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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

**RE: Notice of Written and Oral Ex Parte Comments - Two Originals filed in the proceeding captioned: *In the Matter of Numbering Resource Optimization, Notice of Proposed Rulemaking, CC Docket No. 99-200; CC Docket No. 96-98; CC Docket No 96-116; FCC 02-73 (Rel. March 14, 2002).***

Dear Secretary Dortch,

The National Association of Regulatory Utility Commissioners (NARUC) respectfully urges the FCC to act quickly in the above captioned proceeding to affirm its earlier December 2001 finding that ALL carriers in the top 100 MSA meet the current pooling and porting deadlines, regardless of whether they have received a specific request ("BFR") from another carrier to provide LNP.

This letter is being provided to each FCC Commissioner's office. In addition, the undersigned spoke with FCC Commissioner Kevin Martin covering the substance of this letter on October 28, 2002. During the previous week, Mr. Ramsay also spoke by phone with Jordan Goldstein, Sam Feder, and Dan Gonzales covering the basic arguments outlined below.

The National Association of Regulatory Utility Commissioners has been very vocal in pressing for an end to industry requested deadline extensions. We also strongly pressed for elimination of the requirement for a "BFR" for all carriers operating in the top 100 MSAs.

We anticipated, based on, *inter alia*, the text of the March *Further Notice of Proposed Rulemaking* ("FNPRM"), that the FCC would create a record and vote quickly on the issues presented. Indeed, as outlined below, the FNPRM reiterated the FCC's findings (and NARUC's arguments supporting the original FCC findings) that "number portability contributes to the development of competition among alternative providers by . . . {1} allowing customers to respond to price and service changes without changing their telephone numbers, {2} enabl(ing) carriers to alleviate number shortages by implementing code sharing and other mechanisms to transfer unused numbers among carriers that need numbering resources." The FNPM also said: "These benefits weigh in favor of a requirement that all local exchange carriers and covered CMRS carriers in the top 100 MSAs be LNP-capable, regardless of whether they receive a request from a competing carrier. Similarly, these benefits indicate that carriers entering markets in the largest 100 MSAs should be required to be LNP-capable upon entry." We agree and urge the FCC to act quickly to confirm its December 2001 findings.

*The December Order*

Commendably, the FCC's December 28, 2001 *Third NRO Report and Order* eliminated the BFR requirement to respond to a number of state comments that they could not implement pooling throughout an entire MSA, because some carriers had not implemented LNP in certain exchanges within that MSA. Specifically, the FCC found:

"Some states have advised that not all wireline carriers in the top 100 MSAs are LNP capable. Apparently, some carriers have interpreted our rules to require LNP capability only when a request is received from a competing carrier, even in the top 100 MSAs. This issue was brought to light when state pooling trials were implemented and certain carriers had not acquired the necessary capability to participate in thousands-block number pooling. We therefore clarify, on our own motion, that the LNP and pooling requirements extend to all carriers in the largest 100 MSAs, regardless of whether they have received a specific request to provide LNP from another carrier. We also clarify that the "top 100 MSAs" include those MSAs listed in the LNP First Report and Order."

The FCC also clarified that the BFR requirement now only applied outside the top 100 MSAs.

*The March Order and FNPRM*

However, in March of 2002, reacting to industry allegations that it had failed to provide procedural due process before acting, the FCC, on its own motion, reconsidered its findings in the *Numbering Resource Optimization Third Report and Order*, 67 FR 6431 (Feb. 12, 2002), regarding the local number portability (LNP). Specifically, this *Third Order on Reconsideration*, 67 FR 16332 (Apr. 5, 2002) reverses the FCC's December 2001 clarification that these requirements extend to all carriers within the largest 100 MSAs, regardless of whether they have received a specific request from another carrier to provide LNP. Simultaneously, the FCC issued a further NPRM in the above captioned proceeding to determine if it should confirm its December findings:

"For the reasons explained below, we seek comment in the Further Notice on whether we should again extend the LNP requirements to all carriers in the largest 100 MSAs, regardless of whether they receive a request to provide LNP. We also **seek** comment on whether all carriers in the top 100 MSAs should be required to participate in thousands-block number pooling, regardless of whether they are required to be LNP capable."

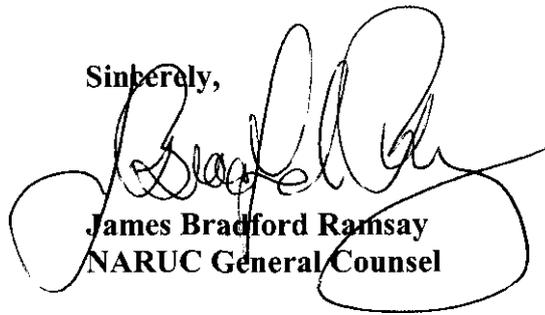
The further NPRM cites with approval NARUC's basic arguments for extending the BFR exemption to wireless carriers noting:

"Upon initially requiring all local exchange carriers and covered CMRS carriers to provide number portability in the largest 100 MSAs, the Commission found that number portability contributes to the development of competition among alternative providers by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers. LNP also can enable carriers to alleviate number shortages by implementing code sharing and other mechanisms to transfer unused numbers among carriers that need numbering resources. These benefits weigh in favor of a requirement that all local exchange carriers and covered CMRS carriers in the top 100 MSAs be LNP-capable, regardless of whether they receive a request from a competing carrier. Similarly, these benefits indicate that carriers entering markets in the largest 100 MSAs should be required to be LNP-capable upon entry. *We seek comment on whether these benefits to competition and numbering resource optimization warrant a reinstatement of the original LNP requirement for all local exchange carriers and covered CMRS carriers in the largest 100 MSAs.* We also seek comment on whether certain small carriers that have switches either within the largest 100 MSAs or in areas adjoining the largest 100 MSAs, but provide service to no or few customers within the MSA, should be exempt from the LNP requirement because they are not likely to receive a request for LNP. {Emphasis Added}."

Again, we urge the FCC to act decisively to confirm the findings of the December order and eliminate the BFR requirement for all carriers operating in the top 100 MSAs.

As always, if you have any questions about this filing, please do not hesitate to contact me at 202.898.2207 or [jramsay@naruc.org](mailto:jramsay@naruc.org).

Sincerely,



**James Bradford Ramsay**  
**NARUC General Counsel**

cc: Jordan Goldstein  
Dan Gonzalez  
Sam Feder  
Matt Brill  
Christopher Libertelli