

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the matter of:

Petition Pursuant to 47 U.S.C. § 160 For  
Partial Forbearance from the Commercial  
Mobile Radio Services Number Portability  
Obligation

Numbering Resource Optimization

WT Docket No. 01-184

CC Docket No. 99-200

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION  
AND OF THE PEOPLE OF THE STATE OF CALIFORNIA**

GARY COHEN  
HELEN M. MICKIEWICZ

505 Van Ness Ave.  
San Francisco, CA 94102  
Phone: (415) 703-1319  
Fax: (415) 703-4592

Attorneys for the  
Public Utilities Commission  
State of California

September 21, 2001

## TABLE OF CONTENTS

<b><u>I. VERIZON’S PETITION MISREPRESENTS THE SUBSTANCE OF PREVIOUS FORBEARANCE REQUESTS AS WELL AS FCC POLICY ON DEPLOYMENT OF WIRELESS LNP</u></b> .....	2
<b><u>II. VERIZON’S PETITION DOES NOT MEET THE THREE-PRONG TEST OF 47 U.S.C. § 160</u></b> .....	6
A. <u>THE FCC SHOULD CONCLUDE THAT VERIZON’S PETITION DOES NOT MEET THE FIRST PRONG OF THE SECTION 10 TEST</u> .....	7
B. <u>CONSUMERS WILL BE HARMED, NOT PROTECTED, IF THE FCC GRANTS THE VERIZON FORBERANCE PETITION</u> .....	8
C. <u>FORBEARANCE OF THE LNP MANDATE FOR WIRELESS CARRIERS IS NOT CONSISTENT WITH THE PUBLIC INTEREST</u> .....	9
<b><u>III. A DEAL IS A DEAL</u></b> .....	11
<b><u>IV. COMPETITION WOULD NOT BE SERVED BY PERMANENT FORBEARANCE</u></b> .....	14
A. <u>THE PETITION CONTAINS NO ASSESSMENT OR THE COST OR THE BENEFIT COMPONENTS OF VERIZON’S COST-BENEFIT ANALYSIS</u> .....	14
1. <u>Does the Absence of Number Portability Impede Wireless Competition?</u> .....	15
2. <u>Additional Data May Be Needed</u> .....	18
B. <u>VERIZON DOES NOT ADDRESS THE WIRELESS INDUSTRY’S INTEREST IN COMPETING WITH WIRELINE CARRIERS</u> .....	19
<b><u>V. WILL WIRELESS CARRIERS ACTUALLY BE ABLE TO POOL BY NOVEMBER, 2002?</u></b> .....	23
<b><u>VI. NEED FOR A PENALTY</u></b> .....	23
<b><u>VII. SHOULD THE FCC GRANT VERIZON’S PETITION, IT MUST ADOPT TECHNOLOGY-SPECIFIC OVERLAYS</u></b> .....	23
<b><u>VIII. CONCLUSION</u></b> .....	25

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the matter of:

Petition Pursuant to 47 U.S.C. § 160  
For Partial Forbearance from the  
Commercial Mobile Radio Services  
Number Portability Obligation

WT Docket No. 01-184

Numbering Resource Optimization

CC Docket No. 99-200

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES  
COMMISSION AND OF THE PEOPLE OF THE STATE OF CALIFORNIA**

The California Public Utilities Commission and the People of the State of California (CPUC or California) submit this Response to the Petition Pursuant to 47 U.S.C. § 160 for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, filed by Verizon Wireless (Verizon) on July 26, 2001. California strongly opposes the Verizon petition for reasons that are set forth below.

In addition, staff members of several state commissions, known as the State Coordination Group, jointly have prepared comments in opposition to the Verizon petition. CPUC staff participated in this effort, and the CPUC supports the SCG comments, which are appended to this filing.<sup>1</sup>

---

<sup>1</sup> The SCG was formed after the FCC, in September 1999, delegated authority to an initial five states, including California, to undertake number conservation measures, including establishment of number pools. In conjunction with that grant of authority, the FCC urged California “to consult with other state commissions” to develop fill rates (utilization thresholds) and rules for sequential number assignment. (See California Delegation Order, FCC 99-248, ¶¶ 27, 32.) To coordinate on fill rates, sequential numbering, and number pooling, staff representatives of state commissions which received delegated authority began to “meet” via conference call on a regular basis, and continue to do so.

## **I. VERIZON'S PETITION MISREPRESENTS THE SUBSTANCE OF PREVIOUS FORBEARANCE REQUESTS AS WELL AS FCC POLICY ON DEPLOYMENT OF WIRELESS LNP**

In its petition, Verizon sets forth the procedural background preceding this request, the fifth by representatives of the wireless industry, for relief from the FCC's requirement that wireless carriers deploy local number portability (LNP) technology on or before November 24, 2002.<sup>2</sup> California does not dispute the sequence of procedural events preceding the instant petition, and thus, will not repeat that sequence of events here. The CPUC does, however, dispute some of the rationale asserted on behalf of either the FCC or the wireless industry in the recounting of the procedural history contained in the petition, and we will respond here accordingly.

The substance of Verizon's petition is a request to be relieved of an obligation originally imposed by the FCC in 1997. That obligation was the need to deploy LNP technology which would enable customers of wireless carriers to change service providers but retain the customer's assigned telephone number. The FCC had imposed the same obligation on wireline carriers, and had required all carriers providing service in the top 100 Metropolitan Service Areas (MSAs) to meet that obligation no later than December 31, 1998.<sup>3</sup> The FCC allowed CMRS carriers until June 1999 to complete technical changes to their networks required to support roaming.<sup>4</sup> Representatives of the wireless industry have sought and received an extension of that original June 1999 deadline four times; as noted above, the Verizon petition marks the fifth such request.

---

<sup>2</sup> See *Memorandum Opinion and Order*, 14 FCC Rcd 3092 (1999), (FCC 99-19).

<sup>3</sup> *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, ¶ 165.

<sup>4</sup> *Id.*, at ¶ 166.

As a preliminary matter, California observes that the petition is most remarkable for what it does not say. First, the petition fails to characterize at all the reasons for the most recent wireless industry request for an extension of time, the petition filed by the Cellular Telecommunications Industry Association (CTIA) in February 1999.<sup>5</sup> Rather, the Verizon petition describes the 1999 request only as “a petition for forbearance filed by CTIA”. In failing to describe the content of that petition, Verizon neatly avoids disclosing that in it, CTIA addressed neither numbering issues generally nor the linkage between LNP and number pooling.<sup>6</sup> The Verizon petition goes on, however, to characterize the FCC’s response to the CTIA petition as one based on “[g]rowing concerns regarding number conservation” which “drove” the Commission’s determination to forbear from the LNP requirement only until November, 2002.<sup>7</sup> In other words, Verizon asserts, the FCC’s “concern about number conservation significantly influenced its decision to defer the LNP mandate for CMRS providers rather than forbear from it altogether”.<sup>8</sup> In reality, however, the FCC devoted a mere six paragraphs of the 26-page order granting CTIA’s petition to numbering issues.<sup>2</sup> The vast majority of the FCC’s discussion and rationale addressing the CTIA petition had absolutely everything to do with competition and nothing to do with number conservation.

---

<sup>5</sup> Petition for Forbearance of the Cellular Telecommunications Industry Association, December 16, 1997. CTIA has changed its name to the Cellular Telecommunications and Internet Association since that February 1999 filing.

<sup>6</sup> CTIA Petition for Forbearance, December 16, 1997.

<sup>7</sup> *Id.*, at p. 8.

<sup>8</sup> *Id.*

<sup>2</sup> See Memorandum Opinion and Order, FCC 99-19, ¶¶ 43-48.

Building on its misrepresentation, Verizon goes on to argue that the “Commission’s numbering rules are premised on the assumption that number portability is a prerequisite for pooling”. (*Id.* At 9.) Verizon then refutes the FCC’s “assumption”: “It is neither accurate nor necessary to link the implementation of pooling to provisioning of number portability”. (*Id.* At 10.) Again, what is striking is the information that is omitted, i.e., the source of the FCC’s assumption. The telecommunications industry generally is the source of technical information on which the FCC relies. Specifically, the FCC stated in the numbering NPRM that “thousands-block pooling relies on the same network architecture that makes LNP possible”.<sup>10</sup> The source for the FCC’s statement was the report prepared by the Number Resource Optimization Working Group (NROWG) for the North American Numbering Council (NANC), and submitted to the FCC on October 21, 1998.<sup>11</sup> California does not know whether any state commission representative participated in the preparation of the NROWG report, but certainly any state representation would have been in the minority.

Thus, for several years, the FCC has assumed, based on information provided by the industry, that LNP is necessary for carriers to pool. In the instant petition, for the very first time, and as of its filing date, just seventeen months before the compliance date, Verizon states that only Local Routing Number (LRN) network architecture, and not LNP are necessary for the wireless industry to participate in number pooling.

---

<sup>10</sup> Notice of Proposed Rulemaking, FCC 99-122, CC Docket 99-200, ¶ 143. See fn. 251, cite to NANC Report at § 5.1.2.

<sup>11</sup> The NANC and its working groups have been dominated for several years by industry representatives, though membership has been expanded in the past year to include more NARUC and consumer group representation.

The CPUC does not necessarily dispute that the proper link is between LRN and number pooling, and not between LNP and number pooling. But the distinction is beside the point. If Verizon's operations staff only determined in the last several months that number pooling does not require LNP, then two conclusions flow from that discovery and its disclosure: 1) the wireless industry could have implemented number pooling far earlier than it will, had it begun preparing for deployment of LNP sooner and made this vital discovery earlier; and 2) earlier wireless industry requests for forbearance were not based on accurate information about the network architecture necessary for deploying LNP. The latter conclusion truly gives pause, as it calls into question the validity of the technical claims underlying not only the instant petition, but the previous wireless industry requests for forbearance as well. The former conclusion is simply infuriating, as the states repeatedly have asked the wireless industry if it were possible for wireless carriers to implement pooling before porting, and the answer consistently has been "no", and "no" should be the FCC's answer to Verizon's petition.<sup>12</sup>

California can identify no policy or public interest basis for granting the request for permanent forbearance from an obligation the FCC considers essential to a competitive marketplace. Were the FCC to grant the petition, it would be permanently foreclosing the opportunity for true competition between wireless carriers, as well as the opportunity for competition between wireline and wireless providers. Further, the FCC

---

<sup>12</sup> A fairly recent exchange regarding wireless pooling occurred at the NANC in February of this year when a NARUC delegate inquired of a representative of the Wireless LNP working group as to whether the industry could pool before deploying LNP. The question was not answered at the February meeting, but a follow-up report was presented at the March meeting in which the answer again was "no"; LNP is a prerequisite to pooling.

would be retreating from policies explicitly set forth in the February 1999 order granting CTIA's petition for forbearance. Finally, the Commission would be violating the spirit, if not the language, of the 1996 Federal Telecommunications Act, which evinced a Congressional intent for competition to develop among and within all telecommunications markets. California will address these issues below.

## **II. VERIZON'S PETITION DOES NOT MEET THE THREE-PRONG TEST OF 47 U.S.C. § 160**

In its order granting CTIA's December 1997 petition for forbearance from the LNP mandate, the FCC discussed at length 47 U.S.C. § 160, also known as section 10 of the Communications Act of 1934. The FCC began its discussion by noting that section 10 provides for the Commission to forbear from applying any regulation or provision of the Act to a telecommunications carrier if the Commission makes the appropriate determinations. Section 10 requires the FCC to find 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.

Interestingly, while Verizon discusses section 10 briefly, and even quotes the statute in its petition, Verizon makes no attempt to demonstrate how its request would

meet the three-prong test. The reason for this omission, of course, is that Verizon's request could not possibly meet all three prongs of the test.

**A. The FCC Should Conclude that Verizon's Petition Does Not Meet the First Prong of the Section 10 Test**

The first prong requires the FCC to "examine whether adhering to the current wireless number portability deadline is necessary to ensure that CMRS charges, practices, classifications, and services are just and reasonable, and are not unjustly or unreasonably discriminatory".<sup>13</sup> In granting CTIA's petition, the Commission reached the following conclusion:

LNP would not play a direct role in ensuring that a carrier's rates are just and reasonable. Rather, its impact on carrier rates would flow from its impact in promoting competition in the wireless service market.<sup>14</sup>

The CPUC accepts that the FCC's reasoning in finding that CTIA's petition met the first prong of the section 10 forbearance test likely would apply to the instant petition as well. We note, however, that allowing wireless carriers not to implement LNP certainly would create a tremendous disparity between the wireline and wireless segments

---

<sup>13</sup> FCC 99-19, ¶ 18.

<sup>14</sup> *Id.*, at ¶ 19.

of the telecommunications industry. Wireline carriers have had to expend the dollars to deploy LNP, and have borne the consequences of losing customers and their associated telephone numbers to competitors. With permanent forbearance, the wireless industry would be protected from an essential feature of a competitive market – the ability of customers to freely change providers – and thus would benefit from an exemption denied to wireline carriers. Still, if the FCC considers only the impact on the wireless segment of the industry in competition with itself, then failure to deploy LNP might not directly affect wireless rates, but it would indirectly affect rates by enabling wireless carriers to capture customers.

A failure by the wireless industry to deploy LNP, however, would definitely affect industry “practices” and “service”. Customers would be denied the opportunity to change carriers freely. In assessing CTIA’s petition, the FCC only considered the impact on wireless rates of the forbearance request, and did not discuss practices or service. The FCC should expand its view of the first prong of the section 10 test to include practices and service. If it does so, then the Commission cannot reasonably conclude that Verizon’s request meets the first prong.

**B. Consumers Will Be Harmed, Not Protected, If the FCC Grants the Verizon Forbearance Petition**

The second prong of the section 10 test requires the FCC to “consider whether enforcement of existing wireless number portability requirements is necessary for the

protection of consumers”.<sup>15</sup> Verizon has offered no showing as to how consumers would be protected by its failure to offer consumers full and free choice between wireless carriers, or between wireless and wireline service providers. Verizon’s argument is simply that spending the money on deploying LNP is not worth the benefit to be gained. As discussed below, the “benefit” would be to consumers, and not to Verizon. From Verizon’s perspective, having to incur the expenses associated with deploying LNP is undesirable, as it was for wireline carriers which already have spent the money to comply with the LNP mandate. But section 10 requires the Commission to consider the effect of enforcement on consumers, a subject on which Verizon is silent.

The FCC should deny Verizon’s petition precisely because, based on the petition’s content, the Commission cannot reasonably conclude that the second prong of the section 10 test has been met. Specifically, the FCC must recognize that enforcement of the LNP mandate for wireless carriers is necessary to protect consumers who otherwise would be forever prevented from changing wireless service providers by their unwillingness to give up telephone numbers. This would be a defeat for the very competition the Commission must foster pursuant to the 1996 Federal Telecommunications Act.

**C. Forbearance of the LNP Mandate for Wireless Carriers Is Not Consistent with the Public Interest**

The third prong of the section 10 test requires the FCC to “consider whether forbearance is consistent with the public interest”.<sup>16</sup> Here, again, Verizon has offered no showing to explain how the public interest would be served by limiting competition

---

<sup>15</sup> *Id.*, at ¶ 21.

<sup>16</sup> *Id.*, at ¶ 24.

within the wireless market and between the wireless and wireline market. In granting CTIA's petition, the Commission determined that extending the LNP deployment deadline was

consistent with the public interest for competitive reasons because it 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. Conversely, we see insufficient competitive benefit to justify the cost and technical burden of implementing LNP more rapidly.<sup>17</sup>

The same rationale no longer applies to the instant petition. By November 24, 2002, CMRS providers will have had the benefit of four additional years to build out their networks and make the technical upgrades necessary to meet the LNP mandate.

Thus, the

FCC's determination that delay would be in the public interest is no longer true. Indeed, the opposite is true; further delay will harm the public interest. Permanent forbearance would be a permanent blow to true competition. The FCC must recognize that forbearance is not consistent with the public interest because competition in the wireless industry, and between the wireline and wireless segments of the industry, would be artificially constrained in the future. The result would violate the spirit of the 1996 Federal Telecommunications Act, which contemplated competition between and among all telecommunications markets.

---

<sup>17</sup> Id., at ¶ 25.

### III. A DEAL IS A DEAL

As noted, the wireless industry has been on notice for more than five years of its obligation to deploy LNP. The Verizon petition offers no legitimate basis for the FCC to relieve Verizon, or any other wireless carrier, of that obligation. Indeed, in its December 1999 petition, CTIA acknowledged the potential role of LNP in wireless competition. “After the five year broadband PCS buildout period, number portability may eventually become a factor for competition in the CMRS marketplace”.<sup>18</sup> In responding to the CTIA petition, the FCC concluded that CTIA’s request met the three-prong test of section 10. In addition, the FCC agreed that “some additional time to implement LNP should be afforded to wireless carriers on technical grounds”.<sup>19</sup> The FCC accepted the wireless carriers’ estimate of 18 months to two years for manufacturers to provide the software to their CMRS customers.<sup>20</sup> In turn, wireless carriers projected the need for another twelve months to conduct laboratory and field testing to ensure the reliability, quality, and integrity of the service.<sup>21</sup> Concluding that the initial deadline for wireless compliance with the LNP mandate was “not practically feasible”, the FCC granted a four-year extension to November 24, 2002, a period more than adequate to cover the industry estimates of time needed for each phase of the ramp-up.<sup>22</sup>

Subsequent to adopting the 2002 deadline, in CC Docket 99-200, the Commission sought comment on “whether to allow some sort of transition period between the time

---

<sup>18</sup> CTIA Petition for Forbearance, p. 9.

<sup>19</sup> FCC 99-19, ¶ 28.

<sup>20</sup> *Id.*, at ¶ 29.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

that covered CMRS carriers must implement LNP, and the time that they must participate in pooling, and if so, what the minimum reasonable allowance for such transition period would be”.<sup>23</sup> After evaluating the comments received, the Commission stated that “[b]ased on the record before us, we decline to adopt a transition period between the time that covered CMRS carriers must implement LNP and the time they must participate in any mandatory number pooling”.<sup>24</sup> The FCC noted that carriers “have not provided us with sufficient evidence demonstrating that they will not be able to implement pooling by the deadline for implementation of LNP”.<sup>25</sup> Of course, in the instant petition, Verizon is seeking to permanently forestall deployment of LNP, not pooling. But the Commission’s consideration of whether to allow a transition period for pooling was premised on its long-standing belief, advanced by the telecommunications industry, that LNP was a prerequisite for pooling. Verizon now posits in its petition that LNP is not necessary for pooling. This new claim does not obviate the FCC’s conclusion – that the LNP mandate must be met by November 24, 2002, and the wireless industry will be allowed no additional time to implement pooling. Verizon is attempting to turn the FCC’s reasoning

---

<sup>23</sup> Report and Order and further Notice of Proposed Rulemaking (First NRO Order), FCC 00-104, ¶ 249.)

<sup>24</sup> 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 CC Docket No. 99-200 (Second NRO Order), FCC 00-429, ¶ 50.

<sup>25</sup> Id.

on its head. Verizon is now willing to implement pooling by the deadline for wireless LNP deployment, but no longer wants to meet the LNP mandate.

Verizon has offered no new evidence on which the Commission could reasonably conclude that the LNP mandate may not be met by November 24, 2002. The fact that the wireless industry will have to spend many dollars to meet the mandate is not new information. Nor is the extent of the technical changes that the industry must make to its facilities. All of this was known when the FCC granted the CTIA petition in February 1999. The only new piece of information Verizon has offered is that LNP is not necessary for the wireless industry to pool. That is useful information, but it does not change the underlying facts.<sup>26</sup>

Verizon has not asserted that it is technically incapable of meeting the LNP mandate. Nor has it argued that the amount of time left before the November 2002 deadline is inadequate. Rather, Verizon argues simply that it does not want to meet the deadline because it, Verizon Wireless, believes the extent of competition in the wireless industry is sufficient without number portability. The FCC should deny the petition. A deal is a deal – the wireless industry has received several extensions of time to meet the LNP mandate, and has committed at every turn to meet the mandate. Verizon and other wireless providers should be held to the terms of the bargain.

---

<sup>26</sup> One question raised is why the wireless industry only discovered seventeen months prior to the November 2002 deadline that LNP is not necessary for pooling?

#### **IV. COMPETITION WOULD NOT BE SERVED BY PERMANENT FORBEARANCE**

##### **A. The Petition Contains No Assessment or the Cost or the Benefit Components of Verizon's Cost-Benefit Analysis**

Verizon has couched its request to respond to the FCC's policies regarding efficient number utilization. "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." (Petition, pp. 13-14.) But the Verizon request is, first and foremost, about competition. Verizon asserts that the cost of compliance with the LNP mandate "will be expensive and burdensome to achieve", and that the expense cannot be justified by the goal of increased competition because competition among carriers "is already being achieved". (*Id.* At 12.) Thus, Verizon is claiming that a cost-benefit analysis demonstrates that the benefit of meeting the LNP mandate, i.e., increased competition, does not warrant the expense of achieving that goal.

California perceives two fundamental flaws in Verizon's argument. First, Verizon has not quantified its costs. Certainly, it has set forth in its pleading an accounting of the types of technical changes that must be made to its network to comply with the LNP mandate. But, Verizon offers no actual cost estimate, either total costs or projected per-customer costs. Thus, the FCC is lacking the cost component of Verizon's cost-benefit analysis.

Further, Verizon makes absolutely no attempt even to define the benefit of implementing LNP, let alone to quantify it. Verizon is content to claim that the FCC's

goal of increasing competition has been achieved and, that is the end of the discussion. In the CPUC's view, however, that is merely the beginning of the discussion. Again, it is noteworthy what Verizon has omitted from its petition.

**1. Does the Absence of Number Portability Impede Wireless Competition?**

Today, when a wireless customer considers changing service providers, the customer must weigh the advantages to be derived from a different calling plan against the disadvantage of having to give up his or her existing wireless telephone number. It could be argued that wireless customers are not as attached to their numbers as wireline customers, on the theory that many wireless customers obtain service provided by an employer or given as a gift, and the number assigned is not of the customer's choosing. Some customers may view wireless service as both secondary and discretionary, and thus be less concerned about the need to change telephone numbers when changing service providers.

But recent communications from consumers to the CPUC demonstrate that at least some wireless customers consider the need to change telephone numbers to be an impediment to changing service providers. We have appended one example to this pleading for the FCC to review.<sup>27</sup> In addition, our extensive experience in implementing area code changes in California has persuaded us that customers have a very personal interest in and attachment to their telephone number(s), including the relevant area code. Finally, the FCC's own view, set forth in the decision on the CTIA petition, is that "in the

---

<sup>27</sup> We note that the desire to change long-distance providers is an impetus for some customers to seek a new wireless carrier, given that wireless customers must accept the wireless carrier's choice of long-

longer term, wireless number portability will be an increasingly important issue for consumers”<sup>28</sup>.

At the same time, the CPUC cannot provide to the FCC any quantification of the number of customers who would change wireless service providers if those customers did not also have to change their telephone numbers. But then, neither has Verizon provided the FCC with such information. This omission is crucial. Without any assessment of the extent to which wireless customers value their telephone numbers, and consider having to give up those numbers an impediment to changing carriers, Verizon simply cannot assert that the benefit of deploying LNP does not justify the cost. The ability to freely change service providers is the essence of competition. If having to relinquish one’s telephone number prevents customers from changing carriers, then the wireless industry’s failure to comply with the LNP mandate will only frustrate competition.

From a customer standpoint, then, the ability to retain one’s wireless telephone number is a benefit the customer may consider critically important. Yet Verizon has offered no assessment of this benefit to consumers. Consequently, Verizon’s cost-benefit analysis of the need to meet the LNP mandate, plus its characterization of the degree of competition in the wireless marketplace both are seriously flawed. The Commission cannot rely on representations with no factual basis.

Further, were the FCC to accept Verizon’s claims, it would be retreating from its own policy established in the order granting CTIA’s December 1997 petition. There, the

---

distance provider, and cannot select an alternative long-distance provider.

<sup>28</sup> FCC 99-19, ¶ 23.

FCC considered carefully the effect that forbearance from the LNP mandate could have on the development of competition. Parties proposed, and the Commission expressly rejected the prospect of permanent forbearance from the LNP mandate.

While we conclude that the limited forbearance requested by CTIA meets the public interest prong under section 10, we reject the argument made by some commenters that the record supports complete forbearance from enforcing our wireless number portability requirements. We emphasize that the competitive reasons that led us to mandate wireless number portability in the *First Report and Order* remain fundamentally valid: we sought to increase competition both within the CMRS marketplace and with wireline carriers, and found that this competition would provide incentives for all carriers to provide innovative service offerings, higher quality services and lower prices. We remain committed to the basic regulatory approach outlined in prior orders in this proceeding.<sup>29</sup>

The FCC has before it no new facts on which to base a reversal of the policy set forth in its order on the CTIA petition. Verizon has provided no information regarding its anticipated costs to deploy LNP, nor any clear assessment of the consumer benefit to be gleaned from permanent forbearance. Indeed, as previously noted, the absence of hard data or new information constrains the FCC's ability to determine that forbearance would protect consumers or be consistent with the public interest.

In addition, in the order granting the CTIA petition, the FCC determined that it would be unwise to leave wireless deployment of LNP to market forces. The FCC's language was forceful, and its conclusion quite plain.

We also reject the view espoused by some commenters that if consumer demand for wireless number portability develops, market forces alone are sufficient to ensure its development and implementation. We remain unconvinced that market forces will provide sufficient incentives for widespread implementation. In order for a wireless customer to switch

---

<sup>29</sup> *Id.*, at ¶ 40.

wireless carriers while retaining its phone number, both carriers must have implemented LNP. If certain carriers conclude that they will sustain a net loss in customers overall under a LNP scenario, they will have little, if any, incentive to implement LNP in the absence of a requirement. We also reiterate our view that a regulatory mandate is necessary to the full implementation of wireless number portability, in order for it to support nationwide roaming. The ability to support nationwide roaming requires that all wireless carriers, even those outside major markets, to configure their networks to support number portability, regardless of whether there is consumer demand for LNP among customers in their home markets. Thus, without the establishment of a regulatory requirement, wireless carriers who successfully develop service provider LNP could be unable to offer its full benefits because their customers would not be able to roam on the networks of other wireless carriers that do not support LNP. We believe such a result would not be in the public interest.<sup>30</sup> (Emphasis added.)

In light of this unequivocal language, and the utter absence of any new data on which to base a different conclusion, the FCC must reject Verizon's petition for forbearance. To do otherwise would violate the "basic regulatory approach outlined in prior orders in this proceeding", to use the Commission's own words.<sup>31</sup>

## **2. Additional Data May Be Needed**

California urges the Commission to reject Verizon's petition outright, on the grounds that it has failed to demonstrate any rational basis for the relief it seeks. Should the FCC be inclined to consider the petition, however, the CPUC urges the Commission at a minimum to obtain further data on the value wireless customers place on their telephone numbers. The Commission could do this in one of two ways. The FCC could commission an independent study, or it could direct Verizon or a wireless industry trade group to commission an independent study.

---

<sup>30</sup> *Id.*, at ¶ 41.

<sup>31</sup> *Id.*, at ¶ 40.

For example, in the order granting the CTIA petition, the Commission referred to “customer surveys taken by CMRS carriers and industry analysts” showing that “price, service area coverage, and service quality are key factors driving consumer choice of wireless carriers”.<sup>32</sup> At the same time, the FCC identified a “DLJ Report”, noting that “an additional factor that may diminish the inclination of some consumers to abandon their wireline telephone service completely for wireless service may be the inability to port the number”.<sup>33</sup>

Given the record before the Commission when it considered the CTIA petition in 1999, were the Commission to accept Verizon’s claims without gathering additional information, it would be making a decision on a completely inadequate record.

**B. Verizon Does Not Address the Wireless Industry’s Interest in Competing with Wireline Carriers**

Verizon’s petition omits discussion of yet another essential point the FCC must consider in evaluating the request for permanent forbearance. In recent years, the wireless industry increasingly has positioned itself as a source of competition for incumbent local exchange service providers. For example, in comments filed earlier this year in the Commission’s numbering docket, the Personal Communications Industry Association (PCIA) stated that “[n]on-LNP-capable services, such as wireless services, also are used by individuals and businesses, and, in many instances, compete head-to-head with services offered by wireline carriers”.<sup>34</sup> In that vein, wireless providers have

---

<sup>32</sup> *Id.*, at ¶ 34.

<sup>33</sup> *Id.*, at ¶ 35, fn. 102.

<sup>34</sup> PCIA’s Comments, CC Docket 99-200, February 14, 2001, p. 7. See also, “[w]ireless carriers have finally reached the point where their service is a viable substitute for landline service for some users”.

argued that the Commission's policies should be technology-neutral, and should not favor one industry segment over another. The wireless industry has been particularly vociferous in demanding that FCC numbering policies not discriminate against wireless carriers. The insistence on non-discriminatory policies has been evidenced in myriad ways, ranging from advocacy of a particular recovery mechanism for LNP implementation costs to outright opposition to number pooling because wireless carriers would not be LNP capable.<sup>35</sup>

The underlying theme for wireless positioning on various numbering issues has been its insistence on being treated the same as any other industry segment. In large measure, the wireless industry has anticipated the possibility, if not probability, that sooner or later, in the eyes of most consumers, wireless service would become truly competitive with wireline service. That day may indeed have arrived, as many wireless customers today eschew use of their wireline telephones to make toll calls, preferring to take advantage of wireless calling plans which afford customers thousands of "free" minutes of air time per month. In addition, as the wireless industry is the first to tout, the local calling scopes of wireless customers generally is vastly larger than that for wireline customers.<sup>36</sup> Lower monthly rates, multiple calling plans, as well as the ease and

---

Comments of Airtouch Communications, Inc. filed in response to CPUC Petitions for Delegation of Authority and for Waiver, NSD File No. L-98-136, NSD File No. L-99-36, CC Docket No. 96-98, June 14, 1999, p. 19.

<sup>35</sup> In light of the instant petition, previous vehement opposition by the wireless industry to the FCC's delegation of authority to states to undertake pooling trials is especially noteworthy.

<sup>36</sup> This is especially true in California, which has a uniform statewide local calling scope of only twelve miles, among the smallest in the nation.

convenience of mobility all have helped make wireless service among the fastest growing telecommunications offerings in the country, as the FCC's own research has revealed.<sup>37</sup>

And, the wireless industry has been helped by FCC policies which focused on neutrality among industry segments. The FCC declined to allow creation of area codes dedicated to wireless or other services, despite tremendous public interest in such area codes. The FCC granted the CTIA request for deferral of the LNP mandate for four years. The Commission granted states authority to implement number pooling, but declined to allow states to order wireless carriers to deploy LNP any earlier than the November 2002 compliance date. Wireless carriers have continued to draw numbers in full NXX codes, while one state after another has required wireline carriers to join mandatory number pools.<sup>38</sup>

All in all, the wireless industry has managed to avoid participating in the solution to the numbering crisis in the U.S., while contributing heavily to it. The wireless industry has staked out its position premised on the need to be treated the same as every other industry segment, and premised on its potential to be competitive with wireline local exchange service. The Commission required wireline carriers in the top 100 MSAs to deploy LNP on a schedule which concluded December 31, 1998. Wireline customers now have the option to change carriers but retain the customer's assigned telephone number, so long as the customer remains physically within his or her local exchange,

---

<sup>37</sup> "Local Telephone Competition: Status as of June 30, 2000", FCC Industry Analysis Division, Common Carrier Bureau, December 2000. See also "Telecommunications Industry Revenues: 1999", Jim Lande, FCC Industry Analysis Division, Common Carrier Bureau, September 2000.

<sup>38</sup> California currently has pools in ten NPAs; Illinois, Maine, New York, North Carolina, and Texas are among the other states with pools underway.

while wireless customers have no such opportunity. Should the FCC grant the Verizon petition, wireless customers would forever be deprived of the chance to change carriers and keep a telephone number. This inevitably would mean that wireless service could not become truly competitive with wireline local exchange service because customers could not switch between wireline and wireless service without giving up their telephone numbers. In addition, wireless providers would accomplish the very result they have begged the FCC to avoid – the FCC would have established a discriminatory policy, albeit a policy that would discriminate in favor of the wireless industry.

Again, it is noteworthy that the Verizon petition does not mention the industry's

interest in competing with wireline local exchange carriers. Nor does it acknowledge that the policy it advocates would discriminate to the detriment of wireline carriers who already have spent millions of dollars to deploy LNP technology and to begin pooling. Yet, these are factors of tremendous importance in the FCC's consideration of the instant petition. Verizon has not met its burden of demonstrating why the relief sought should be granted; its multiple omissions should not be rewarded.

**V. WILL WIRELESS CARRIERS ACTUALLY BE ABLE TO POOL BY NOVEMBER, 2002?**

California supports the discussion of whether wireless carriers will be ready to pool by November 24, 2002 contained in the SCG Comments and has nothing to add here. (SCG Comments, § III.)

**VI. NEED FOR A PENALTY**

California supports the discussion of a penalty contained in the SCG Comments and has nothing to add here. (SCG Comments, § III.)

**VII. SHOULD THE FCC GRANT VERIZON'S PETITION, IT MUST ADOPT TECHNOLOGY-SPECIFIC OVERLAYS**

California is one of several states that have sought a waiver from the FCC's prohibition against technology-specific or service specific area code overlays. In the most recent round of comments on the topic, some wireless carriers noted that deployment of wireless LNP would defeat the purpose of creating area codes devoted to wireless services. The commenters pointed out that once customers possessed the ability to port numbers from a wireline carrier to a wireless carrier, or vice versa, the existence of an area code dedicated to wireless services would inhibit free competition.

Theoretically, customers would not be able to port into or out of a dedicated area code if

the customer were changing the type of service rather than just changing carriers but keeping the same type of service.

The wireless industry cannot have it both ways. If the FCC agrees to permanent forbearance of the LNP mandate for wireless carriers, then the Commission must reconsider creation of expanded area codes for numbers assigned to wireless providers.<sup>39</sup> The CPUC has determined that wireless growth is driving number demand; without the need to fuel the wireless industry, California would not have to consider opening any new area codes for the next many years, perhaps for the next decade.<sup>40</sup> We suspect the pattern is similar in other parts of the country. The public interest would not be served by continuing to allocate numbers to both wireline and wireless carriers in the same NPA at a ratio of 10,000 numbers per wireless request to 1,000 numbers per wireline request. The result would be patently unfair to the wireline industry, and to the public, who would be subjected to the inconvenience and expense of opening new area codes to satisfy the demands of one industry segment.

///

///

///

---

<sup>39</sup> The FCC still has not acted on California's request for authority to implement a technology- or service-specific overlay. The CPUC's position has not changed, and we await a response.

<sup>40</sup> This is so because of the tremendous savings in number use that has resulted from the creation of number pools in California area codes. By the close of 2001, California will have opened number pools in fourteen area codes. The CPUC has noted this fact in utilization reports for several California NPAs.

## VIII. CONCLUSION

California urges the FCC to deny the Verizon petition for permanent forbearance. To do otherwise would create tremendous inequity between wireline and wireless providers, would discriminate in favor of the wireless industry, would deny consumers competitive alternatives, would violate existing FCC policy, and would simply be a bad choice for consumers.

Respectfully submitted,

GARY M. COHEN  
HELEN M. MICKIEWICZ

By: /s/ HELEN M. MICKIEWICZ

---

Helen M. Mickiewicz

505 Van Ness Ave.  
San Francisco, CA 94102  
Phone: (415) 703-1319  
Fax: (415) 703-4592

Attorneys for the  
Public Utilities Commission  
State of California

September 21, 2001

-----Original Message-----

**From:** Pdhas@aol.com [mailto:Pdhas@aol.com]

**Sent:** Monday, August 27, 2001 2:26 PM

**To:** Telco\_answer@cpuc.ca.gov

**Subject:** Cell Phone Telephone Numbers

I would like the PUC to force the wireless telephone industry in California to make individual subscriber cell phone numbers portable between the different cell phone carriers. As a hypothetical example, if I want to switch from AT&T Wireless to either Verizon or Singular, then I ought to be able to keep my current cell phone number when making the switch. One of the deterrents to people switching between cell phone carriers is that they will lose their phone number in the process. This then becomes a deterrent to competition. I do not believe that there is any technical impediment to having cell phone portability. It works just fine for land lines, where numbers are portable between different phone companies. I am positive that when faced with cell phone number portability the wireless phone companies will find all sorts of reasons why it shouldn't happen, however, I don't believe that any of the reasons will have substantial merit when measured against the public's right to having a competitive system.

Paul D. Hass

2320 Cascade

Tustin, CA 92782-1039

(714) 838-6607

(714) 273-3421 Cell

(714) 832-2229 FAX

pdhas@yahoo.com

paul\_hass@uwalumni.com