

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

In the Matter of )  
 )  
Telephone Number Portability ) CC Docket No. 95-116  
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To: The Commission )

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**COMMENTS OF VIRGIN MOBILE USA, LLC ON THE  
PETITION FOR DECLARATORY RULING OF THE  
CELLULAR TELEPHONE & INTERNET ASSOCIATION**

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**I. INTRODUCTION AND OVERVIEW**

Virgin Mobile USA, LLC (“VMU”) submits these Comments addressing the Petition for Declaratory Ruling (“Petition”) filed by the Cellular Telephone & Internet Association (“CTIA”) on May 13, 2003.<sup>1</sup> As VMU has stated in previous submissions to the Federal Communications Commission (“FCC” or “Commission”),<sup>2</sup> VMU supports the rapid implementation of both wireless-wireless and wireline-wireless local number portability (“LNP”). The United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) properly affirmed the FCC’s wireless LNP rules, paving the way for their implementation later this year.<sup>3</sup> To maximize consumer choice in selection of wireless carriers and to increase competition in the market, VMU supports commencement of wireless-wireless LNP on November 24, 2003, as currently scheduled, even if wireline-wireless portability cannot be implemented on the same

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<sup>1</sup> See *Public Notice*, “Comments Sought on CTIA Petition for Declaratory Ruling on Local Number Portability Implementation Issues,” CC Docket No. 95-116, DA 03-1753 (released May 22, 2003) (“*Public Notice*”).

<sup>2</sup> See, e.g., Reply Comments of Virgin Mobile USA, LLC, filed on March 13, 2003, in CC Docket No. 95-116.

date. Certain matters raised in the Petition should, however, be addressed as soon as possible.

These matters include:

- Defining the top 100 markets;
- Eliminating the ambiguous “*bona fide* request” (“BFR”) obligation;
- Establishing reasonably short portability provisioning intervals;
- Clarifying that service level agreements are the only inter-carrier agreements needed for LNP; and
- Roaming of a ported number outside the top 100 markets.

With the exception of the need for BFRs and the definition of the top 100 markets, these issues concern wireline-wireless LNP and do not have a significant bearing on wireless-wireless LNP. Thus, they should be resolved expeditiously by the Commission, without further delaying the current wireless-wireless LNP implementation deadline.

## **II. DEFINING THE TOP 100 MARKETS**

The FCC’s *NRO Third Order on Reconsideration* altered the definition of the top 100 MSAs, but the ruling was subsequently reversed and the issue opened for public comment.<sup>4</sup> There is, then, continued uncertainty regarding the definition, particularly among carriers that operate in markets not initially part of the top 100 MSAs, but now included in the top 100 MSAs under the FCC’s revised definition. The Commission should act quickly to clarify the definition of the top 100 MSAs to avoid delaying wireless-wireless LNP.

## **III. ELIMINATING THE NEED FOR *BONA FIDE* REQUESTS (“BFRs”)**

The need for BFRs remains uncertain. Although the Commission’s *NRO Third Order on Reconsideration* eliminated the BFR obligation, the Commission later backtracked on that decision and solicited comment on the issue. In that proceeding, the FCC tentatively concluded that all carriers in the top 100 MSAs should be LNP-capable as of the November 2003 deadline

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<sup>3</sup> *Cellular Telecommunications & Internet Association et al. v. Federal Communications Commission*, No. 02-1264 (D.C. Cir., June 6, 2003).

<sup>4</sup> Petition at 30-31.

to maximize competition and efficient number resource allocation, regardless of whether they received BFRs.<sup>5</sup> The FCC has not yet issued a ruling in this proceeding. In light of the uncertainty concerning the BFR requirement, some commercial mobile radio service (“CMRS”) licensees submitted BFRs to their counterparts; others reportedly did not.<sup>6</sup>

VMU agrees with the FCC’s initial decision to eliminate BFRs and require all carriers in the top 100 markets to be LNP-capable as of November 24, 2003. As a non-licensee, VMU is not entitled to submit BFRs to other carriers under the Commission’s rules.<sup>7</sup> The services offered by a mobile virtual network operator (“MVNO”) such as VMU and those offered by CMRS licensees are perceived by consumers as being interchangeable. It would therefore be contrary to the public interest in a competitive telecommunications market for MVNOs to be treated differently with respect to the procedures for obtaining LNP.<sup>8</sup>

Press reports indicate that BFRs were filed in the top 100 markets by various CMRS licensees by the February 24, 2003 deadline. The BFR requirement is arguably meaningless because there is demonstrated demand for wireless LNP in the top 100 markets. To facilitate widespread wireless LNP implementation by the November 24, 2003, deadline, and to reduce burdensome, unfair, and unnecessary administrative hurdles which threaten to thwart this objective, the Commission should immediately eliminate the BFR requirement.

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<sup>5</sup> *Number Resource Optimization, Telephone Number Portability*, CC Docket Nos. 99-200, 95-116, Third Order on Reconsideration, Third Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, FCC 02-073 (Mar. 14, 2002).

<sup>6</sup> *Verizon Wireless Fights LNP, Despite Requests, Schmuers’ Praise*, Communications Daily, Feb. 26, 2003, at 7.

<sup>7</sup> See 47 C.F.R. Sec. 52.31(a)(1)(i) (defining carriers permitted to make portability requests as “licensed CMRS provider[s]”).

<sup>8</sup> Therefore, an MVNO would have to “piggy-back” on the BFRs filed by its underlying carrier(s), potentially without having had any input as to the markets for which BFRs were filed. Further, because CMRS licensees need not provide a list to identify markets in which they submitted BFRs, the only way for MVNOs such as VMU to learn which markets have BFRs is go through the burdensome process of requesting that information from every carrier. See 47 C.F.R. Sec. 52.31(a)(1)(iii) (“a covered CMRS provider must make available upon request to any interested party a list of its switches for which number portability has [and has not] been requested”).

#### **IV. ESTABLISHING SHORT PORTING PROVISIONING INTERVALS**

CTIA correctly points out that a lengthy porting interval would eliminate the consumer benefits of LNP by discouraging consumers from migrating to a new carrier despite the theoretical availability of LNP.<sup>9</sup> VMU therefore supports CTIA's position that the wireless-wireless porting interval should be no longer than 2-1/2 hours.<sup>10</sup> There is industry consensus on the wireless-wireless interval, and once the existing databases are modified, the timeframe for porting numbers should be little different from that to assign a new customer a new number or to move an existing customer's number to a new mobile phone.

VMU also agrees with CTIA's observations that a disproportionately long porting interval for wireline-wireless LNP may have a chilling effect on wireline-wireless portability generally. True intermodal competition requires that there be comparable porting intervals for wireless-wireless LNP and wireline-wireless LNP. VMU therefore supports CTIA's request for FCC intervention to reduce the wireline-wireless porting interval to remedy the current disparity in order to promote intermodal competition.

#### **V. CONFIRMING SERVICE LEVEL AGREEMENTS SUFFICIENT FOR LNP**

The FCC must determine the type of inter-carrier agreement that will govern porting between wireline and wireless carriers. VMU supports CTIA's position that service level agreements ("SLAs"), as opposed to interconnection agreements, are sufficient to coordinate porting between carriers.<sup>11</sup> VMU agrees with CTIA that requiring interconnection agreements would be unnecessary, burdensome, and would likely delay wireline-wireless LNP

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<sup>9</sup> Petition at 14-15.

<sup>10</sup> Petition at 7.

<sup>11</sup> CTIA also raised this issue in a previous petition for declaratory ruling on wireline-wireless LNP issues (*see* Petition for Declaratory Ruling of CTIA filed in Docket No. 95-116 on January 27, 2003) and received VMU's support on the record in that proceeding (*see* Reply Comments of Virgin Mobile USA, LLC filed in CC Docket No. 95-116 on March 13, 2003).

implementation.<sup>12</sup> Further, as CTIA observes, “LEC insistence on detailed interconnection negotiations simply for the purpose of implementing number portability is at odds with the decision not to regulate CMRS providers as LECs under sections 251 and 252.”<sup>13</sup> Thus, VMU supports CTIA’s request for clarification on this issue to resolve lingering uncertainty and to facilitate implementation of the long-awaited goal of wireline-wireless LNP.

## **VI. ROAMING WITH PORTED NUMBERS OUTSIDE THE TOP 100 MARKETS**

Several small and rural carriers have sought partial waivers of the requirement to support nationwide roaming for ported and pooled numbers. CMRS providers were required to support nationwide roaming for pooled numbers by November 24, 2002, and for ported numbers one year later, as of the November 24, 2003, wireless LNP implementation deadline. As CTIA explains, the purpose of this requirement is to ensure that customers with pooled or ported numbers roaming into other markets have the ability to make and receive calls.<sup>14</sup> VMU agrees with CTIA that waivers of this requirement may threaten seamless nationwide roaming, and that the FCC must be aware of this risk in considering such waivers. Resolution of this issue is particularly important to public safety because it may undermine efforts to implement enhanced 911 services.

VMU acknowledges, however, that the competing considerations at issue here – maintaining nationwide roaming versus minimizing financial burdens on smaller carriers – may take time to resolve. VMU respectfully submits, however, that the FCC should not delay implementation of wireless-wireless LNP pending resolution. VMU urges consideration of interim solutions, such as whether roaming billing is done, or could be done, by credit card to

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<sup>12</sup> Petition at 16-21.

<sup>13</sup> Petition at 19.

<sup>14</sup> CTIA Petition at 32.

enable nationwide roaming capability, and to maintain the wireless LNP implementation date while carrier waiver requests are pending and if they are granted.

## VII. CONCLUSION

VMU urges the Commission to resolve the issues raised in CTIA's Petition quickly so carriers may implement wireless-wireless and wireline-wireless concurrently on November 24, 2003. VMU notes that most issues raised by CTIA concern only wireline-wireless LNP and have no bearing on wireless-wireless LNP implementation. Those that do pertain to wireless-wireless LNP are relatively straightforward and should be addressed quickly. If expeditious resolution of all aspects of CTIA's Petition is not possible, VMU respectfully requests that Commission consideration of wireline-wireless LNP issues not cause further delay to the implementation of wireless-wireless LNP.

Respectfully submitted,

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