

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

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
)	
CTIA Petition for Declaratory Ruling on Local Number Portability Implementation Issues)	
)	
)	

To: The Commission

COMMENTS OF WESTERN WIRELESS CORPORATION

Western Wireless Corporation¹ (“Western Wireless”) hereby submits these comments in the above-captioned proceeding in response to the Federal Communications Commission’s (“FCC’s” or “Commission’s”) Public Notice of May 22, 2003.² In the *Public Notice* the Commission sought comment on the Cellular Telecommunications & Internet Association (“CTIA”) Petition for Declaratory Ruling (“*Petition*”) of the Commission’s local number portability (“LNP”) requirements.³ Western Wireless agrees with CTIA that clarification of certain LNP implementation issues is required.

¹ Western Wireless provides wireless telecommunications services in 19 western states through a state-of-the-art network infrastructure capable of serving the basic and advanced telecommunications needs of rural business and residential consumers. The Company operates cellular systems under the Cellular One brand name, serving over 1,000,000 subscribers in 18 Metropolitan Statistical Areas (“MSAs”) and 88 Rural Service Areas (“RSAs”).

² *Comment Sought on CTIA Petition for Declaratory Ruling on Local Number Portability Issues*, Public Notice in CC Docket No. 93-116, DA 03-1753 (May 22, 2003) (“*Public Notice*”).

³ 47 C.F.R. § 52.20(b); *see also Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association*, CC Docket No. 95-116 (filed May 13, 2003) (“*Petition*”).

INTRODUCTION

On May 13, 2003, CTIA filed its second *Petition* requesting that the Commission resolve several additional LNP issues in light of technical and operational uncertainties faced by the wireless industry.⁴ CTIA's *Petition* explained how many wireless LNP issues have already been resolved by industry groups, including the North American Numbering Council ("NANC").⁵ Yet, due to the complexity of LNP implementation, a number of matters remain unclear and warrant further Commission action.

Western Wireless seeks to meet its porting obligations successfully, and urges the Commission to provide the clarification necessary for this important transition. To this end, Western Wireless requests that the Commission confirm: (1) that Service Level Porting Agreements ("SLA") may be used, rather than interconnection agreements, to define the terms and conditions of carrier LNP arrangements; (2) that customers should not experience reduced local calling scope as a result of porting their number from a wireline carrier to a wireless carrier; and (3) that the definition of the top 100 MSAs adopted in the original LNP rules will be used to determine the LNP deployment schedule of wireless carriers.

I. Number Portability Should Be Achieved Without Interconnection Negotiations

Western Wireless requests that the Commission provide clarity on the method by which intercarrier LNP service contracts should be memorialized, particularly with the ILECs. CTIA and its members have identified a meaningful resolution to this issue through the development of

⁴ On January 23, 2003, CTIA filed a petition for declaratory ruling with the FCC seeking to resolve whether wireline carriers are obligated to port their customers' telephone numbers to wireless carriers when the wireless service area overlaps with the wireline carriers' rate center. *Petition for Declaratory Ruling of the Cellular & Internet Association*, CC Docket No. 95-116 (filed Jan. 23, 2003) ("*Rate Center Petition*").

⁵ *Petition* at 2-3.

an SLA template.⁶ Despite ILEC arguments to the contrary, there are strong legal and policy reasons why carriers should not be required to enter into interconnection negotiations, particularly with the LECs, regarding LNP implementation.

The Commission has clear statutory jurisdiction to permit the use of SLAs. Section 251(e) clearly gives the Commission “*exclusive jurisdiction*” over the administration of numbering.⁷ The ILECs argue in support of requiring Section 252 interconnection agreements between the parties, but Section 252 only applies to those elements set forth in Sections 251(b) and (c).⁸ With respect to CMRS carriers, however, LNP is not required pursuant to Sections 251(b) and (c), and wireline-CMRS relationships are under the authority of the FCC, not the states.⁹ The Commission has found that it has the distinct authority to implement *wireless* LNP under Section 332.¹⁰ In addition, full-blown interconnection agreements would unnecessarily require great financial expense and extensive state-by-state negotiations. Western Wireless asks that the Commission specifically permit the use of SLAs to govern the terms and conditions of LNP between carriers.

⁶ *Rate Center Petition* at 3; *see also Petition* at 16-17.

⁷ 47 U.S.C. § 251(e); *see also Petition* at 17.

⁸ *See* 47 U.S.C. § 252; *see also Rate Center Petition*, SBC Comments at 7-8.

⁹ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499 (1996) (“*Local Competition Order*”); *aff’d*, *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997).

¹⁰ 47 U.S.C. § 332; *See Verizon Wireless’ Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability*, Memorandum Opinion and Order, 17 FCC Rcd 14972, 14986 (rel. July 26, 2002) (“*LNP MO&O*”); *see also Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8425-26 (1996) (“*LNP Order*”).

II. The Commission Should Clarify Rating and Routing Issues Necessary to LNP Implementation

Western Wireless would also like the Commission to clarify that calls to ported numbers that are still rated in their local calling areas cannot be billed as toll, even if after being ported they are being switched at a location outside the wireline carrier's local calling area.¹¹ The FCC established the Metropolitan Trading Area ("MTA") as the local calling area for traffic to or from a CMRS network.¹² Some LECs have argued that any traffic, including locally rated traffic, that must be routed off of their networks would be sent to an IXC on toll trunk groups.¹³

Western Wireless supports the Commission granting Sprint's outstanding Petition for Declaratory Ruling ("*Sprint Petition*") requesting clarification of the ILECs' rating and routing practices.¹⁴ The ILECs' arguments ignore (1) the efficiencies of switch placement in the wireless network—where a wireless switch is not maintained in every wireline rate center, and (2) the FCC's determination that all intraMTA traffic to or from CMRS carriers is local. Western Wireless asks the Commission to ensure that consumers are not penalized for porting from a wireline to wireless carrier through the loss of inbound local calling.

¹¹ *Petition* at 24-26.

¹² *See Local Competition Order*, 11 FCC Rcd. at 16014 (1996); "Telecommunications traffic" is defined as intraMTA traffic to or from a CMRS network. 47 C.F.R. § 51.701(b)(2). Specifically, FCC rule 54.703(b) provides that: "A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." 47 C.F.R. §54.703(b).

¹³ *Rate Center Petition*, OPASTCO Comments at 2 (filed Feb. 26, 2003).

¹⁴ *Sprint Corp. Petition for Declaratory Ruling Regarding the Rating and Routing of Traffic by ILECs*, CC Docket No. 01-92, Petition of Sprint (filed May 9, 2002); *see also Comment Sought on Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic*, CC Docket No. 01-92, *Public Notice*, 17 FCC Rcd 13,859 (2002); *Sprint Corp. Petition for Declaratory Ruling Regarding the Rating and Routing of Traffic by ILECs*, CC Docket No. 01-92, Joint Comments of VoiceStream Wireless Corporation and Western Wireless Corporation (filed August 8, 2002) ("*VoiceStream/Western Joint Comments*").

Both the local dialing parity and local number portability rules also require the LECs to treat calls to ported numbers as local calls. The local dialing parity rules would be violated if the LEC requires callers to add a “+1” prefix to calls to a ported number that was not required prior to the number being ported.¹⁵ The addition of a “+1” prefix would also violate the requirement in the local number portability rules that end users retain their existing telecommunications numbers “without impairment of ... convenience” when changing providers.¹⁶

III. The Commission Must Define the Geographic Scope of LNP Deployment

Finally, Western Wireless requests that the Commission provide certainty regarding which markets are within the top 100 MSAs by adopting the original list included in the 1996 *First Report and Order*.¹⁷ CMRS carriers are required to deploy LNP by November 24, 2003 only in those markets that fall within the top 100 MSAs.¹⁸ As Western Wireless has explained in previous filings with the Commission, the Commission’s *Third Report and Order* redefined the existing list of MSAs included within the top 100 by combining contiguous MSAs into larger “combined MSAs” (“CMSAs”) on the Census Bureau’s list of the largest 100 MSAs, thus adding markets into the top 100 MSAs that were previously excluded.¹⁹ The Commission subsequently reversed in part the *Third Report and Order*, but requested comment on whether it

¹⁵ LECs have a “duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.” 47 U.S.C. § 251(b)(3).

¹⁶ 47 C.F.R. § 52.21(i).

¹⁷ *LNP Order*, 11 FCC Rcd 8352; *see also Petition* at 30-31.

¹⁸ 47 C.F.R. § 52.31.

¹⁹ *Numbering Resource Optimization*, CC Docket Nos. 99-200, 96-98, 95-116, Comments of Western Wireless (filed May 6, 2002) (“*Western Third Report Comments*”); *see Numbering Resource Optimization*, Third Report and Order, 17 FCC Rcd 252 (2001).

should adopt the revised list of top 100 MSAs.²⁰ If the Commission uses the revised list of top 100 MSAs, at least one of Western Wireless' markets that was outside the top 100 MSAs will be swept within the top 100 MSAs.²¹

Without a Commission decision clearly setting the parameters of the top 100 MSAs, the scope of Western Wireless' obligation to provide LNP by the November 24, 2003 deadline is not defined. Western Wireless further pointed out to the Commission that it is unclear, per the updated year-2000 CMSA list, whether certain RSAs would be considered within the top 100 MSAs despite contradictory language in the Commission's rules.²²

Given the complexity and expense of the LNP requirements, it is incumbent upon the Commission to specify its parameters clearly and well in advance of the deadline. Western Wireless therefore asks that the Commission reject the conclusions reached in the *Third Report and Order* and permit the top 100 MSA boundaries to stand as originally conceived in the 1996 *First Report and Order*.

²⁰ *Numbering Resource Optimization*, CC Docket Nos. 99-200, 96-98, and 95-116, Third Order on Reconsideration, 17 FCC Rcd 4784 (2002).

²¹ *Western Third Report Comments* at 4; *Limited, Conditional Petition of Western Wireless for Waiver of Number Pooling Obligations in McAllen-Edinburg-Mission, Texas*, CC Docket Nos. 99-200 and 95-116 (filed Nov. 27, 2002) ("*Western Wireless Waiver Petition*").

²² *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) ("*Western Wireless Supplemental Waiver Petition*") at 5; *see also* 47 C.F.R. § 22.909(b) (establishing RSAs to include "all areas outside defined Metropolitan Statistical Areas (MSAs) and New England County Metropolitan Areas (NECMAs)").

CONCLUSION

For the reasons stated above, Western Wireless respectfully requests that the Commission clarify the outstanding wireless LNP implementation issues as described herein.

Respectfully submitted,

WESTERN WIRELESS CORPORATION

By: _____/s/_____
Gene A. DeJordy, Esq.
Vice President of Regulatory Affairs
3650 131st Avenue, SE
Suite 400
Bellevue, WA 98006
(425) 586-8055

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