

THE FCC SHOULD FORBEAR FROM THE WIRELESS NUMBER PORTABILITY (“WNP”) REQUIREMENT FOR A MINIMUM OF THIRTY MONTHS

The FCC should forbear from the WNP requirement for a minimum of 30 months. Competitive and technical circumstances justify forbearance of 30 months to ensure that wireless carriers are able to implement WNP successfully with minimal risk to network reliability.¹

Background

In the *CTIA Forbearance Order*, the FCC decided to forbear from the WNP requirement for approximately 32 months based on both competitive and technical grounds.² Among the reasons the FCC gave for granting the forbearance were the following:

- Retaining the deadline not necessary to prevent unjust or unreasonable charges/practices, or to protect consumers. *Id.* at paras. 19, 22.
- Technical issues- most CMRS providers would be unable to meet the deadline because of the roaming issues, and separation of mobile directory number (“MDN”)/mobile identification number (“MIN”) process. *Id.* at para.27.
- Wireless carriers indicated that software vendors and manufacturers will need 18 months to 2 years to provide software to CMRS customers, and wireless carriers will need another 12 months to conduct laboratory and field testing. *Id.* at para. 29.
- Forbearance until Nov. 2002 "appropriately balances the competitive costs and benefits of wireless LNP." *Id.* at para. 37.
- Wireless carriers are devoting substantial resources to Y2K issues and to other regulatory requirements, including E911 and CALEA. *Id.* at para. 38.
- Forbearance is reasonable to allow the five-year PCS buildout period. A five-year buildout is not uniform for all PCS carriers because different blocks of spectrum have been licensed, and thus November 24, 2002 is appropriate as a uniform benchmark PCS buildout date (all but a small number of PCS licensees in the top 100 MSAs will have completed five-year buildout). *Id.* at para. 39.

Current Competitive and Technical Considerations

Similarly, today both competitive and technical considerations justify forbearance from the WNP obligation for at least 30 months, with a “re-look” at the end of that period.

¹ See *Matter of Telephone Number Portability*, FCC 97-74, CC Docket No.95-116, First Memorandum and Order on Reconsideration at ¶¶ 78-83 (1997) (noting that “network reliability [is] . . . of paramount importance.”); see also *Telephone Number Portability*, FCC 96-286, CC Docket No.95-116, First Report and Order and Further Notice of Proposed Rulemaking (1996) (“*First LNP Order*”) at ¶ 77 (requiring LNP deployment in one MSA in each of the seven BOC regions by the end of the fourth quarter 1997, an additional 16 MSAs by the end of first quarter 1998, etc.).

² *Cellular Telecommunications Industry Association’s Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligation*, FCC 99-19, WT Docket No.98-229, Memorandum Opinion and Order, 14 FCC Rcd 3092 (1999) (“*CTIA Forbearance Order*”).

Competitive Reasons Justifying Forbearance:

- The record on the Verizon Wireless Petition for forbearance (WT Docket No. 01-184) provides strong support for forbearance from WNP. The wireless industry is competitive, continues to grow increasingly more competitive, and there is no indication that a lack of WNP has impeded competitive progress. Elimination of the current WNP deadline would not result in unjust or unreasonable rates, charges, or practices; would not harm consumers; and would be consistent with the public interest.
- The Commission has recognized that competition in the CMRS industry is thriving. The Commission's *Sixth CMRS Report* states: "In the year 2000, the CMRS industry continued to experience increased competition and innovation as evidenced by lower prices for consumers and increased diversity of service offerings. The process of carriers building nationwide footprints [footnote omitted] continues to be a significant trend in the mobile telephone sector."³
- Although some commenters have argued that WNP will increase competition in the wireless markets, absent evidence of market failure, the Commission should not impose an additional regulatory mandate on a market that just last month Chairman Powell characterized as "the most competitive market in the telecommunications industry."⁴
- For those commenters who were concerned primarily about wireline to wireless competition, a delay in the implementation of WNP would not have any adverse effect on wireline to wireless competition since the FCC rules already require wireline carriers to port to wireless carriers.⁵ Thus wireless carriers who wish to compete directly for wireline customers can, if they wish, still implement WNP by November 24, 2002 (or even earlier) and port customers from the wireline carriers.

Technical Reasons Justifying Forbearance:

- Pooling is no small task and it requires significant technical and operational changes, including separation of the MIN/MDN and the cooperation of over 250 carriers. Forbearance from the WNP mandate is necessary because the simultaneous implementation of pooling and porting poses risks to network reliability, end-user service quality and successful pooling implementation.

Network reliability risks: Various commenters have provided evidence that simultaneous implementation of WNP with the number pooling requirements would substantially affect the reliability of the network.

³ *Sixth CMRS Competition Report* at 4-5.

⁴ *FCC to Phase Out Wireless Spectrum Cap*, Reuters, November 8, 2001.

⁵ See *First LNP Order* at ¶ 114 (mandating pursuant to section 251(b)(2) and 251(d) that local exchange carriers provide "currently available number portability measures as soon as reasonably possible upon receipt of a specific request from another telecommunications carrier, including from wireless service providers."); 47 C.F.R. § 52.23(b)(1). Because carriers will have implemented the requisite MDN/MIN separation for pooling, wireline-to-wireless porting should not pose any problems for roaming.

- Current volumes of individual LEC ports for pooling and porting are on average 18.8 million per year, and are estimated to be 20.7 million during 2003. Assuming that 46.8% of number planning areas (“NPAs”) are pooled and that CMRS carrier must convert to WNP in November 2002, total CMRS porting and pooling volumes are estimated to be as much as approximately million 78.6 million in 2003.⁶ Thus, on an annual basis, total CMRS porting and pooling volumes would be more than *three times* the current volumes of wireline porting and pooling on the NPAC/Service Order Administrator (“SOA”) /Local Service Management Systems (“LSMS”) systems.⁷ Even though wireless carriers and Neustar are working diligently to prepare for these increased volumes, ***it would be unrealistic to believe that a complex set of interdependent network systems can handle a three-fold increase in volume with no degradation of service.***
- Neustar will have to implement significant hardware and software upgrades to prepare the Number Portability Administration Center (“NPAC”) for these increased volumes. Although Neustar contends that the requisite upgrades to the NPAC will be made well in advance of the November 24, 2002 date,⁸ history demonstrates that it is unlikely that these types of system upgrades will be implemented on schedule and without any significant performance problems.⁹ If the NPAC cannot handle the increased volumes, no customers will be able to port their numbers.
- Even if the NPAC is prepared to handle the increased volumes, it is likely that the LSMSs and SOAs that interface with NPAC will experience some problems in handling the increased volumes. These systems are already having problems handling the speed with which messages are currently downloaded with the more limited number of wireline ports.¹⁰ If the LSMSs cannot handle the volumes, backlogs will develop which may adversely affect routing information and may result in failed ports or uncompleted calls.
- In addition the wireless industry is experiencing switch software delivery problems which may result in problems with the intercarrier communications process. The Wireless

⁶ See U.S. Cellular/VoiceStream Reply Comments at 15-16.

⁷ See *id.*, see also Cingular comments at 24 (noting that *wireless porting alone* in the first year of WNP could increase the current volumes of *wireline porting* by over 400%).

⁸ Neustar contends that NPAC hardware and software will be completely installed and tested by May 2002. Neustar reply comments at 2.

⁹ In spite of Neustar’s good faith efforts, the company’s track record of meeting software delivery dates has been less than stellar and even when software is delivered on time, there are often glitches and other problems that prevent the software from operating at optimum levels for some initial period of time. For example, the original plan was for Neustar to have the requisite software (NPAC Release 3.0) in place to allow efficient data representation (“EDR”) no later than July 2000. See *Matter of Numbering Resource Optimization*, FCC 00-104, CC Docket No.99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000) at ¶ 177. There were, however, several delays in the release of the software. When it finally was released (behind schedule), there were significant problems with the interface between the NPAC and the SOAs. As a result, the industry is now relying on NPAC Release No. 3.1 to provide the EDR operability. That software will not be generally available in all regions until May 2002. Neustar reply comments at 2.

¹⁰ The current problem appears to arise out of a dispute between the LSMS designers and Neustar about the message processing speed contained in the industry’s original specifications for interoperability between the NPAC and the LSMSs.

Number Portability Operations (“WNPO”) Team recently advised the NANC that the software upgrades that are required to make some wireless switches capable of handling the MIN/MDN split and interfacing with the LRN system will not be available until after October 2001 and possibly not until after May 2002.¹¹ Although the industry anticipates that the software will be in place to enable it to pool on November 24, 2002, the delivery delays will significantly shorten the time available to test the intercarrier communications process. Such a compressed testing schedule will likely result in a truncated testing of the inter-carrier communications process, significantly increasing the odds that carriers will not be able to quickly and efficiently process porting requests on an automated basis.

- There are also may be significant problems with wireless to wireline porting. As the record demonstrates, various issues, including the conflicting standard intervals for service activation, and inconsistent rate centers for wireline and wireless customers, have not been resolved.¹² It is unclear whether these problems will be resolved before November 24, 2002.¹³ If they are not resolved, there may be significant problems with wireline to wireless ports.

End user service quality risks: Hasty WNP deployment may result in significant service problems for customers.

- Unlike pooling, in which carriers simply do not assign pooled numbers to customers if there are problems with the numbers, in the porting context, carriers must port a customer’s number pursuant to a request, and if the porting process is not working smoothly, there will be real impacts to the service quality provided to customers.
- As described above, increased volumes on the NPAC/SOA/LSMS network may adversely affect the porting process and the proper routing of calls. This in turn may result in failed ports, uncompleted calls, or the inability to receive incoming calls.¹⁴
- Insufficient time to implement and fully test intercarrier communications processes may generally result in unsuccessful or delayed ports—resulting in service outage for the customer.¹⁵

Adverse impacts on number pooling: Simultaneous implementation of WNP and pooling places the successful implementation of pooling at risk.

- As an initial matter, if the combined volumes from porting and pooling result in the adverse network effects outlined above, pooling will also be adversely affected because

¹¹ See Voicestream/US Cellular reply comments at 14 citing *Memorandum from James Grasser and Brigitte Brown, Co-chairs, WNPO Team to Robert Atkinson, NANC Chair* (Oct. 9, 2001).

¹² USTA reply comments at 3-4; BellSouth reply comments at 6-9; Alltel comments at 6.

¹³ The wireless carriers have been trying to resolve these issues with the wireline carriers for over 4 years with no success. As is evident from USTA’s reply comments, the wireline industry is extremely resistant to porting with wireless carriers.

¹⁴ See Cingular comments at 20; CTIA reply comments at 17-18; Voicestream/US Cellular reply comments at 15-16.

¹⁵ See AWS reply comments at 11; Voicestream/US Cellular reply comments at 14-15.

calls will not route properly to the pooled blocks, making them essentially unusable as a number resource until the problems are resolved.

- Even if the network can handle the combined volumes, the carriers have finite resources to address both number pooling and WNP; a diversion of some of those resources to WNP and away from pooling may jeopardize the successful implementation of pooling.
- Implementation of pooling is a complex task in and of itself. According to Neustar, pooling will be occurring in approximately 150 NPAs by November 24, 2002.¹⁶ This represents a serious challenge for wireless carriers who not only have to be prepared on November 24, 2002 to start pooling in 21 NPAs per quarter specified in the National Pooling Rollout Schedule, but who also have to find a way to catch up in the other 150 NPAs. Although the details of the wireless catch up plan are still being worked out, one option that is being seriously considered is that wireless carriers will start in March of 2002 to participate in “native block pooling.”¹⁷ This will be an enormous and resource intensive effort for both the wireless carriers and Neustar.
- Because of the switch software delivery delays described above, wireless carriers will have to conduct the intercarrier testing for porting at the same time they are participating in the native block pooling process to prepare for traditional pooling.¹⁸ The intercarrier communications testing process would likely divert much needed resources from the native block pooling process, thus jeopardizing the successful and timely implementation of pooling.

¹⁶ Neustar reply comments at 5.

¹⁷ See Neustar Reply comments at 4-6.

¹⁸ See, e.g., Voicestream/US Cellular reply comments at 14 (noting that completion of necessary intercarrier testing will likely be delayed due to software delays).