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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation	)	WT Docket No. 01-184
	)	
And	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116

MEMORANDUM OPINION AND ORDER

Adopted: July 16, 2002 **Released: July 26, 2002**

By the Commission: Commissioners Abernathy and Martin approving in part, dissenting in part, and issuing separate statements; Commissioner Copps issuing a statement.

I. INTRODUCTION

1. In this Order, we deny, in part, Verizon Wireless's (Verizon) petition for permanent forbearance from the Commission's wireless local number portability (LNP) rules.[1] We find, however, that extending the LNP implementation deadline for a period of one year until November 24, 2003, will allow adequate time to resolve all outstanding LNP implementation issues, including training personnel and other non-technical tasks, and critically, public safety coordination. It will also allow wireless carriers to focus on the successful implementation of thousands-block number pooling and will reduce the burdens and potential risks associated with the simultaneous implementation of thousands-block number pooling and porting. By providing a transition between number pooling and number portability, we ensure that our critical numbering optimization goals are met before the obligation to implement LNP becomes due. We also find that the competitive reasons that lead the Commission to require wireless LNP remain valid today and that there are sufficient competitive and consumer benefits in terms of innovative service offerings, higher quality services, and lower prices to justify the cost of implementing LNP in the near future.

A. Number Portability for CMRS Providers

2. Section 251(b) of the Communications Act of 1934, as amended (the Act) requires local exchange carriers (LECs) to provide service provider LNP, to the extent technically feasible, in accordance with requirements prescribed by the Commission.[2] On July 2, 1996, the Commission released its *First Report and Order* on number portability, which promulgated rules and deployment schedules for the implementation of number portability.[3] Although Commercial Mobile Radio Service (CMRS) carriers are not LECs, and thus are not included in section 251(b), the Commission also required number

[1] 47 C.F. R. § 52.31.

[2] 47 U.S.C. § 251(b).

[3] Telephone Number Portability, CC Docket No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352 (1996) (*First Report and Order*).

portability for CMRS carriers.[4] The Commission determined that implementation of LNP, which would enable wireless subscribers to keep their phone numbers when changing carriers, would enhance competition between these carriers as well as promote competition between wireless and wireline carriers.[5] This determination was supported at the time by many in the wireless industry, particularly new Personal Communications Services (PCS) providers, who viewed wireless LNP as important to promoting competition with more established cellular carriers.[6] The Commission also concluded that "[i]mplementation of long-term service provider portability by CMRS providers will have an impact on the efficient use and uniform administration of the numbering resource."[7]

3. The Commission required cellular, broadband PCS, and covered specialized mobile radio (SMR) carriers to have the capability to deliver calls from their networks to ported numbers anywhere in the country by December 31, 1998.[8] In addition, CMRS carriers were required to offer service provider LNP, including the ability to support roaming, throughout their networks by June 30, 1999.[9] The Commission delegated authority to the Chief of the Wireless Telecommunications Bureau (Bureau), to extend the dates contained in the CMRS implementation schedule up to nine months.[10] On reconsideration, the Commission upheld its decision to impose number portability requirements on CMRS providers, with some clarifications.[11]

4. On November 24, 1997, the Cellular Telecommunications and Internet Association (CTIA)[12] filed a petition with the Bureau to exercise its delegated authority to extend the CMRS service provider number portability deadline by nine months.[13] On September 1, 1998, the Bureau granted the requested nine-month extension, stating that it was necessary to provide additional time for the wireless industry to develop and test standards in order to ensure efficient deployment of wireless number portability.[14] As a result of the *Bureau Extension Order*, the deadline for CMRS carriers to offer service provider portability

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[4] The Commission imposed number portability requirements on CMRS carriers pursuant to its authority under sections 1, 2, 4(i), and 332 of the Act. *See* 47 U.S.C. §§ 1, 2, 4(i), and 332.

[5] *First Report and Order*, 11 FCC Rcd at 8434-36, paras. 157-160.

[6] *Id.* at 8426, para. 144.

[7] *Id.* at 8431-32, para. 153.

[8] *Id.* at 8440, para. 165. This gave CMRS carriers the ability to deliver telephone calls made by their customers on a wireless phone to wireline customers who have retained their telephone number but switched service providers.

[9] *Id.* at para. 166.

[10] *Id.* at para. 167.

[11] Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7313, paras. 136-37 (1997) (*First Memorandum Opinion and Order*). The Commission clarified that under the CMRS implementation schedule, by June 30, 1999, CMRS providers were required to (1) offer service provider portability in the largest 100 MSAs where a request was received at least nine months before the deadline, and (2) be able to support nationwide roaming. Although only CMRS carriers in the largest 100 MSAs were required to offer service provider portability by the June 30, 1999, deadline, all CMRS carriers were required to support roaming by that date. This requirement was intended to ensure that if a customer with a ported number roamed into another CMRS carrier's network, that CMRS carrier would support that customer's ability to make and receive calls.

[12] At the time CTIA filed its petition, it was known as the Cellular Telecommunications and Industry Association.

[13] Telephone Number Portability, Petition for Extension of Implementation Deadlines of the Cellular Telecommunications Industry Association, CC Docket No. 95-116 (filed Nov. 24, 1997).

[14] Telephone Number Portability, Petition for Extension of Implementation Deadlines of the Cellular Telecommunications Industry Association, CC Docket No. 95-116, *Memorandum Opinion and Order*, 13 FCC Rcd 16315, 16317, para. 7 (1998) (*Bureau Extension Order*).

was extended from June 30, 1999, to March 31, 2000.[15]

5. On December 16, 1997, CTIA filed a petition with the Commission under section 10 of the Act,[16] requesting that the Commission forbear from imposing LNP obligations on CMRS providers until the completion of the five-year buildout period for broadband PCS carriers. On February 8, 1999, the Commission granted the petition and extended the deadline for CMRS providers to offer service provider LNP in the largest 100 MSAs until November 24, 2002.[17] The Commission found that limited forbearance was justified because the three-prong test for forbearance had been met. Considering evidence that competition in the wireless market had increased significantly as the result of recent service launches by broadband PCS and SMR carriers, and that prices were falling at least in part because of the entry of the new competitors, the Commission found that LNP requirements were not necessary, at that time, to ensure just and reasonable charges and practices in the wireless industry.[18] The Commission also found that LNP requirements were not necessary to protect consumers at that time because evidence showed that demand for LNP among consumers was low and that consumers were routinely switching among wireless carriers even without LNP.[19] Finally, the Commission determined that forbearance was consistent with the public interest for both technical and competitive reasons. The Commission found that the wireless industry needed additional time to develop and deploy LNP technology and that forbearance would also give CMRS carriers flexibility to complete network buildout, technical upgrades, and other improvements that were likely to have a more immediate impact on enhancing wireless service and promoting competition.[20]

6. Although the Commission concluded that a limited period of forbearance was appropriate, it expressly rejected arguments for complete forbearance from the wireless number portability requirements.[21] The Commission found that the competitive reasons that led it to mandate wireless number portability in the *First Report and Order* remained fundamentally valid and indicated that it remained committed to the basic regulatory approach outlined in prior orders.[22] The Commission stated that the new implementation schedule did not relieve CMRS carriers of their underlying obligation to implement LNP and that carriers were expected to work toward implementation during the interim period.[23] In February 2000, the Commission affirmed its decision against permanent forbearance on

[15] *Id.* In the *Bureau Extension Order*, the Commission took no action with respect to the requirement that by December 31, 1998, all cellular, broadband PCS, and covered SMR providers have the capability to deliver calls from their networks to ported numbers.

[16] 47 U.S.C. § 160.

[17] Telephone Number Portability, Cellular Telecommunication and Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229, *Memorandum Opinion and Order*, 14 FCC Rcd 3092 (1999) (*1999 Forbearance Order*). On December 15, 1998, the Commission exercised its authority under 47 U.S.C. § 160(c) to extend the one-year period for decision by 90 days, which moved the deadline for Commission action on the CTIA petition to March 16, 1999.

[18] *Id.* at 3101-02, para. 19.

[19] *Id.* at 3103, para. 22.

[20] *Id.* at 3104-05, para. 25.

[21] *Id.* at 3112-13, para. 40.

[22] *Id.*

[23] *Id.* at 3117, para. 49.

reconsideration.[24]

B. Numbering Exhaust and Numbering Resource Optimization

7. At the time of the *1999 Forbearance Order*, the Commission had not adopted thousands-block number pooling requirements. However, the Commission there stated its intention to develop standards for number conservation methods, including pooling, and to initiate a rulemaking proposing certain non-LNP based numbering optimization techniques applicable to all telecommunications carriers. On June 2, 1999, the Commission released a notice of proposed rulemaking on numbering resource optimization.[25]

8. In its *First Report and Order* on numbering resource optimization,[26] the Commission adopted several administrative and technical measures to allow it to closely monitor the use of numbering resources within the North American Numbering Plan (NANP). To accommodate the increasing need for new telephone numbers caused, in part, by the introduction of new wireless and wireline devices, the Commission also adopted a system for allocating numbers in blocks of 1,000 rather than 10,000 (thousands-block number pooling). This system is designed to provide for more efficient allocation of numbers by not giving carriers more numbers than they can use. The Commission determined that all carriers, including wireless carriers, would be required to participate in thousands-block number pooling once they became LNP-capable. In the *Second Report and Order* on numbering resource optimization, the Commission declined to adopt a transition period between the time that CMRS carriers must implement LNP and the time they must participate in pooling, finding that carriers had failed to provide sufficient evidence that they would be unable to implement pooling by the deadline for implementation of LNP. [27]

9. BellSouth, Cingular, CTIA, Qwest, and Sprint filed petitions seeking reconsideration of the Commission's decision to require simultaneous implementation of number pooling and number portability.[28] These carriers asserted that they needed additional time to make changes to their systems to be able to implement pooling.[29] Sprint argued that the Commission's decision not to establish a separate and phased-in implementation plan for CMRS pooling was unexplained and contrary to precedent.[30] In the *Third Report and Order* on numbering resource optimization, the Commission again declined to alter the implementation date for covered CMRS carriers to participate in pooling, noting that it was in the

[24] Telephone Number Portability, Cellular Telecommunications and Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229, *Order on Reconsideration*, 15 FCC Rcd 4727, 4733, para. 12 (2000) (*Order on Reconsideration*).

[25] Numbering Resource Optimization, CC Docket No. 99-200, *Notice of Proposed Rulemaking*, 14 FCC Rcd 10322 (1999).

[26] Numbering Resource Optimization, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574 (2000) (*Numbering Resource Optimization First Report and Order*).

[27] Numbering Resource Optimization, CC Docket No. 99-200, *Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking*, 16 FCC Rcd 306 at 328, para. 50 (2000) (*Numbering Resource Optimization Second Report and Order*).

[28] BellSouth Petition for Reconsideration and Clarification, CC Docket No. 99-200 at 12-15 (filed March 12, 2001); CTIA Petition for Reconsideration, CC Docket No. 99-200 at 5-14 (filed March 12, 2001); Cingular Wireless LLC Petition for Reconsideration of the Second Report and Order and Order on Reconsideration, CC Docket No. 99-200 at 3-13 (filed March 12, 2001) (*Cingular Petition*); Petition for Reconsideration of Qwest Corp., CC Docket No. 99-200 at 2-5 (filed March 12, 2001) (*Qwest Petition*); Sprint Corporation Petition for Reconsideration and Clarification, CC Docket No. 99-200 at 5-12 (filed March 12, 2001) (*Sprint Petition*).

[29] *See Cingular Petition* at 3-6; *Qwest Petition* at 5.

[30] *Sprint Petition* at 5-12.

public interest to require covered CMRS carriers to participate in pooling as soon as possible to maximize number utilization efficiency.[31]

C. Verizon Forbearance Petition and Comments

10. On July 26, 2001, Verizon filed a petition requesting that the Commission permanently forbear from imposing LNP requirements on covered CMRS providers under section 10 of the Act.[32] In its forbearance petition, Verizon argues that the wireless LNP requirements will impose "complex technical burdens and expenses that are not justified by tangible competitive benefits."[33] Verizon also contends that wireless carriers need not implement LNP to be able to participate in thousands-block number pooling. Verizon contends that although carriers must make certain changes to their network architecture to be able to pool, they would need to make additional changes and incur considerably greater burdens to be able to provide LNP.[34] Verizon does not seek additional time to implement pooling, and commits to participate in pooling by November 24, 2002, but contends that granting forbearance from the wireless LNP requirements will allow CMRS carriers to focus on successfully meeting the pooling deadline.

11. The majority of CMRS carriers submitting comments support Verizon's request for permanent forbearance. They agree with Verizon that the benefits of requiring wireless carriers to implement LNP do not outweigh the costs associated with implementing LNP.[35] For example, Cingular claims that implementation of LNP will involve enormous costs and will not provide wireless subscribers with better rates, coverage, or service quality.[36] AT&T Wireless argues that permanent forbearance from the LNP requirements is appropriate because portability has not been necessary for the development of competition in the wireless industry and will not be needed to promote further competition.[37] Other wireless carriers, on the other hand, argue that the Commission should retain the LNP requirements with certain modifications.[38] Leap Wireless, for instance, opposes any delay of the wireless LNP mandate, stating that the public interest benefits in the form of increased competition and conservation of numbering resources outweigh the costs associated with implementing LNP.[39] Leap proposes that the Commission maintain LNP requirements for wireless carriers but clarify that carriers need only be capable of porting numbers out to other carriers and that they need not develop the capability to port numbers in.[40] Nextel suggests that the Commission allow an eighteen to twenty-four month transition

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[31] Numbering Resource Optimization, CC Docket No. 99-200, *Third Report and Order*, 17 FCC Rcd 252, 263, para. 23 (2001).

[32] Verizon Wireless Petition Pursuant to 47 U.S.C. § 160 for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184 (filed July 26, 2001) (*Verizon Wireless Forbearance Petition*).

[33] *Verizon Wireless Forbearance Petition* at 2.

[34] *Id.* at 4.

[35] ACS Wireless, ALLTEL, AT&T Wireless, Cingular Wireless, Dobson Communications, Sprint PCS, United States Cellular, VoiceStream Wireless, and Western Wireless all filed comments supporting Verizon's petition. Comments and Reply Comments filed in response to the Verizon Wireless Petition are listed in Appendix A.

[36] Cingular Comments at 3.

[37] AT&T Wireless Comments at 6-7.

[38] *See* Cox Reply Comments; Leap Wireless Reply Comments; Mid-Missouri Cellular Reply Comments; Nextel Reply Comments; and Public Service Cellular Reply Comments.

[39] Leap Wireless Reply Comments at 1.

[40] *Id.* at 1-2.

period between the implementation of LNP and pooling.[41]

12. A number of carriers supporting permanent forbearance have also argued in the alternative that in the event the Commission deems permanent forbearance inappropriate, the Commission should delay the wireless LNP implementation date by a significant amount of time. Sprint argues, for example, that if the Commission decides against permanent forbearance, it should temporarily forbear from imposing LNP requirements on wireless carriers for three years and reexamine the need for the LNP requirements at the second anniversary of the temporary forbearance order.[42] AT&T argues that the Commission should forbear from imposing the wireless LNP requirements for a minimum of thirty months.[43]

13. State utility commissions generally oppose Verizon's request for permanent forbearance. Some are skeptical about Verizon's claim that wireless carriers can participate in pooling before implementing LNP.[44] Others argue that wireless LNP is necessary to avoid the stranding of numbers associated with wireless churn.[45] Some state commissions also contend that forbearing from imposing LNP requirements would stifle further development of competition within the wireless industry and between the wireless and wireline industries and therefore would be contrary to the public interest.[46] Moreover, state commenters argue that Verizon has failed to provide a sufficient explanation of the costs it claims it will have to bear to implement portability and has made no attempt to identify the benefits of portability for consumers.[47] Wireless resellers also oppose Verizon's request for permanent forbearance, arguing that wireless LNP is critical to maintaining a vibrant resale market.[48]

II. DISCUSSION

A. Forbearance Analysis Under Section 10

14. Section 10(a) of the Act provides that the Commission must forbear from applying any regulation or provision of the Act to a telecommunications carrier if the Commission determines that:

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[41] Letter from Laura H. Phillips, Counsel for Nextel Communications, Inc., to Magalie Roman Salas, Secretary, FCC, at 2 (filed Jan. 22, 2002) (*Nextel Ex Parte*).

[42] Letter from Luisa L. Lancetti, Vice President, Regulatory Affairs – PCS, to Magalie Roman Salas, Secretary, FCC (filed Jan. 18, 2002) (*Sprint Ex Parte*).

[43] Letter from Suzanne K. Toller, Davis Wright Tremaine LLP, to Magalie Roman Salas, Secretary, FCC (filed Jan. 18, 2002) (*AT&T Ex Parte*).

[44] *See, e.g.*, Michigan Commission Comments at 1-2; NARUC Comments at 3; New Hampshire Commission Comments at 10; New York Commission Comments at 2; Pennsylvania Commission Reply Comments at 5-8; and State Coordination Group Comments at 4.

[45] *See*, Maryland Commission Comments at 2; NARUC Comments at 2-3; Ohio Commission Comments at 4; Texas Commission Comments at 2-3.

[46] *See*, California Commission Comments at 9-10; Connecticut Commission Comments; Iowa Commission Comments at 2; New Hampshire Commission Comments at 10-12; New York Commission Comments at 3; Ohio Commission Comments at 4-8; State Coordination Group Comments at 4; Texas Commission Comments at 4. *See also* Letter from Loretta M. Lynch , President, California PUC, to Michael Powell, Chairman, FCC at 1, 3-4 (filed Nov. 19, 2001) (*California Ex Parte*); Letter from James Bradford Ramsay, NARUC, General Counsel, to Michael Powell, Chairman, FCC, at 1-2 (filed Nov. 29, 2001) (*NARUC Ex Parte*).

[47] *See*, California Commission Comments at 14-18; Iowa Commission Comments at 3; New Hampshire Commission Comments at 3-6, 8-9; State Coordination Group Comments at 5-8.

[48] ASCENT Comments at 13-14; WorldCom Comments at 8-9.

(1) enforcement of such regulation is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.[49]

If we determine that there is competition in the wireless market, we then must determine whether the LNP requirements are still warranted under the standards set out in section 10. Although there has been growth in competition in the wireless industry, we find that permanent forbearance is not justified under the second and third prongs of the section 10 forbearance test; *i.e.* we conclude that LNP requirements for wireless carriers are necessary to protect consumers and are consistent with the public interest.[50] We therefore deny the Verizon petition for permanent forbearance, as discussed below.

1. Consumer Protection

15. The second prong of the section 10 forbearance test requires that we determine whether enforcement of the wireless number portability requirements is necessary for the protection of consumers. Verizon argues that sustained competitive pressure encourages CMRS providers to maximize consumer satisfaction.[51] Verizon explains that customers who are dissatisfied with their wireless service frequently switch service providers even in the absence of LNP.[52] Moreover, Verizon asserts that sections 201 and 202 of the Act already ensure sufficient consumer protection.[53] Opponents of Verizon's petition argue that wireless LNP is necessary to protect those wireless consumers who would otherwise be prevented from changing service providers because of their unwillingness to give up their telephone number.[54]

16. *Discussion.* We conclude that a permanent forbearance from the LNP requirements for CMRS carriers is not consistent with the protection of consumers. In the *1999 Forbearance Order*, the Commission found that immediate implementation of the LNP requirements was not necessary to protect consumers because evidence showed that demand for LNP among consumers was low and that consumers were routinely switching among wireless carriers even without LNP.[55] The Commission emphasized, however, that it continued to view wireless LNP as providing important benefits to consumers.[56] The Commission found that although extending the LNP implementation deadline until November 2002

[49] 47 U.S.C. § 160(a). Section 10(b) of the Act provides that, in making the determination about whether forbearance would be consistent with the public interest, the Commission "shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services." 47 U.S.C. § 160(b).

[50] Because we conclude that Verizon's request fails the second and third prongs of section 10, we need not address whether the LNP requirement is necessary under the first prong set forth in section 10(a)(1). 47 U.S.C. § 160(a)(1).

[51] *Verizon Wireless Forbearance Petition* at 22.

[52] *Id.* 22-23.

[53] *Id.* at 23. Section 201 of the Act requires carriers to provide service on terms that are just and reasonable. Section 202 prohibits carriers from engaging in unreasonable discrimination. *See* 47 U.S. C. §§ 201-202.

[54] California Commission Comments at 9.

[55] *1999 Forbearance Order*, 14 FCC Rcd at 3103, para. 22.

[56] *Id.* at para. 23

would not harm consumers, it was likely that, in the longer term, wireless number portability would become an increasingly important issue for consumers.[57] The Commission anticipated that, as wireless service rates continued their downward trend, there would be a greater likelihood that consumers would view their wireless phones as a potential substitute for their wireline phones and thus the ability of consumers to port their numbers was likely to become an increasingly important factor in consumer choice.[58]

17. We find that the market is developing along the lines anticipated in the *1999 Forbearance Order*. Many wireless consumers are beginning to change the way in which they use their wireless phones. For example, carriers have begun to offer pricing plans providing large buckets of air time for a fixed monthly rate.[59] Some commenters contend that subscribers on these plans, motivated to use all of their allotment of minutes, use their cell phones for incoming calls more frequently and give out their cell phone numbers more freely.[60] Indeed, recent data shows a 51 percent increase in minutes of use for wireless subscribers during the period of July through December between 2001 and 2000.[61] Other evidence demonstrates that wireless-wireline competition, while still limited, is increasing. A survey by the Yankee Group, for instance, found that about three percent of mobile telephone subscribers rely on their wireless phone as their only phone and another survey conducted by the Consumer Electronics Association found that three in ten wireless phone users say that they would rather give up their home telephone than their wireless phone.[62] In addition, a USA Today/CNN/Gallup poll found that 18 percent of wireless phone owners use their wireless phone as their primary phone.[63] In the *Seventh Annual CMRS Competition Report,* we also found data suggesting that wireless plans are substituting for traditional wireline long distance.[64] For example, we noted one analyst's claim that 20 percent of AT&T's customers, or 5 million people, have replaced some wireline long distance usage with wireless. We also found that an increasing number of wireless carriers offer service plans designed to compete directly with wireline local telephone service.[65]

18. As these trends continue, and as wireless service subscribers increase the frequency with which they give out their mobile telephone number, we anticipate that an increasing number of consumers will be reluctant to change wireless service providers unless they can keep the same number.[66] Unless LNP is available, increasing numbers of wireless service consumers - especially those who routinely

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[57] *Id.*

[58] *Id.* at 3103-04.

[59] WorldCom Comments at 5-6. *See also* Linda J. Mutschler *et al.*, *The Next Generation VI*: Wireless in the US, United States Telecom Services-Wireless/Cellular, Merrill Lynch, Mar. 8, 2002 at 57-63.

[60] *Id.*

[61] June 2001 CTIA Survey (minutes of use through 2000), at 169; Todd Rethemeier *et al.*, *Talk is Cheaper, Demand is Steeper*, Bear Sterns, Equity Research, May 21, 2002, at 1 (citing CTIA 2001 MOU results). CTIA aggregated all of the carriers' MOUs from July 1 through December 31, then divided by the average number of subscribers, and then divided by six.

[62] Judy Saries, *Wireless Users Hanging Up on Landline Phones*, NASHVILLE BUSINESS JOURNAL, Feb. 2, 2001; *Will Wireless Phones Make Traditional Home Telephones Obsolete?*, News Release, Consumer Electronics Association, Apr. 6, 2000.

[63] Michelle Kessler, *18% See Cellphones As Their Main Phones*, USA TODAY, Feb. 1, 2002, at B1.

[64] Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Seventh Report*, FCC 02-179 at 34 (rel. July 3, 2002) (*Seventh CMRS Competition Report*).

[65] *Id.*

[66] WorldCom Comments at 5-6.

provide their wireless number to others - will find themselves forced to stay with carriers with whom they may be dissatisfied because the cost of giving up their wireless phone number in order to move to another carrier is too high. In fact, several hundred consumers have filed comments indicating that they already feel restricted in switching among carriers because of their inability to take their number with them.[67] Similarly, as more consumers choose to use wireless instead of wireline services, the inability to transfer their wireline number to a wireless service provider may slow the adoption of wireless by those consumers that wish to keep the same telephone number they had with their wireline service provider. As the Commission found in the *1999 Forbearance Order*, we continue to view wireless LNP as providing important benefits to consumers. We find that by denying permanent forbearance from the wireless LNP requirements, we ensure that as the wireless industry continues to mature, and wireless subscribers become significantly more invested in their phone numbers, they will be able to experience the benefits of LNP.

2. Public Interest

19. The third prong of the section 10 forbearance standard requires us to consider whether forbearance is consistent with the public interest. Verizon argues that permanent forbearance will not impair the public interest in competition because sufficient competition exists in the wireless industry without LNP and because there is no evidence that LNP will actually bring about increased levels of competition.[68] Verizon also argues that permanent forbearance will allow carriers to continue to focus their resources on further buildout of their networks.[69] Finally, Verizon claims that forbearance will allow carriers to focus on pooling and thus will serve the public interest in conservation of numbering resources.[70]

20. *Discussion.* In the *1999 Forbearance Order*, the Commission determined that temporary forbearance at that time was consistent with the public interest for both competitive and technical reasons. In rejecting requests for permanent forbearance, however, the Commission found that the competitive reasons that led it to require wireless LNP in the *First Report and Order* remained fundamentally valid.[71] The Commission indicated that the wireless LNP requirements were intended to increase competition both within the CMRS marketplace and with wireline carriers, which in turn would provide incentives for all carriers to provide innovative service offerings, higher quality services, and lower prices.[72] The Commission affirmed these findings on reconsideration.[73] We remain convinced that wireless LNP will result in these competitive benefits in the long term. Accordingly, we find that permanent forbearance is not in the public interest.

21. Moreover, as the Commission discussed in the *1999 Forbearance Order*[74] and on

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[67] Some of these consumers have noted that, in determining whether to switch carriers, they must consider costs associated with replacing business cards and stationery. *See e.g.*, Comment from Alan Martin (filed Jan. 29, 2002); Comment from Alan Furman (filed Nov. 28, 2001); Comment from Robert F. Bergen (filed Nov. 28, 2001); Comment from Thomas A. Goodman (filed Nov. 28, 2001); Comment from Kristine Mighion (filed Feb. 1, 2002); Comment from Chris Britton (filed Feb. 7, 2002); and Comment from Mark Matthews (filed Feb. 7, 2002).

[68] *Verizon Wireless Forbearance Petition* at 26.

[69] *Id.* at 25.

[70] *Id.* at 29-30.

[71] *1999 Forbearance Order*, 14 FCC Rcd at 3112, para. 40.

[72] *Id.* at 3112-13.

[73] *Order on Reconsideration* 15 FCC Rcd at 4733, para. 12.

[74] *1999 Forbearance Order*, 14 FCC Rcd at 3113, para. 41.

reconsideration, we are not convinced that market forces would ensure implementation of LNP. Although certain carriers may want all wireless carriers to implement LNP because they believe it will result in a net gain of subscribers, other carriers may feel differently and will not have any incentive to implement LNP because they may be convinced that industry-wide LNP will only serve to make it easier for their subscribers to leave them. Consequently, it is unlikely for the entire industry to agree to move to wireless LNP voluntarily. In addition, there may be economic disincentives for any individual carrier to be the first to voluntarily adopt full LNP, which would provide its subscribers the flexibility to switch to a different carrier while retaining their current phone numbers. This is because, absent the implementation of full LNP by other wireless carriers, that carrier could not gain any new wireless customers from the non-participating wireless carriers. As a result, to ensure that consumers have the ability to switch carriers while retaining their phone numbers, we must require wireless carriers to implement LNP.

22. As discussed above, wireless phone numbers have become more important to consumers. Consumers taking advantage of flat rate pricing plans are using their wireless phones more frequently and giving out their wireless phone numbers more freely. For these consumers, the inability to take their wireless phone number with them is an additional impediment to these consumers switching service providers.[75] Maintaining LNP requirements, by contrast, will eliminate this disincentive to switching among carriers and consumers will be free to choose among carriers based on factors such as price, service, and coverage. Competitive pressure on carriers will intensify, as carriers will be forced to compete on the basis of the price and quality of the service they offer to consumers, without regard to a customer's phone number. Maintaining LNP requirements will also make it easier for newer carriers to offer service to existing wireless consumers who would switch carriers but for lack of ability to port their wireless phone number.[76]

B. Extension of LNP Deadline

23. Although we find that permanent forbearance from the wireless LNP requirements would not be consistent with the public interest, as we discuss above in section III. A., we find that a limited extension of the LNP implementation deadline is warranted. We emphasize that our action here should not be interpreted as diminishing our view that wireless number portability is an increasingly important factor in consumer choice. We find that extending the LNP implementation deadline for a period of one year until November 24, 2003, is warranted to provide adequate time to resolve all outstanding LNP implementation issues, including personnel training and other non-technical issues, and critically, public safety coordination. The extension will allow carriers to focus on the successful implementation of thousands-block number pooling and to guard against any potential network disruptions that might result from simultaneous implementation of thousands-block number pooling and porting.

24. Carriers have submitted evidence demonstrating that implementation of the network architecture necessary for pooling is particularly complex for wireless carriers because of the mobile nature of wireless service and the need to support roaming.[77] Particularly, carriers have indicated that separation of the Mobile Directory Number (MDN) and Mobile Identification Number (MIN) will require changes to a large number of systems and must be accomplished by every wireless carrier, including

[75] *See* Letter from Michael Mowery, General Counsel, Telephia to Magalie Roman Salas, Secretary, FCC (filed Jan. 22, 2002) (noting that 40% of respondents to Telephia survey questionnaire selected "I don't want to change my current phone number" as one reason for remaining with their current carrier).

[76] *See* Leap Wireless Comments at 4; Nextel Comments at 2; WorldCom Comments at 8. *See also*, Letter from James F. Barker, Latham & Watkins on behalf of Leap Wireless, to William F. Caton, Acting Secretary, FCC (filed Feb. 12, 2002) (submitting declaration from Dr. Peter Crampton, Professor of Economics at the University of Maryland).

[77] AT&T Comments at 11.

those operating in markets where pooling will not initially be implemented, by November 24, 2002, to support roaming with pooled numbers nationwide.[78] By extending the deadline for implementation of wireless LNP for one year, we allow carriers to focus on successfully completing all of the tasks necessary for pooling. We note that wireless carriers have committed to participating in thousands-block number pooling by November 24, 2002, and have also indicated that they will devote considerable resources to correct the unforeseen technical challenges surrounding a successful implementation.[79] We fully expect wireless carriers to fulfill this commitment.

25. In addition, evidence from the record shows that delays in the delivery of switch software by some vendors have compressed the LNP implementation schedule, thereby reducing the time available to conduct inter-carrier testing.[80] Carriers assert that the limited period of inter-carrier testing that would be permitted under the current schedule jeopardizes the successful implementation of porting and increases the difficulty of simultaneous implementation of porting and pooling.[81] Carriers have also expressed concern over whether their networks will be prepared to handle the querying volumes associated with porting and pooling transactions.[82] AT&T, for example, notes that total CMRS porting and pooling volumes have been estimated to be as much as 78.6 million in 2003.[83] Carriers worry that if their networks are not sufficiently prepared to handle the combined volumes from porting and pooling, pooling efforts will be adversely affected because calls will not route properly to pooled blocks, making them unusable as a number resource until problems are resolved.[84] To guard against any potential network disruptions, we find that extending the deadline for implementation of LNP for a period of one year is appropriate and adequate. We find that a one year extension is reasonable because it not only provides a transition period between implementation of thousands-block number pooling and porting but also allows carriers time to observe and correct any problems that may occur after pooling is implemented before having to implement LNP.[85]

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[78] AT&T Comments at 12; *Verizon Wireless Forbearance Petition* at Appendix 5.

[79] *See* Testimony from Ms. Anna Miller, Director of Numbering Policy, VoiceStream Wireless, on behalf of CTIA, to the Subcommittee on Telecommunications and the Internet, June 26, 2002.

[80] AT&T Comments at 15-16.

[81] AT&T Reply Comments at 11.

[82] AT&T Comments at 17; Cingular Comments at 19; VoiceStream and US Cellular Comments at 15-16.

[83] *AT&T Ex Parte* at 3.

[84] *Id.* at 5. We note that in a recent ex parte filing, CTIA has also expressed concern about the ability of the Number Portability Administration Center (NPAC) to handle the volume of number ports that will result from wireless LNP. *See* Letter from Michael Altschul, Senior Vice President, Regulatory Affairs and General Counsel, CTIA, to Tom Sugrue, Chief, Wireless Telecommunications Bureau, and Dorothy Attwood, Chief, Wireline Competition Bureau (filed Mar. 28, 2002). In response to CTIA's filing, Neustar indicated that the NPAC would be prepared to handle anticipated porting volume. *See* Letter from Joseph F. Franlin, Senior Vice President, Operations, Neustar, to Tom Sugrue, Chief, Wireless Telecommunications Bureau, and Dorothy Attwood, Chief, Wireline Competition Bureau (filed Apr. 2, 2002). We find that Neustar will be able to handle increased pooling and porting volumes as a result of CMRS carriers' participation in number pooling and number portability.

[85] We note that, while not addressing the merits of Verizon's petition for forbearance, APCO, NENA, and NASNA have expressed concern about potential degradation of 911 services for customers who port numbers, and urge the Commission to enforce the LNP performance criteria set forth in section 52.23 of the Commission's rules. *See* Letter from James R. Hobson, Counsel for NENA, to Magalie Roman Salas, Secretary, FCC (filed Jan. 30, 2002) at 2-3. While we recognize these concerns, to the extent that wireless carriers are deploying automatic location identification technology in their networks according to compliance plans approved by the Commission, we conclude that they will satisfy the performance criteria in section 52.23 with respect to provision of emergency services.

26. We note that some states oppose a grant of any extension because of doubts about whether CMRS carriers will be able to fully participate in pooling before implementing LNP.[86] These states are concerned that Verizon and the other CMRS carriers propose some form of limited pooling that would result in number pools available to only one particular carrier, number pools segregated by type of carrier, or CMRS carriers not being able to donate numbers to pools.[87] Evidence from the record suggests that these concerns are unfounded. Although previously, the Commission indicated that implementation of LNP was a necessary precursor to the implementation of number pooling,[88] evidence from the record now leads us to conclude that it is technically possible for wireless carries to fully participate in pooling before implementing LNP.[89] Specifically, we have found that it is not number portability itself, but rather the location routing number (LRN) network architecture that is necessary to establish pooling capability.[90] The majority of the CMRS carriers submitting comments agree that once CMRS carriers establish an LRN network architecture they may fully participate in pooling.[91] CMRS carriers have made assurances that they will be able to donate and utilize blocks of numbers from all carrier types within a given rate center and there will be no need for separate pools by carrier or type of carrier.[92] Moreover, carriers commit to being able to participate in other numbering optimization methods that are dependent on LRN network architecture, such as unassigned number porting (UNP) and individual telephone number pooling (ITN), should the Commission require utilization of those conservation measures at some point in the future.[93]

27. We also note that some states argue that portability is necessary to help address the problem of numbers associated with wireless churn being stranded during the aging process.[94] In its comments, NARUC explains that the telephone numbers of consumers switching wireless carriers are typically stranded for a period of 45 days after the carrier winning the customer assigns the customer a new number.[95] The subscriber's original number is held in reserve and cannot be immediately reassigned. NARUC contends if CMRS carriers were required to port some of these numbers, there would be significant numbering resource savings.[96] Although we agree that portability could help relieve this

[86] *See* NARUC Comments at 3; New Hampshire Commission Comments at 10; New York Commission Comments at 2-3.

[87] New Hampshire Commission Comments at 10; New York Commission Comments at 2-3.

[88] *See, e.g.*, *1999 Forbearance Order*, 14 FCC Rcd at 3113, para. 43; *Order on Reconsideration*, 15 FCC Rcd 4732-33, para. 11; *Numbering Resource Optimization First Report and Order*, 15 FCC Rcd at 7633-34, paras. 136-37.

[89] AT&T Wireless Comments at 3-4; Cingular Wireless Comments at 15-16; Sprint Comments at 7-8; *Verizon Wireless Forbearance Petition* at 9-11; VoiceStream and US Cellular Comments at 10.

[90] *Id.* Under the LRN network architecture, a unique ten-digit number – the location routing number or LRN – is assigned to each central office switch to identify each switch in the network for call routing purposes. The LRN then serves as a network address. *See* Telephone Number Portability, CC Docket No. 95-116, *Second Report and Order*, 12 FCC Rcd 12281, 12288 (1997).

[91] AT&T Wireless Comments at 3-4; Cingular Wireless Comments at 15-16; Sprint Comments at 7-8; Verizon Wireless Forbearance Petition at 9-11; VoiceStream and US Cellular Comments at 10. *But see*, Mid-Missouri Cellular Comments at 15-20; Public Service Cellular Comments at 11-16, arguing that MIN/MDN separation, which, according to the majority of carriers, is a critical element of the LRN infrastructure, is not necessary for pooling.

[92] AT&T Reply Comments at 15; Verizon Wireless Reply Comments at 21.

[93] AT&T Reply Comments at 15-16.

[94] NARUC Comments at 2-3; Ohio Commission Comments at 4; Texas Commission Comments at 2-3; Maryland Commission Comments at 2.

[95] NARUC Comments at 2.

[96] *Id.*

problem, evidence from the record indicates that the resulting savings in numbering resources would not be significant enough to justify the imposition of LNP requirements prior to the expiration of the limited period of extension we adopt today to address this problem. For example, AT&T estimates that only 2.7% of the numbers in its inventory are held in the aging category at any given time.[97] In addition, our June 30, 2001, Numbering Resource Utilization data shows that only 4% of all numbers held by wireless carriers were in the aging category.[98] Moreover, as Cingular points out, there are administrative restrictions on CMRS carriers' ability to obtain additional numbering resources that would prevent them from obtaining additional numbers based on an inventory of aging disconnected numbers.[99]

28. We reject requests for a longer extension. Several carriers argue that, if the Commission determines that permanent forbearance from the wireless LNP requirements is not appropriate, it should, at a minimum, extend the LNP implementation deadline for a period of anywhere between eighteen months to three years.[100] We decline to permit such a delay in the implementation of wireless LNP.[101] As discussed above, we find that wireless number portability will promote competition by making it easier for consumers to switch carriers to pursue better features, coverage, and prices. Delay beyond the one year period we adopt today could impair the development of competition unnecessarily and harm consumers. Carriers have also expressed concern about making LNP-related system-wide changes to their network during their busy holiday sales season, i.e., during the months of November and December.[102] We are not persuaded that these concerns justify allowing an extension beyond the one year period we adopt today. Nothing prevents carriers from implementing portability before the November 24, 2003, deadline if they are concerned about making changes to their networks during their busy holiday sales season.

29. We are not persuaded that the costs of LNP will outweigh the benefits consumers will experience from the ability to switch carriers while retaining the same number. Although supporters of Verizon's petition argue that the costs associated with LNP will be significant,[103] other parties have submitted evidence indicating that the relative cost of implementing LNP will be low. For example, using Cingular's estimate that it will have on-going annual costs associated with LNP of $50 million, ASCENT notes that this cost would be spread across a subscriber base of roughly 30 million subscribers,

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[97] AT&T Reply Comments at 16.

[98] *See* FCC, Common Carrier Bureau, Industry Analysis Division, *Numbering Resource Utilization in the United States as of June 30, 2001*, Table 1 (November 2001) (*November 2001 Numbering Resource Utilization Report*). This report may be downloaded (filename:utilizationjune2001.pdf) from the FCC-State Link Internet site at <http://www.fcc.gov/ccb/stats>.

[99] Cingular Reply Comments at 17.

[100] *See* Letter from Suzanne K. Toller, Davis Wright Tremaine LLP on behalf of AT&T Wireless, to Magalie Roman Salas, Secretary, FCC (filed Jan. 18, 2002) (recommending that Commission forbear from wireless LNP for minimum of 30 months); Letter from Luisa L. Lancetti, Sprint, to Magalie Roman Salas, Secretary, FCC (filed Jan. 18, 2002) (recommending forbearance from wireless LNP for at least three years); Letter from Diane J. Cornell, CTIA, to Magalie Roman Salas (filed Dec. 5, 2001) (recommending that, at minimum, Commission should extend porting deadline for two years); and Letter from Laura H. Phillips, Counsel for Nextel, to Magalie Roman Salas, Secretary, FCC (filed Jan. 22, 2002) (recommending that Commission adopt transition period between implementation of porting and pooling of between eighteen to twenty-four months).

[101] Because we adopt a blanket one year extension of the LNP implementation deadline, we do not address the proposal from Leap Wireless contained in their July 9, 2002 ex parte letter. *See*, Letter from Harvey P. White, Chairman & CEO, Leap Wireless to Michael Powell, Chairman, FCC (filed July 9, 2002).

[102] ALLTEL Comments at 7-8.

[103] *See* Cingular Comments at 4; Sprint Comments at 6; and Verizon Wireless Reply Comments at 17.

resulting in a per-subscriber monthly assessment of 10 to 20 cents.[104] Moreover, Leap Wireless notes that costs associated with LNP will be small compared to other expenses for operations and network upgrades.[105] Citing Sprint's estimate that it will need to spend $26 million to implement LNP, Leap notes that Sprint spent $3.327 billion on capital expenditures last year.[106] Leap states that Sprint's LNP cost would represent a fraction of one percent of its capital expenditures for a single year.[107] We therefore find that the consumer benefits of LNP justify imposing these costs on wireless carriers.[108]

30. We are not persuaded by arguments that a longer extension of the LNP implementation deadline is necessary to allow wireless carriers to focus on compliance with other regulatory requirements.[109] Wireless carriers have in fact already received extensions of time to develop and implement technology associated with E911 and CALEA. For example, as of October 2001, the top six nationwide carriers had received waivers of the Commission's E911 rules[110] and were granted additional time to deploy handsets with automatic location identification (ALI) capability. In addition, with respect to CALEA,[111] a number of carriers have received additional time to implement core capabilities under the J-standard. Considering that this relief allows carriers, in the near term, to devote resources that were dedicated to compliance with these requirements to other endeavors, we find that requiring wireless carriers to deploy LNP after the expiration of the limited extension period we adopt today will not impose an undue burden. Because of the preceding findings, absent extraordinary circumstances, we expect wireless carriers to comply with the schedule set forth in this Order. We would be generally circumspect about granting any additional requests for more time especially if such requests make the same arguments addressed herein.

31. Under the terms of the extension we adopt today, a CMRS carrier located in one of the largest 100 MSAs that receives a request[112] by February 24, 2003, from another carrier to allow end-users to port their telephone numbers, must be capable of doing so by November 24, 2003.[113] After November 24,

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[104] ASCENT Reply Comments at 13.

[105] Leap Wireless Reply Comments at 12.

[106] *Id.* at 13. Sprint later estimated its costs to install LNP to be over $86 million. *Sprint Ex Parte* at 5.

[107] *Id.*

[108] We note that Leap Wireless, Cox Communications, and WorldCom have suggested that, instead of granting forbearance, the Commission should require wireless carriers to implement the capability to "port out" numbers but remove the requirement that carriers be able to "port in" numbers. *See* Cox Comments at 2-4, Leap Wireless Comments at 13-14, and Letter from Tally Frenkel, Associate Attorney, WorldCom, to Magalie Roman Salas, Secretary, FCC (filed Nov. 30, 2001). We do not adopt this approach because, as indicated above, we find that the consumer benefits of LNP justify imposing the associated costs on carriers. Moreover, there is insufficient evidence in the record for us to conclude that the technical requirements for the approach suggested by these parties are appreciably different from those for full LNP, or that it would result in significant cost savings.

[109] *See e.g.*, ALLTEL Comments at 8-10.

[110] *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Request for Waiver by AT&T Wireless Services, Inc., *Order*, 16 FCC Rcd 18253 (2001); Request for Waiver by Cingular Wireless LLC, *Order*, 16 FCC Rcd 18305 (2001); Wireless E911 Phase II Implementation Plan of Nextel Communications, Inc., *Order*, 16 FCC Rcd 18277 (2001); Request for Waiver by Sprint Spectrum L.P. d/b/a Sprint PCS, *Order*, 16 FCC Rcd 18330 (2001); and Request for Waiver by Verizon Wireless, *Order*, 16 FCC Rcd 18364 (2001), *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442 (2000).

[111] See 47 U.S.C. § 1001 et seq.

[112] Requests to allow end-users of one wireless carrier to port their telephone numbers to another carrier are made on a per-switch basis in the scenarios described in this paragraph. *See* 47 C.F.R. § 52.31 (a)(1).

[113] Because we extend the date by which carriers must provide LNP, the date by which carriers must submit requests for deployment is also extended by one year, until February 24, 2003. *See* 47 C.F.R § 52.31 (a)(1)(ii). We note that

(continued....)

2003, wireless carriers in the largest 100 MSAs must be capable of allowing end-users to port their telephone numbers if another carrier has made a request for portability. Such carriers must do so within 30 to 180 days of the request, depending on the nature of the changes required to the particular switch.[114] Outside the largest 100 MSAs, CMRS carriers that receive a request to allow end users to port their telephone numbers must be capable of doing so within six months after receiving the request or within six months after November 24, 2003, whichever is later.[115] This extension of LNP mandates does not alter CMRS carriers' obligation to participate in thousands-block number pooling by November 24, 2002. In addition, this extension does not change the requirement that all CMRS carriers must support roaming nationwide for customers with pooled numbers by November 24, 2002. That is, if a customer with a pooled number roamed into another CMRS carrier's network, that CMRS carrier would support that customer's ability to make and receive calls.[116]

32. We note that several small rural carriers have argued that MIN/MDN separation is not necessary for wireless carriers to participate in pooling and that, if the Commission extends the implementation date for number portability, it should prevent carriers from using MIN/MDN separation to implement pooling.[117] These carriers offered an alternative approach for allowing number pooling to proceed without the need for MIN/MDN separation. Because we only extend the LNP implementation deadline by one year and because there is insufficient evidence in the record for us to conclude that any alternative routing mechanisms these carriers propose are practicable, we see no reason to resolve this dispute in the context of the pending forbearance petition or to otherwise compel the wireless industry to consider any alternative approaches.[118]

33. Finally, we reject the requests of Vermont and California to recognize state authority to independently impose LNP requirements on CMRS carriers.[119] Uniform, national rules for number portability are necessary to minimize confusion and additional expense related to compliance with inconsistent regulatory requirements.

III. CONCLUSION

34. We deny, in part, Verizon's request for permanent forbearance because we find that wireless LNP is necessary to preserve consumer choice and enhance competition among CMRS carriers and between the wireless and wireline industries. We find that extending the LNP implementation deadline is appropriate, however, to reduce burdens associated with the simultaneous implementation of porting and

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the Commission is currently considering whether to change its rules and extend LNP requirements to all carriers in the largest 100 MSAs, regardless of whether they receive a request to deploy LNP. *See* Numbering Resource Optimization, Telephone Number Portability, CC Docket No. 99-200, CC Docket No. 95-116, *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*, FCC 02-73 (rel. Mar. 14, 2002).

[114] *See* 47 C.F.R. § 52.31 (a)(1)(iv).

[115] *See First Memorandum Opinion and Order*, 12 FCC Rcd at 7314, para. 137.

[116] *See* 47 C.F.R. §§ 20.12(c), 52.31(a)(2).

[117] *See* Ex Parte Comments from Missouri RSA No. 7 Limited Partnership, Illinois Valley Cellular Partnerships, Public Service Cellular, Farmers Cellular Telephone, and Northwest Missouri Cellular Limited Partnership (filed Mar. 26, 2002).

[118] We note that carriers choosing not to implement the industry selected MIN/MDN separation solution are not excused from their obligation to deliver valid call back numbers to Public Safety Answering Points (PSAPs), in accordance with the Commission's enhanced 911 (E911) rules. *See* 47 C.F.R. § 20.18(d).

[119] Vermont Commission Comments at 3, 5-8; California Commission Reply Comments at 10-11.

pooling and we extend the LNP implementation deadline for a period of one year until November 24, 2003. The actions we take here will help ensure that our critical numbering resource optimization goals are met while at the same time advancing the achievement of our equally important competition policy and consumer protection goals.

IV. ORDERING CLAUSES

35. Accordingly, IT IS ORDERED THAT, pursuant to sections 4(i) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i) and 160, the Petition for Forbearance filed by Verizon Wireless on July 26, 2001, is DENIED to the extent stated herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

Appendix A

List of Parties

Comments

1. Carl Alexander
2. ALLTEL Communications, Inc. (ALLTEL)
3. Association of Communications Enterprises (ASCENT)
4. AT&T Wireless Services, Inc. (AT&T Wireless)
5. California Public Utilities Commission and the People of the State of California (California Commission)
6. Cellular Telecommunications and Internet Association (CTIA)
7. Cingular Wireless LLC (Cingular)
8. Connecticut Department of Public Utility Control (Connecticut Commission)
9. Dobson Communications Corp. (Dobson)
10. Paul Hass
11. Marc Horowirz
12. Iowa Utilities Board (Iowa Commission)
13. Maryland Public Service Commission (Maryland Commission)
14. Michigan Public Service Commission (Michigan Commission)
15. National Association of Regulatory Utility Commissioners (NARUC)
16. Nebraska Public Service Commission (Nebraska Commission)
17. New Hampshire Public Utilities Commission (New Hampshire Commission)
18. New York Department of Public Service (New York Commission)
19. Ohio Public Utilities Commission (Ohio Commission)
20. Rural Cellular Association (RCA)
21. Amitai Sela
22. Joseph Sokol-Margolis
23. Sprint PCS (Sprint)
24. State Coordination Group
25. Texas Public Utility Commission (Texas Commission)

26. Verizon

27. Verizon Wireless

28. Vermont Public Service Board (Vermont Commission)

29. Jesse Vincent

30. Joint Comments of VoiceStream Wireless and United States Cellular Corp. (VoiceStream and US Cellular)

31. Samuel Weiler

32. WorldCom, Inc. (WorldCom)

Replies

1. ACS Wireless, Inc. (ACS)

2. ALLTEL

3. ASCENT

4. AT&T Wireless

5. BellSouth Corp. (BellSouth)

6. Business Service Center, Inc., Conestoga Mobile Systems, Inc., Com-Nav, Inc., Redi-Call Communications Company and Salisbury Mobile Telephone, Inc. (Paging Companies)

7. California Commission

8. CTIA

9. Cingular

10. Cox Communications, Inc. (Cox)

11. Illinois Commerce Commission (Illinois Commission)

12. Leap Wireless International (Leap Wireless)

13. Mid-Missouri Cellular

14. Neustar, Inc. (Neustar)

15. Nextel Communications, Inc. (Nextel)

16. Pennsylvania Public Utility Commission (Pennsylvania PUC)

17. Public Service Cellular

18. RCA

19. SBC Communications, Inc. (SBC)

20. Sprint
21. United States Telecom Association (USTA)
22. Verizon
23. Verizon Wireless
24. VoiceStream and US Cellular
25. Samuel Weiler
26. Western Wireless Corp. (Western)
27. WorldCom

STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY, DISSENTING IN PART

Re: Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability, WT Docket No. 01-184, CC Docket No. 95-116, Memorandum Opinion and Order (adopted July 16, 2002).

The Commission today extends for one year the compliance deadline for wireless carriers to achieve local number portability (LNP). I believe, however, that the public interest would be better served by a lengthier delay and that the record in this proceeding supports a more substantial delay. In addition, recent events in the capital markets and the Commission's wireless competition report underscore the need for regulatory restraint. Moreover, there is nothing in this record to indicate that there is a substantial risk of competitive harm if we grant a lengthier delay. That is why we should resist substituting our judgment for the market's judgment of how best to serve consumers.

Wireless local number portability is not statutory.[1] Rather, the Commission in 1996 determined that LNP should be required for wireless carriers based largely on concerns about new carriers competing with entrenched cellular providers.[2] Later, LNP was justified based on numbering conservation concerns. In 1999, the Commission granted forbearance from wireless LNP until November 24, 2002 .[3]

The case for temporary forbearance is even stronger today than it was in 1999. As the 1999 Commission put it, "[t]he record indicates that the demand for wireless number portability among CMRS consumers is currently low and that consumers are more concerned about competition in other areas such as price and service quality."[4] The Commission thus found that granting an extension would give carriers greater flexibility to complete build out and other improvements likely to have a more immediate impact on enhancing service to the public and promoting competition.[5] Today, I find little record support for the conclusion that consumers would readily prefer LNP to better coverage, lower prices, or more innovation services. Capital is a zero sum game; resources spent on this mandate in a competitive market will have an impact on other products and services that benefit consumers, including price, coverage, innovation and other mandates such as E911. Moreover, mandates impose costs that sap the strength and viability of the wireless market. Over the longer term, it is the strength of that market that we will rely on to deliver valued service, innovation, coverage and price competition to American consumers. The burden of additional mandates is particularly acute for providers in rural areas or those with small customer bases who are not capable of spreading their costs across millions of customers. I am therefore concerned that the short-term competition considerations that are used to justify this order may be offset by the longer-term impact of weaker and fewer competitors, particularly in rural and underserved areas.

In describing the wireless LNP obligation over the years, the Commission has generally pointed to four factors in assessing the timeliness of the mandate: (1) number conservation, (2) wireline/wireless competition, (3) wireless/wireless competition, and (4) technical considerations. I believe these considerations support a delay into 2004.

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[1] 47 U.S.C. 251 (b)(2).

[2] *Telephone Number Portability*, 11 FCC Rcd 8352 (1996). The emergence of six national wireless carriers without a LNP mandate has eviscerated this rationale.

[3] *Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability*, Memorandum Opinion and Order, 14 FCC Rcd 3092 (1999) ("*1999 Order*").

[4] *Id.* at ¶ 22.

[5] *Id.* at ¶¶ 25-26.

(1) Number Conservation: It was originally thought that LNP was a necessary condition precedent to number pooling conservation measures. That is no longer the case. Indeed, wireless carriers' pooling responsibilities are not, and should not, be delayed by today's Order. Therefore, despite previous concerns, significant numbering conservation is not tied to the LNP mandate.[6]

(2) Wireline/Wireless Competition: Wireline/wireless substitution appears to run at around 3% and is increasing. Continued significant declines in long distance revenues prompted in part by wireless substitution underscores this trend. Thus, it does not appear that LNP is essential for wireline/wireless competition.[7] In addition, wireless carriers who believe that wireline/wireless competition warrants it, can opt into LNP and port numbers from wireline carriers. Indeed, at least one carrier has indicated that it will implement LNP in November 2002 based on its business plan — with or without a mandate. For these reasons, I do not believe wireline/wireless competition supports mandating LNP in the short term.

(3) Wireless/Wireless Competition: In granting forbearance in 1999, the Commission stated that "not only is CMRS competition currently growing rapidly without LNP, but in the near term, LNP does not appear to be critical to ensuring that this growth continues."[8] Along virtually every metric, the competitive landscape has only improved: subscribership has grown, prices have fallen, and build out continues. Nonetheless, I recognize that one day wireless/wireless competition will likely provide the most valid rationale for any wireless LNP obligation. As consumers become increasingly attached to their numbers, the inability to port may distort consumer choice. When the tipping point is reached, one would expect (1) consumers to stick with their current carriers longer and (2) carriers with market share to become more entrenched thus thwarting new competitor entry. In turn, one would expect to see at least two objective signs that the marketplace is ripe for an LNP mandate: (a) a slow-down in churn and (b) smaller carriers supporting LNP. Neither has yet occurred.

> (a) Churn: In 1999, the Commission cited to consistently high churn as further evidence of the lack of consumer harm from forbearance.[9] Prior FCC orders also concluded that consumers did not closely identify with their phone numbers.[10] Therefore, to the extent that consumers have come to identify increasingly with their numbers, one would expect a slow in churn. Based on Commission data, we have not seen any significant decline in churn over time. Nor has any party to this proceeding produced any evidence of a significant decline in churn in any market segment or region of the country. Number portability cannot be justified based on a slow-down in churn due to increased customer identification with their numbers.
>
> (b) Carriers Without Market Share Support: One would expect carriers with smaller market share to be enthusiastic about LNP as a tool to pry away existing customers from larger providers. Yet, while a few carriers (such as Leap) oppose delay, the four smallest national players (Sprint, Nextel, Alltel and Voicestream) all support significant delay. These carriers presumably believe their market resources are better spent in other areas of the business. As the Commission stated in 1999, delay would "give carriers greater flexibility to complete build out and other improvements likely to have a more immediate impact on enhancing service to the public and promoting competition." These other efforts include coverage, customer service, and/or price –

[6] Some have argued that LNP could make a difference in terms of aging numbers etc. Any potential increase in numbering efficiency would be marginal from these efforts.

[7] There may be other very good reasons why wireline customers would not want their numbers ported to a wireless phone — including the availability of that number to telemarketers and directory assistance.

[8] *1999 Order* at ¶ 19.

[9] *Id.* at ¶ 23.

[10] ***Id.*** at ¶ 34.

three areas which consumers consistently identify as very important in selecting a carrier. Shifting these resources to LNP substitutes government's judgment for the carrier's judgment on how best to compete and satisfy customers.

(4) Technological Considerations: Technical concerns also warrant some delay. As the public safety community has pointed out in support of a short delay, there are serious concerns about the impact of imposing pooling and porting and the corresponding impact on E911. We do not yet know how pooling will affect network performance or whether the existing LNP infrastructure is capable of handling the estimated increase in port volumes resulting from wireless implementation.

Based on these considerations, the Commission unanimously agrees that the 1999 Commission guessed wrong as to the appropriate date to impose LNP; however, unlike my colleagues, I believe implementation in 2004 would have been the sounder policy.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: *Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability, Memorandum Opinion and Order (WT Docket No. 01-184; CC Docket No. 95-116) (July 16, 2002).*

Today we grant wireless carriers a one year delay of their local number portability responsibilities. I believe that a shorter delay would have sufficed. But faced with the alternative of a longer delay, and because the Order strongly reaffirms the necessity of LNP rules and states that carriers must meet this new schedule absent extraordinary circumstances, I support the Order.

A brief delay of LNP responsibilities is warranted. If for no other reason, a short delay is appropriate to allow carriers and public safety answering points to coordinate so there are no negative effects on 911 emergency response. APCO, NENA, and NASNA suggested that a short period of time would allow such coordination and would ensure that any network changes are accomplished effectively.[1] I find their arguments persuasive.

Many colleagues from State Commissions around the country believe that porting changes are likely less expensive than carriers suggest. They believe that carriers don't need a long delay to accomplish pooling, and that, in fact, porting actually assists the pooling effort. They also believe that delay would not serve the public interest, would undermine competition, would fail to protect consumers, and could result in number exhaustion problems.[2] I am mindful of these arguments, and appreciate the effort our State colleagues have made in participating in our proceeding. In fact, their input has significantly enhanced the quality of our dialogue on local number portability.

I believe that a delay shorter than one year would have provided carriers with ample time to resolve all LNP, pooling, and public safety concerns. However, I support today's Order because it is significantly superior to such options as an even longer delay or, worse, to forbearance that would result from Commission inaction. A failure to reach agreement within one year of the Petition would have resulted, under the Communications Act, in an automatic grant of the request for permanent forbearance of LNP responsibilities.

In addition, I support this Order because it strongly reaffirms the Commission's determination that LNP rules are in the public interest and important for the protection of consumers, for competition, and because market forces without an FCC rule could create a "first

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[1] *See*, Letter from James R. Hobson, Counsel for NENA, to Magalie Roman Salas, Secretary, FCC (filed Jan. 30, 2002).

[2] *See, generally*, NARUC Comments; California Commission Comments; Connecticut Commission Comments; Iowa Commission Comments; Maryland Commission Comments; Michigan Commission Comments; New Hampshire Commission Comments; New York Commission Comments; Ohio Commission Comments; Pennsylvania Commission Comments; State Coordination Group Comments; Texas Commission Comments; Letter from Loretta M. Lynch, President, California PUC, to Michael Powell, Chairman FC (filed Nov. 19, 2001); Letter from James Bradford Ramsey, NARUC, General Counsel, to Michael Powell, Chairman, FCC (filed Nov. 20, 2001).

mover problem" where no nationwide wireless company would step forward and offer portability unilaterally for fear that other companies would not reciprocate.

Finally, I support this Order because it explains that the Commission reviewed, considered, and found unpersuasive carrier arguments that a permanent waiver, or a waiver of longer than one year, was necessary. The Commission considered arguments that a longer delay was needed to allow time for pooling changes, inter-carrier testing, and to account for delays in the delivery of switch software. We also considered whether a longer delay was necessary because of the potentially large querying volumes associated with porting and pooling, because the delay ends during the busy holiday season, because of the costs of LNP-associated changes, so that carriers could focus on other responsibilities, such as E911 and CALEA, and for reasons raised in the other arguments on the record. The Commission found that none of these arguments justified a delay of longer than one year.

Carriers were granted their first delay of LNP responsibilities in 1998.[3] They received their second delay in 1999.[4] Carriers receive their third delay today. I hope we are resolved that on November 24, 2003, rather than a fourth delay, we will be able to deliver number portability to American consumers.

[3] *Petition for Extension of Implementation of the Cellular Telecommunications Industry Association*, CC Docket No. 95-116, Memorandum Opinion and Order, 13 FCC Rcd 16315 (1998).

[4] *Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations*, WT Docket No. 98-229, Memorandum Opinion and Order, 14 FCC Rcd 3092 (1999).

SEPARATE STATEMENT OF COMMISSIONER KEVIN J. MARTIN, APPROVING IN PART AND DISSENTING IN PART

Re: *Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, Memorandum Opinion and Order, WT Docket No. 01-184, CC Docket No. 95-116

I vote in support of the Commission's decision to deny Verizon's petition for permanent forbearance from the Commission's wireless number local portability (LNP) rules but to grant carriers a twelve-month extension to come into compliance. I dissent, however, from this item's discussion of the legal standard used to assess Verizon's petition.

1. Under the standard adopted by the majority, I do not find a sufficient basis for granting Verizon's petition for permanent forbearance, and I agree that the Commission's LNP mandate is "important" for the protection of consumers.

As I have previously explained, I believe that competition is preferable to regulation. Market forces are the best method of delivering choice, innovation, and affordability to consumers across our nation. But that does not mean that the Commission has no role to play. The Commission has an important role to play in creating an environment in which competition can flourish. And where there are market failures, the Commission may need to step in and take action.

The inability of consumers to keep their phone numbers when they switch carriers can be an impediment to competition. It imposes a cost to switching carriers, which, for many consumers, could be significant. In order to make a switch, consumers must contact the full range of people from whom they expect to receive calls, and many must also change business cards, letterhead, advertisements, and professional directories. These costs not only provide a disincentive for consumers that may want to switch providers, they also disadvantage new entrants to the market.

Thus, LNP can be important for competition. It allows consumers to choose a cheaper or more innovative wireless service without incurring some of these not insignificant switching costs. Moreover, it allows consumers more easily to replace their wireline phones with wireless phones, providing direct competition to the incumbent wireline telephone providers. A recent poll found that 18 % of wireless phone owners use their wireless phones as their primary phones. LNP may be an important part of ensuring that competition with wireline phones continues to grow.

The ability of new entrants to compete with established providers may become an even more important issue as additional deregulatory steps that the Commission has already taken go into effect. For example, the spectrum cap regulations, which limit the amount of spectrum any carrier can hold and thus ensure that there can be at least four competitors in any given market, will sunset January 1, 2003. In the post-spectrum-cap environment, in which some further consolidation may occur, the ability of smaller, new entrants to compete with even larger wireless carriers may be critical to maintaining a vibrant competitive wireless market and thereby ensure that consumers continue to receive the most innovative and affordable services.

For all of these reasons, I support the Commission's conclusion that our LNP rules are consistent with the protection of consumers and thus not to forbear permanently from applying them. I also support the Commission's decision to delay implementing those rules for a period of

one year. Several public safety groups – the National Emergency Number Association (NENA), the Association of Public-Safety Communications Officials-International, Inc. (APCO), and the National Association of State Nine One One Administrators (NASNA) – have sought a sixth-month delay to ensure our E911 rules are implemented effectively in conjunction with LNP. As I have stated before, implementation of E911 must be a fundamental priority, and I agree that a short delay of LNP requirements is appropriate to ensure this implementation is not jeopardized. I also find merit in certain carriers' claims that implementing LNP at the same time that they implement pooling will create hardship, due to the need to ensure the technical workability of each functionality. While I know that some carriers would have liked an even longer delay, I believe we have struck a fair balance between the carriers' needs and those of consumers.

2. Although I support the Commission's conclusion under the forbearance standard adopted by the majority, I would have preferred to change this standard. Section 10 of the Communications Act (47 U.S.C. § 160) states in relevant part: "Any [forbearance] petition shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) of this section within one year after the Commission receives it." 47 U.S.C. § 160(c). Subsection (a) in turn states:

> [T]he Commission shall forbear from applying any regulation or any provision of this chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that –
>
> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.

47 U.S.C. § 160(a).

I believe that the present item fails to give sufficient content to this language, in particular its use of the term "necessary." Section 10 requires, among other things, that forbearance be granted if enforcement of the challenged regulation is not "necessary" to ensure that charges, practices, etc., are just and reasonable, and enforcement of the regulation is not "necessary" for the protection of consumers. 47 U.S.C. § 160(a). In this item, the Commission does not offer a definition of "necessary," although it suggests that the term means something like "consistent with" or "important." For example, the item's analysis rests on the conclusion that "permanent forbearance from the LNP requirements for CMRS carriers is not *consistent with* the protection of consumers" and finds that "we continue to view wireless LNP as providing *important* benefits to consumers." Order ¶¶ 16, 18 (emphasis added). I find this ambiguity particularly troubling, because, in another context, the Commission has recently argued explicitly that the term "necessary" means "useful" or "appropriate." *See* FCC's Petition for Rehearing or Rehearing *En Banc*, *Fox Television Stations, Inc. v. FCC*, Nos. 00-1222, *et al.*, 2002 WL 1343461, at 5 (D.C. Cir. Jun 21, 2002) ("Terms such as 'necessary' and 'required' must be read in their statutory context and, so read, can reasonably be interpreted as meaning 'useful' or 'appropriate' rather

than 'indispensable' or 'essential.'"). As I have explained elsewhere, I believe the term "necessary" should mean something more than merely "useful" or "appropriate." *See* Separate statement of Commissioner Kevin J. Martin, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act; Sunset of Exclusive Contract Prohibition*, Report and Order, CS Docket No. 01-290 (adopted June 13, 2002). Rather, I believe the term should be read in accordance with its plain meaning, to mean something closer to "essential." In any event, I believe that it should mean something more than merely "useful," "appropriate," "consistent with," or "important."

I am also troubled by the fact that this item does not state that the burden, in judging a forbearance petition, is on the Commission. The language of section 10 places affirmative obligations on the Commission. Subsection (c) requires that a forbearance petition is automatically granted (the "petition shall be deemed granted") absent an action of the Commission to deny the petition. Subsection (a) then directs the Commission to "determine" specific factors and then mandates forbearance ("the Commission shall forbear") if those factors are met. This language makes grant of a forbearance petition the default outcome, placing the burden of justifying a denial of a forbearance petition on the Commission. In other words, the statute requires the Commission, when faced with a petition to forbear from applying a particular regulation, to grant the petition unless it can justify continued application of the regulation.

Despite this statutory language, the Commission has, in the past, placed the burden on forbearance petitioners to demonstrate that a regulation is no longer necessary. *See, e.g.*, *Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services*, 13 FCC Rcd 16857, ¶ 25 (1998) ("[T]he record does not show that today's market conditions eliminate all remaining concerns about whether broadband PCS providers' rates and practices are just, reasonable, and non-discriminatory."). While the present item appears to offer some improvement, it does not address this past precedent or explicitly state where the burden lies. In my view, the Commission ought to clarify that the burden lies with the Commission.

For these reasons, I dissent from the item's discussion of the forbearance standard. These are matters of critical importance to me, and, in this item, are of critical significance. As I explained above, I am comfortable deciding that LNP is "useful" for or even "consistent with" the protection of consumers. However, it is less clear that LNP could meet the more appropriate and higher standard of the statute – "necessary" – and I am disappointed that this question was not the subject of our debate.