEX Mobile, Inc. v. FCC et. al.*, No. 97-9551 (10th Cir. 1999). We have not previously considered the issue of whether states could establish technical standards for CMRS LNP implementation without additional delegated authority from the Commission. Given our conclusion that it is premature to consider mandating specific wireless LNP implementation measures or reporting requirements, we do not believe it is necessary to resolve this issue of state authority at this time.

with respect to implementation of wireless LNP.[43] The wireless industry submits monthly reports to the NANC on the status of the industry's number portability efforts.[44] In addition, under section 52.31(e) of the Commission's rules, the Wireless Telecommunications Bureau (Bureau) has the authority to establish direct reporting requirements if the Bureau considers such requirements necessary to monitor the progress of CMRS providers in implementing number portability.[45] Moreover, under section 52.31(e), the Bureau may direct carriers to take any actions necessary to ensure compliance with the deployment schedule.[46] Accordingly, we believe that the existing NANC reporting mechanism, as well as the authority of the Bureau to address any wireless LNP implementation problems that may arise, are sufficient to address the LNP implementation concerns raised by MCI WorldCom and the Pennsylvania Commission.

16. Competition. TRA disagrees with our conclusion in the *CMRS LNP Forbearance Order* that an extension of the CMRS LNP deadline until November 24, 2002 would not harm competition in the CMRS market in that timeframe and would likely promote competition in that timeframe by giving CMRS carriers greater flexibility to complete network buildout, technical upgrades, and other improvements.[47] GTE, on the other hand, disagrees with our affirmation in the *CMRS LNP Forbearance Order* that, in the long term, CMRS LNP implementation will promote competition in the CMRS market and competition between wireless and wireline carriers.[48] We find that petitioners failed to raise arguments or facts not already considered in the *CMRS LNP Forbearance Order*. In the Order, we carefully considered the effect of forbearance from the CMRS LNP requirements on wireless-to-wireless and wireless-to-wireline competition and found that extending the wireless LNP deadline until November 24, 2002, but not beyond that date, would promote competition in the short term and in the long term.[49]

17. TRA's Alternate LNP Proposal. TRA argues that the Commission failed to adequately consider the alternative approach for implementing LNP that was proposed by TRA in *ex parte* filings in the *CMRS LNP Forbearance* proceeding.[50] In TRA's *ex parte* filings in this proceeding, it argued that the wireless industry does not require any additional time beyond March 2000 to implement LNP because there is an alternative approach, known as "LRN relay," that would enable the industry to support LNP more quickly and less expensively than the

[43] *See* Pennsylvania Commission Petition at 8; *CMRS LNP Forbearance Order*, 14 FCC Rcd at 3109, ¶ 33.

[44] At the monthly meetings of the NANC, the Wireless Number Portability Subcommittee of the NANC's Local Number Portability Administration Working Group reports on issues related to LNP implementation by the wireless industry. For NANC meeting minutes, *see* http://www.fcc.gov/ccb/Nanc. For timelines and other documents prepared by the Wireless Number Portability Subcommittee, *see* http://www.npac.com/cmas.

[45] 47 C.F.R. § 52.31(e).

[46] *Id.*

[47] TRA Petition at 8-10. *See CMRS LNP Forbearance Order*, 14 FCC Rcd at 3109-12, ¶¶ 34-39.

[48] GTE Petition at 20-23. *See CMRS LNP Forbearance Order*, 14 FCC Rcd at 3112-13, ¶ 40.

[49] *See CMRS LNP Forbearance Order*, 14 FCC Rcd 3109-13, ¶¶ 34-42.

[50] TRA Petition at 6-7, 14-15; TRA Reply at 6-7.

industry-proposed MIN/MDN separation process. TRA also requested that we place the TRA proposal on public notice.[51]

18. We find that we adequately considered TRA's proposal in the *CMRS LNP Forbearance Order*. First, we concluded that, given the extensive comment that TRA's proposal has generated in this proceeding and a related proceeding on wireless-wireline integration,[52] and the fact that the wireless industry had previously considered proposals similar to TRA's in the standards development process, it was not necessary to seek further public comment on TRA's proposal.[53] Second, we questioned whether the LRN relay approach could realistically be submitted to the relevant industry standards bodies, developed, and fully implemented by March 2000, as TRA asserted.[54] Third, we concluded that we did not need to resolve the debate about the technical feasibility of TRA's proposed alternative or its relative technical merits as compared with the MIN/MDN approach in addressing CTIA's forbearance petition.[55] We stated that, even if TRA's proposal is technically viable, there was no reason to compel the wireless industry at this stage in the LNP development process to abandon its substantial efforts to date in favor of a different methodology. We also stated that, even assuming that TRA's proposal would be less costly than MIN/MDN separation, on balance our view remains that maintaining the March 2000 CMRS LNP schedule would impose additional costs and technical burdens on the wireless industry that, given the current market conditions in the industry, are not necessary to protect consumers, promote the public interest, and ensure just, reasonable, and nondiscriminatory rates and practices.

19. Application of Section 10. TRA argues that we did not apply the appropriate standard under section 10(a)(2) as part of our analysis of the effect of the requested forbearance on consumers.[56] Section 10(a)(2) requires the Commission to determine whether "enforcement of [a] regulation or provision is not necessary for the protection of consumers."[57] We find that we correctly applied this standard. In the *CMRS LNP Forbearance Order*, we concluded that extending the implementation deadline until November 2002 would not harm consumers; in other words, we concluded that maintaining the March 31, 2000 deadline was not necessary to protect consumers.[58] In making our determination under section 10(a)(2), we evaluated a number of competitive factors in the CMRS market and did not, as TRA contends, rely solely on evidence of the lack of current consumer demand for number portability.

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[51] *See ex parte letter* from David Gusky, Vice President, TRA, to William E. Kennard, Chairman, FCC, dated December 4, 1998.

[52] The wireless-wireline integration proceeding sought comment on NANC's May 18, 1998 report on wireless-wireline integration issues relating to LNP implementation. *See Public Notice*, Telephone Number Portability and North American Numbering Council (NANC) Recommendation Concerning Local Number Portability Administration, Wireless and Wireline Integration Report, CC Docket 95-116, 13 FCC Rcd 17342 (1998).

[53] *See CMRS LNP Forbearance Order*, 14 FCC Rcd at 3108, ¶ 32.

[54] *See id.* at 3109, ¶ 33.

[55] *See id.* at 3108-09, ¶¶ 32-33.

[56] TRA Petition at 11-12; TRA Reply at 6.

[57] 47 U.S.C. § 160(a)(2).

[58] *See CMRS LNP Forbearance Order*, 14 FCC Rcd at 3103, ¶ 22.

20. In its petition for reconsideration, GTE argues that once the Commission found in the *CMRS LNP Forbearance Order* that the three prongs of the section 10 forbearance standard were met, section 10 requires the Commission to forbear indefinitely from imposing service provider LNP requirements on CMRS carriers.[59] We disagree.

21. CTIA's forbearance petition sought forbearance from the Commission's service provider LNP requirements imposed on CMRS providers at least until the expiration of the five-year buildout period for broadband PCS carriers.[60] CTIA's forbearance request reasonably can be construed to encompass three alternative forms of relief: (1) forbearance from imposing service provider LNP requirements on CMRS carriers until the end of the five-year buildout period (November 24, 2002); (2) forbearance from imposing these requirements until a date after the five-year buildout period; or (3) forbearance from these requirements indefinitely. We considered each of these alternatives under section 10 and concluded in the *CMRS LNP Forbearance Order* that forbearance from imposing service provider LNP requirements on CMRS providers until the expiration of the five-year buildout period for PCS providers (November 24, 2002) satisfied the statutory standards for forbearance,[61] whereas forbearance beyond the expiration of the buildout period would not satisfy the section 10 statutory standard.[62]

22. Section 10(c) provides that the Commission may grant or deny a forbearance petition "in whole or in part."[63] We find, first, that section 10(c) expressly permits the Commission to grant one of the three alternative forms of relief sought by CTIA, even if the relief granted results in forbearance for a shorter period of time than would have occurred if the Commission had granted one of the other alternative forms of relief requested by CTIA. We find, second, that section 10(c), by permitting the Commission to grant a forbearance petition "in part," gives us the authority to forbear from our CMRS LNP requirements until November 24, 2002, even if CTIA had not requested that alternative form of relief.

23. Moreover, accepting GTE's argument that we are not permitted to forbear from our CMRS LNP requirements until November 24, 2002 would lead to an anomalous result in this case. Under GTE's argument, we would not have the option of granting forbearance until the expiration of the buildout period, even though that was a form of forbearance relief actually requested by the petitioner and that relief satisfied the section 10 statutory standard. Therefore, having concluded that the alternative forms of relief requested by the petitioner did not satisfy the section 10 statutory standard, we would be required to reject CTIA's forbearance petition in its entirety. We believe that this result is inconsistent with the deregulatory mandate of section 10.

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[59] *See* GTE Comments at 5-12; GTE Reply Comments at 2-4. *But see* MCI Comments at 2 (arguing that the Commission has various alternatives, including rule changes and waivers, to extend the CMRS LNP implementation date in accordance with the public interest).

[60] *See* CTIA Petition for Forbearance at 3.

[61] *See CMRS LNP Forbearance Order*, 14 FCC Rcd at 3101-02, 3103, 3105-06, 3109-12, 3116, ¶¶ 19, 22, 28-29, 34-39, 48.

[62] *See id.* at 3103-04, 3112-13, 3116, ¶¶ 23, 40-42, 48.

[63] *See* 47 U.S.C. § 160(c).

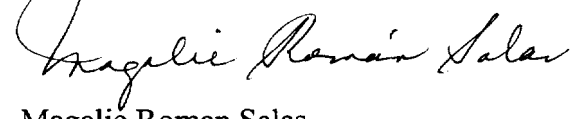
24. We note that, even if we had been required to reject CTIA's forbearance petition in its entirety because we lacked the authority to extend the CMRS LNP implementation deadline to November 24, 2002 under a section 10 forbearance analysis, we could have accomplished the same result by granting a waiver of the CMRS service provider LNP requirement in section 52.31(a) until November 24, 2002. The record for the *CMRS LNP Forbearance Order* contained sufficient evidence to satisfy the "good cause" waiver standard of section 1.3 of the Commission's rules.[64] Specifically, the record demonstrated that the wireless industry needs additional time beyond the March 31, 2000 implementation deadline to finalize standards, produce software, and deploy number portability in their networks.[65] The record also established that extending the deadline until November 24, 2002 will give CMRS carriers greater flexibility in that time-frame to complete network buildout, technical upgrades, and other improvements that are likely to have a more immediate impact on enhancing service to the public and promoting competition in the telecommunications marketplace.[66] In addition, the record demonstrated that the public interest in efficient use of numbering resources would not be harmed by the limited extension of the LNP deadline.[67] Thus, the relief sought by CTIA could have been granted by waiver.

25. Conclusion. As discussed above, we conclude that none of the petitions raises arguments that warrant reconsideration of our decision in the *CMRS LNP Forbearance Order* to forbear from imposing service provider LNP requirements on CMRS providers until November 24, 2002. We find that we adequately considered issues related to number conservation, competition in the wireless industry, and TRA's alternate LNP proposal. We also find that our analysis of CTIA's petition for forbearance was consistent with the standard set forth in section 10 of the Communications Act.

IV. ORDERING CLAUSE

26. Accordingly, IT IS ORDERED, pursuant to section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the petitions for reconsideration of the *CMRS LNP Forbearance Order* filed by GTE Service Corporation, MCI WorldCom Inc., the Pennsylvania Public Utility Commission, and the Telecommunications Resellers Association ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

[64] 47 C.F.R. § 1.3. Courts have interpreted good cause to mean cases where special circumstances warrant a deviation from the general rule and such deviation will serve the public interest better than adherence to the general rule. *See WAIT Radio v. FCC*, 418 F.2d 1135, 1157 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[65] *CMRS LNP Forbearance Order*, 14 FCC Rcd at 3105-06, ¶¶ 28-29.

[66] *Id.* at 3109-13, ¶¶ 34-42.

[67] *Id.* at 3116, ¶ 48.

SEPARATE STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability, WT Docket No. 98-229, CC Docket No. 95-116 (February 9, 2000)

While I have no qualms with today's decision to deny these petitions for reconsideration, I write separately to express my concern about the Commission's jurisdiction to order number portability for CMRS providers in the first instance. The Commission has grounded its authority in sections 1, 2, 4(i), and 332, of the Communications Act.[1] I have long voiced concern about this agency's efforts to impose costly and far-reaching regulatory obligations based on authority cobbled together from various general and ancillary provisions of the Act. Such assertions of jurisdiction are particularly troubling here in light of Section 251's statutory provision specifically mandating number portability solely for local exchange carriers. Moreover, elsewhere we have concluded that CMRS providers are not subject to these LEC obligations.[2] In the highly competitive CMRS arena, it is the market, not government, that should generate new service opportunities and technological innovation. To take a government-first, mandate-driven approach in the face of meager statutory authority strikes me as unnecessary and unproductive.

-- FCC --

[1] *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8431 (1996) (citing these provisions as the basis of the Commission's statutory authority); *see also Telephone Number Portability*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7315 (1997).

[2] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15995-96 (1996).