Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

AUG - 2 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Petition Pursuant to 47 U.S.C. § 160	)	WT Docket No. 01-184
For Partial Forbearance From the	)	
Commercial Mobile Radio Services	)	
Number Portability Obligation	)	

VERIZON WIRELESS' PETITION PURSUANT TO 47 U.S.C. § 160 FOR PARTIAL FORBEARANCE FROM THE COMMERCIAL MOBILE RADIO SERVICES NUMBER PORTABILITY OBLIGATION

John T. Scott, III
Vice President and
Deputy General Counsel – Regulatory Law

Anne E. Hoskins
Regulatory Counsel

Lolita D. Smith
Associate Director Regulatory Matters

Verizon Wireless
1300 I Street, N.W., Suite 400 West
Washington, D.C. 20005
(202) 589-3760

July 26, 2001

TABLE OF CONTENTS

I. SUMMARY 2

II. BACKGROUND 5

III. LNP CAPABILITY IS NOT A PREREQUISITE FOR THOUSANDS BLOCK NUMBER POOLING 9

A. LNP-BASED REQUIREMENTS FOR POOLING 11

B. MANY ADDITIONAL TASKS ARE REQUIRED TO IMPLEMENT LNP THAT ARE NOT NECESSARY FOR POOLING 12

IV. THE FCC SHOULD PERMANENTLY FORBEAR FROM ENFORCING THE CMRS LNP REQUIREMENT 13

A. CMRS NUMBER PORTING IS NOT NECESSARY TO PROMOTE COMPETITION 15

1. The CMRS Market is Highly Competitive and Justifies Permanent Forbearance From LNP 16

2. CMRS LNP Is Not Necessary To Promote Competition in The Landline Market 19

B. CMRS NUMBER PORTING IS NOT NECESSARY TO ENSURE JUST AND REASONABLE RATES 20

C. CMRS NUMBER PORTING IS NOT NEEDED TO ENSURE CONSUMER PROTECTION 22

D. PERMANENT FORBEARANCE IS CONSISTENT WITH THE PUBLIC INTEREST 23

1. Forbearance Will Allow CMRS Providers to Focus on Pooling and Thus Help Achieve the Public Interest Goal of Optimizing Number Resources 24

2. Forbearance Will Not Impair the Public Interest in Competition 26

3. Forbearance Will Allow Carriers to Focus on Pro-Competitive Network Buildouts and Upgrades.....27

4. The Public Interest in Deregulation also Mandates Permanent Forbearance.....29

V. CONCLUSION.....31

APPENDIX

A. LRN-BASED NETWORK REQUIREMENTS FOR POOLING.....2

1. The LRN Routing Method.....2

2. MIN/MDN Separation.....3

3. Roaming.....4

4. NPAC Pooling Functional Requirements.....5

B. MANY ADDITIONAL TASKS ARE REQUIRED TO IMPLEMENT NUMBER PORTABILITY THAT ARE NOT NECESSARY TO ACHIEVE POOLING.....6

1. Point Of Sale Systems To Port-In Other Mobile Telephone Numbers.....7

2. Training Of Sales And Customer Service Personnel.....8

3. Billing System Development To Integrate Other Carriers' MDNs Into Verizon Wireless' Systems For Taxation And Number Inventory.....10

4. Overhaul Of Reseller Systems To Accommodate Reseller "End User" Porting.....11

5. Development and Staffing of a Porting Center.....12

6. Communication Process with NPAC and Other Carriers.....13

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition Pursuant to 47 U.S.C. § 160	)	WT Docket No. _____
For Partial Forbearance From the	)	
Commercial Mobile Radio Services	)	
Number Portability Obligation	)	

To: The Commission

VERIZON WIRELESS' PETITION PURSUANT TO 47 U.S.C. § 160 FOR PARTIAL FORBEARANCE FROM THE COMMERCIAL MOBILE RADIO SERVICES NUMBER PORTABILITY OBLIGATION

Verizon Wireless submits this petition for partial forbearance from the Commission's rules that require CMRS carriers to provide local number portability ("LNP") capability. Relief is sought only from the LNP obligation, not from the requirement that CMRS carriers participate in number pooling.[1]

Granting this petition will mean that carriers must continue to upgrade their networks to comply with all required number optimization requirements, and must be capable of thousands block number pooling, on schedule, in November 2002. But carriers would be relieved of the unsupportable requirement to go beyond number conservation, and to make the expensive but totally unnecessary investments in complex systems needed to implement single number portability. Removing the CMRS LNP obligation will allow carriers to devote their resources

[1] This petition is filed pursuant to Section 10 of the Communications Act, as amended by the Telecommunications Act of 1996 ("Telecom Act" or the "Act"), 47 U.S.C. § 160, and Section 1.53 of the Commission's Rules.

to becoming pooling-capable, not waste them on a regulatory mandate that was imposed to promote competition in an industry that is already fully competitive.

I. SUMMARY

This Petition is not about number pooling, and does not seek forbearance from pooling. Verizon Wireless recognizes that conservation of the nation's telephone number resources is an important public policy goal. It supports number pooling as an effective means to optimize number use and make more numbers available to meet the needs of CMRS carriers and their customers. Verizon Wireless accepts the obligation to implement the Location Routing Number ("LRN")-based network architecture that is needed for the implementation of thousand block number pooling ("TBNP"). It is working toward meeting the November 2002 deadline for CMRS carriers to participate in states' number pooling programs.

This Petition is, however, about stopping regulatory overkill: the separate mandate that CMRS providers be capable, also by November 2002, of transferring a customer's telephone number to or from another carrier, referred to as local number portability ("LNP"). This mandate will impose complex technical burdens and expenses that are not justified by tangible competitive benefits. Moreover, those burdens and expenses are not necessary to protect against unreasonable rates, terms and conditions or to protect subscribers, the standards for Section 10 forbearance.

The FCC originally based the CMRS LNP mandate on the belief that it would promote competition, but that belief was misplaced and is, in today's competitive CMRS market, unsupportable. Competition does not, nor has it ever, justified imposition of the LNP capability requirement on wireless carriers. The Commission itself has cited the CMRS industry repeatedly as a model for competition. Customers enjoy an ever-growing array of

services and price plan choices. Clearly, the inability of customers to retain phone numbers has not deterred competition. Customers want new phones, nationwide coverage, inexpensive price plans, and top-rate customer service. The FCC itself recognized these facts when, in 1999, it granted temporary forbearance of the CMRS LNP mandate until November 2002:

> There is no evidence that requiring wireless carriers to adhere to the current [LNP] implementation schedule is necessary to prevent affirmative harm to consumers. The record indicates that the demand for wireless number portability among CMRS consumers is currently low and that consumers are more concerned about competition in other areas such as price and service quality.[2]

The FCC should be removing, not adding, regulatory impediments to the provision of competitive services. Maintaining an LNP requirement on CMRS will cause providers to expend significant resources, which will slow the provisioning of new services and features that customers both want and need. It will consume scarce resources at a time when wireless companies are attempting to meet other major new mandates, including E911 and CALEA, and, for that matter, pooling itself. Increased competition should mean less regulation, not more. Congress enacted Section 10 of the Act to require the Commission to forbear from enforcing regulations that are unnecessary to achieve demonstrable benefits. The CMRS LNP mandate is precisely such a regulation.

The problem this Petition seeks to rectify is that the Commission's numbering rules tie pooling to the deployment of LNP capability.[3] Thus, CMRS providers must be capable of both pooling <u>and</u> portability by November 2002. The linkage of pooling to LNP was based on

---

[2] *See* 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) at ¶ 22 ("*Forbearance Order*").

[3] Section 52.20(b) states, "[A]ll carriers capable of providing local number portability (LNP) must participate in thousands-block number pooling where it is implemented and consistent with the national thousands-block number pooling framework established by the Commission," and Section 52.31(a) requires CMRS providers to be capable of porting numbers by November 24, 2002.

assumptions by both industry and the Commission that LNP capability was a prerequisite to pooling. The Commission determined in 1999 that it should forbear from LNP only until November 2002, because it wanted to ensure that CMRS providers were pooling-capable by that date, and believed that deploying LNP capability was necessary for CMRS providers to be able to pool. This is not entirely correct. It is the LRN-based network technology, rather than the ability of customers to retain their telephone numbers when switching service providers, that is necessary for pooling.

This distinction is crucial. In this petition, Verizon Wireless shows why there are discrete pooling and LNP-based technical and operational upgrades. While CMRS providers must make a number of upgrades (such as MIN/MDN separation) in order to become pooling capable, they would need to make additional upgrades, and incur considerably greater burdens, to provide single number portability. The Petition asks the Commission to require only those LRN-based architecture and related network upgrades that are necessary to facilitate pooling, but to forbear from enforcing the parts of those rules that impose LNP capability. In this way, carriers will be clear that they must take all actions necessary to become pooling capable. They would not, however, have to take the additional actions required to engage in single number portability, actions that will require substantial further effort and investment.

The FCC can achieve both its number conservation and competition objectives by granting this petition. Granting forbearance would not change the November 2002 TBNP obligation on CMRS providers, promoting FCC and state number conservation objectives. But forbearance would relieve carriers from the significant additional burdens of complying with LNP. With relief from the unnecessary LNP mandate, CMRS carriers can focus their resources on the technology and systems necessary for pooling and other mandates, and

redirect millions of dollars and staffing resources to investments in customer-responsive, pro-competitive products and services. Forbearance will thus clearly serve the public interest.

II. BACKGROUND

In the 1996 Telecom Act, Congress enacted various requirements designed to open wireline telephone markets to competitive entry by imposing obligations on wireline local exchange carriers (LECs). One such obligation imposed on LECs was number portability. Section 251(b)(2) of the 1996 Act thus directed the FCC to adopt rules requiring LECs to deploy the capability to permit customers to keep the same telephone number when switching carriers. But Congress did not direct the FCC to extend LNP to all carriers – only to wireline LECs. The regulatory action was focused, and limited, to further Congress' objective to open landline local exchange markets to competition.

In July 1996, however, the FCC adopted number portability rules and deployment schedules for both LECs and CMRS carriers.[4] While acknowledging that Section 251(b)(2) granted it no authority to extend LNP to CMRS carriers, the FCC claimed it had independent authority to do so under Sections 1, 2, 4(i), and 332 of the Telecom Act.[5] Several wireless carriers challenged this FCC claim of authority, arguing that the Act did not authorize the Commission to impose LNP on wireless carriers, and pointing to a complete lack of evidence that CMRS LNP was necessary to promote competition. They noted that there was no evidence wireless customers would forego switching providers if they could not keep the same

---

[4] Those types of CMRS carriers that were covered by the rule were defined to include cellular, broadband PCS and certain SMR providers. Although other types of CMRS providers were exempted, this Petition simply uses the term "CMRS providers" to avoid confusion.

[5] *See Telephone Number Portability,* CC Docket No. 95-116, *First Report and Order*, 11 FCC Rcd 8352 (1996), at ¶153-154; *Telephone Number Portability,* CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236 (1997) at ¶¶ 140-142.

phone numbers, and that customers were in fact readily switching carriers in response to competition, without LNP.[6]

In addition to extending the regulatory scope of the 1996 Act beyond the policy objectives it sought to achieve, the FCC's extension of LNP to CMRS carriers departed from the deregulatory thrust of both the 1996 Act and the 1993 amendments to Section 332. It is ironic that the FCC has cited Section 332 as its statutory authority for CMRS LNP, since the agency has repeatedly said that Section 332 imposes a *deregulatory* mandate for CMRS. Without explanation, the Commission did not conduct a cost/benefit analysis before imposing LNP on broadband PCS and SMR providers.[7] The Commission did not establish a factual record of the need for wireless LNP. It neither demonstrated that customers were or would be hindered from switching carriers *because of* the unavailability of number portability, nor did it show that the absence of number portability hindered CMRS competition by discouraging market entry. Over wireless industry objections, the FCC concluded that by allowing consumers to retain their telephone numbers when changing service providers, LNP would help new PCS entrants compete for customers with incumbent cellular providers, and also would promote wireless/wireline competition.[8]

Nearly three years later, in response to a petition for forbearance filed by CTIA, the Commission pulled back from its 1996 findings. It decided that LNP was not necessary at that

---

[6] *First Report and Order*, at ¶ 143, citing comments by Bell Atlantic Mobile, Airtouch, Mobile Media, and Bell South. Bell Atlantic Mobile reiterated its arguments in a petition for reconsideration of the *First Report and Order* and in an appeal to the Tenth Circuit. *Bell Atlantic NYNEX Mobile, Inc. v. FCC,* No. 97-9551. The company dismissed its appeal, without prejudice, following the FCC's 1999 *Forbearance Order*.

[7] It did so for paging services, a step which, unsurprisingly, led to an exemption of paging services from LNP *See First Report and Order* at ¶ 156, & fn. 451. But it inexplicably failed to conduct the same analysis for broadband CMRS.

[8] *See First Report and Order* at ¶ 160.

time to promote wireless competition and, in fact, that wireless carrier resources could be better deployed to provide customer benefits through system build-outs and other investments. Its February 9, 1999, *Forbearance Order* granted CTIA's forbearance petition in part by allowing CMRS carriers to delay implementation of LNP until November 24, 2002.[9] In analyzing the three prongs of the Section 10 forbearance standard, the FCC concluded that:

> -- Retaining the current wireless number portability implementation schedule was not necessary to prevent unjust or unreasonable charges or practices by CMRS carriers;
>
> -- The high incidence of switching between wireless carriers (popularly referred to as 'churn') indicated that many wireless customers easily and routinely switch from one carrier to another without the benefit of number portability and consequently, temporary forbearance would not harm consumers;
>
> -- Extending the deadline until November 2002 was consistent with the public interest for competitive reasons because it would give CMRS carriers greater flexibility in that time-frame to complete network build-out, technical upgrades, and other improvements that are likely to have a more immediate impact on enhancing service to the public and promoting competition.[10]

The FCC saw "insufficient competitive benefit to justify the cost and technical burden of implementing LNP more rapidly," and concluded that the limited forbearance requested by CTIA would not harm consumers.[11] In doing so, the Commission recognized that LNP is not necessary for competition in the CMRS industry. The Commission agreed with CTIA that competition was better served by allowing CMRS providers to invest in continued deployment of their networks and rolling out innovative services.[12] With temporary forbearance, carriers could continue to focus on initiatives that drive competition, instead of working to fulfill a regulatory mandate that Congress intended for the wireline local exchange market.

---

9 *Forbearance Order* at ¶ 1.

10 *Id.* at ¶ 22-25.

11 *Id.*

12 *Id.* at ¶¶ 25, 37-38.

Despite these findings, the Commission did not fully forbear, but instead postponed LNP compliance until November 2002. Growing concerns regarding number conservation drove this date. The Commission had identified a solution to slowing down the steady exhaust of area codes because of the practice of assigning numbers to carriers in 10,000 number blocks: thousands block number pooling. It also believed that pooling was dependent on carriers' deployment of LNP, i.e., that carriers had to deploy LNP to participate in pooling. The Commission's concern about number conservation significantly influenced its decision to defer the LNP mandate for CMRS providers rather than forbear from it altogether. The 1999 *Forbearance Order* repeatedly stated that uniform LNP implementation and deployment regulations could facilitate number conservation.[13]

The nexus between LNP and number conservation assumed an even greater role in the Commission's analysis in later proceedings,[14] after the point in time when the North American Numbering Council ("NANC") had recommended TBNP and the industry decided to provision TBNP with the same LRN-based network architecture that facilitated LNP.[15] TBNP became the cornerstone of the Commission's number conservation initiative, a shift that culminated in the *Second Numbering Resource Optimization Order*, where the Commission required CMRS carriers to implement both LNP and pooling on a flash-cut basis by the November 2002 LNP deadline.[16]

Citing concerns over network impact and reliability, CTIA and a number of carriers have sought reconsideration of the requirement that CMRS providers implement pooling and

---

13 *First Report and Order* at ¶¶ 36-37.

14 *Forbearance Order* at ¶¶ 2, 43-48 .

15 *Id.* at ¶ 8.

16 *Number Resource Optimization, Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in*

number portability across the country simultaneously.[17] The Commission has yet to address these important concerns. Verizon Wireless urges the Commission to do so, promptly, in FCC Docket No. 99-200. With this new Petition, Verizon Wireless demonstrates that TBNP can be implemented fully – and most likely better – without an LNP capability mandate at all. Rather than risk network reliability and divert scarce carrier resources away from competitive initiatives and the fulfillment of other regulatory mandates, the Commission should forbear altogether from imposing its LNP mandate on CMRS carriers. It should instead allow carriers to focus their resources on becoming pooling capable. This action would fully achieve all of the FCC's goals for number optimization. It would, however, remove a costly, enormously complex and totally unnecessary burden that CMRS carriers face to be ready for single number portability.

III. LNP CAPABILITY IS NOT A PREREQUISITE FOR THOUSANDS BLOCK NUMBER POOLING.

The Commission's numbering rules are premised on the assumption that number portability is a prerequisite for pooling. Section 52.21(k) defines number portability as a service that enables "users of telecommunications services to retain, at the same location, existing telecommunications numbers, without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." Section 52.31(a) requires CMRS providers to comply with the LNP mandate by November 24, 2002. Section 52.20(b) then requires that all LNP carriers comply with the thousands block pooling

---

CC Docket No. 99-200, released December 29, 2000. Relevant portions referred to as "Second NRO Report and Order" and "Second Further Notice," respectively.

[17] *See* Petitions for Reconsideration filed by The Cellular Telecommunications and Internet Association at 12, Cingular Wireless at 12-13 and Sprint Corporation at 8-11, filed March 12, 2001, in CC Docket No. 99-200.

mandate. The Commission's 1999 *Forbearance Order* makes clear that the rules are intended to require all covered CMRS providers to complete the deployment of LNP capability by that date so that they can participate in pooling. The underlying premise for the Commission's rules and that decision was that CMRS providers had to fully deploy LNP capability in order to pool numbers, and thus that LNP had to be completed by that date to promote the Commission's number conservation objectives.

It is neither accurate nor necessary to link the implementation of pooling to provisioning of number portability. The correct link is between pooling and the Location Routing Number (LRN) network architecture, not LNP itself.[18] There are many operational requirements (generated solely by the portability mandate) that are unnecessary for pooling. Unlike pooling, portability impacts all segments of a wireless carrier's business and operations, including its billing systems, customer records, point of sale and customer care systems. In addition to the investment in systems hardware and software, portability will require carriers to set up systems to make comprehensible to their sales staffs and customers the limitations that the rate center system and carrier contracts place on customers' ability to switch carriers but keep their numbers. These major changes are not caused by, nor are they needed for, pooling. They do not advance the Commission's number conservation objectives.

The Appendix to this Petition explains in detail the many network upgrades and communications systems that are necessary for CMRS providers to be pooling-capable, separately identifies the additional investments that would be needed to be capable of single-number portability, and explains why those investments need not be incurred to achieve pooling capability. The network architecture functions that are required for pooling (and

[18] *See* ATIS Industry Numbering Committee, INC, Thousands Block Number NXX-X Pooling Administration Guidelines, Section 2.4.

would be required as well for number portability), discussed briefly below and in detail in Section A of the Appendix, are primarily associated with the LRN method needed for TBNP. The additional LNP functions that are not necessary for pooling (but rather are related to customer-driven LNP service transactions), are discussed in Section B of the Appendix. Verizon Wireless is seeking forbearance only from the LNP obligation, which would relieve it from having to take the many complex and burdensome actions set forth in Section B.

A. LNP-BASED REQUIREMENTS FOR POOLING

In developing the protocols for implementing TBNP, the industry decided to build upon the LRN network architecture, specifically the Advanced Intelligent Network system that also is used for LNP.[19] Number pooling is accomplished through the use of LRN databases, which can provide specific routing information for blocks of numbers within the same NXX that have been allocated to different service providers. This LRN database associates an LRN with each subscriber's telephone number to support proper routing to different service providers' switches. This happens to be the same network architecture that would be deployed for number portability. Use of the LRN network architecture avoids the need to perform 7-digit screening (NPA-NXX-X) within each switch on calls to pooled numbers. It also allows individual service providers to retain their own numbering inventory.

TBNP requires implementation of the LRN network architecture, including MIN/MDN separation, roaming system changes, and NPAC pooling functional requirements.[20] Each of these functions necessary to participate in pooling is discussed in detail at pages 1-5 of the

---

[19] Number Resource Optimization Working Group, Report to the North American Numbering Council, October 20, 1998, p.92.

[20] ATIS Industry Numbering Committee, INC, Thousands Block Number NXX-X Pooling Administration Guidelines, Section 2.4.

Appendix. Verizon Wireless will continue to deploy all of the LRN network architecture and other functions identified in Section A of the Appendix to enable it to become pooling capable by November 2002 and to participate in state thousands-block pooling efforts. All of them can however, be put in place, without also providing single number portability.

B. MANY ADDITIONAL TASKS ARE REQUIRED TO IMPLEMENT LNP THAT ARE NOT NECESSARY FOR POOLING.

While the LRN network architecture serves as the technological foundation for pooling, there are many additional tasks required for number portability that are not required to implement number pooling. Most of these tasks are related to inter-carrier communications, customer service and the management of customer records in LNP transactions. These are discussed at pages 5-15 of the Appendix. Verizon Wireless requests forbearance from the LNP obligation so that it will not be required to make the considerable investment in personnel and financial resources that will otherwise be needed. These LNP-required steps will be expensive and burdensome to achieve, yet are completely unnecessary because their goal – competition among carriers – is already being achieved. They include:

- Verizon Wireless would need to develop and add, at considerable expense, new functionality to all point of sale ("POS") systems that support sales channels and customer care operations. The Appendix discusses the many changes in POS systems that would be necessary, as well as problems that CMRS carriers face because of the structure of their networks. For example, problems are likely to occur because CMRS carriers do not operate out of all landline rate centers. The FCC never considered these and other wireless-specific technical issues when it imposed the requirement on CMRS.

- Training of sales and customer service personnel to deal with the incredibly complex issues that will arise with LNP. Among the problems that will require extensive intermediation are the difficulties of porting customers who are in service areas where the coverages of the porting and ported carriers differ, a frequent situation.
- Multiple systems relating to number inventory, rating of calls, taxation and other programs will need to be extensively revised. Loading of numbers will be far more complex, requiring considerably more software capability.
- Communications with NPAC and other carries will be much more extensive, requiring additional personnel, hardware and software upgrades. Manual communications mechanisms that might suffice for pooling would likely prove inadequate for the rapid inter-carrier communications that would be required when porting occurs.

As is shown in the Appendix, none of these difficult tasks need to be implemented in order for Verizon Wireless to become capable of participating in thousands block pooling. They would be done only because they would be necessary to meet the Commission's single number portability mandate. But, as Section IV of this Petition shows, that mandate is clearly not essential to achieve any concrete goal. Forcing CMRS providers to incur the burden of these tasks would thus constitute an enormous waste of carrier resources and would be regulatory overkill of the worst magnitude.

IV. THE FCC SHOULD PERMANENTLY FORBEAR FROM ENFORCING THE CMRS LNP REQUIREMENT.

As described above, pooling does not require provision of the many costly billing, customer service, and communications processes that will be necessary to provide LNP capability to customers. The FCC can fully achieve the number optimization goals it aims to

achieve through pooling without requiring LNP, and thus without forcing carriers to make the substantial investments of personnel and capital that would be required for LNP. The only possible remaining justification for retaining the LNP mandate is to promote competition in the CMRS industry. Because competition is thriving without LNP, there is no policy basis for retaining the obligation to provide CMRS LNP capability. Moreover, because the LNP obligation is not necessary to promote competition, the Commission is legally required to forbear from enforcing it.

The Communications Act requires forbearance from the CMRS LNP mandate upon satisfaction of the Section 10 standards. Section 10, 47 U.S.C. § 160, provides that the FCC shall 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 provision or regulation is consistent with the public interest.

The Commission's 1999 *Forbearance Order* granted only temporary forbearance (until November 2002) by weighing the number conservation and competition rationales for LNP. The Commission declined to grant permanent forbearance in 1999 for the following reasons:

- Implementation of LNP is a precondition to the implementation of number pooling. The public interest would be jeopardized if CMRS carriers cannot participate in LNP- based conservation techniques such as number pooling after November 2002.
- CMRS LNP would eventually promote competition in both the CMRS marketplace and with wireline carriers, which would provide incentives for carriers to provide innovative service offerings, higher quality services and lower prices.

- By November 2002, nearly all PCS licensees will have completed their five year buildout, and thus the vast majority of CMRS carriers subject to LNP requirements will have achieved substantial buildout in these markets, enabling carriers to shift resources to deploy LNP.[21]

As explained in Section III above and in the Appendix to this Petition, full implementation of LNP is not a necessary precondition for pooling, which Verizon Wireless will complete by November 2002. Stripped of a number conservation justification, the regulatory mandate of LNP can be maintained only if the competition rationale remains valid. It does not. The FCC found that temporary forbearance was required in 1999 because competition was an insufficient ground at that time for LNP. The FCC was right to forbear in 1999, and today there is even less reason to impose CMRS LNP. All the rationales that supported forbearance in 1999 warrant making forbearance permanent for LNP, and instead support a more narrowly tailored requirement that carriers take the actions necessary to be able to participate in TBNP. CMRS LNP is not necessary to promote competition in the CMRS marketplace or with wireline carriers. As will be demonstrated below, CMRS carriers have had and will continue to have ample incentives to develop innovative services that customers can afford and will want to buy, without the added regulatory mandate of LNP.

A. CMRS NUMBER PORTING IS NOT NECESSARY TO PROMOTE COMPETITION.

Congress imposed number portability obligations only on LECs to promote local *landline* telephone competition, relying on studies showing that some landline customers would be discouraged from subscribing to new landline entrants if they had to change their phone numbers. In the landline context, the 1996 Act was attempting to bring competition to a

[21] 1999 *Forbearance Order* at ¶ 39-48.

telecommunications market that had little competition. No such adverse competitive conditions existed in the wireless industry, and the FCC's decision to impose LNP on wireless carriers was not based on any evidence that LNP was needed to promote competition. The record in the *First Report and Order* did not demonstrate that portability would promote new CMRS entry or otherwise increase competition. Nor was there any evidence that customers were deterred from switching carriers because of a lack of number portability, or that the benefits of LNP outweighed the cost of implementation. The CMRS market is even more competitive today than it was in 1997 when the FCC first imposed the CMRS LNP rule and in 1999 when the FCC granted temporary forbearance of the rule.

1. The CMRS Market is Highly Competitive and Justifies Permanent Forbearance From LNP.

In its 1999 *Forbearance Order*, the Commission found that requiring CMRS LNP was not necessary to promote competition until 2002, and in fact that resources could be put to greater competitive advantage in other ways, including network buildout. While it did not back away from eventually imposing LNP obligations, the FCC acknowledged that "... not only is CMRS competition currently growing rapidly without LNP, but in the near term, LNP does not appear to be critical to ensuring that this growth continues."[22] If the state of CMRS competition was sufficient to forbear in 1999, the growth in competition since then logically supports permanent forbearance.

Competition continues to flourish in the CMRS industry today. Competitive market forces have delivered lower rates, ensured customer care as an essential part of wireless business concerns, and spurred innovation and investment that have provided consumers with

[22] *See Forbearance Order* at ¶ 19.

improved services and features consistent with the public interest.[23]

Since its 1999 *Forbearance Order,* the Commission has released three more CMRS competition reports, all of which show that competition has steadily increased -- without CMRS LNP. If anything, these reports show that forbearance should now be made permanent, and that there is even less basis than ever to impose the huge regulatory burden of LNP.

The *Fourth Report*, released June 24, 1999, stated that several sectors of the CMRS industry had experienced increased competition since the release of the *Third Report.* Mobile telephony providers' focus on aggressive network deployment resulted in improved coverage and increased service options in areas where some level of competition had already existed.[24] The *Fourth Report* noted the increasing availability of wireless communications as the mobile telephony sector of CMRS experienced "another year of strong growth and competitive development."[25] Some statistics from the *Fourth Report* reveal the vitality of CMRS competition -- all of which occurred without LNP:

- Subscribership increase of over 25% from 55.3 million to 69.2 million;
- National penetration rate of 26%;
- Average price of service fell substantially, continuing a downward trend; the average monthly bill or average revenue per unit ("ARPU") declined from $42.78 in December 1997 to $39.43 in December 1998;
- Availability of at least five mobile telephone operators in each of the 35 largest Basic Trading Areas ("BTAs") and at least three providers in 97 of the 100 largest BTAs in the continental U.S.[26]

---

[23] Even during the recent economic downturn, analysts are positive about the growth outlook for wireless. Merrill Lynch now estimates that the US will add 25 million net new subscribers during 2001, which implies 135 million total subscribers at the end of 2001, for nearly 23% year-over -year growth. *See* Merrill Lynch, *The Next Generation V*, March 9, 2001 at 13.

[24] Implementation of Section 6002(b) of the Omnibus Budget reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with respect to Commercial Mobile Services, *Fourth Report*, 14 FCC Rcd 10145 (1999) at 4-5 ("*Fourth Report*").

[25] *Fourth Report* at 6.

[26] *Id.* at 6-9.

The *Fifth Report*, released August 18, 2000, found continuing increases in competition, evidenced by lower prices and increased diversity of service offerings[27] -- again, all occurring *without* LNP:

- By year-end 1999, subscribership had reached 86.0 million, representing 32% of the country's population;
- The price of mobile telephone service declined by 11.3% between the end of January 1999 and the end of January 2000, with the Strategies Group estimating prices falling as much as 20% between 1998 and 1999;
- 222 million people, or 88% of the total U.S. population, had a choice of three or more different operators (cellular, broadband PCS, and/or Nextel) offering mobile service in the counties in which they live;
- Over 172 million people, or 69% of the U.S. population, lived in areas with five or more mobile operators;
- About 11 million people, or 4% of the population could choose from seven different mobile operators;
- The average price of mobile service fell substantially, continuing the trend of the last few years.[28]

The *Sixth Report*, the results of which were presented to the Commission in June 2001, concludes that the wireless industry continued to experience increased competition and innovation in the year 2000, yielding even lower prices and an increased diversity in service offerings for many consumers [29] -- again, *all* without LNP:

- Increased subscribership from 86.0 million to 109.5 million, yielding nationwide penetration of approximately 39 percent;
- Customers choice continued to expand with over 91% of the U.S. population now having access to three or more different operators; over 75% can choose between five or more operators and approximately 47% of the population has access to six different providers;
- The price of mobile service declined 12.3 percent during 2000.

---

[27] Implementation of Section 6002(b) of the Omnibus Budget reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with respect to Commercial Mobile Services, *Fifth Report*, 15 FCC Rcd 17660 (2000) at 4-5 ("*Fifth Report*").

[28] *Fifth Report* at 5-6.

[29] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with respect to Commercial Mobile Services, *Sixth Report*, FCC 01-192 (released July 17, 2001) *("Sixth Report")*.

Year after year, the FCC has found improved competition in the CMRS industry, with corresponding consumer benefits in service provider choice and price reductions. Since 1996, the average price per minute for mobile telephone service has dropped from $0.54 to $0.21, while the average minutes-of-use per month have climbed from 125 to 255, none of which was prompted by single number portability.[30] Given this record, CMRS LNP simply cannot be supported by a competition rationale – there is none.

2. CMRS LNP Is Not Necessary To Promote Competition in The Landline Market.

Another justification for imposing LNP on CMRS carriers was the hope that CMRS carriers would provide a source of competition to incumbent landline carriers.[31] There is no evidence, however, that CMRS LNP would materially affect a landline customer's decision about whether to retain landline service. In fact, the 1999 *Forbearance Order* found that enforcing the LNP implementation schedule was unlikely to advance wireless to landline competition.[32] Over the past few years wireless services have begun to replace some customers' primary lines.[33] The Commission's most recent CMRS competition report documented continued inroads by wireless into the landline market, noting that three percent of wireless customers now have no landline phone at all, and that, "in some areas, wireless use has begun to erode landline revenues due to "technology substitution," that is, the substitution of new technologies for existing ones. And it noted one survey that reported that 12 percent of respondents said they purchased a wireless phone instead of installing an additional landline

---

30 *Id.*, Attachment A.

31 *Forbearance Order* at 35.

32 *Id.*

33 *Fifth Report* at 14; *See Fourth Report* at 12-15. The *Fourth Report* found that because the digital technology used by broadband PCS systems can replicate many features of landline phones, many PCS

phone. The Commission also noted that Leap and other wireless carriers "have begun offering service plans designed to compete directly with wireline local telephone service.[34]

All of this wireless-landline competition has developed, of course, without any CMRS number portability obligation in place. Where customers have replaced their primary landline phone with a wireless handset, they have responded to such market incentives as bucket plans offering a high number of minutes of use for low, flat-rates, free or low-cost long distance, and other such service features. The key incentives for landline to wireless conversion are wide and dependable coverage, quality customer service, and attractive pricing plans. There is no evidence that the presence of LNP would have affected this trend – let alone any evidence that LNP is necessary for such competition. Carrier resources are better spent on customer-driven initiatives that spur competition with landline carriers for primary or secondary lines. To the contrary, forcing CMRS providers to divert those resources to pay for LNP capability can only impair those initiatives. In this way, LNP may in fact impede, rather than promote, landline-CMRS competition.

B. CMRS NUMBER PORTING IS NOT NECESSARY TO ENSURE JUST AND REASONABLE RATES.

Based on the robust competition in the CMRS market, the Commission concluded in the 1999 *Forbearance Order* that imposing CMRS LNP at that time was not necessary to prevent unjust or unreasonable charges or practices by CMRS carriers.[35] That conclusion warrants permanent forbearance today, because the level of CMRS competition is even more

---

carriers were promoting their service as substitutes for second telephone lines in homes and businesses. This has been an effective mechanism for promoting PCS services in rural or smaller urban areas.

[34] *Sixth Report*, at 32-34 (documenting growth of wireless-landline competition).

[35] *Forbearance Order* at ¶19.

robust than it was in 1999 when the Commission granted CTIA's forbearance petition. As discussed above, the Commission's competition reports have documented the growth in CMRS competition and the resulting benefits: lower prices, value-added services, greater wireless penetration, and the availability of many competing providers in nearly all markets.

These competitive trends continue to ensure just and reasonable rates – without number portability in place for CMRS. The recent consolidation has seen some formerly regional competitors merge to form national competitors. The number of competitors offering services in most markets has not decreased, however, as evidenced by statistics from the CMRS competition reports. In fact, consolidation has promoted competition as national wireless providers achieve economies of scale to expand their footprints, offer advanced services, and offer customers nationwide pricing plans marked by affordable rates. The *Fourth Report* noted that the driving force behind many consolidations had been the desire of large regional carriers to enhance their ability to compete with national operators like AT&T Wireless, Sprint PCS, and Nextel.[36] This objective has intensified competition among nationwide wireless providers.[37] Between the beginning of 1999 and the end of 2000, the number of national wireless providers doubled to six (AT&T Wireless, Cingular, Nextel, Sprint PCS, Verizon Wireless and VoiceStream).[38]

In short, the FCC's competition reports have documented steady, substantial declines in CMRS prices, all without an LNP mandate. There can be no clearer example of a rule that is "not necessary" to guard against excessive rates. Nor is there any plausible basis to presume that LNP, which is not necessary today, will somehow become necessary in November 2002.

---

36 *Fourth Report* at 15; *See also Fifth Report* at 10.

37 *Fifth Report* at 10.

38 Merrill Lynch, *Wireless Pricing and Landline Substitution*, April 4, 2002 at 2.

The plain fact is that LNP was not, is not, and will not provide any safeguards against unjust rates that the competitive market does not already provide.

C. CMRS NUMBER PORTING IS NOT NEEDED TO ENSURE CONSUMER PROTECTION.

In the 1999 *Forbearance Order*, the Commission also found that the second prong of the forbearance standard was met, because enforcement of LNP at the time was not necessary to protect consumers. That finding remains equally valid today. Sustained competitive pressures encourage CMRS providers to maximize customer satisfaction. Customer care is an important aspect of the wireless business, and is a way in which wireless carriers seek to differentiate themselves in the marketplace. For example, on May 1, 2001, Verizon Wireless rolled out a national campaign, the "Worry Free Guarantee" which focuses on its commitment to excellent service. This commitment requires employees to continue to put customers first by incorporating the "Worry Free Guarantee" into the corporate culture as the way of doing business. Such customer care initiatives are the hallmark of wireless service providers operating in a competitive business. In today's competitive market, carriers that do not respond to customers' needs risk losing them to a competitor. The dependability of wireless networks is another competitive factor that ensures quality services for consumers. Wireless carriers must seek ways to prevent dropped calls, fill in coverage gaps, and overcome other weaknesses of radio frequency propagation. These providers must continually upgrade their network facilities to maintain customer loyalty and satisfaction.

In a competitive market, customers exercise their prerogative to switch service providers whenever they are dissatisfied. This has happened, and will continue to happen,

without LNP, as confirmed by wireless market experience since 1996 and persistent levels of churn.[39] Given that churn measures the frequency with which subscribers switch operators, it is often used as an indicator of increasing competition.[40] As the FCC found in the 1999 *Forbearance Order* when it concluded that forbearance would not harm consumers, "the high incidence of switching between wireless carriers ... indicates that many wireless carriers easily and routinely switch from one carrier to another without the benefit of portability"[41]

Moreover, LNP is not needed to protect consumers given the protections that Sections 201 and 202 of the Act already provide.[42] The Commission has recognized the importance of these statutory provisions to ensure consumer protection, and has pointed to them as a reason why it can and should forbear from specific wireless regulations.[43] Section 201 requires carriers to provide services on terms that are not unjust and unreasonable, while Section 202 prohibits carriers from engaging in unreasonable discrimination. Under its enforcement authority, the FCC can sanction CMRS carriers whose practices violate these provisions.

All these facts point in one direction – there is no basis for keeping the mandate that CMRS providers take the steps necessary for single number portability.

D. PERMANENT FORBEARANCE IS CONSISTENT WITH THE PUBLIC INTEREST.

Section 10(a)(3) requires the Commission to analyze whether forbearance would be consistent with the public interest. Section 10(b) elaborates on Section 10(a)(3):

---

[39] The weighted average of cellular churn was 1.89% in 1996, 1.89% in 1997, and 1.95 % in 1998; the weighted average for Broadband PCS was 3.2% in 1997 and 4.2% in 1998. *See Fourth Report,* Appendix B, Table 7, at B-9.

[40] *Fourth Report* at 24.

[41] *1999 Forbearance Order* at ¶ 22.

[42] 47 U.S.C. §§ 201, 202.

> In making the determination under section (a)(3), the Commission shall consider whether forbearance from 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, that determination may be the basis for a Commission finding that forbearance is in the public interest.

Section 10(b) does not preclude forbearance even if a petitioner does not show that forbearance would enhance competition among carriers. The Commission has held that Congress, by requiring it to "consider" the public interest factor illuminated in Section 10(b), did not preclude consideration of other factors. Instead, the Commission found the public interest to be a broad standard to be exercised consistent with the Act's goals.[44]

Two stated policy goals underpin the CMRS LNP mandate: number conservation and carrier competition. But these goals have and can continue to be achieved without a number portability mandate.

1. Forbearance Will Allow CMRS Providers to Focus on Pooling and Thus Help Achieve the Public Interest Goal of Optimizing Number Resources.

The Commission can fulfill its conservation goal without enabling customers to retain telephone numbers when they switch carriers. In much of the recent debate regarding the need for LNP, the FCC has focused on thousands block number pooling. Section III of this petition demonstrates that wireless carriers can be required to support pooling through implementation of LRN-based network architecture modifications even when the forbearance requested by this

---

[43] *See* PCIA's Broadband PCS Alliance's Petition for Forbearance for PCS, WT Docket No. 98-100, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 13 FCC Rcd 16857 (1998) at ¶ 25 ("*PCIA Forbearance Order*").

[44] *See* Bell Operating Companies Petition for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, CC Docket No. 96-149, *Memorandum Opinion and Order*, 13 FCC Rcd 2627 (1998), petition for recon. pending at ¶ 46. ("*Section 272 Forbearance Order*") (rejecting AT&T's assertion that forbearance must enhance competition).

Petition is granted. Specifically, TBNP requires implementation of the LRN method of routing, MIN/MDN separation, development of a process for communicating with the NPAC, and roaming system changes, all of which can be implemented without taking the additional, resource-intensive steps to provision number portability. The Commission can and should continue to require that carriers provision the necessary LRN network architecture to facilitate nationwide roaming and develop the necessary pooling standards, without requiring carriers to provide single number portability.

Granting the requested partial forbearance will remove only the requirement that CMRS carriers implement the aspects of number portability that are not necessary for pooling and are not justified by any competitive or public interest purpose. A explained in detail in Section III of this Petition and in the Appendix, these number portability requirements touch all segments of a wireless carrier's operations, including billing systems, customer records, point of sale systems, and customer care. The financial and personnel resources needed to support these upgrades should instead be focused on pooling, because it (not LNP) will promote the public interest in number conservation.

By allowing wireless providers to concentrate on implementing TBNP and participating in state number pooling efforts as of November 2002, forbearance from LNP will yield significant public interest benefits. Verizon Wireless agrees that pooling will promote the important goals of number optimization and conservation of numbering resources. But the Commission has been advised of the many complex steps the CMRS industry must complete to become pooling capable, and, as noted above, CTIA and individual carriers have asked the Commission to address specific issues arising from the simultaneous mandates of pooling and porting (*infra,* at 9). The Commission should resolve these matters promptly. Without having

to implement the "flash cut" to porting as well as pooling, CMRS providers can devote their efforts and resources to finishing the network upgrades and other actions that are needed to participate fully in pooling. In this way, the Commission, and carriers, can focus on achieving tangible public interest benefits, without devoting resources to a mandate that lacks such clear benefits.

2. Forbearance Will Not Impair the Public Interest in Competition.

The competition rationale is belied by current facts demonstrating sustained robust levels of CMRS competition. The FCC's commitment to LNP was predicated on the public interest judgements regarding the state of competition in 1996 when PCS start-ups had just received licenses and were trying to deploy their networks. Since that time, PCS has flourished and PCS carriers compete vigorously with cellular incumbents, or in some cases have merged with cellular incumbents to form nationwide companies. Continued commitment to the regulatory approach outlined in the *First Report and Order* is not justified in today's competitive CMRS marketplace.

Moreover, the FCC has never established, through empirical evidence, any direct relationship between LNP and wireless competition. In the 1999 *Forbearance Order* proceeding, the FCC exposed the fallacy in its competition rationale for imposing the CMRS number portability mandate. The Commission examined the putative benefits of LNP versus the benefits of allowing carriers to direct resources toward more direct competitive initiatives like CMRS buildout and improving service quality, and concluded:

- Extending the deadline was consistent with the public interest for competitive reasons because it would 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;[45]

- Not only was CMRS competition growing rapidly without LNP, but in the near term, LNP did not appear to be critical to ensuring that this growth continues;[46] and

- Demand for wireless number portability among CMRS consumers was low and consumers were more concerned about competition in other areas such as price and service quality.[47]

A similar analysis today will demonstrate that, even without LNP, competition continues to develop, delivering many choices for consumers which they are freely exercising. Number portability, if offered, may be used by some customers, most of whom would have switched carriers without LNP; but this benefit will not be cost-free. Customers are likely to pay a price in foregone competitive investments (including network buildout) and possibly in increased rates for services.

3. Forbearance Will Allow Carriers to Focus On Pro-Competitive Network Buildouts and Upgrades.

The 1999 *Forbearance Order* posited that LNP would become appropriate to impose when the five-year PCS buildout for many PCS licensees ended. Verizon Wireless disagrees that the mere fact that some CMRS providers may have completed a buildout justifies imposing LNP at that time. To the contrary, permanent forbearance would be more consistent with the stated goal of encouraging providers to provide the substantial, high-quality wireless service that will best serve the needs of wireless customers. First, only a minority of CMRS providers (some PCS licensees) are subject to the five-year period that ends in November 2002. Second, the five-year buildout requires those providers to cover only a third (or, in the

---

45 *See Forbearance Order* at ¶ 25.
46 *See Forbearance Order* at ¶ 19.
47 *See Forbearance Order* at ¶ 22.

case of providers holding 10 mhz PCS licenses, only 25 percent) of their licensed service area. This hardly constitutes complete buildout. Those PCS providers can be expected to devote significant continued resources to buildout after as well as before the five-year milestone. Third, some PCS providers have sought lengthy extensions of their five-year milestone buildout dates for a sizeable number of different markets.[48]

In short, buildout is not a process that is completed on some date. The same rationale that the Commission used to grant temporary forbearance – allowing carriers to devote scarce resources to building their coverage and expanding their footprint to serve more customers – does not vanish on November 24, 2002. Even established cellular, PCS and SMR carriers who have already built extensive networks must continually add cell sites, install digital upgrades, and take other actions they believe are necessary to have a high-quality network that can help retain existing subscribers and attract new subscribers. At the same time, CMRS carriers are facing increasing demands on network resources to provide previously untested and technically complex services, such as Enhanced 911, and to interconnect with new competitive carriers. Competition will be better fueled by focusing resources on continued network development and deployment, rather than diverting those resources to LNP.

Assuming, *arguendo*, that portability, while not necessary for competition, would nevertheless enhance competition, the Commission would still not be justified in enforcing the rule. A speculative, marginal gain in competition would not justify the complexity or expense of providing LNP to CMRS customers. The Commission and courts have repeatedly emphasized the importance of carefully evaluating the impact of regulatory mandates. Even

---

[48] *E.g.*, Public Notice, "Wireless Telecommunications Bureau Seeks Comment on Leap Wireless International, Inc.'s Request for Waiver and Extension of Broadband PCS Construction Requirements," released May 8, 2001 (Leap seeks one- or two-year extensions (some until 2003) for 31 PCS licenses).

assuming some possible competitive benefit to a regulatory burden, that burden should not be continued or imposed unless the tangible benefits justify doing so.[49]

Customer choice is not impeded by personal attachment to a wireless phone number. The churn levels in the wireless industry, which measure the frequency with which subscribers switch carriers, prove as much.[50]

4. The Public Interest in Deregulation also Mandates Permanent Forbearance.

In the 1993 amendments to Section 332 of the Act, Congress imposed a framework that relies on competition in the CMRS market rather than government intrusion to achieve public interest goals.[51] In its first decision implementing those amendments, the FCC proclaimed, "We establish, as a principal objective, the goal of ensuring that unwarranted regulatory burdens are not imposed upon any mobile radio licensees that are classified as CMRS providers."[52] The Commission later declared that it bore the burden to justify any regulation as consistent with the federal deregulatory paradigm:

> In 1993, Congress amended the Communications Act to revise fundamentally the statutory system of licensing and regulating wireless (i.e., radio) telecommunications services. ... OBRA reflects a general preference in favor of reliance on market forces rather than regulation. Section 332(c), for example, empowers the Commission to reduce CMRS regulation, and *it places on us the burden of demonstrating that continued regulation will promote*

---

[49] *See Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services,* WT Docket No. 00-193, *Notice of Proposed Rulemaking,* 15 FCC Rcd at ¶ 21: "To the extent record evidence establishes existence of a problem that a rule could remedy, we then must weigh the potential benefits of regulation against its costs." The courts have reversed Commission actions that failed to demonstrate careful consideration of relevant factors, including costs. *See, e.g., United States Telecommunications Association v. FCC, 227 F.3d 450* (D.C. Cir. 2000) (FCC failed to ensure that the costs of compliance with CALEA requirements were minimized, failed to compare the costs of the requirements with the cost of obtaining the information through alternative means, and failed to explain how it measured cost effectiveness).

[50] *See Fourth Report* at 24.

[51] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002(b) (1993) ("OBRA").

[52] *In re Implementation of Section 3(n) and 332 of the Communications Act, Second Report and Order*, 9 FCC Rcd 1411 at ¶ 15 (1994).

> *competitive market conditions*. ... Congress delineated its preference for allowing this emerging market to develop *subject to only as much regulation for which the Commission and the states could demonstrate a clear cut need.*[53]

The 1996 Act reaffirmed Congress's specific deregulatory mandate for CMRS and extended that mandate to other services.[54] It cannot be any clearer that Congress has determined to rely on competition, not regulation, except where regulation is proven to be essential, and that the law imposes the burden on the Commission to demonstrate why LNP is essential to achieve competition.[55]

Regulatory requirements cannot be maintained based on facts that may have justified the rule at the time it was adopted. Rather, the Commission must develop a record of current facts that looks forward, not backward, to supply the requisite basis for imposing regulation. Current facts demonstrate tremendous competition in the CMRS market, as carriers compete vigorously for new and existing subscribers. Given the pro-competitive developments, any need for the massive, complex regulation LNP represents is now less, not more. Forbearance until 2002 presumes, without facts, that this need will somehow reappear between now and then. Neither law nor logic allows retaining CMRS LNP at all.

---

[53] Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers, *Order*, 10 FCC Rcd 7025-7026 (1995) (emphasis added), *aff'd*, 78 F.3d 842 (2d Cir. 1996).

[54] Telecommunications Act of 1996, Pub. L. No. 104-104 (1996). The 1996 Act establishes "a pro-competitive, de-regulatory national policy framework" that is intended to "promote competition and reduce regulation..." S. Conf. Rep. No. 230, 104th Cong., 1st Sess. 1 (1996).

[55] In another context, then Commissioner Powell stated in his Separate Statement to the Notice in the 1998 Biennial Regulatory Review Spectrum Aggregation Limits: "I believe the burden should be on us, the FCC, to re-assess and re-validate the rule .... We must be prepared, if this is what the record evidence shows, to make a compelling and convincing case that the rule must be kept. If we cannot, or if the evidence in support of the rule is lacking, we must modify or eliminate it and rely on competitive market forces or other mechanisms, such as the antitrust laws." Separate Statement of Commissioner Michael Powell Re: 1998 Biennial Regulatory Review, Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket No. 98-205, *Notice of Proposed Rulemaking*, 13 FCC Rcd 25,132, 25177 (1998).

V. CONCLUSION

For the reasons provided above, the Commission should continue to require CMRS carriers to make all necessary LRN-based network changes that are required to participate in thousands-block number pooling by November 2002, but should forbear from requiring CMRS carriers to provide single number portability. This partial forbearance from the numbering rules applicable to CMRS will properly tailor existing regulations to the narrowest needed to promote the goal of number conservation, while eliminating the unnecessary and excessive CMRS LNP requirement.

Respectfully submitted,

VERIZON WIRELESS

By: John T. Scott III /ech

John T. Scott, III
Vice President and Deputy General
Counsel – Regulatory Law

Anne E. Hoskins
Regulatory Counsel

Lolita D. Smith
Associate Director Regulatory Matters

Verizon Wireless
1300 I Street, N.W., Suite 400-West
Washington, D.C. 20005
(202) 589-3760

July 26, 2001