

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
Telephone Number Portability )  
) CC Docket No. 95-116  
Wireline Competition Bureau Seeks Comment )  
on Requests for Waiver or Temporary )  
Extension of the Requirement to Provide Local )  
Number Portability to CMRS Providers )

To: Chief, Wireline Competition Bureau

**COMMENTS OF WESTERN WIRELESS CORPORATION**

Western Wireless Corporation submits these comments on the Petitions for Waiver (collectively, “the Petitions”) filed on September 24, 2003, by Franklin Telephone Company, Inc. (“Franklin”), Inter-Community Telephone Company, LLC (“Inter-Community”), and North Central Telephone Cooperative, Inc. (“North Central”) (collectively, “the Petitioners”) of the Petitioners’ obligations to provide local number portability (“LNP”) to Commercial Mobile Radio Service (“CMRS”) carriers.<sup>1</sup> The Petitions should be denied because they are quite simply a last minute attempt by carriers with a dominant position in the local exchange market to prevent their customers from taking service with their existing telephone number from a competitive carrier.

The Petitioners, like all incumbent local exchange carriers (“LECs”), have known since at least 1997 that they would be required to provide LNP on six months’ notice to requesting telecommunications carriers, including CMRS carriers. Their claims of “uncertainty” regarding

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<sup>1</sup> *Wireline Competition Bureau Seeks Comment on Requests for Waiver or Temporary Extension of the Requirement to Provide Local Number Portability to CMRS Providers*, Public Notice, DA 03-3014 (rel. Oct. 2, 2003).

the LNP requirement are unfounded, as their obligation is clear. Granting the Petitions would unnecessarily deny rural consumers the benefits of the intermodal competition that formed a basis for imposing the CMRS LNP obligation. In addition, Petitioners' claims of financial and logistical difficulty are unsubstantiated and inconsistent with the Commission's prior rulings on this issue. The Commission should deny the petitions.

**I. THERE IS NO "UNCERTAINTY" THAT THE PETITIONERS ARE REQUIRED TO PROVIDE LNP**

As incumbent LECs, the Petitioners are required to provide LNP by the statute,<sup>2</sup> as well as by the Commission's implementing rules.<sup>3</sup> Since the *LNP First Report & Order* was released in 1997, the Petitioners, like all LECs, have been on notice that they would be required to provide LNP within six months of a request from another carrier, including a CMRS carrier.

Petitioners suggest that section 251(f) of the Communications Act of 1934, as amended ("Act"), may qualify them for "modification or suspension" of their LNP obligations.<sup>4</sup> Yet the Commission explicitly decided not to provide an exemption from the LNP requirement for carriers covered by section 251(f). In the *LNP First Report & Order*, the Commission deferred the issue of the 251(f) exemption into the *Local Competition* proceeding.<sup>5</sup> In the *Local Competition First Report & Order*, which came out a month later, the Commission concluded:

We believe that Congress did not intend to insulate smaller or rural LECs from competition.... Thus, we believe that, in order to justify continued exemption once a bona fide request has been made, or to justify suspension or modification of the Commission's section 251 requirements, a LEC must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient

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<sup>2</sup> 47 U.S.C. § 251(b).

<sup>3</sup> 47 C.F.R. § 52.26.

<sup>4</sup> Petitions at 2-3.

<sup>5</sup> *Telephone Number Portability*, First Report & Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8396 (1996).

competitive entry. State commissions will need to decide on a case-by-case basis whether such a showing has been made.<sup>6</sup>

None of the Petitioners have alleged that they have been granted an exemption from the LNP requirements from a state. Thus, section 251(f) does not excuse them from complying with the Commission's six-year-old LEC LNP rules.

The Petitioners further seek to call their LNP obligations into doubt by raising several putative objections to the CMRS BFRs that they have received, but all of them are without merit. First, petitioners claim that the CMRS requests seek:

to obligate us to port our numbers to a wireless carrier that, in turn, affords that carrier the capability to allow its mobile subscriber to use the number outside the boundaries of our original rate center. In our view, that result would be considered "location" or "geographic" portability, which we understand to be an obligation that the FCC has already determined is not required by statute and would be contrary to the public interest.<sup>7</sup>

If the mobile nature of CMRS service constitutes "location" or "geographic" portability, then no carrier ever would be obligated to port to a CMRS carrier — and no CMRS carrier would ever have to port numbers out at all, which is clearly not the Commission's position. The Commission, however, has carefully considered the merits of requiring LECs to port with CMRS carriers, and CMRS carriers to port with each other, in adopting the LNP rules. Indeed, if the mobile nature of CMRS service constituted location or geographic portability, then *any* assignment of a telephone number to a CMRS subscriber would constitute impermissible geographic portability. Petitioners' interpretation is so obviously incorrect as to strain credulity.

Petitioners next assert that the requests "failed to demonstrate compliance with the FCC Rules that number portability is required only if requested by 'another telecommunications

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<sup>6</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report & Order, 11 FCC Rcd 15499, 16118 (1996).

<sup>7</sup> Petitions, Exhs. 1, at 2.

carrier in areas in which that telecommunications carrier is operating or plans to operate.”<sup>8</sup>

Petitioners claim that it has requested assurances that the requesting carriers have “viable service” in their service territory, and note that the requesting carriers have no “local interconnection” with the Petitioners.<sup>9</sup>

As other CMRS carriers have pointed out, the porting of numbers to wireless carriers does not change the rate center designation of the number.<sup>10</sup> Thus, the number will continue to be rated in the same rate center where the telecommunications carrier is operating. Unless a CMRS carrier is requesting LNP in areas where it is not licensed to serve, the Petitioners have no reasonable basis for objecting to a valid BFR. The Petitioners also cannot avoid their legal obligations by requiring the establishment of an interconnection agreement as a precondition to LNP. There are thousands of LECs and CMRS providers all interconnected, directly or indirectly, to form the public telecommunications network. An interconnection agreement is not required, and is typically not entered into, between LECs and CMRS providers, absent the establishment of a point of interconnection (“POI”) in a LEC rate center.

In sum, the Petitioners’ legal obligations are clear: LECs have known since 1997 that they would be required to provide LNP within six months of a request from any carrier, including a CMRS carrier; now, at the eleventh hour, the Petitioners should not be allowed to avoid their legal obligations and maintain their control over essential facilities, *i.e.*, customer telephone numbers, to the detriment of consumers and the public interest benefits of a more competitive local telephone market.

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<sup>8</sup> Petitions, Exhs. 1, at 2 (citing 47 C.F.R. § 52.23(c)).

<sup>9</sup> *Id.*

<sup>10</sup> *See, e.g.*, Ex parte letter of Sprint (CC Docket No. 96-115) dated Sept. 22, 2003 at 2.

## II. GRANTING THE PETITIONS WOULD BE INCONSISTENT WITH THE COMMISSION'S PRIOR FINDINGS ON THE IMPORTANCE OF INTERMODAL COMPETITION

One of the bases for the Commission's decision to impose the LNP obligation on wireless carriers was that consumers increasingly view wireless service as a substitute for wireline service. Most recently, in denying the petition for permanent forbearance from the CMRS LNP rules, the Commission noted that it had previously concluded that pricing trends in the CMRS market suggest that "there would be a greater likelihood that consumers would view their wireless phones as a potential substitute for their wireline phones and thus the ability of consumers to port their numbers was likely to become an increasingly important factor in consumer choice."<sup>11</sup>

In denying permanent forbearance from the CMRS LNP requirement, the Commission also discussed its finding in its *CMRS Competition Report* that "an increasing number of wireless carriers offer service plans designed to compete directly with wireline local telephone service."<sup>12</sup> Indeed, Western Wireless has sought in many of its markets to offer service that competes directly with wireline local service. In order to compete more effectively, Western Wireless has obtained eligible telecommunications carrier ("ETC") status for purposes of universal service support but, without LNP, a significant barrier will remain to full and vibrant competition between wireline and wireless carriers.

Clearly, granting the Petitions would undermine the Commission's stated goal of fostering intermodal competition, and because Western Wireless provides cellular service in Inter-Community's service territory in North Dakota, granting the petitions also would have a

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<sup>11</sup> *Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, Memorandum Opinion and Order, 17 FCC Rcd. 14972 (2002) ("*Verizon Wireless Forbearance Order*").

<sup>12</sup> *Id.*

direct and adverse impact on emerging competition in rural North Dakota. Without question, granting the Petitions would be a step backwards in realizing the Commission's goal of intermodal competition in rural areas. Consumers in rural areas stand to gain the most from LNP, but only if the Commission remains true to its commitment to removing barriers to intermodal competition.

### **III. PETITIONERS HAVE NOT SATISFIED THE STANDARDS FOR A WAIVER, AND WAIVER WOULD BE CONTRARY TO THE COMMISSION'S PRIOR HOLDINGS**

Petitioners claim it will take them six months to deploy necessary software upgrades to provide LNP.<sup>13</sup> Inexplicably, however, Petitioners request "a one-year extension following clarification of [their] obligations and confirmation that the requests are valid."<sup>14</sup> Petitioners have not justified the length of the extension they request.

Moreover, the Petitioners have known since July 26, 2002, that CMRS carriers would be required to participate in LNP within the largest 100 MSAs on November 24, 2003, and outside the largest 100 MSAs within 6 months of a request thereafter.<sup>15</sup> Petitioners further admit that they received the CMRS BFRs on or about May 28, 2003 – six months before the November 24 deadline.<sup>16</sup> Thus, had Petitioners begun promptly to prepare for the requirement, there would be no need for a waiver.

It also is difficult to view Petitioners' claims of financial hardship as compelling. For example, Petitioner Franklin claims it will cost between \$34,000 and \$60,500 for it to implement

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<sup>13</sup> Petitions at Exhs. 1 at 1.

<sup>14</sup> Petitions at 2 n.4.

<sup>15</sup> *Verizon Wireless Forbearance Order*, 17 FCC Rcd at 14987-88.

<sup>16</sup> The CMRS carriers' dated BFRs are appended to the Petitions.

LNP, and that it has 10,000 access lines.<sup>17</sup> Even assuming the highest possible cost, Petitioner Franklin has not proven any undue financial hardship that would exceed recognized consumer benefits of LNP. Furthermore, if Petitioner Franklin's customers absorbed the cost, then it would amount to only **50 cents per subscriber per month**, assuming the cost is spread over only a *single* year. Spreading the cost over multiple years would reduce the monthly cost per subscriber further. Based on figures in the Petitions, the costs per subscriber for North Central and Inter-Community would be even lower. The Commission's recently rejected similar claims by CMRS carriers seeking forbearance from the CMRS LNP requirement.<sup>18</sup>

For many years, the Commission's approach to mitigating the costs of portability and pooling for carriers outside the largest 100 MSAs has been based on the BFR requirement – carriers are not obligated to provide LNP until another carrier has made a request to port numbers, demonstrating actual demand.<sup>19</sup> The Petitioners have now had *six years of delay* as a result of this mechanism. No further delay is warranted.

Petitioners suggest that granting the requested extensions would serve the public interest by allowing “rational public policy decision-making without a ‘rush-to-judgment’ based on the impending WLNP Deadline.”<sup>20</sup> Yet the decision to require wireline-to-wireless porting was originally made over six years ago, and has been reviewed by the Commission three times in the interim in petitions for forbearance or extension. This is hardly a “rush to judgment.”

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<sup>17</sup> Franklin Petition, Exh. 1, at 1. Franklin states that it will cost \$34,000 to upgrade its Siemens switch. *Id.* It also states that it will incur \$32,500 in additional costs for Nortel switches owned by its affiliated entity, Delta Communications. *Id.* Franklin provides a line count figure of 10,000 lines, but does not state whether this includes lines served by Delta. *Id.*

<sup>18</sup> *Verizon Wireless Forbearance Order*, 17 FCC Rcd at 14986-87.

<sup>19</sup> *See Telephone Number Portability*, First Memorandum Opinion & Order on Reconsideration, 12 FCC Rcd 7236, 7272-73, 7313-14 (1997); *Numbering Resource Optimization*, Fourth Report & Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 12472, 12478 (2003).

<sup>20</sup> Petitions at 13.

