FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:	WT Docket No. 01-184
Petition Pursuant to 47 U.S.C. § 160 For Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation	
Numbering Resource Optimization	CC Docket No. 99-200

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

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The California Public Utilities Commission and the People of the State of California (CPUC or California) submit these Reply Comments 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 set forth in its comments of September 21, 2001. The CPUC here responds to a few additional issues prompted by the other parties' comments.

I. THE VERIZON WIRELESS REQUEST DOES NOT MEET THE SECTION 10 REQUIREMENTS FOR FORBEARANCE

For the most part, parties commenting in support of the Verizon Wireless request echo the arguments Verizon offered in its petition. First and foremost, they argue that the petition meets the section 10 test for forbearance. Thus, the wireless industry commenters assert unequivocally the following:

- LNP is not necessary to ensure that rates and practices are just, reasonable and nondiscriminatory;[1]
- LNP is not necessary for the protection of consumers;[2]
- LNP forbearance is consistent with the public interest.[3]

The Verizon Wireless request does not meet this test because granting permanent forbearance would mean permanently restricting competition among wireless providers, and between wireless and wireline providers. Consumers would not be protected, nor would forbearance be consistent with the public interest. The wireless industry, on the other hand, argues that the degree of competition extant among CMRS providers adequately safeguards consumer protection and the public interest.[4] The industry's conclusion, however, is based at least in part on a misrepresentation of the FCC's determination in 1999 to extend the deadline for wireless providers to comply with the LNP mandate.[5]

For example, VoiceStream and United States Cellular represent the basis for the FCC's extension order as follows:

> The Commission determined two years ago that CMRS LNP was not necessary to protect competition and that forbearance under Section 10 was appropriate. [Footnote omitted.] It nevertheless decided to delay the LNP conversion deadline (rather than eliminate the requirement altogether)

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1 See Sprint PCS Comm., p. 4; see also VoiceStream and US Cellular Comm., p. 7, AT&T Wireless Comm., p. 5.

2 See Sprint PCS Comm., p. 5; see also VoiceStream and US Cellular Comm., p. 8, AT&T Wireless Comm., p. 6.

3 See Sprint PCS Comm., p. 6; see also VoiceStream and US Cellular Comm., p. 9, AT&T Wireless Comm., p. 7.

4 The CPUC notes here that some representatives of the wireless industry oppose Verizon's request. Specifically, California concurs with the comments filed by WorldCom, which has almost two million wireless service customers.

5 See *Memorandum Opinion and Order*, 14 FCC Rcd 3092 (1999), (FCC 99-19).

> largely because it believed that LNP was necessary in order for CMRS carriers to participate in pooling. [Footnote omitted.][6]

Plainly, it is correct that the FCC determined in 1999 "that CMRS LNP was not necessary to protect competition", and that "forbearance under Section 10 was appropriate", based on the facts presented at that time.[7] The statement that the FCC decided to delay the LNP mandate deadline "largely because it believed that LNP was necessary in order for CMRS carriers to participate in pooling" is patently false. As discussed in our September 21st Comments, the FCC devoted a mere six paragraphs out of a twenty-six-page order to the relationship between number pooling and LNP.[8] In contrast, the FCC considered at great length the basis for CTIA's request, which had nothing to do with number conservation or number pooling. Rather, CTIA sought to defer the LNP mandate deadline because "[a]t this stage in the growth of the CMRS market, though, the public interest is better served by the concentration of limited resources to crucial infrastructure buildout as rapidly as possible".[9] The FCC granted the request to defer compliance with the LNP mandate because doing so then 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

6 VoiceStream and US Cellular Comm., p. 4.

7 FCC 99-19, responding to the Petition for Forbearance of the Cellular Telecommunications Industry Association, December 16, 1997.

8 See CPUC's September 21, 2001 Comm., pp. 3-4.

9 CTIA Petition for Forbearance, December 16, 1997, p. 9.

promoting competition in the telecommunications marketplace.[10]

The Commission repeated its rationale in the *Report and Order and Further Notice of Proposed Rulemaking* in the Numbering Resource Optimization docket, CC Docket No. 99-200, (FCC 00-104, *First NRO Order*). There the Commission stated as follows:

> In the *CMRS LNP Forbearance Order*, we granted CMRS providers until November 24, 2002, to implement LNP capability because (1) we determined that the industry needed time to develop and deploy the technology that will allow viable implementation of number portability, including the ability to support seamless nationwide roaming, [footnote omitted] and (2) we determined that extending the deadline is consistent with the public interest for competitive reasons because it would give CMRS carriers greater flexibility to complete network buildout, technical upgrades and other improvements which will enhance service and promote competition.[Footnote omitted.][11]

Thus, the wireless claim, as stated by AT&T Wireless, that "the conditions that required the Commission's forbearance under Section 10 of the Act two years ago apply with even greater force today" is completely wrong and misstates the facts.[12] The conditions which led the FCC to forbear in 1999 do not exist today. Neither petitioner Verizon Wireless nor any of the carriers submitting comments allege that they need extra time to build out their networks. Rather, today they allege that the CMRS market is

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10 FCC 99-19 at ¶ 25. The Commission repeated this rationale in the *Report and Order and Further Notice of Proposed Rulemaking* in the Numbering Resource Optimization docket, CC Docket No. 99-200, (FCC 00-104), (1st NRO Order). There the Commission stated as follows:

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11 *First NRO Order*, ¶ 136.

sufficiently competitive to justify permanent forbearance, thereby assuming completion of the network buildout anticipated in the FCC's 1999 forbearance order. The Verizon Wireless petition asserts a totally different claim for forbearance from that CTIA advanced in its December 1997 petition.

The FCC could not reasonably conclude today that it should permanently forbear from the LNP mandate, using the same rationale as it did in 1999. The underlying facts are completely different, and the Commission must render a new determination based on the facts that exist today. California demonstrated in its September 21st Comments that the facts today cannot possibly support a finding that the Verizon Wireless petition meets the three-prong section 10 test.[13] We will not repeat that argument here.

II. COMPETITION WILL BE SERVED BY DEPLOYMENT OF WIRELESS LNP

A. New Evidence Exists Showing that Consumers Want Wireless LNP

The wireless commenters assert that the CMRS marketplace is fully competitive and that "[t]here is no new evidence to indicate that wireless consumers currently seek WNP".[14] This is a curious assertion, indeed, since the FCC docket in which these comments are being filed contains several individual comments from members of the public complaining that they cannot change wireless service providers and keep their

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12 AT&T's Comm., p. 5.

13 See the CPUC's September 21, 2001 Comm., pp. 6-10.

14 AT&T Wireless Comm., p. 6.

existing wireless telephone number. California attached one such communication to its September 21st Comments, and attaches another one to this Reply. "No new evidence" would suggest that no customers desire LNP as a feature of wireless service, but the very existence of complaints to the FCC and the CPUC belie that representation. Plainly, new evidence does exist, but the wireless industry has declined to determine the scope of consumer interest in wireless LNP.

Further, so far as the CPUC can determine from the comments filed, no wireless provider has conducted a survey asking the question "would you change your wireless service provider if you did not have to surrender your telephone number". Without asking the question, the industry cannot assert with any degree of accuracy that the answer to such a question is "no". Instead, the industry simply states that no customer interest in wireless LNP exists, thus diminishing the "benefit" consumers would derive from deployment of the technology.

B. Federal Law Does Not Require the FCC to Perform a Cost-Benefit Analysis of Its Wireless LNP Mandate

In their comments, several wireless providers note that the FCC has conducted no cost-benefit analysis to decide if deployment of wireless LNP is worth the cost to the industry.[15] California agrees that the FCC has not performed a cost-benefit analysis, but then, the FCC is not required to perform such an analysis. If it were, the wireless providers would be citing to the relevant statute or case law precedent establishing such a requirement. But, in fact, the opposite is true. Neither the 1934 Communications Act,

nor the 1996 Federal Telecommunications Act contain any provision directing the FCC to perform a cost-benefit analysis prior to adopting a regulation.

Nor does the Regulatory Flexibility Act (RFA), as the United States Court of Appeals for the Fifth Circuit concluded just last year.

> The RFA specifically requires a "statement of the factual policy, and legal reasons for selecting the alternative adopted in the final rule". [Cite omitted.] Nowhere does it require, however, cost-benefit analysis or economic modeling. Indeed, the RFA expressly states that "in complying with [section 604], an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable." *5 U.S.C. § 607*.[16]

Further, the time for the Commission to have sought and considered cost estimates, if those were to be a factor in its determination, was in 1996 when the FCC adopted its LNP mandate for all telecommunications carriers. Then the FCC could have considered costs for all carriers, not just wireless providers. But, now, after the rest of the industry has incurred the costs of complying with the LNP mandate, the wireless carriers in their comments assert astronomical start-up and on-going costs for complying with the LNP mandate. None of these estimates were offered to the FCC previously, and all of them are completely speculative.[17] If the FCC is to rely on carrier cost information, it will need to audit the claimed costs to determine if they are legitimate or, as is far more

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15 See Sprint PCS Comm., p. 11; Cingular Wireless Comm., pp. 14-15; VoiceStream and US Cellular Comm., p. 3.

16 *Alenco Communications, Inc., et al v. FCC*, 201 F.3d 608, 625, (5th Cir. 2000).

17 Indeed, in the last round of comments on this topic, in response to the FCC's *Report And Order and Further Notice of Proposed Rulemaking*, FCC 00-104, released March 31, 2000, in which the FCC asked whether wireless providers should be granted an extension of time beyond the LNP deadline to implement pooling, commenters did not produce any cost estimates. Now, just 16 months before the deadline, and for the first

likely, inflated for the purposes of intimidating the Commission into retreating from its pro-competitive policies.

While the FCC need not conduct a cost-benefit analysis, the Commission is required to act consistent with its existing policies, or to explain, based on the record before it, why it is changing its policies. The record before the FCC is utterly inadequate to justify a sharp about-face in the FCC's pro-competitive policies that produced the LNP mandate for all telecommunications carriers. California notes that the FCC performed no cost-benefit analysis before requiring wireline carriers to deploy LNP technology. Wireline carriers had to meet the LNP mandate deadline in the top 100 MSAs almost three years ago. They have had to incur the costs of deploying and maintaining LNP since December 1998. It would be inequitable for the FCC to reward one industry segment by excusing it from having to comply with a policy the Commission previously imposed on all industry segments.

C. Wireless LNP Will Mean More Consumer Choice

The claims by some commenters that competition would be reduced, or that prices would increase if the FCC does not forbear from the LNP mandate are, of course, ludicrous.[18] With deployment of wireless LNP, customers can change carriers without the need to surrender telephone numbers.[19] This will force wireless providers to offer

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time, wireless providers submit huge cost estimates.

18 See Sprint PCS Comm., p. 10; VoiceStream and US Cellular Comm., pp. 7-8; CTIA Comm., p. 13;

19 It will remain true, of course, that customers in many cases will be unable to keep the same telephone and change providers, but to many

lower, not higher, prices and better packages to keep existing or to attract new, previously-captive, customers.[20] That is how competitive markets work. As Sprint PCS notes, "[c]onsumers are protected by competition and choice".[21] The more choices consumers have, the greater the degree of competition. But in its petition, and in the supporting comments from the wireless industry, parties seek to limit competition by limiting choice. The FCC should reject the Verizon petition.

III. PERMANENT FORBEARANCE MANDATES CREATION OF TECHNOLOGY-SPECIFIC AREA CODES

In its comments, Cingular Wireless asserts that number portability is being considered and/or implemented in multiple countries. Cingular adds that "[i]n no other country has portability between wireline and wireless technologies been required". It is also true that in many, many other countries, wireless providers are assigned numbers in one or more area codes designated just for wireless services. In some countries, such as Australia and Turkey, wireless providers have a separate dialing pattern. In Australia, for example, all wireline numbers have eight digits, while wireless numbers have nine digits.

The wireless industry has actively resisted any effort to require it to have separate area codes, despite overwhelming public sentiment in support of the concept. If the FCC grants permanent forbearance, one fundamental argument the wireless industry has

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customers, the value of the telephone number is greater than the telephone. This is especially so given that some providers give free or heavily discounted phones to customers as an inducement to take service.

20 The mere hint that all wireless carriers would increase their prices to recoup their LNP deployment costs smacks of price-fixing, and the FCC should disregard any such suggestion.

21 Sprint PCS Comm., p. 5.

offered to oppose technology-specific or service-specific area codes will be eliminated. Without portability, a wireless customer could not transfer to a wireline carrier the number assigned to the customer's wireless telephone. Nor would the reverse be possible. Without the ability to port from one kind of service to another, the technical difficulty the wireless industry has associated with technology-specific area codes would be irrelevant.

IV. STATES RESERVE THE RIGHT TO ORDER LNP DEPLOYMENT FOR COMPETITIVE REASONS

In its comments, the Vermont Public Service Board (Vermont) asks the FCC to "recognize in its decision that the question of whether Verizon Wireless should implement LNP is also a state law issue that is up to each state commission to consider as that commission sees fit".[22] California concurs with Vermont's assessment of state authority to regulate CMRS terms and conditions. Section 332 of the 1934 Communications Act, as revised by the Omnibus Budget Reconciliation Act of 1993 (OBRA), prohibits states from regulating CMRS rates and entry, but explicitly does "not prohibit a state from regulating the other terms and conditions of commercial mobile services".[23] California agrees with Vermont that if the FCC were to forbear from imposing number portability obligations on Verizon Wireless, the states would be free to

[22] Vermont Comm., p. 5.

[23] 47 U.S.C. § 332(c)(3)(A).

order wireless providers to deploy LNP pursuant to state authority to regulate terms and conditions of service.[24]

V. CONCLUSION

California urges the FCC to deny the Verizon petition for permanent forbearance of the Commission's wireless LNP mandate. As Sprint PCS notes, "[c]onsumers are protected by competition and choice". Permanent forbearance from the LNP mandate will deprive consumers of added competition, and true choice of providers. The goals of the 1996 Telecommunications Act, as well as the FCC's own pro-competitive policies, would be frustrated by such a result.

Respectfully submitted,

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[24] The CPUC notes that the FCC has only declined "to order covered CMRS service providers to speed up their implementation of LNP solely for the purpose of implementing thousands-block number pooling". (FCC 00-104, released March 31, 2000, ¶ 137, emphasis added.)

ATTACHMENT

Ms. Mickiewicz

For the record my request is indeed specifically concerning the cellular telephone systems.

Local Number Portability should be even easier for the wireless/cellular telephone service providers than it is for the land line providers.

The cellular providers all have much newer and more flexible equipment and systems than the land line providers. Some land based systems, even in the " top 100 Metropolitan Statistical Areas (MSAs) in the U.S. " may still be using older non electronic switches. Until I moved 12 years ago the area where I lived in Los Gatos, Ca was still served by an old relay frame system. Los Gatos is part of the Silicon Valley (San Jose/Santa Clara) area.

Also, I suspect that many if not most cellular calls actually cross a "land line" either as the origin or destination segment or even between different cellular service providers.

I specific request for information at this time was driven by my need to change phone types at work. I will be changing from a Nokia to a Nextel phone, from AT&T service to Nextel service.

I have requested that my number be transferred and was told by our IT Helpdesk that AT&T and Nextel specifically refuse to transfer the numbers, even though my employer has 3000+ employees, most with at least 1 phone many with 2 phones and even a few with 3 phones.

We even have a policy that allows me to keep my Nokia phone with AT&T and the same number and all I need is approval from my VP. I refuse to request that approval.

This lack of what I would call a "customer service" attitude and even perhaps active refusal to support customers should end.

Especially when it should be much easier to provide number portability to cellular phones that to "lane lines"

If you have any questions about my statements, or would like further comments please feel free to contact me at the numbers or email below.

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