Sprint

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January 8, 2002

**Via Electronic Mail Delivery**

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

**Re:** ***Ex Parte Presentation***
**Wireless LNP Forbearance – WT Docket No. 01-184**

Dear Ms. Salas:

This letter serves as notification that on this date Luisa Lancetti, Roger Sherman and Pete Sywenki (representing Sprint Corporation) met with Dorothy Attwood and Diane Harmon (of the Common Carrier Bureau) to discuss the above-captioned proceeding. We discussed Sprint PCS' filings in this proceeding, and the company's support for forbearance. A copy of the presentation material discussed at the meeting is attached hereto.

Pursuant to Section 1.1206(a), an original and one copy of this letter are being filed with your office. Please associate this letter with the files in the above-captioned proceeding.

Please contact us should you have questions concerning the foregoing.

Sincerely,

Luisa L. Lancetti

Attachment

cc: Dorothy Attwood
Diane Harmon

January 8, 2002

**SPRINT PCS**
**WIRELESS LNP FORBEARANCE**
**WT Docket No. 01-184**

The FCC held three years ago that forbearance of the LNP mandate was justified, but it extended rather than eliminating the rule, largely because of the mistaken belief that LNP is needed for number pooling. (In fact, it is the MIN/MDN separation that is needed for pooling, not LNP.) Forbearance was appropriate in February 1999, and it remains appropriate today, given subsequent market developments:

| | Feb. 1999 | Jan. 2002 |
|---|---|---|
| Mobile customers | 69M | 128M |
| Percent POPs w/ choice of five carriers | 4% | 75% |
| Monthly minutes per customer | 143 | 335 |
| Average revenue per unit | $39.43 | $45.27 |
| Wireless CPI | 89.7 | 67.5 |

Indeed, Chairman Powell was fully justified in noting last month that "[b]y any standard . . . this is the most competitive market in the communications industry."

Even if the FCC has doubts over permanent forbearance of the LNP mandate, it should at minimum extend the LNP deadline until after number pooling has been successfully implemented. It is critically important that CMRS carriers begin pooling in November 2002; by contrast, there is no pressing need that LNP be implemented on that or any other date. By deferring the LNP mandate, CMRS carriers can focus their efforts on successfully implementing number pooling and minimize the service quality/network reliability risks of doing too much in too little time.

## I. THE FCC SHOULD PROMPTLY POSTPONE THE LNP DEADLINE SO CMRS CARRIERS CAN FOCUS ON NUMBER POOLING AND OTHER REGULATORY MANDATES

The FCC should promptly postpone the LNP implementation deadline so industry can focus on timely implementation of number pooling and so the FCC can more thoroughly consider the LNP forbearance petition.

CMRS carriers are currently required to implement LNP and number pooling on November 24, 2002 – in the middle of the industry's busy holiday season. Also in 2002, carriers will be devoting resources to E911 implementation, CALEA and TTY, among other things. Sprint PCS

submits that CMRS carriers are being asked to do too much in the same time-frame. Again, the integrity of CMRS networks is being placed in jeopardy.

LNP and pooling both require the same new network architecture: the MIN/MDN separation. (LNP requires additional network and customer care system changes to implement.) If existing roaming capabilities are to be preserved, all CMRS carriers in the country, no matter how small (other than GSM carriers), must timely and successfully implement the MIN/MDN separation by November 2002.

The State Coordinating Group acknowledges that "many smaller wireless carriers are confused about what they need to do and have not yet made the necessary arrangements to become LNP-capable." The same Group has recognized that to "the extent that some carriers do not meet the LNP deadline, some customers will be dropped from the network when roaming outside their home area — a result that benefits neither the consumer nor the carriers."

Sprint PCS' Senior Vice President-Operations has advised the FCC that the "current requirement that wireless carriers flash cut to both pooling and LNP porting on the same date poses an unreasonable risk to network reliability and service quality." It is axiomatic that the chance of successfully implementing a capability improves considerably if one need only do one task rather than two tasks simultaneously — even ignoring other mandates such as E911, CALEA and TTY. Also, LECs were permitted to phase in LNP and pooling separately.

The instantaneous and sizable addition of wireless LNP and pooling volumes to the regional NPAC data base systems will exacerbate existing landline porting problems and jeopardize service quality and network reliability. By deferring LNP, the NPACs can adjust to wireless pooling before having to adjust again to wireless LNP.

Timely implementation of number pooling is critically important. At a minimum, the FCC should postpone the LNP deadline so CMRS carriers can: (1) ensure that CMRS pooling can begin in November 2002 without adversely affecting roaming capabilities, and (2) once it is confirmed that the MIN/MDN separation has been successfully implemented, catch up to LECs in pooling implementation. Pooling will have been implemented in approximately 160 area codes when CMRS carriers become pooling capable, and they will need some time to implement pooling in all of these NPAs (in addition to the 21 NPAs converted to pooling each quarter under the national plan). CMRS carriers cannot be reasonably expected to convert 180 NPAs to pooling in November 2002, and FCC has determined that carrier should convert a maximum of 21 NPAs per quarter. Given their late start, CMRS carriers will need a year or so to implement pooling in all NPAs where LECs are pooling. Because of the severity of the numbering crisis, the CMRS industry should focus on pooling implementation without being distracted by the additional burdens imposed by deploying simultaneously LNP as well.

The sooner the FCC acts on LNP (by forbearance or a deferral), the sooner the CMRS industry can redouble its focus on pooling implementation.

## II. THE LNP MANDATE MERITS RECONSIDERATION UNDER SECTION 11

Section 11 of the Act specifies that FCC "shall review all regulations" every two years. The FCC has conducted two biennial reviews, but has never reviewed the wireless LNP mandate — even though Chairman Powell has recognized that "I cannot imagine any other industry segment that can better laud their state of competition as 'meaningful.' Prices are down and falling. Innovation, churn and penetration are up and still climbing." Only last month Chairman Powell stated the following regarding the CMRS industry:

> By any standard, however, this is the most competitive market in the communications industry. This is demonstrated by our findings that there is growth and increasing output, lower and declining prices, increasing innovation, consumer churn and service provider substitutability. These facts are surely proof of a highly competitive market. . . . Certainly, we can always quibble about the usefulness and need for more evidence and more data, but the facts are stubborn and they show this is a healthy and competitive marketplace.

Aside from Section 11, the FCC Chairman has noted that it is time to reconsider the predictive judgments the FCC made in 1996:

> Much of this "Phase One" exercise was theoretical – attempting to make policy judgments and set conditions for activity that had yet to take place. We now have almost six years of real-world experience and can take stock of those judgments. It is time to make prudent course corrections in our policies.

The CMRS industry has changed enormously since the FCC imposed the LNP mandate over five years ago, and the predictive judgment the FCC made in 1996 has been undermined by market developments.

## III. THE LNP MANDATE IS OF DUBIOUS LEGAL VALIDITY

Congress decided in Feb. 1996 that LECs, but not CMRS providers, should implement LNP. Six months later, the FCC required CMRS carriers to implement LNP as well, citing "independent authority" to act "as we deem appropriate" (remarkably relying on Section 332, a deregulatory statute, for its legal authority).

The FCC concluded in 1996 that paging carriers need not implement LNP because the costs would exceed the benefits. However, it did not conduct the same cost-benefit analysis for broadband CMRS providers – even though prior orders, including orders issued the same day, said that such an analysis was necessary before new regulatory mandates should be imposed on the CMRS industry. Sprint PCS submits that the LNP mandate cannot be supported if a cost-benefits analysis is performed.

## IV. LNP Is Not Necessary to Protect Competition in the Mobile Market

The heart of a Section 10 forbearance analysis is whether LNP is necessary to protect competition. The FCC adopted the LNP mandate in 1996, before PCS networks were operational, to "facilitate the viable entry of new providers." Two new "national" PCS licensees, Sprint PCS and VoiceStream, which now collectively serve over 20 million customers and which continue to grow at a rapid pace, each oppose the LNP mandate. With the exception of Leap, smaller and rural carriers also oppose LNP. Sprint PCS talks to thousands of customers daily. Customers want better coverage, new features, and lower prices – with a subsidized phone, to boot. LNP will not help meet any of these customer needs.

Nor is LNP necessary to protect consumers, because they have demonstrated a willingness to change service providers without LNP. Twenty million mobile customers, one in five, switched carriers in 2000. Another 20+ million customers will switch carriers this year. The fact that over 40 million customers switched carriers in two years alone demonstrates that consumers are not "locked into" their service provider.

## V. LNP Would Inhibit the Ability of CMRS Carriers to Compete with LEC Services

States say that LNP is necessary so CMRS can compete meaningfully with fixed LEC services. (The same states, however, inconsistently contend that the FCC should approve "wireless-only overlays" whereby mobile customers would be assigned different numbers than LEC customers.)

CMRS carriers do not need LNP to compete with LEC services. CMRS has been growing much faster than fixed services and most consumers today have both fixed and mobile service. CTIA estimates that there were over 128 million mobile customers at the end of 2001. There were 128 million residential LEC customers at the end of 1999 (most recent data available). It is unrealistic to think that most consumers will "unplug" LEC services entirely, although the number of "wireless-only" customers continues to grow. LEC residential customers do not need wireless LNP because most of them are already mobile customers.

Indeed, the sure way to inhibit LEC/CMRS competition is force CMRS carriers to divert finite capital from coverage/service quality investments while simultaneously increasing the price of mobile service — thereby increasing the price disparity between LEC and CMRS services. LNP will inhibit, not promote, LEC/CMRS competition.

## VI. LNP Proponents Ignore the Costs of LNP

There are three costs to LNP. The first is the customer experience. Service activation becomes much more complicated and time consuming, and customers may find that service with ported numbers will not work in all areas.

Second, LNP will increase carrier service costs, and since LNP does not support any new revenue generating services, the costs must be recovered from existing services. Most LNP costs are recurring (annual) costs. For example, Sprint PCS estimates that it will have to hire over 300

additional customer service representatives (based on current churn rates) to handle the additional work that LNP entails.

Sprint PCS expects to spend over $86 million to install LNP and over $50 million in additional operating expenses annually thereafter to operate in a LNP environment. In contrast, Sprint will spend about $58 million to implement MIN/MDN separation and pooling and about $9 million annually to operate in a pooling environment (based on current estimates).

SPCS serves approximately 10% of all CMRS customers. Assuming other carriers are incurring similar costs (a reasonable assumption given they are undertaking the same work), the total consumer benefit by eliminating LNP would exceed an estimated $860 million for LNP installation and an estimated $500 million in additional operational expense each year thereafter.

Cost increases are confirmed by experience. LECs began implementing LNP in October 1997, and since that time prices for basic local telephone service have increased by 12.7%. During that same time period, prices for wireless services have fallen by 34.9% -- *without LNP*.

Finally, dollars spent on LNP are necessarily dollars that cannot be invested to add cell sites (thereby expanding coverage or improving service quality) or to invest in 3G networks and services such as the wireless web. Customers have made clear they want reliable service and new services, not LNP, and they have also made it clear that they want low service prices (and an inexpensive, subsidized phone).

The FCC deferred the LNP deadline in 1999 so carriers could continue their network buildout, determining that the public would better benefit with such buildout rather than LNP. Industry responded by installing over 48,000 cell sites between Dec. 1998 and June 2001 – an increase of 73%. (The resulting consumer benefits are documented on page 1.)

The same considerations apply today. Additional cell sites are needed to accommodate the large growth (both customers and usage). The need for reliable, ubiquitous coverage is clear. CMRS carriers also need to invest in 3G networks and services. And carriers must implement such regulatory mandates as pooling, Phase II E911, CALEA and TTY.

LNP proponents assert that the costs of LNP are not substantial – pennies a month per customer. However, a practice in other countries has been not to charge all customers, but to impose a porting out fee on the cost-causer – customers using the capability (with reports of U.K. carriers charging up to 50 pounds or $75 U.S.).

More fundamentally, however, the government should not impose any new costs on carriers – and their customers – without a clear-cut need. Mobile customers expect inexpensive service, but they continue to demand better coverage and service quality. Because of limited available capital dollars, Sprint PCS expects to build fewer cell sites in 2002 than 2001 (or 2000 and 1999). Sprint PCS knows from experience that customers would rather have Sprint PCS use the money budgeted for LNP for constructing additional cell sites to expand coverage and improve service quality.

## VII. THE AUSTRALIAN EXPERIENCE SUPPORTS FORBEARANCE

States point to the introduction of LNP in Australia as "proof" that LNP its technically feasible – a point the CMRS industry has never contested. In fact, this development supports forbearance in the U.S.

The Australian regulator adopted the LNP mandate because the mobile market in that country is not robustly competitive. (There is also no forbearance statute.) Although there are four carriers, one (Telstra) has a 46% market share and a second (Optus) holds a 33% market share. Prices in Australia are more than ten times those in the U.S. (For $40 U.S., Australian customers receive between 103-167 minutes per month – vs. 2,500 with Sprint PCS.) LNP applies only among mobile carriers (there is no LEC/CMRS porting). Australian mobile carriers were also not asked to simultaneously deploy number pooling – or Phase II E911, CALEA, and TTY. The market in Australian is mature, with 65% of the population using mobile service.

Early results of the experiment have not met expectations, with one article calling LNP "a fizzer . . . one big yawn:"

> Australia's largest mobile phone provider, Telstra, whose mobile phone service charges a premium to its 5.3 million customers, nearly half of the industry's customer base, would be a big loser, right? . . . Telstra has won hands down. . . . MNP was meant to make it easier for the smaller guys. So far it hasn't.

Since LNP was introduced on September 25, 2001:

- Churn rates began to fall to 1% monthly.
- Several carrier LNP systems crashed, some several times.
- Although porting was to take between 10 minutes and two hours, large backlogs developed with some ports taking up to three days.
- The largest carrier (Telstra) increased its prices 25%, and its stock price increased as a result. Other carriers are expected to follow suit.
- The largest carrier eliminated handset subsidies, shifting $300 million annually to consumers. Other carriers are expected to follow suit.
- The largest carrier had a good year and expects improved margins in 2002, while its smaller competitors are "hemorrhag[ing] as revenues dry up and losses mount."

There are only four carriers and fewer than 12 million mobile customers in Australia. Imagine the problems that potentially could arise in the U.S., which has 250 different CMRS carriers and 128 million customers, who are also being asked to port with LECs and introduce pooling – as well as implement Phase II E911, CALEA and TTY.

## VIII. THE LNP MANDATE MEETS THE SECTION 10 FORBEARANCE STANDARD

FCC decided in 1999 that the Section 10 forbearance standard had been met, but that it should extend the LNP deadline rather than abrogate the mandate because of the belief that LNP was necessary for number pooling. This factual assumption is erroneous. LNP and pooling both require the MIN/MDN separation, but LNP requires substantial additional work and cost, which have been documented in the record in this proceeding. Sprint PCS estimates it will spend $9 million annually on pooling, but over $50 million annually on LNP operating costs, in addition to initial implementation costs.

In fact, LNP will harm mobile customers and will inhibit LEC/CMRS competition. CMRS providers should implement number pooling and other mandates, but not have to also pursue a costly regulatory mandate for a problem that does not exist.

## IX. SPRINT PCS' RECOMMENDATION

Sprint PCS submits that the record evidence conclusively demonstrates that the FCC should forbear from applying the LNP mandate. If the FCC is concerned that market conditions may change, alternatively, the FCC should temporarily forbear *for three years*, with the FCC reexamining the need for the LNP mandate beginning on the second anniversary of the temporary forbearance order. This alternative plan would enable CMRS carriers to focus on implementation of number pooling. And it will permit CMRS carriers to re-divert capital from LNP implementation to expanding coverage and improving service quality (additional cell sites) and to deploying 3G networks and services – the features that customers are demanding. Sprint PCS concedes that LNP *may* be appropriate – in the future – if evidence begins to suggest that competition is diminishing. If so, however, the FCC has full authority to revisit the issue and revise course.

<<< Back | Print

Wireless WEEK
www.wirelessweek.com

## Keep LNP, Pooling Separate

**By Charles Levine**
**December 31, 2001**
**Wireless Week**

Like one train car to the next, the FCC has hitched the issues of wireless number pooling and local number portability together, with both scheduled to arrive in November 2002. The coupling of these mandates jeopardizes the successful implementation of each, however, and derails wireless companies' efforts to provide what consumers want: advanced services and better coverage at competitive prices.

The FCC concluded nearly two years ago that wireless carriers should implement pooling and LNP on the same date. Access to sufficient numbers remains a critical issue, and wireless companies are working hard to meet the November 2002 pooling deadline. But the linking of portability and pooling is unnecessary. It undermines our ability to successfully implement pooling and diverts limited investment dollars. The LNP requirement should be set aside.

First, the technology issue. Pooling and LNP do involve some of the same network upgrades. Unlike pooling, however, LNP also requires carriers to change virtually every system used in dealing with customers. Also, LNP requires significant, ongoing customer care expenses to operate. The two mandates don't have to be linked, and doing so raises significant network reliability and integrity issues.

Second, LNP will hurt consumers. It isn't justified given current market conditions. The FCC originally adopted the mandate to facilitate the viable entry of new providers and to encourage incumbent cellular carriers to lower prices. Sprint PCS and other new entrants have done just fine without LNP, however. Even the FCC chairman recently noted that the wireless sector has become "the most competitive market in the communications industry." Moreover, the FCC imposed this regulatory mandate in 1996, only six months after Congress decided to *exclude* wireless carriers from an LNP obligation.

State regulators assert that LNP is necessary because customers are locked into their service providers and are unwilling to change. The facts say otherwise. Twenty million mobile customers–one in five–switched carriers in 2000 without LNP. For 2001, the number is expected to be even higher, clearly indicating that LNP is not needed to ensure competition.

Some state regulators also claim that LNP will promote competition between local exchange carriers and wireless. But the number of wireless customers will soon exceed the number of LEC residential customers. Besides, people will not cut the cord completely unless wireless prices and service quality are comparable to wireline services. LNP will not help make this happen.

Finally, and most importantly, is the cost issue. Proponents ignore the significant costs of LNP. Between 2001 and 2004, Sprint PCS expects to spend $218 million on pooling and porting, a figure that would be reduced by 65 percent if the portability mandate were removed. We estimate that for the wireless industry overall, the removal of the portability requirement would free $1.4 billion over four years– money that could be invested in network infrastructure, technology and service.

Ultimately, the customer will pay for the unnecessary regulation. Because LNP

does not enable wireless carriers to provide any new services, there is no way to recover costs without affecting service or pricing in some form. We should learn from experience. Since LECs began implementing LNP in October 1997, prices for basic telephone service have increased 12.7 percent. During the same period and without LNP, wireless service prices have fallen 34.9 percent.

There is one thing about trains: When one car derails, other cars derail with it. We have a serious numbering crisis in this country, and wireless pooling has great potential to help solve the problem. The FCC would promote the public interest by eliminating the current LNP requirement by next November and allowing providers to focus their time on implementing pooling successfully and using capital dollars on more of the advancements that have revolutionized the industry in recent years.

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**Author Information**

Charles Levine is president of Sprint PCS.

<<< Back | Print