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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
Universal Service	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications Act of 1996	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116

REPLY COMMENTS OF THE RURAL CELLULAR ASSOCIATION

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May 20, 2002

SUMMARY

In comments filed in both the number portability and number pooling proceedings, the Rural Cellular Association ("RCA") has demonstrated that the Commission should forbear permanently from imposing number portability and number pooling requirements on small and rural wireless carriers. In the event the Commission does not forbear completely, at a minimum, the Commission should not require small and rural carriers to implement number portability prior to a specific request from another carrier; non-porting carriers should not be required to participate in number pooling.

The majority of commenters generally supported RCA's position. Those recommending that the Commission amend its rules asserted that such action would promote competition and number conservation. These commenters, however, fail to consider that the resulting inefficiencies would far outweigh the few benefits that might be gained. They also fail to recognize that the requiring non-porting carriers to implement number pooling would unnecessarily and unduly burden carriers.

Some commenters oppose allowing exemptions for small and rural carriers. These commenters ignore record evidence demonstrating that imposing these requirements on small and rural carriers is unnecessary and extremely burdensome. Accordingly, the Commission must maintain the status quo.

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	)	
Telephone Number Portability	)	CC Docket No. 95-116

REPLY COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"),[1] by counsel, hereby submits these reply comments in response to the Commission's request for comment on a proposal to require all carriers within the 100 largest MSAs to implement number portability and participate in thousands block number pooling regardless of whether a carrier has received a specific request to provide number portability from another carrier.[2]

In comments filed in both the number portability and number pooling proceedings, RCA has demonstrated that the Commission should forbear permanently

[1] RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. Formed in 1993 initially to address the distinctive issues facing rural cellular service providers, the membership of RCA is concerned with advancing policies that foster the implementation of wireless services in the nation's rural and smaller market areas.

[2] Third Order on Reconsideration in CC Docket No. 99-200, Third Further Notice of Proposed Rulemaking in CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 95-116, CC Docket Nos. 99-200, 96-98, 95-116 (rel. Mar. 14, 2002) ("Notice").

from imposing number portability and number pooling requirements on small and rural wireless carriers.[3] In the event the Commission does not forbear completely, at a minimum, the Commission should not require small and rural carriers to implement number portability prior to a specific request from another carrier; non-porting carriers should not be required to participate in number pooling.

The majority of commenters generally supported RCA's position.[4] Those recommending that the Commission amend its rules asserted that such action would promote competition and number conservation.[5] These commenters, however, fail to consider that the resulting inefficiencies would far outweigh the few benefits that might be gained. They also fail to recognize that the requiring non-porting carriers to implement number pooling would unnecessarily and unduly burden carriers.

Some commenters oppose allowing exemptions for small and rural carriers. These commenters ignore record evidence demonstrating that imposing these requirements on small and rural carriers is unnecessary and extremely burdensome. Accordingly, the Commission must maintain the status quo.

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[3] *See, e.g.*, Comments of RCA ("RCA's Comments") in WT Docket No. 01-184, filed September 21, 2001; RCA's Comments in CC Docket 99-200, filed November 5, 2001.

[4] *See, e.g.*, Comments of The New York State Telecommunications Association ("NYSTA's Comments") at 2; Comments of Iowa Telecommunications Services, Inc. ("Iowa Telecom's Comments") at ii; Comments of The Independent Companies at 2.

[5] *See, e.g.*, Comments of Public Utilities Commission of Ohio (Ohio PUC's Comments") at 2; Comments of the California Public Utilities Commission ("California PUC's Comments" at 2; Comments of the Michigan Public Service Commission ("Michigan PSC's Comments") at 2-3; Comments of Worldcom ("Worldcom's Comments") at 2.

I. Commenters that Support Amending Number Portability Rules Fail to Prove that any Benefits Gained Outweigh Resulting Inefficiencies

Some commenters argue that requiring all carriers to implement number portability will enhance competition even though there is no demand as demonstrated by a request for portability.[6] As demonstrated by RCA, however, the assertion that competition would be enhanced if the Commission amends the rule is based on an erroneous presumption - - that the capability to port will result in porting - - which ignores the cost/benefit analysis that precedes rational market-based decision-making.[7]

In fashioning its number portability rules, the Commission found that competitors would target their resources and port numbers only in markets where they are "currently interested" and avoid the costs of porting in markets where they determine that it is not needed.[8] Additionally, as noted by one commenter, the existing rule is in accord with Congress' intent that the number portability requirement be imposed only when "the prospect of actual benefits to customers and competition warrants imposing the cost of [number portability] capability."[9] If the Commission were to amend its number

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[6] *See, e.g.*, Worldcom's Comments at 2; Ohio PUC's Comments at 4.

[7] *See* RCA's Comments at 3-4; *See also*, Comments of the Cellular Telecommunications and Internet Association ("CTIA's Comments") at 3 (urging the Commission to conduct a cost-benefit analysis prior to requiring number portability for any carrier that serves only a small number of customers within a Top 100 MSA).

[8] RCA's Comments at 3-4 *citing In the Matter of Telephone Number Portability: First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7272 (1997) ("Order on Reconsideration").

[9] Comments of TDS Telecommunications Corporation at 2-3 *citing Joint Managers' Statement, S. Conf. Rep. No. 104-230*, 104th Cong. 2d Sess. 113(1996). The Conference Report stated that the new duties imposed by Section 251(b), including the requirement to provide number portability "make sense only in the context of a specific

portability rule as recommended by some commenters, all carriers in the 100 largest MSAs would have to make expensive upgrades in order to have the capability to port even though some of these carriers may never have to port. The only benefit to consumers would be that the initiation of porting might begin marginally sooner.[10] Because the inefficiencies outweigh the few benefits that might be gained by changing the rule, the Commission must maintain its rule that a carrier is not obligated to implement number portability until another carrier makes a request for the carrier to begin porting.

II. Commenters that Support Amending Number Pooling Rules to Require Non-Porting Carriers to Participate in Number Pooling Ignore Record Evidence that Such Upgrades Would Unnecessarily and Unduly Burden Carriers

Some state commissions urge the Commission to require all carriers to participate in number pooling even if they are not number portable-capable.[11] These commenters fail, however, to consider that, in some cases, the costs of implementing necessary upgrades significantly outweigh the number conservation benefits to be obtained.

In its comments, RCA noted that the FCC erroneously has determined that the burdens associated with the implementation of the local routing number ("LRN")

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request from another telecommunications carrier or any other person who actually seeks to connect with or provide services using the LEC network". *Id.*

[10] *See* Comments of Western Wireless Corporation at 10 ("If no carrier requests have been tendered, it is difficult to see how a customer could benefit from a carrier's implementation of [number portability]"); Comments of Iowa Telecommunications Services at ii ("[b]lanket requirements that all carriers in the top 100 MSAs must deploy LNP or number portability would be both pointless and wasteful as applied to carriers that do not face any competitors, which have not received a portability request, and are not subject to number resource shortages").

[11] *See, e.g.*, Comments of Iowa Utilities Board at 4; Ohio PUC's Comments at 8.

architecture may not be as great as once thought.[12] VoiceStream Wireless Corporation affirms RCA's conclusion that the FCC's assumption is wrong:

> VoiceStream is puzzled by the tentative conclusion [in the Commission's Notice] because it could be construed that Location Routing Number (LRN) infrastructure is not necessary for the implementation of thousand-block pooling. To the contrary, whatever it is called – whether simply LRN, or 'partial LNP' – the fact remains that a carrier must have LRN network architecture to participate in thousand-block number pooling. Quite simply, there must be LNP query software loaded in the switch in order for that switch to be able to properly terminate calls to a pooled telephone number. To this extent, an LNP-capable switch is a prerequisite for thousand-block number pooling.[13]

Record evidence demonstrates that the costs of implementing the LRN architecture are extremely burdensome, especially on small and rural carriers who do not already have the generic upgrade in place. For example, the New York State Telecommunications Association reports that the costs to upgrade existing switches, purchase the software and conduct the necessary translations would average over $100,000 per company.[14] The National Telecommunications Cooperative Association estimates the costs to its members to upgrade their switches to accommodate the LRN architecture to be $200,000 to $600,000 taking into account the additional cost of staff time to implement, test, monitor and ensure that the systems work properly.[15]

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[12] RCA's Comments at 5 *citing* Notice at para. 9.

[13] Comments of VoiceStream Wireless Corporation ("VoiceStream's Comments") at 2-3.

[14] NYSTA's Comments at 9. The association provides a breakdown of the actual costs in Attachment B to its comments and demonstrates how these costs are burdensome and unnecessary for its rural, Independent telephone company members.

[15] Comments of the National Telecommunications Cooperative Association ("NTCA's Comments") at 4.

To prevent all small and rural carriers from incurring unnecessary and unduly burdensome expenses, the Commission must maintain its rule that number pooling is required only for carriers that have received a request to port numbers and have implemented number portability.

III. Commenters that Oppose Exemptions for Small Carriers Ignore Record Evidence that Demonstrate that Imposing These Requirements on Small and Rural Carriers is Unnecessary and Extremely Burdensome

A few state commissions argue that if the Commission were to amend its rules, state commissions, and not the FCC, should have the authority to exempt certain small and rural companies from the new requirements.[16] Other state commissions and Worldcom argue that no exemptions should be granted.[17] All of these commenters ignore Commission precedent and record evidence demonstrating the public interest benefit in exempting small and rural carriers from any newly-adopted requirements.

As RCA demonstrated in its comments, the FCC already has determined that small carriers should not be required to implement number portability without a specific request, because the extraordinary burden has no countervailing public benefit.[18] As

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[16] *See, e.g.*, Ohio PUC's Comments at 2 ("[d]ue to the cost concerns of small ILECs serving less than 15,000 access lines, however, state commissions are in the best position to determine whether a small ILEC within the largest 100 MSAs should be LNP-capable and/or participate in pooling"); California PUC's Comments at 2-3 ("[t]he CPUC proposes that the FCC not exempt such carriers, but confer authority on the states to make individual determinations for an exemption on a case-by-case basis").

[17] *See, e.g.*, Michigan PSC's Comments (arguing that not only should all carriers in the 100 largest MSAs be required to implement number portability and participate in number pooling, but the requirement should be extended to rural areas outside of the 100 largest MSAs as well); Comments of NASUCA at 3; Comments of Worldcom at 3; Comments of State of New York Department of Public Service at 1.

[18] *See* RCA's Comments at 5-6 *citing* Order on Reconsideration, 12 FCC Rcd at 7272 (Commission finding that requiring all carriers within an MSA to port regardless of

demonstrated by RCA, the Commission is justified in exempting small carriers within the 100 largest MSAs from number pooling requirements since it has already exempted carriers with similar characteristics that serve outside of the 100 largest MSAs.[19]

Record evidence in this proceeding further supports the need for the Commission to exempt small and rural carriers if it decides to amend its rules. In its comments, Mid-Missouri Cellular demonstrates that small carriers already are disadvantaged due to unfunded mandates which disproportionately burden small carriers and, to the extent that large carriers are engaged in anti-competitive practices, these disadvantages are unfairly magnified.[20] As noted above, various associations have surveyed their membership and have provided specific data as to the burdensome costs that these requirements would impose on small and rural carriers.[21] Additionally, commenters such as VoiceStream have observed that for many small and rural carriers, the costs of becoming number portable-capable and participating in number pooling exceed the benefits to be obtained.[22] Accordingly, given the Commission's previous findings and additional record evidence, the Commission should exempt small carriers from new requirements if it decides to amend its rules.

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whether a request was issued would cause small carriers to upgrade their networks at significant expense with no resulting competitive benefit).

[19] *See* RCA's Comments at 6 *citing In the Matter of Numbering Resource Optimization: Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200*, FCC 01-362, para. 20 (rel. Dec. 28, 2001). *See also* Comments of Beacon Telecommunications Advisors, LLC at 2.

[20] Comments of Mid-Missouri Cellular at i – iii.

[21] *See* discussion under Section II above citing NYSTA and NTCA's comments.

[22] VoiceStream's Comments at 4; Comments of The Independent Companies at 4; Iowa Telecom's Comments at 15.

IV. Conclusion

The Commission should forbear permanently from imposing number portability and number pooling requirements on small and rural wireless carriers. In the event the Commission does not forbear completely, at a minimum, the Commission should not require small and rural carriers to implement number portability prior to a specific request from another carrier; non-porting carriers should not be required to participate in number pooling.

Respectfully submitted,

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May 20, 2002

CERTIFICATE OF SERVICE

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Reply Comments of the Rural Cellular Association" was served on this 20th day of May 2002, via hand delivery to the following parties:

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