

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

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	

**COMMENTS ON PETITION FOR WAIVER AND  
CLARIFICATION OF WESTERN WIRELESS CORPORATION**

United States Cellular Corporation ("USCC")<sup>1</sup> hereby supports the successive waiver requests made by Western Wireless Corporation ("Western") in its petition and supplement.<sup>2</sup>

**I. The FCC Should Grant  
Western's Request And  
Also Grant Broader Relief**

In its Petition, Western sought a waiver of, or, in the alternative, a three year extension of time concerning its obligation to provide number "pooling" in the McAllen-Edinburg-Mission Combined Metropolitan Statistical Area (CMSA).

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<sup>1</sup> USCC provides cellular and PCS service in 44 MSA, 100 RSA, 1 MTA, and numerous BTA markets nationwide. Accordingly, it has a large stake in any decision made by the FCC affecting wireless carrier number portability and number pooling obligations.

<sup>2</sup> See Limited, Conditional Petition of Western Wireless For Waiver of Numbering Pooling Obligations in McAllen-Edinburg- Mission, Texas, CC Docket Nos. 99-200 and 95-116 (filed November 27, 2002)(Petition); Supplement to Petition for Waiver and Petition for Clarification of Western Wireless Corporation, CC Docket Nos. 99-200, 96-98 and 95-116 (filed March 3, 2003) (Supplement); Public Notice, The Commission Seeks Comment on the Petition of Western Wireless For Waiver of the Commission's Number Pooling Requirements, DA 03-860, released March 24, 2003.

Western noted that it had not become aware of the possibility that it would have any number porting (or pooling) obligations until December 2001, when the FCC had adopted an order which purported to "clarify" that local number portability and the number pooling were required "in the top 100 MSAs identified in the 1990 U. S. Census Reports and all subsequent updates."<sup>3</sup> Western also discussed the FCC's March 14, 2002 "reconsideration" of its definition of top 100 MSAs (still unresolved) and its request for comment concerning that definition,<sup>4</sup> and the FCC's subsequent reaffirmation, in July, 2002 of the "pooling" requirement in the "top 100" MSAs (however defined) beginning in November 24, 2002.<sup>5</sup>

In light of the uncertainty surrounding the pooling and porting requirements as applied to rural CMRS carriers, Western sought a waiver or extension of the pooling requirement in the CMSA.

Western's Supplement, filed March, 2003 reflects its realization that the "Census" MSA and CMSA definitions are not congruent with existing FCC MSA and RSA market definitions. Thus, many CMRS "RSA" service areas and MSAs below the top 100 may also now be ensnared in the portability and pooling webs.

Accordingly, Western has now asked for either a "clarification" that "RSA" cellular licensees are not subject to the pooling and local number portability (LNP) obligations imposed on "top 100" MSA carriers or an individual waiver of pooling

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<sup>3</sup> Numbering Resource Optimization et al, Third Report and Order and Second Order in Reconsideration in CC Docket Nos. 96-98 and CC Docket 99-200, 17 FCC Rcd 252, ¶127 ("Third Numbering Order").

<sup>4</sup> Number Resource Optimization, 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 95-116, 17 FCC Rcd 4784 ¶10 (2002) ("Numbering Reconsideration Order").

<sup>5</sup> Verizon Wireless's Petition For Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, Memorandum Opinion Order 17 FCC Rcd 14972, ¶31 (2002) ("LNP Forbearance Order").

and porting requirements applicable to the "top 100" MSAs for its own RSAs and MSAs below the "top 100."

USCC would note in support of Western's request that it has made similar arguments in these dockets. In comments, filed May 6, 2002 and February 26, 2003, USCC has discussed the "top 100" issue, noting in May, 2002 that under the 1997 "MSA" list appended to Part 52 of the FCC's Rules, which deals with LNP, USCC would have provided cellular service in all or part of only three of the "top 100" MSAs. However, under the revised list of "top 100 MSAs," as first approved by the FCC in December, 2001 and as referred to in the LNP Forbearance Order of last July, USCC would provide cellular service in all or part of eighteen "MSAs."

USCC does not wish to repeat the arguments put forward and the examples given in our prior comments. Rather, we only wish to stress, one more time, the urgent need for the Commission to deal with this subject in a general context. Western should get its waivers but other carriers should receive comparable treatment. We ask again that the FCC focus on the following two basic problems.

First, the FCC has never defined, by county, the "top 100" MSAs in which pooling and porting are to be required of wireless carriers. Cellular and PCS carriers inhabit a universe of MSA, RSA, BTA, and MTA service areas, which retain the county definitions fixed at the time the services were created. The "Indianapolis MSA," for example, retains the same counties for cellular licensing purposes which it had in 1982, when the first cellular applications were filed.

However, the Commission, in its successive orders dealing with wireless pooling and porting requirements, has repeatedly (and vaguely) referred to Census Bureau MSA definitions which have changed radically over time, and mainly in the

direction of continual expansion through the "CMSA" device. The Commission has not taken those changing MSA definitions into account or discussed their huge impact on companies like Western and USCC at all. Thus, such carriers have simply been left in the dark to figure out what the possible application to them of the ever changing requirements might be. To put it mildly, this approach has lacked the clarity necessary for reasoned decision making.

Second, the FCC has not conformed its policy directives with the LNP and porting rules actually on the books and still not repealed or superseded. For example, Section 52.31(a) of the FCC's Rules provides, in pertinent part, that CMRS carriers must "provide a long term data base method for number portability in the MSAs identified in the "Appendix" to that rule part [the "top 100" MSA list compiled in 1997] only upon "request" that LNP be provided at a given "switch" within an MSA. Section 52.20 of the Rules states that the number "pooling" requirement only applies to carriers "capable of providing local number portability (LNP) and that pooling implementation must be "consistent with the national thousands-block number pooling framework established by the Commission." This makes the obligation to provide pooling dependent on a prior porting obligation.

Pursuant to the Third Numbering Order and reaffirmed in the LNP Forbearance Order, however, pooling requirements were to be applied to "top 100" MSA wireless carriers by November 24, 2002, a full year before the applicability of LNP requirements.

Moreover, the FCC's wireless pooling requirement is not synchronized with the national MSA "thousands block pooling schedule" for 2002 and 2003.<sup>6</sup> Under that schedule, in many markets, wireless carriers would have to pool numbers long before their wireline counterparts. This lack of coordination makes little sense.

Finally, the FCC has stated that CMRS carriers outside the top 100 MSAs must provide LNP on request beginning six months after November 24, 2003.<sup>7</sup> However, the relevant rule, Section 52.31, does not refer to any CMRS portability (or subsequent pooling) obligation outside the top 100 MSAs.

The essential problem remains that it is impossible for CMRS carriers to discern from these rules and conflicting FCC directives what their obligations are and when they apply.

### Conclusion

USCC and other wireless carriers are attempting conscientiously to comply with the FCC's number portability and pooling requirements, and are moving forward with the necessary technological system upgrades to do so. However, it still is urgently necessary for the FCC to: (1) define, by county, the "top 100 MSAs" in which pooling and porting will be required for wireless carriers; (2) set reasonable time periods for compliance with those requirements; and (3) write rules which reflect the actual requirements. Until and unless such actions are taken, Western should be granted the waivers it requests, and other similarly situated wireless carriers should be granted similar relief.

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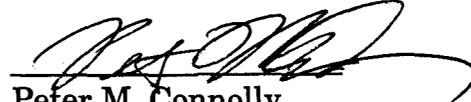
<sup>6</sup> In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, DA 02-949, Order, 17 FCC Rcd 17347 (2002).

<sup>7</sup> See LNP Forbearance Order, ¶31 n.116.

Respectfully submitted,

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