

November 19, 2001

Michael Powell  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: Verizon Wireless Petition for Forbearance

Dear Chairman Powell:

I write to urge you to deny Verizon Wireless' petition seeking permanent forbearance from the FCC's mandate that all telecommunications carriers (except paging companies) must deploy local number portability (LNP) technology. Number portability is pro-competitive and strongly in the public interest. Without portability, customers must change both their telephone handset and their telephone number before switching carriers, thus imposing a major obstacle on a customer's ability to change providers. Not only will number portability enhance competition among wireless carriers, it will bring much-needed additional competition to wireline carriers. As wireless number portability is technically feasible, there is no legitimate reason for the FCC to exempt the wireless industry from the pro-competitive portability mandate. Moreover, as explained below, wireless number portability will be an important additional tool to assist in conserving scarce telephone numbers.

As you know, the FCC originally required all carriers in the top 100 Metropolitan Statistical Areas (MSAs) to meet the number portability mandate by December 31, 1998. The wireless industry has sought and received several extensions of time in which to comply with the mandate, the most recent of which the FCC granted in February 1999. Then, with only sixteen months to go before the compliance deadline, Verizon Wireless has asked that the FCC reverse its policy and allow wireless carriers not to meet the mandate set more than five years ago.

In its petition, Verizon pledges that it will comply with the FCC's concurrent mandate that wireless providers begin participating in number pooling. The FCC, in its *Second Report & Order* on numbering, declined to allow wireless providers any transition period between meeting the wireless LNP mandate and meeting the number pooling mandate. Thus, wireless providers must begin pooling on November 24, 2002, the same date the FCC set as the deadline for compliance with the wireless LNP mandate. Seizing on the fact that the deadlines are concurrent, Verizon Wireless is confusing the true issue raised by its petition. Verizon asserts that the FCC should not require compliance with the LNP mandate because LNP is not necessary for wireless carriers to pool. Aside from the fact that the wireless industry only "discovered" recently that LNP is not necessary for pooling, this discovery raises very serious questions.<sup>1</sup>

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."

Further, assuming that wireless carriers start to pool in November 2002 - which is uncertain, given information both the CPUC and FCC have received from the industry concerning the ability of vendors to make the appropriate software available in a timely manner - wireless failure to deploy LNP technology will limit the industry's participation in other number conservation measures. Both individual telephone number pooling (ITN) and unassigned number porting (UNP) require use of full LNP capability, not just the location routing number (LRN) platform required for number pooling. California is interested in pursuing additional conservation measures such as ITN and UNP, and has expressed that interest informally to FCC staff as well as in comment to the FCC. But, as with number pooling, the effectiveness of UNP and/or ITN will be limited permanently if the wireless industry cannot participate because it has not deployed the necessary supporting technology, LNP.

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<sup>1</sup> California does not necessarily dispute that carriers can pool without deploying full LNP.

The Verizon Wireless petition is flawed for several reasons. First and foremost, wireless LNP is about competition, not numbering. Regardless of whether wireless carriers are able to pool by November 2002 or later, the true issue before the FCC is the ability of wireless customers to change carriers easily. This includes the ability to change service from a wireless to a wireline carrier, and vice versa. Such interchangeability between different types of carriers would be permanently impaired by forbearance from the wireless LNP mandate.

The essence of competition is a customer's opportunity to freely terminate service with one provider and initiate service with another. Without LNP, however, a wireless customer is inhibited from changing carriers because she must change both her equipment and her telephone number. Thus, permanent forbearance from the wireless LNP mandate will not serve the interests of consumers because continued absence of wireless LNP is both inconvenient and potentially costly to consumers who wish to change wireless carriers. This alone demonstrates Verizon's failure to meet the section 10 forbearance test the FCC must apply to determine whether forbearance is appropriate. The three pronged-test requires that the FCC determine whether (1) enforcing the wireless LNP mandate is unnecessary to ensure that the wireless industry's "charges, practices, classifications or regulations . . . are just and reasonable, and are not unjustly or unreasonably discriminatory," (2) enforcing the mandate is "not necessary for the protection of consumers," and (3) forbearing from applying the mandate is "consistent with the public interest."

The need for customers to change both equipment and telephone numbers inhibits them from changing carriers, which in turn, constrains competition. Further, declining to give consumers the very type of choice contemplated in the 1996 Federal Telecommunications Act can hardly be "consistent with the public interest."<sup>2</sup> Finally, allowing the wireless industry not to implement LNP does not ensure that the industry's "charges, practices, classifications or regulations . . . are just and reasonable." If wireless carriers do not face unfettered competition, they can capture customers and retain them at the expense of unreasonable rates, charges, or terms and conditions because the customer does not want to surrender a telephone number. Despite assurances to the contrary from the wireless industry, the Verizon Wireless request does not meet the section 10 forbearance test.

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<sup>2</sup> In comments to the FCC, the wireless industry has asserted vigorously that the FCC should find the Verizon petition to meet the section 10 forbearance test because it made such a finding in granting the last extension of the wireless LNP compliance date in February 1999. In granting that last extension, however, the FCC concluded that doing so was not necessary for the protection of consumers and was consistent with the public interest because it was temporary, and was granted only so that wireless providers could "buildout" their networks to provide greater coverage. This, the FCC reasoned, would benefit consumers more in the short run than holding the industry to the compliance deadline. At the same time, in granting the extension, the FCC emphasized that "the competitive reasons that led us to mandate wireless number portability in the *First Report and Order* remain fundamentally valid . . ." (*Memorandum Opinion and Order*, FCC 99-19, WT Docket No. 98-229/CC Docket No. 95-116, Released February 9, 1999, ¶ 40.)

Verizon Wireless and other wireless providers also are urging the FCC to approve the petition on the grounds that the wireless industry is already sufficiently competitive. This view suggests that once a certain level of competition exists for a product or service, it is reasonable for regulators to approve technical restrictions that impede the development of further competition simply because there is already “enough” competition. This is anathema to the very concept of competitive markets.

The wireless carriers also assert that the FCC should conduct a cost-benefit analysis of implementing wireless LNP. The FCC is under no legal obligation to conduct such an analysis – indeed, the United States Court of Appeals for the Fifth Circuit concluded just last year that the Regulatory Flexibility Act does not require the FCC to employ “cost-benefit analysis or economic modeling.” The court went on to state that “an agency may provide either a quantifiable or numerical description of the effects of a proposed rule . . . or more general descriptive statements if quantification is not practicable or reliable.”<sup>3</sup> The FCC’s existing policy requires deployment of wireless LNP; should the FCC decide to reverse that policy, it must do so based on a sustainable record. The speculative cost claims the wireless carriers assert provide no basis for an FCC policy reversal.

Finally, should the FCC be persuaded to reverse policy course, the FCC must seriously consider allowing states to create technology-specific overlays. California has proposed expanded or regional overlays in comments to the FCC, and I included such a proposal in a letter to your predecessor, former Chairman Kennard some months ago. The FCC has yet to respond to that suggestion. But, I note that one of the arguments wireless carriers have offered in opposing technology-specific overlays is that deployment of wireless LNP would make such overlays pointless. Customers would be able to port a wireline number to a wireless carrier, or a wireless number to a wireline carrier. Failure to implement wireless LNP guts that argument.

Further, in conducting utilization studies of every area code in California, we have determined that wireless growth continues to drive the need for new area codes. In our 909 area code, for example, demand by wireless carriers for numbers outside the rationing process, most of which we have granted, is rapidly depleting the remaining supply of numbers in that area code, pushing it much more quickly toward exhaust. This story will be repeated across California as time goes on because of steady wireless demand for numbers. Developing area codes specific to wireless and other non-geographic-based technologies, such as OnStar and E-fax, would relieve pressure on all-services area codes.

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

*Mr. Michael Powell*  
*Chairman, FCC*  
*November 19, 2001*  
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I urge you to deny the Verizon Wireless petition for forbearance from the FCC's wireless LNP mandate.

Sincerely,

Loretta M. Lynch  
President, CPUC

cc Kathleen Q. Abernathy, FCC Commissioner  
Michael J. Copps, FCC Commissioner  
Kevin J. Martin, FCC Commissioner  
Dorothy Atwood, Chief, Common Carrier Bureau  
Jeffrey Carlisle, Senior Deputy Chief, Common Carrier Bureau  
Diane Griffin Harmon, Acting Chief, Network Services Division  
Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau