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National Association of Regulatory Utility Commissioners

November 29, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Commissioner Kevin Martin
Federal Communications Commission
445 12th Street, SW Portals II Building
Washington, D.C. 20544

RE: Written Ex Parte – Two Originals Filed in the Proceeding Captioned:

The Wireless Telecommunications Bureau Request for Comment on Wireless Local Number Portability Forbearance Petition Filed by Verizon Wireless. WT Docket No. 01-184

Dear Commissioner Martin:

NARUC urges the FCC to continue its efforts to promote telecommunications competition and enhance State number conservation efforts by requiring all wireless telecommunications providers to implement wireless number portability (WNP) by November 24, 2002.

Since the Commission first adopted its wireless number portability requirement in 1996, the wireless industry has asked for and received repeated extensions. It is no surprise that they have again sought another extension, albeit on the basis of only "recently discovered" back office implementation problems and speculative cost estimates.

NARUC already filed comments, based on prior NARUC resolutions, (1) opposing any further extensions that impact wireless carrier participation in pooling and (2) pointing out that granting forbearance indisputably has a significant impact on number use.

Even so, during the recently concluded NARUC Convention in Philadelphia, Pennsylvania, NARUC's member commissions voted unanimously to oppose any further forbearance or delay approving a resolution specifically referencing the Verizon Wireless petition. A copy of that resolution is attached.

The Resolution specifically points out significant flaws in the Verizon petition as well as the negative policy impact granting the petition is likely to generate. Specifically, the resolution notes:

- *Verizon's petition fails to provide a factual basis/record for the FCC to act upon insofar as it fails to (1) quantify the alleged costs that justifies forbearance; (2) provide an empirical assessment of the extent to which wireless customers value their telephone numbers and how much of an impediment this is to changing carriers; and (3) quantify its cost savings as a result of the FCC's classification of wireless as local for the purposes of reciprocal compensation;*

- *Approval of Verizon's petition would result in an inefficient use of telephone number resources;*

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- *Approval of Verizon's petition would result in less competition among wireless providers if customers are unable to retain their wireless telephone numbers when switching to alternative wireless service providers offering more economical calling packages;*

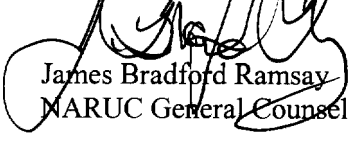
- *Approval of Verizon's petition would take effect to the detriment of promoting local competition between wireline and wireless carriers as customers will be unable to retain their telephone numbers when switching between wireline and wireless service providers.*

Indeed, the *only* limited empirical evidence available suggests strongly that WNP would significantly enhance, at a minimum, wireless-to-wireless competition. (See, e.g., attached recent news articles, one by J. Cox, discussing the experience of one U.S. wireless subscriber (Nash) who is staying with his current provider, even though better plans are available, because "... About 200 people call Nash [and] [c]hanging service providers requires getting a new phone number, a key reason he will accept the new restriction and stay." The second citing the experience of a Mr. Weiler, who wants to change carriers because of "bad service" but won't because "too many people have my number." The third quoting former Virginia Republican House Member Thomas Bliley's opposition to Verizon's petition – pointing out that "Portability is a prerequisite to meaningful competition," and challenging the industry's arguments on the cost of implementation: "estimating the industry's overall costs over those five years at $10 per customer - or about 15 cents per month apiece. For an industry [with] revenues of $56 billion last year, the cost is "extremely modest," he said. And because portability will allow customers to switch to a competitor offering better prices or services - without the hassle of having to alert friends, relatives and clients, or the cost of changing business stationery and phone listings - portability will drive prices down, he said. (Bliley, by the way, doesn't represent anyone involved in the portability case.*)*")

NARUC appreciates the increased emphasis the FCC has placed on coordinating closely with the States on numbering related issues. Based on both our real concerns forbearance could have on both competition and number conservation efforts, the association respectfully requests that the FCC deny the Verizon petition outright. However, should the FCC be inclined to approve the petition, NARUC respectfully suggests that the FCC maintain its requirement that wireless carriers begin number pooling on November 24, 2002, and, before granting any further delays in WNP, at a minimum, create a record to justify further action, by e.g., requiring wireless carriers to provide the estimated additional costs that they would experience from porting and soliciting further data on the value wireless customers place on their telephone numbers.

NARUC believes WNP will promote greater consumer choice, enhance competition, and strengthen our ability to promote number conservation. We urge you and your fellow commissioners to stand firmly by your commitment to implement WNP in November 2002. As always, if you have any questions about this filing, please do not hesitate to contact me at 202.898.2207 or jramsay@naruc.org.

Sincerely,



James Bradford Ramsay
NARUC General Counsel

cc: *Sam Feder, Legal Advisor*

N A R U C

National Association of Regulatory Utility Commissioners

R E S O L U T I O N

APPENDIX A – ***NARUC Resolution on Verizon Wireless's Forbearance Petition***

WHEREAS, Subsequent to FCC's 1996 release of its First Report and Order on number portability, the wireless industry has filed three petitions for extensions of time to meet the FCC's portability requirement; *and*

WHEREAS, Verizon Wireless (Verizon) has recently filed a petition requesting permanent forbearance from porting telephone numbers; *and*

WHEREAS, Verizon's petition fails to: (1) quantify the alleged costs that justifies forbearance; (2) provide an empirical assessment of the extent to which wireless customers value their telephone numbers and how much of an impediment this is to changing carriers; and (3) quantify its cost savings as a result of the FCC's classification of wireless as local for the purposes of reciprocal compensation; *and*

WHEREAS, Approval of Verizon's petition would result in an inefficient use of telephone number resources; *and*

WHEREAS, Approval of Verizon's petition would result in less competition among wireless providers if customers are unable to retain their wireless telephone numbers when switching to alternative wireless service providers offering more economical calling packages; *and*

WHEREAS, Approval of Verizon's petition would take effect to the detriment of promoting local competition; *and*

WHEREAS, Wireless service will not become truly competitive with wireline service because customers will be unable to retain their telephone numbers when switching between wireline and wireless service providers to the detriment of promoting competition; *now therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC) convened in its November 2001 113th Annual Convention in Philadelphia, Pennsylvania, urges the FCC to deny Verizon's petition; *and be it further*

RESOLVED, That should the FCC be inclined to approve the petition, that it maintain its requirement that wireless carriers begin pooling on November 24, 2002, and at a minimum, require wireless carriers to provide the estimated costs that they would experience from porting and obtain further data on the value wireless customers place on their telephone numbers.

Sponsored by the Committee on Telecommunications.
Recommended by the NARUC Board of Directors November 13, 2001.
Adopted in Convention November 14, 2001.

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APPENDIX B – *Recent Related News Articles*

(1) U.S. MOBILE-PHONE CARRIERS FIGHT PLAN TO LET USERS KEEP NUMBERS

Washington, Nov. 23 (Bloomberg) --

Sprint PCS customer Jonathan Nash signed up for more wireless-phone service this month, then found his calling plan had a new limit. Although the 27-year-old policy analyst is unhappy, he won't switch companies.

About 200 people call Nash, a Sprint PCS customer for a year, on his mobile phone. Changing service providers requires getting a new phone number, a key reason he will accept the new restriction and stay with the No. 4 U.S. wireless carrier.

``I didn't want to go through the hassle" of notifying contacts, said Nash, a Population Reference Bureau employee in Washington. ``You're resigned to stay with this company."

Customers will continue to face hurdles if Sprint Corp.'s PCS unit, Verizon Wireless Inc., AT&T Wireless Services Inc. and other mobile-phone carriers win relief from regulators. The companies want to rescind a U.S. requirement, scheduled to take effect in a year and estimated to cost $1 billion, that will let users keep their mobile-phone numbers when switching carriers.

The phone companies say the requirement is unnecessary, will distract them from improving service and will raise prices. Analysts and consumers say the carriers want to keep subscribers. ``Why would you want to implement this?" asked Adam Guy, analyst with the Strategis Group in Washington. ``It just makes it easier for the big guys to lose customers."

The mobile-phone system prevents customers from picking a number and keeping it when they change carriers. Customers like Nash have to adopt new digits when signing up with a new company, just like subscribers of Nextel Communications Inc., Cingular Wireless or Alltel Corp. That adds costs as consumers print new business cards, or alert friends, family and colleagues.

FCC Action In 1996, the Federal Communications Commission decided companies should install gear to let customers keep their numbers, a concept called number portability. The action would boost competition by letting consumers easily pick the carrier with the best prices, as they do with long-distance companies, and substitute wireless for traditional wired phone service. Local- phone carriers have complied with a similar FCC order.

Wireless companies were supposed to install gear in 100 big cities by June 30, 1999. The Cellular Telecommunications and Internet Association sought additional time, citing technical difficulties, and the FCC set a new deadline of March 31, 2000. The agency granted another industry request, and the deadline is Nov. 24, 2002.

FCC Considers Request Earlier this year, Verizon Wireless, the nation's biggest mobile-phone company, asked the FCC to drop the requirement, which will help conserve a diminishing pool of phone numbers. The agency is weighing the request and expects a decision early next year, Wireless Bureau Chief Thomas Sugrue said recently at a Charles Schwab conference.

"For us to modify our operating systems to enable a customer to bring their own number inventory to us is extremely complex," said Fran Malnati, executive director of regulatory affairs at Verizon Wireless. "It causes us to focus on fulfilling this government mandate instead of spending time on improving services for our customers."

The industry's lobbying group, the CTIA, estimates companies will spend more than $1 billion installing the technology even as it spends billions to track emergency calls for law enforcement and comply with other federal orders. Consumers will end up footing the bill with higher fees, it says.

Industry, Consumers Disagree "Number portability is a regulatory solution intended to produce competition -- something which already exists," the industry's biggest trade group told the FCC in written comments.

Wireless rates have fallen 32 percent since 1997, it said. The number of minutes used by consumers increased 34 percent in the first half of the year, according to the group's figures. Even without the ability to keep their phone numbers, 20 million wireless customers switched carriers last year, Sprint PCS said. Changing a phone number "is obviously not a barrier to consumer choice," the company said.

Opponents dismiss such claims, saying it's unfair to look at past data to justify dropping an FCC rule before it takes effect. "More calls are being placed to cellular phones than in the past," the Public Utilities Commission of Ohio told the FCC. "If customers are unable to retain their wireless phone numbers, they will be less likely to switch providers." Carriers may take advantage of subscribers' reluctance, consumer advocates say. *Take Nash, for example. When he signed a new Sprint PCS contract on Nov. 14 adding his wife, the carrier cut an hour from the start time of his night calling plan to 9 p.m. That limited his use of the majority of 5,000 minutes he and his wife share each month. No amount of pleading would prompt the customer service agent to rescind the time change.*

"It's like they know they have you locked in," Nash said.

Chris Murray, Internet and telecommunications counsel for Consumers Union, agreed. "It's a sticky feature that allows companies to get away with abusing their customers," he said. "For a competitive market to really function, you've got to have number portability." --Jonathan Cox in Washington (202) 624-1961, or jcox2@bloomberg.net /sg

(2) **CELL-PHONE NUMBERS: YOURS FOREVER?** Philadelphia Inquirer, Sunday November 18, 2001, Jeff Gelles

If you're unhappy with your cell-phone service or lured by a better deal elsewhere, should you be able to switch companies without having to get a new phone number? *Verizon Wireless, the nation's largest cell-phone provider, doesn't think so - even though giving consumers that option has been part of the nation's grand plan for the wireless-phone market since 1996.* The Federal Communications Commission initially ordered carriers to offer wireless "number portability" in the nation's 100 largest markets by July 1999. At industry urging, that deadline was delayed, first till March 2000 and then till Nov. 24, 2002.

Now, Verizon, backed by top competitors such as AT&T Wireless, Cingular and Sprint PCS, wants the mandate put off again - permanently. Verizon calls it "regulatory overkill." The wireless leader - it serves 28.7 million customers - told the FCC that portability would "impose complex technical burdens and expenses that are not justified by tangible competitive benefits."

Verizon's Aug. 2 petition has gotten virtually no attention outside the telecommunications industry. While the FCC was inviting public comment in September, most of the public's attention was understandably focused elsewhere.

Critics, including state utility regulators and smaller carriers and resellers such as WorldCom Inc., say Verizon and its brethren are reneging on promises and understating the value of consumer choice in an attempt to protect their market share. WorldCom told the FCC that without portability, disgruntled consumers "are faced with a no-win situation - either stay with their provider and continue receiving unsatisfactory service, or change providers and have to change phone numbers." That's the choice that bedeviled Samuel Weiler, a graduate student at Carnegie Mellon University who was among the handful of consumers who voiced objections to Verizon's petition before the FCC's public-comment period ended.

Weiler, 27, wanted to switch carriers because of bad service. Why didn't he? "Too many people have my old number."

For their part, the major carriers insist that the wireless market is, as Verizon puts it, "already fully competitive." They cite continued growth in customers, to more than 123 million nationwide; declines in per-minute prices; and additional providers in many markets thanks to new bandwidth. "Clearly, the inability of customers to retain phone numbers has not deterred competition," Verizon says.

Some of the carriers also mention high "churn" rates - the percentage of customers who drop their service, presumably to switch - as evidence that subscribers aren't held back by loss of their phone numbers. *Verizon doesn't mention its churn rate to the FCC - perhaps because its latest report to shareholders touts a decline in the quarterly rate to 2.2 percent.* "They're extraordinarily low churn rates - they're among the best in the business," says Verizon Communications vice president Eric Rabe.

Critics say that simply looking at churn rates misses the point. For some customers, such as those

who have only had a phone briefly or use it only for emergencies, a new number may not be a big deal.

But what if you've had your number for years and given it to a wide circle of people? Or if you're cutting edge and using a cell phone as your main home phone? People who use wireless phones for work face additional burdens if they change carriers, such as needing new business cards and stationery. Some worry that callers won't bother to track them down.

It's not clear whether the FCC will go along with Verizon's request, though most observers expect President Bush's new GOP appointees to be more industry-friendly than their predecessors. The new chairman, Michael K. Powell, has previously voiced skepticism about portability's necessity, though it is already required in the nation's largest markets for wired residential phones.

So what is number portability: regulatory overkill, or a necessity to keep a maturing wireless market competitive? It's your call, and the FCC's.

(3) CELL-PHONE COMPETITION COULD SUFFER IF YOUR NUMBER CAN'T GO WITH YOU PHILADELPHIA INQUIRER Wednesday, November 28, 2001 Jeff Gelles

Former U.S. Rep. Thomas J. Bliley Jr., a Virginia Republican, had a ringside seat during one of America's most dramatic technological transformations: the explosion in use of wireless phones. From 1995 to 2001, when Bliley chaired the House committee that oversees the Federal Communications Commission, the number of cell-phone subscribers in the United States more than quadrupled. Extra bandwidth tripled the number of competitors in many markets. Per-minute prices plummeted.

Now, Bliley is worried that the thriving, competitive market spawned by that expansion could be seriously undermined - and you should be, too, if you want the ability to shop for the best prices and service without having to give up your cell-phone number.

The reason? Wireless-industry leaders are pushing the FCC to drop its long-standing plan to require what's known as wireless number portability, which is set to go into effect next November.

"Portability is a prerequisite to meaningful competition," said Bliley, who has retired from Congress and now works at Collier Shannon, a Washington law firm. Without it, consumers and businesses will become increasingly locked in to the provider they started with, because of the hassle and costs of changing numbers, he said.

Bliley's is among a number of voices being raised belatedly about this issue - belatedly because the FCC's invitation for public comment officially ended on Sept. 21, days after terrorist attacks stunned New York, Washington, and the rest of nation.

After a column last week on this issue, a number of readers asked whether they could still have a say on this. FCC officials now say that, despite the deadline, consumers and businesspeople can still comment and have their remarks added to the public record. A decision is expected early next year, a commission spokeswoman said.

The issue is before the FCC because Verizon Wireless, the nation's leading wireless company, has asked the FCC to shift from a course it set five years ago when it first required that wireless numbers should be made portable. Number portability, already required for wired phones in the nation's 100 largest markets, was initially supposed to apply to wireless numbers by mid-1999. It has already been delayed twice, first to March 2000 and then to Nov. 24, 2002. In August, Verizon asked to have the rule suspended again - this time permanently. In a petition quickly seconded by such leading competitors as Cingular, AT&T Wireless, Sprint PCS and VoiceStream, Verizon called the requirement "regulatory overkill," and said the wireless-phone market was "already fully competitive."

Joe Baker, a Cingular vice president and general manager for the region serving Pennsylvania, New Jersey and Delaware, echoed that yesterday. "The competition is pretty ruthless," he said in an interview. Baker said that cost was the main reason Cingular was trying to stamp out wireless-number

portability. Cingular, which has about 23 million customers nationwide, said implementing portability would cost it about $250 million over the next five years. "It's going to be an enormously expensive thing to bring into the marketplace, and those costs will be passed on to consumers," Baker said.

Bliley, a true believer in the benefits of competition who has heard it all before, challenges the industry on both counts. Bliley estimates the industry's overall costs over those five years at $10 per customer - or about 15 cents per month apiece. For an industry that rang up revenues of $56 billion last year, the cost is "extremely modest," he said.

And because portability will allow customers to switch to a competitor offering better prices or services - without the hassle of having to alert friends, relatives and clients, or the cost of changing business stationery and phone listings - portability will drive prices down, he said. (Bliley, by the way, doesn't represent anyone involved in the portability case.)

(4) **AUSTRALIANS RUSH TO SWITCH CELLULAR PROVIDER** By Adam Creed, Newsbytes CANBERRA, AUSTRALIA, 27 Nov 2001, 7:17 AM CST

Since being given the ability to change mobile telephone service providers while keeping the same phone number, 90,000 Australians have jumped ship, Australia's government telecom regulator said today. It has been just over two months since the introduction of mobile phone number portability in Australia, the culmination of a long process while carriers negotiated, delayed, developed and tested a national portability system.

The lack of a portability process had been a hindrance to true competition among Australia's three national mobile network operators - Telstra, Vodafone and SingTel Optus.

The Australian Communications Authority (ACA) today said more than 90,000 subscribers successfully ported their cell-phone numbers to a new service provider since mobile number portability began.

The increase in activity during the past two months - as subscribers jumped to other services as new plans and offers emerged after the introduction of portability - has shown that many felt tied to one provider by their phone number.

Whether competition in Australia has increased after the failure of One.Tel and Hutchison's exit from its GSM business is another matter.

The ACA said it will demand service providers improve the time it takes to switch subscribers. Consumers want same-day switching or less, the ACA said, and it will put this performance requirement to the carriers to see if they can guarantee it.

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