

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

In the Matter of:	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Franklin Telephone Company, Inc.,	)	
Inter-Community Telephone Company, LLC, and	)	
North Central Telephone Cooperative, Inc.,	)	
	)	
Petitions for Waiver of Section 52.23(c)	)	
of the Commission's Rules	)	

**OPPOSITION OF T-MOBILE USA, INC.**

T-Mobile USA, Inc. (“T-Mobile”) hereby opposes the petitions filed by Franklin Telephone Company, Inc. (“Franklin”), Inter-Community Telephone Company, LLC (“Inter-Community”), and North Central Telephone Cooperative, Inc. (“North Central”) (collectively, the “Companies”) for waiver of the Federal Communications Commission’s (“FCC’s” or “Commission’s”) rules that require local exchange carriers (“LECs”) to provide local number portability (“LNP”) to a requesting Commercial Mobile Radio Service (“CMRS”) provider by November 24, 2003.<sup>1</sup> T-Mobile respectfully requests the Commission to deny all three petitions because the Companies have failed to identify any unique facts or special circumstances that could justify waiver of the FCC’s LNP rules, and grant of a waiver based on the grounds the Companies assert would undermine the purpose of the LNP rules.

The FCC has the discretion to waive its rules “for good cause shown.”<sup>2</sup> As federal courts have explained, “the FCC may exercise its discretion to waive a rule where particular facts

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<sup>1</sup> Franklin Telephone Company, Inc. Petition for Waiver, filed Sept. 24, 2003 (Franklin Petition); Inter-Community Telephone Company, LLC Petition for Waiver, filed Sept. 24, 2003 (Inter-Community Petition) North Central Telephone Cooperative, Inc. Petition for Waiver, filed Sept. 24, 2003 (North Central Petition) (collectively, the “Petitions”).

<sup>2</sup> 47 C.F.R. § 1.3.

would make strict compliance inconsistent with the public interest.”<sup>3</sup> Therefore, a “waiver from the Commission is appropriate if *special circumstances* warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.”<sup>4</sup> “The burden . . . falls on the petitioner . . . to demonstrate the unique facts on which the Commission may rely in considering whether a waiver would be in the public interest.”<sup>5</sup> Here, the petitioners have failed to identify, let alone demonstrate, any unique facts or special circumstances that could warrant a deviation from the FCC’s LNP rules, as explained in detail below.

**I. THE COMPANIES HAVE FAILED TO IDENTIFY ANY UNIQUE FACTS THAT COULD JUSTIFY WAIVER OF THEIR STATUTORY LNP OBLIGATION**

The Companies fail to cite any special circumstances that warrant a deviation from the statutory obligation LECs bear to implement LNP. Each company provides a single paragraph description of the “technical hurdles” that allegedly warrant the requested waiver, and none provided any evidentiary support for the allegations. Each of the alleged “technical hurdles” is addressed below.

**A. The Costs that the Companies Will Incur To Implement LNP Are No Higher than those Incurred by All Other Carriers, Including Rural Carriers**

The Companies claim that “[a]pplication of the requirement to implement number portability by the WLNP Deadline would impose a requirement that is unduly economically burdensome.”<sup>6</sup> The Companies do not claim that special circumstances cause them to incur additional

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<sup>3</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”), citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied 409 U.S. 1027 (1972) (“*WAIT Radio*”).

<sup>4</sup> *Request for Waiver by Marin County Office of Education, San Rafael, California*, 17 FCC Rcd 22441, ¶6 (2002) (emphasis added).

<sup>5</sup> *Federal-State Joint Board on Universal Service*, 17 FCC Rcd 3518, ¶4 (2002).

<sup>6</sup> See, e.g., *Inter-Community Petition* at 6; *Franklin Petition* at 6; *North Central Petition* at 6.

costs to implement LNP that other carriers do not incur. Indeed, the Companies do not even attempt to compare their costs with the costs of other carriers that must implement LNP. Rather, the Companies explain that, “[a]s a small and rural telephone company, the Compan[ies] ha[ve] a limited base over which to spread [their] costs.”<sup>7</sup> However, as the Companies themselves admit, the Commission took this fact into account when it ordered rural telephone companies to implement LNP upon request by another carrier.<sup>8</sup> Nonetheless, the Companies fail to identify any special circumstances which demonstrate that the assumptions upon which the FCC based this requirement do not apply here.

Since the Companies cannot identify any special circumstances that could justify a waiver, they claim instead that a waiver of the LNP obligation would serve the public interest because “competition is not imminent” in the areas covered by their switches, despite the fact that each of the Companies has received at least one Bona Fide Request (“BFR”) from a CMRS provider. The Companies argue that they had no obligation to begin implementing LNP because the BFRs allegedly were not valid. However, the reasons that the Companies cite for ignoring the BFRs are fundamentally inconsistent with well-established precedent and, therefore, cannot form the basis for waiver of the Commission’s LNP rules.

The Companies assert two grounds for rejecting the BFRs. *First*, the Companies claim that the BFRs represented a request for “location” or “geographic” portability, and demanded that the CMRS providers who submitted the BFRs “provide any additional facts to demonstrate that the request is not for geographic location portability.”<sup>9</sup> Rejecting a BFR on this pretext is blatantly illegal. Specifically, it is not necessary in a BFR – which merely notifies a carrier that another carrier intends to serve the same area and permit customers to port numbers between the two carriers – to provide any

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<sup>7</sup> See, e.g., *Inter-Community Petition* at 5-6; *Franklin Petition* at 6; *North Central Petition* at 6.

<sup>8</sup> See, e.g., *Inter-Community Petition* at 6-7; *Franklin Petition* at 6-7; *North Central Petition* at 6-7.

<sup>9</sup> See, e.g., *Inter-Community Petition* at 4; *Franklin Petition* at 4-5; *North Central Petition* at 4-5.

particular showing on issues like location portability. Rather, to the extent the Companies have legitimate concerns about location portability, they should have honored the BFR and later question specific port requests that appear to the companies to be requests for location portability. Indeed, in light of the unreasonable and inaccurate interpretation of location portability asserted by the Companies, it would have been impossible for a CMRS provider to provide any facts that could have satisfied the Companies demands.

It has been settled law since 1996 that the porting of a number from a wireline carrier to a CMRS provider is “service provider portability” rather than “location” or “geographic” portability. Specifically, Section 251 of the Act imposes on all LECs “[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.”<sup>10</sup> Pursuant to Section 251, the Commission required LECs to implement long-term “service provider portability,”<sup>11</sup> which the Commission defined as “the ability of end users to retain the same telephone numbers as they change from one service provider to another.”<sup>12</sup> By contrast, the Commission did not require LECs to implement long-term “location” or “geographic” portability, which the Commission defined as “the ability of end users of telecommunications services to retain existing telecommunications numbers when they move outside the area served by their current central office.”<sup>13</sup>

The LECs’ duty to provide service provider portability extends to all carriers, including wireless carriers. As the Commission explained in the LNP First Report and Order,

Because the 1996 Act’s definition of number portability requires LECs to provide number portability when customers switch from any telecommunications carrier to any

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<sup>10</sup> 47 U.S.C. 251(b)(2).

<sup>11</sup> *Telephone Number Portability*, 11 FCC Rcd 8352 (1996) (“*LNP First Report and Order*”).

<sup>12</sup> *LNP First Report and Order*, ¶172.

<sup>13</sup> *Id.*, ¶174.

other, the statutory obligation of LECs to provide number portability runs to other telecommunications carriers. Because CMRS falls within the statutory definition of telecommunications service, CMRS carriers are telecommunications carriers under the 1996 Act. ***As a result, LECs are obligated under the statute to provide number portability to customers seeking to switch to CMRS carriers.***<sup>14</sup>

The Commission also ruled that it regards “switching among wireline service providers and broadband CMRS providers, or among broadband CMRS providers, as changing service providers, not changing services . . . .”<sup>15</sup> In so ruling, the Commission clarified that an end user who wants to switch from a wireline carrier to a wireless carrier is requesting “service provider portability,” not “location portability,” and the Act requires the LEC to comply with the end user’s request. Accordingly, the Companies had no basis for demanding CMRS providers to demonstrate that they were not requesting geographic portability. As common carriers subject to the Act’s LNP requirements, the Companies have an obligation to be familiar with the FCC’s rulings regarding the duty of LECs to port numbers to wireless carriers. Accordingly, the Companies cannot now claim the right to ignore a BFR from a CMRS carrier merely because they allegedly were not certain whether geographic portability was being requested.<sup>16</sup>

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<sup>14</sup> *Id.*, ¶8 (footnotes omitted and emphasis added).

<sup>15</sup> *Id.*, ¶172.

<sup>16</sup> The Companies also claim that “[e]ven assuming the CMRS provider was able to demonstrate that it covers the Company’s service territory, there is no indication that any of the Company’s subscribers have an interest in substituting their wireline phone, particularly where a wireless phone may very well have intermittent service in rural areas,” *Inter-Community Petition* at 7, and that they “have yet to receive even an inquiry, let alone a request from a customer, seeking to disconnect his/her wireline service and have his/her number ported to a CMRS provider.” *Id.* at 8. As an initial matter, it is not surprising that customers have yet to inquire about disconnecting his/her wireline service and porting his/her number to a CMRS provider since the deadline for implementation of LNP has yet to arrive and CMRS providers have yet to introduce marketing campaigns designed to persuade customers to port their numbers from wireline to wireless in the areas served by the Companies. In any event, neither the Act nor the Commission’s rules predicate the obligation to implement LNP upon an inquiry by a customer, and thus the claims of the Companies, even if true, are irrelevant and cannot form the basis for a waiver.

*Second*, the Companies claim that the BFRs were invalid because the CMRS providers did not have an interconnection agreement with the Companies.<sup>17</sup> Rejecting a BFR on this pretext is also fundamentally inconsistent with the Act and the Commission’s rules. As the Companies themselves recognize, LNP is required upon request by “another telecommunications carrier in areas in which that telecommunications carrier is operating *or plans to operate*.”<sup>18</sup> The plain language of the rule explicitly permits any carrier, including a CMRS provider, to submit a BFR in an area where it is not currently operating: the only requirement is that the CMRS provider plans to operate in the area in the future. Submission of the BFR itself is adequate to signal intent to operate in the area, and the Companies had no right to demand that the CMRS providers submit additional information to prove an intent to provide service in the area.

The Companies claim that their demands for verification of “plans to operate” were justified based on the fact that the CMRS providers did not have direct interconnection agreements with the Companies.<sup>19</sup> However, a CMRS provider can operate in an area without entering into a direct interconnection agreement with the ILEC serving that area, and nothing in the Act or the Commission’s rules requires a CMRS provider to enter into a direct interconnection agreement with an ILEC before that ILEC is obligated to comply with Act and the Commission’s rules regarding LNP. As the FCC recently confirmed in the wireless-to-wireless LNP context, “[n]othing in the rules provides that wireless carriers must port numbers only in cases where the requesting carrier has . . . a direct interconnection in the rate center associated with the number to be ported . . . . Similarly any agreements establishing terms for interconnection are also not required between wireless carriers.”<sup>20</sup>

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<sup>17</sup> See, e.g., *Inter-Community Petition* at 4; *Franklin Petition* at 4-5; *North Central Petition* at 4-5.

<sup>18</sup> 47 C.F.R. 52.23(c).

<sup>19</sup> See, e.g., *Inter-Community Petition* at 4; *Franklin Petition* at 5; *North Central Petition* at 5.

<sup>20</sup> *Telephone Number Portability*, CC Docket No. 95-116, FCC 03-237, at ¶21 (rel. Oct. 7, 2003).

The FCC's ruling recognizes that a CMRS provider can operate in an area and require LNP from another CMRS provider serving that same area even if the carriers have no direct interconnection agreement. There is no reason – legal, technical or operational – to apply a different standard for wireline-to-wireless portability. In any event, the FCC has described the requirements for a valid BFR as follows:

Requesting telecommunications carriers must specifically request portability, identify the discrete geographic area covered by the request, and provide a tentative date by which the carrier *expects* to utilize number portability to port prospective customers.<sup>21</sup>

Each of the BFRs that the Companies received satisfied these requirements. Therefore, the Companies had no legal right to impose a further condition upon their obligation to provide LNP based on the execution of an interconnection agreement with the requesting carrier.

**B. The “Technical Hurdles” that the Companies Face Are No Different than those Faced by All Carriers, Including Other Rural Carriers, that Must Implement LNP**

The Companies claim that, even if they could equip their switches with porting capability by the November 24, 2003 deadline, “installation of number portability capability only partially resolves the issue – unresolved implementation problems render the provision of local number portability unduly economically burdensome and technically infeasible.”<sup>22</sup> However, the Companies fail to identify any specific “implementation problems” beyond broad claims of ignorance about how to provide LNP.<sup>23</sup> For example, the only description of the alleged problems that Inter-Community provided in its petition is that:

Inter-Community does not know how routing, rating and recording of the end user traffic related to any number porting will be achieved, let alone the full extent of the

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<sup>21</sup> *Telephone Number Portability*, CC Docket No. 95-116, FCC 03-126, at ¶10 (rel. June 18, 2003) (“*LNP Fourth Report and Order*”) (emphasis added).

<sup>22</sup> See, e.g., *Inter-Community Petition* at 3; *Franklin Petition* at 3-4; *North Central Petition* at 4.

<sup>23</sup> See, e.g., *id.* at Exhibit 1, page 1.

'back office' functions that will be required (including data storage and processing) to implement such a requirement properly.<sup>24</sup>

As common carriers, the Companies have a duty to educate themselves with respect to the technical requirements necessary to comply with the Act and the Commission's rules. In this instance, the Companies have had ample opportunity to do so since they have been on notice since 1996 that they would have to implement LNP upon request by another carrier, and they have known since July 2002 (when the FCC acted on the Verizon petition for forbearance from wireless LNP) that they would have to implement LNP with wireless carriers by November 24, 2003. Finally, none of the alleged "technical hurdles" that the Companies cite is any different from the "technical hurdles" that *all* other carriers face, including other rural carriers. As such, even if the allegations of the Companies were true, they would not warrant a waiver of the statutory obligation to implement LNP on November 24, 2003.

C. **The Companies' Own Choice To Wrongfully Ignore Valid BFRs Cannot Form the Basis for Grant of a Waiver**

The Companies argue that it is, in any event, now too late for them to implement LNP with wireless carriers by November 24, 2003 and they should be granted a waiver on this basis. However, this argument attempts to bootstrap their own malfeasance into a ground for relief. If the Companies had not wrongfully ignored the BFR requests, they would have had sufficient time to implement the necessary upgrades to implement LNP. Even if the Companies cannot now implement LNP by the November 24, 2003 deadline, which the Companies have failed to establish, the FCC cannot allow LECs to create equities in their favor based on their own blatant wrongdoing when a

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<sup>24</sup> *Id.* T-Mobile also notes that no factual support is provided for any of the general allegations made by the Companies in their waiver petitions.

waiver based on that wrongdoing would undermine the purpose of the LNP rules.<sup>25</sup> Here, the requested waiver would most certainly undermine the purpose of the FCC's LNP rules, as explained below. Accordingly, the Commission should deny the waiver requests.

## II. GRANT OF THE REQUESTED WAIVERS WOULD UNDERMINE THE PURPOSE OF THE COMMISSION'S LNP RULES

The Commission ordered wireless carriers to implement LNP based on its findings that wireless LNP would (1) enhance competition between wireless carriers, (2) *promote competition between wireless and wireline carriers*, and (3) have an impact on the efficient use and uniform administration of the numbering resource.<sup>26</sup> If the requested waivers are granted, competition between wireless and wireline carriers will not be promoted in the areas served by the Companies. This despite the fact that CMRS providers who serve those areas are ready to accept customers who wish to exercise the competitive choice the FCC has sought to provide them by retaining their number when switching from a wireline carrier to a CMRS provider. Indeed, the Companies have not proposed any alternative means for promoting competition between wireless and wireline carriers. Instead, they simply repeat arguments that the FCC has explicitly rejected, claiming that the burdens they would incur to implement LNP outweigh any potential benefits. In rejecting these arguments, the FCC found that, despite the costs associated with the implementation of LNP, the public interest is served by

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<sup>25</sup> *Richard Duncan d/b/a Anderson Communications*, 18 FCC Rcd 4189, ¶13 (2003) (“As we have already stated, Morris has been on notice since 1989, when it first received its authorization, that the license would automatically cancel with respect to any channels for which facilities were not constructed by February 2, 1990. Morris chose to expend funds in the face of that knowledge and in violation of our rules. Even if service to some customers may be temporarily interrupted, which Morris has failed to establish in any event, we cannot allow licensees to create equities in their favor based on their own blatant wrongdoing when a waiver based on that wrongdoing would undermine the purpose of our rules.”).

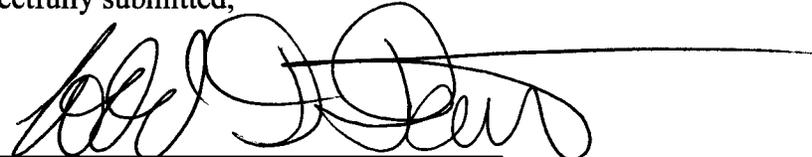
<sup>26</sup> *See, e.g., Verizon Wireless's Petition for Partial Forbearance*, 17 FCC Rcd 14972, ¶2 (2002) (emphasis added).

requiring rural carriers to implement LNP upon request by another carrier.<sup>27</sup> Accordingly, the Commission must deny the waiver petitions because “the courts have held that the Commission must explain why deviation better serves the public interest and articulate the nature of the special circumstances”<sup>28</sup> when it exercises its waiver authority, and the Companies have neither identified special circumstances nor explained why deviation better serves the public interest.

### III. CONCLUSION

For the foregoing reasons, T-Mobile urges the Commission to deny the waiver petitions.

Respectfully submitted,

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<sup>27</sup> *Telephone Number Portability*, 12 FCC Rcd 7236, 7301 (1997) (finding that requiring rural LECs to provide number portability where no competitor has requested such function would “burden rural LECs significantly without benefiting the public by increasing competition” but requiring rural LECs to deploy LNP in “switches for which a competitor *has expressed interest in deployment.*”) (emphasis added). Here, there can be no doubt that CMRS providers expressed interest in deployment of LNP in the Competitors’ switches.

<sup>28</sup> *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d at 1164, 1166 (D.C. Cir. 1990).