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

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

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

DOCKET FILE COPY ORIGINAL

WT Docket No. 01-184

**COMMENTS OF THE RURAL CELLULAR ASSOCIATION**

The Rural Cellular Association ("RCA"),<sup>1</sup> by counsel, hereby responds to the Commission's invitation to comment on the petition filed by Verizon Wireless ("Verizon") requesting the Commission's forbearance from the imposition of Commercial Mobile Radio Service ("CMRS") number portability obligation.<sup>2</sup>

RCA supports Verizon's petition because there exists no public interest justification to imposing local number portability ("LNP") requirements on CMRS providers. Accordingly, the Commission should forbear from imposing all aspects of wireless LNP, including the requirement that CMRS carriers implement software upgrades in their network to support nationwide roaming capabilities for number portability. In addition, the Commission should

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<sup>1</sup> RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing rural wireless service providers.

<sup>2</sup> *WTB Seeks Comment on Wireless LNP Forbearance Petition Filed by Verizon Wireless: Public Notice*, WT Docket No. 01-184, DA 01-1872 (rel. Aug. 7, 2001).

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refrain from modifying its established number pooling implementation rules for markets below the top 100 MSAs.

**I. RCA Supports Verizon's Request that the FCC Should Permanently Forbear From Enforcing CMRS Number Portability Requirements**

Section 10 of the Communications Act of 1934, as amended, gives the FCC the authority to forbear from applying any regulation as long as certain conditions are met.<sup>3</sup> The Commission has previously exercised this forbearance authority in its decision to forbear temporarily from enforcing LNP requirements on CMRS providers.<sup>4</sup> In the Forbearance Order, the Commission determined that the first condition set forth in Section 10 was met since LNP would not play a direct role in ensuring that a carrier's rates are just and reasonable.<sup>5</sup> The Commission also found that "[t]here is no evidence that requiring wireless carriers to adhere to the current implementation schedule is necessary to prevent affirmative harm to consumers."<sup>6</sup> Finally, the

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<sup>3</sup> See 47 C.F.R. § 160(a). Before forbearing from any regulation, the Commission must determine 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."

<sup>4</sup> See *In the Matter of Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations: Memorandum Opinion and Order*, 14 FCC Rcd 3092 (1999) ("Forbearance Order").

<sup>5</sup> *Id.* at 3101. The Commission noted that LNP could have an impact on carrier rates if LNP were proven to promote competition. However, the Commission concluded that based on the current dynamics of the CMRS market, LNP requirements are not necessary to promote such competition. *Id.* As demonstrated below, there are no indications that these findings are any less valid in the highly competitive market of the CMRS industry in 2001.

<sup>6</sup> *Id.* at 3103.

Commission found that forbearance is consistent with the public interest.<sup>7</sup> The conclusions of the three-prong test are still valid today, and, moreover, ample evidence exists that forbearance would serve the public interest by preserving scarce resources for focused construction and service purposes.

**A. Competition in the CMRS Market is Flourishing Despite the Lack of CMRS Number Portability Requirements**

In determining that the first condition was met, the FCC found 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.”<sup>8</sup> With respect to consumer satisfaction, protection and other public interest goals, the Commission found that the demand for wireless LNP among consumers was low, that subscribers were more concerned about price and service quality, and that consumers routinely switched carriers without the benefit of number portability.<sup>9</sup> There are no indications that the findings of 1999 are any less valid in the highly competitive CMRS market of 2001.

According to the FCC’s annual report on the competitive market conditions with respect to CMRS,<sup>10</sup> the total number of subscribers grew from 86 million to 109.5 million between the

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<sup>7</sup> *Id.* at 3103-04.

<sup>8</sup> *Id.* at 3102.

<sup>9</sup> *Id.* at 3103-04; 3109-10.

<sup>10</sup> *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Services, Fifth Report*, 15 FCC Rcd 17660 (2000); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Services, Sixth Report*, FCC 01-192 (rel. July 17, 2001)

year 1999 and 2000. During this period, the portion of the U.S. population having a choice of three or more wireless providers grew from 88 percent to 91 percent; those having a choice of five or more providers grew from 69 percent to 75 percent; and by the end of 2000, approximately 47 percent had access to six different mobile providers. According to the FCC's Sixth Report, almost one in five wireless subscribers switched carriers during the year 2000 and almost half of all wireless users have no strong commitment to stay with their current carrier.<sup>11</sup> Given this strong evidence of a highly competitive CMRS market, there is adequate justification for continued forbearance from enforcement of LNP requirements.

**B. Small Wireless Carriers' Limited Financial Resources are Better Spent on Network Construction and Marketing**

In determining that the public interest criteria had been met, the Commission found that factors such as price, coverage and service quality have a greater impact on competition than number portability, and that these factors would be more positively influenced by "rapid construction of networks and provision of service by new entrants, as opposed to implementing wireless number portability under the existing schedule."<sup>12</sup> The Commission focused on the "rapid construction of networks" it predicted would take place during the PCS build-out period to conclude that LNP obligations should be imposed immediately upon the conclusion of the five

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("Sixth Report").

<sup>11</sup> See Sixth Report at 23-24. According to the report, 12 percent dropped their current service in search of network quality and 10 percent left in order to take advantage of a competitor's promotion.

<sup>12</sup> *Id.* at 3109-10.

year PCS build-out period, November 24, 2002.<sup>13</sup> Concentration on this deadline precluded adequate consideration of other sources of competition.

Although many PCS licensees in the top 100 MSAs will have completed their five-year build-out by November 24, 2002, expenditures on necessary network construction for PCS systems are far from complete. For A, B and 30 MHz C Block licensees, Commission Rules require only that these licensees make their services available to one-third of the population in their service area within five years and two-thirds of the population within ten years.<sup>14</sup> Build-out requirements for 15 MHz and 10 MHz PCS licensees are even less stringent.<sup>15</sup> Thus, for many PCS systems, network build-out will continue in earnest for many years to come as they expand to cover their authorized service territory.

Cellular providers are also continuing to invest significantly in building and improving their networks. For many small and rural providers whose systems have been designed primarily for access by 3 watt phones, additional cell sites are being added to provide adequate service to 0.6 watt phones. Additionally, many smaller carriers are in the process of converting to digital technologies over the next several years.

Both PCS and cellular carriers are considering significant network expenditures to implement 2.5 and 3 G technologies. Additionally, all wireless providers are spending

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<sup>13</sup> See Forbearance Order at 3112. The Commission noted that the build-out period is not uniform for all carriers but concluded that the date marks the point “when all but a small percentage of PCS licensees in the top 100 MSAs will have completed their five-year buildout.

<sup>14</sup> 47 C.F.R. § 24.203(a).

<sup>15</sup> 47 C.F.R. § 24.203(b).

significant amounts of capital to make their networks CALEA and E911 compliant.

Accordingly, to promote the continued expansion of wireless networks and investments to provide public service benefits, the FCC should forbear from imposing LNP requirements on CMRS providers to free limited financial resources for use in necessary network expenditures.<sup>16</sup>

## **II. The FCC Should Forbear From Enforcing All CMRS Number Portability Requirements**

In its Petition, Verizon requests only partial forbearance, stating that 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.”<sup>17</sup> RCA disagrees that such a requirement is necessary and instead proposes a market-based solution.

The Commission requires all carriers that are within the top 100 markets to participate in a national thousands-block pooling.<sup>18</sup> CMRS carriers outside of the largest 100 MSAs are not required to implement thousands-block number pooling unless they become LNP-capable.<sup>19</sup> Because carriers outside of the top 100 MSAs may lose substantial roaming revenue if they do not upgrade their switches to accommodate pooled or ported numbers, carriers outside of the top

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<sup>16</sup> In the event that the Commission determines that permanent forbearance is not in the public interest, RCA strongly urges the Commission to once again grant a temporary forbearance for at least two years.

<sup>17</sup> Verizon Petition at 25.

<sup>18</sup> *See In the Matter of Numbering Resource Optimization: Report and Order and Further Notice of Proposed Rule Making*, CC Docket No. 99-200; FCC 00-104, para. 125 (rel. Mar. 31, 2000)

<sup>19</sup> *Id.* at para. 134.

100 MSAs have strong market incentives to make the necessary infrastructure changes. At the time they make these changes, they will then have the necessary infrastructure to pool numbers and will be subject to the Commission's number pooling requirements. Accordingly, complete forbearance is appropriate and consistent with market-based incentives in lieu of regulation.<sup>20</sup>

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<sup>20</sup> This is consistent with the policy goals established by Chairman Powell to “harness competition and market forces” while resisting the temptation as regulators to “meld markets in the image of any particular industry player.” Summary of Testimony of FCC Chairman Michael K. Powell Before the Subcommittee on Commerce, Justice, State and the Judiciary of the Senate Committee on Appropriations, June 28, 2001. The Commission has previously stated its intention to allow the wireless industry, not the Commission, to decide technical issues with respect to wireless LNP. *See, e.g.*, Forbearance Order at 3108-09. Small and rural carriers are still investigating technical issues with respect to LNP and number pooling. Accordingly, RCA requests that the Commission continue its policy of not mandating any specific technical solution.

### III. Conclusion

The Commission has already considered whether it should forbear temporarily from enforcing LNP requirements on CMRS providers and determined that forbearance is consistent with the public interest. The Commission's conclusions are still valid in the highly competitive CMRS market of today, and, moreover, forbearance would serve the public interest by preserving scarce resources for focused construction and service purposes. Accordingly, the Commission should forbear from enforcing all CMRS number portability requirements.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

By:  \_\_\_\_\_

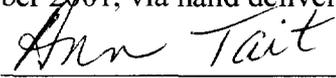
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**CERTIFICATE OF SERVICE**

I, Ann Tait, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Rural Cellular Association" was served on this 21<sup>st</sup> day of September 2001, via hand delivery or first class, U.S. Mail, postage prepaid to the following parties:

  
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