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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Petition of Western Wireless for	)	
Clarification or Waiver of its	)	
Porting and Pooling Obligations	)	

To: The Commission

PETITION FOR TEMPORARY WAIVER, IF NECESSARY, OF POOLING AND PORTING REQUIREMENT

CORR WIRELESS COMMUNICATIONS, LLC

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Its Attorneys

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PETITION FOR TEMPORARY WAIVER, IF NECESSARY, OF POOLING AND PORTING REQUIREMENT

Corr Wireless Communications, LLC ("Corr"), by its attorneys, hereby submits this request for contingent waiver of the rules (52.21 and 52.31) which possibly denominate a single county in Corr's Alabama RSA 1 cellular service area as now being part of the much larger adjacent Birmingham, AL, MSA and which therefore impose porting and pooling obligations on that market. Corr has previously filed comments generally supporting Western Wireless Corporation's ("Western's") request for waiver of the number pooling obligation in circumstances where RSA licensees suddenly find themselves saddled with MSA-size pooling obligations as a result of recent changes in the definitions of the counties comprising MSAs. Corr suggested in that context that, while a waiver is certainly justified in the case of Western, the predicament which Western finds itself in applies to a number of other similarly situated RSA licensees. The Commission should therefore recognize the problem generically and grant across-the-board relief to the handful of licensees who are caught in the conundrum rather than

processing a series of individualized waiver requests.[1] However, since the Commission has yet to rule on the Western petition and it is unclear that generalized relief will be granted in that proceeding, Corr is filing this petition for individualized relief in an abundance of caution.

I. BACKGROUND

Corr is the licensee of cellular RSA-1 in rural Alabama. It has operated there for over ten years, dealing with the multitude of problems that beset rural CMRS providers. Corr was surprised to learn recently that Blount County, one of the rural counties comprising RSA-1 by reference to Section 22.909 of the rules, had been re-assigned by the Census Bureau to the Birmingham, Alabama, CMSA. This would have the effect of imposing "top 100 market" number pooling requirements on Corr for its rate center in Blount. In order to accomplish that, Corr's entire switch would have to be upgraded and software added at enormous cost even though Blount represents only about 30% of the RSA's population.

As Corr has explained in discussions with the staff, the applicability of the top-100 MSA pooling and porting obligations to counties like Blount is uncertain from the language of the Order and the rules which define the covered geographic markets for these purposes. In the *Third Report and Order*, 17 FCC Rcd 252, 305-306 (2001) and the *Fourth Report and Order* in this Docket, FCC 03-126, released June 18, 2003, the Commission addressed some problems posed by the fact that MSAs which were previously in the top-100 could move up or down in the rankings based on population changes The Commission made it clear that when a non-top-100 MSA as defined by the Census Bureau in 1990 moves up in the rankings so as to be among the current top 100, it will be considered a top-100 MSA for purposes of the rules. Neither Order addressed the circumstance of individual counties moving into MSAs based on Census Bureau

[1] Corr requests that the Commission take into account the record established in that proceeding insofar as the general problem posed here has been addressed by Corr and other parties

redesignation The focus of both Orders and the accompanying rules was on entire MSAs changing status, not on new counties being added into existing MSAs.

At the same time, in the *Fourth Report*, the Commission indicated that CMSAs which had been consolidated with other MSAs by the Census Bureau, should not be considered top-100 MSAs even if the effect of consolidation would rank them there. This seemed to support the view that the Commission intended not to recognize territorial additions to 1990 MSAs but only increases in population to those MSAs as previously defined. Under that view, Blount County would retain its 1992 status as a non-MSA part of a licensed rural service area.

Counsel for Corr met with the staff in mid-summer to explain the problem and seek confirmation that our view of the rule's application was correct, *i e* , that counties added to top-100 MSAs were not considered part of a such an MSA for purposes of these Rules. To our surprise, the staff expressed the contrary view, *i.e* , that the reference to "areas identified as one of the largest 100 MSAs on subsequent updates to the U.S. Census reports"[2] should be read to also include areas newly identified as part of a top 100 MSA . While Corr continues to believe that the language of the rule does not clearly delineate the status of counties which shift into top-100 MSAs, we are filing this waiver request based on the staff's helpful explanation of the intent of the rule. Because the staff's interpretation, if correct, would impose the November 24 deadline rather than the May 2004 deadline, Corr finds itself unable to meet the porting and pooling obligation in the short time remaining.

II. WAIVER IS JUSTIFIED IN THESE CIRCUMSTANCES

The Commission clearly recognized in adopting the number pooling scheme that the burden of pooling had little benefit in rural areas where number depletion is not a problem. It

[2] 47 CFR Section 52.21(a).

also recognized that the costs of pooling were disproportionally high for rural carriers who cannot spread the cost over tens of thousands of subscribers. *In re Numbering Resource Optimization, Third Report and Order and Second Order on Reconsideration*, 17 FCC Rcd 252 (2001). In this case, Corr's single switch serves both RSA –1 and several PCS systems in Alabama and Georgia. None of those markets are even arguably in the top-100 (or do not presently have associated numbers), with the result that the redefinition of a single county in Corr's licensed service area results in approximately eight of the most rural counties in America being effectively subject to pooling and porting as though they were part of a major metropolitan market. This does not seem to be what the Commission intended when it carefully demarcated differing treatment for top-100 and non top-100 markets.

Perhaps more importantly, the allocation of portions of Rural Service Areas to adjacent areas could seriously confuse the regulatory classification of these territories. Heretofore, the Commission defined the RSAs by a list of fixed counties. *Cellular MSA/RSA Markets and Counties*, 7 FCC Rcd 742 (1992). These counties delineated the boundary of the RSAs for all purposes, and licensees could plan their network build-outs, roaming arrangements, coverage requirements, equipment upgrades, marketing plans, and anticipated expenses based on these definitive and immutable parameters. Now suddenly a county that is RSA territory for all other regulatory purposes is treated as being part of the adjacent MSA for one purpose. In effect, the FCC is overlaying MSA-specific regulatory obligations on RSAs, without sufficient consideration of the serious consequences of that action. The transformation from RSA to MSA is even more startling when a county suddenly shifts from a presumptively small-market regulatory regime to top 100 MSA status in a single bound.

By fuzzing the heretofore clear distinction between RSAs and MSAs, the Commission has created a breed of regulatory territory which is neither fish nor fowl. It would be like settling

a territorial dispute between New York and New Jersey by declaring that Ellis Island will be considered part of New York for some purposes but part of New Jersey for others. That kind of jurisdictional schizophrenia can only lead to continuing confusion as the jurisdictional classification becomes blurred and situational rather than constant

III. CONCLUSION

Corr therefore urges the Commission to waive, if necessary, the application of top-100 MSA status to Blount County. The effect of such a waiver would be to require Corr to engage in number pooling and porting, upon *bona fide* request, as of May 24, 2004. This time frame – the time frame applicable to all of the remainder of Corr's licensed markets and to the non-Blount remainder of RSA 1 – is perfectly consistent with the overall objectives of the porting and pooling requirements and will permit Corr sufficient time to gear up its system for these undertakings.

Respectfully submitted.

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