

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)	

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) hereby replies to comments filed on October 17, 2003 regarding the petitions of 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, 2003.¹ In its opposition, T-Mobile respectfully requested 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 initial comments of other parties, including those who support grant of the waivers, demonstrate that the Companies have failed to meet the rigorous standard for waiver of the Commission’s LNP rules, as explained below.

¹ 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”).

I. THE COMMENTS DEMONSTRATE THAT THE WAIVER REQUESTS MUST BE DENIED BECAUSE MOST RURAL CARRIERS ARE IDENTICALLY SITUATED TO THE PETITIONERS

It is well established precedent that 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.”² “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.”³ T-Mobile demonstrated in its opposition that 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, and the majority of parties who commented on the waiver requests agree.⁴

The comments filed in this proceeding confirm that the Petitioners face no unique or special circumstances that warrant a deviation from the FCC’s LNP rules. Ironically, the four comments filed in support of the waiver petitions provide compelling proof that other rural carriers face exactly the *same circumstances* as the Petitioners. For example, the Alabama Rural Local Exchange Carriers argue that all “LECs must be extended a waiver or temporary extension of their requirement to implement WLNP” because application of that requirement would be “unduly economically burdensome on LECs” for the same reasons that the Petitioners articulated.⁵ Similarly,

² *Request for Waiver by Marin County Office of Education, San Rafael, California*, 17 FCC Rcd 22441, ¶6 (2002) (emphasis added).

³ *Federal-State Joint Board on Universal Service*, 17 FCC Rcd 3518, ¶4 (2002).

⁴ *See, e.g., Comments of AT&T Wireless Services, Inc. on Petitions for Waiver of LNP Obligations*, CC Docket No. 95-116, (fil. Oct. 17, 2003), *Sprint Opposition to Franklin Petition for Waiver*, CC Docket No. 95-116, (fil. Oct. 17, 2003), *Sprint Opposition to Inter-Community Petition for Waiver*, CC Docket No. 95-116, (fil. Oct. 17, 2003), *Sprint Opposition to North Central Petition for Waiver*, CC Docket No. 95-116, (fil. Oct. 16, 2003), *Opposition of Verizon Wireless to LEC Waiver Petitions*, CC Docket No. 95-116, (fil. Oct. 17, 2003), and *Comments of Western Wireless Corporation*, CC Docket No. 95-116, (fil. Oct. 17, 2003).

⁵ *Comments of the Alabama Rural Local Exchange Carriers*, CC Docket No. 95-116, 2 (fil. Oct. 17, 2003).

TCA, Inc. – Telecom Consulting Associates (“TCA”) requests the Commission to “provide the same relief as sought by Petitioners to all rural telephone companies” because the “factual circumstances surrounding the LNP requests described by Petitioners are easily applicable to [the] majority of rural carriers.”⁶ Indeed, TCA goes on to emphasize that “the circumstances that the Petitioners find themselves in are not unique but easily discovered to affect all rural carriers.”⁷ Likewise, Valley Telephone Cooperative, Inc. argues that, if the Commission grants the waiver requests of the Companies, it should also “grant a blanket waiver and extension to Valley and the hundreds of other rural telephone companies that are identically situated to the Petitioners.”⁸ Leaco Rural Telephone Cooperative, Inc. similarly argues that the Commission should “grant a blanket waiver and extension to Leaco and hundreds of other rural telephone companies that are identically situated to the Petitioners.”⁹ If all rural telephone companies are *identically* situated to the Petitioners, then the Petitioners have failed to demonstrate that *special circumstances* warrant a waiver, and the waiver requests must be denied.

In any event, revisiting the LNP requirements for rural LECs or carriers in general is beyond the limited scope of this individual waiver proceeding.¹⁰ The Commission has already considered and rejected a request for a “‘blanket waiver’ of number portability requirements for smaller and/or rural LECs.”¹¹ As the Commission explained when it denied “petitions that request a

⁶ *Comments of TCA*, CC Docket No. 95-116, 1-2 (fil. Oct. 17, 2003).

⁷ *Id.* at 5-6.

⁸ *Comments of Valley Telephone Cooperative, Inc.*, CC Docket No. 95-116, 1-2 (fil. Oct. 17, 2003).

⁹ *Comments of Leaco Rural Telephone Cooperative, Inc.*, CC Docket No. 95-116, 1-2 (fil. Oct. 17, 2003).

¹⁰ *See, e.g., Leap Wireless International, Inc. Request for Waiver and Extension of Broadband PCS Construction Requirements*, 16 FCC Rcd 19573, ¶20 (2001) (explaining that blanket waiver is not appropriate).

¹¹ *Telephone Number Portability*, 12 FCC Rcd 7236, ¶¶112-23 (1997).

blanket waiver of our number portability requirements for rural and/or smaller LECs that receive a request for deployment in one of their switches,” a “blanket waiver is unnecessary and may hamper the development of competition in areas served by smaller and rural LECs that competing carriers want to enter.”¹² Moreover, to the extent that a rural or smaller LEC is subject to the requirements of Section 251(b) of the Act, “there is no exemption for rural LECs of their number portability obligations under Section 251(f)(1).”¹³ Therefore, reconsideration of the Commission’s decision to reject a blanket waiver of the number portability requirements for smaller and/or rural LECs would be inappropriate and beyond the limited scope of these individual waiver requests, and it would frustrate the competitive goals of portability.

II. IN DENYING THE WAIVER REQUESTS, THE COMMISSION SHOULD REAFFIRM THAT CARRIERS CANNOT SIMPLY IGNORE BONA FIDE REQUESTS FROM CMRS PROVIDERS

The Petitioners seek to justify their decision to ignore the BFRs of CMRS providers by arguing that, due to the mobility that wireless services facilitate, wireline to wireless porting constitutes “location” portability, which is not required by the Act or the Commission’s rules.¹⁴ The four comments filed in support of the waiver requests similarly claim that LECs have no obligation to honor BFRs submitted by CMRS providers because they allegedly amount to a *per se* request for location portability. For example, Leaco and Valley Telephone both claim that “no waiver is required because the Petitioners are not required to implement LNP by November 24, 2003, because there is no requirement that local exchange carriers (“LECs”) implement geographic location portability to port

¹² *Id.* at ¶114.

¹³ *Id.* at ¶117.

¹⁴ *See, e.g., Inter-Community Petition* at 4; *Franklin Petition* at 4-5; *North Central Petition* at 4-5.

numbers across rate center boundaries . . .”¹⁵ The Alabama Rural LECs argue that grant of the waiver is appropriate because

Incumbent LEC numbers, rural or otherwise, have a fixed geographical identity within a rate center area. Porting such numbers to a wireless provider with the capability and obvious intent of allowing the subscribers to use the number on a mobile basis well outside the boundaries of the original service location “rate center” area is, by definition, location portability that this Commission has declined to require.¹⁶

If the porting of a number from a LEC to a CMRS provider were, by definition, location portability, then the Commission’s decision to require CMRS providers to implement LNP in order to facilitate intermodal competition¹⁷ and the complementary ruling that “LECs are obligated under the statute to provide number portability to customers seeking to switch to CMRS carriers”¹⁸ would have been arbitrary and capricious in light of the Commission’s conclusion that location portability is not mandatory.¹⁹

T-Mobile urges the Commission to reaffirm that “LECs are obligated under the statute to provide number portability to customers seeking to switch to CMRS carriers,”²⁰ and that intermodal portability is “service provider” portability rather than “location” portability. Unless the Commission explicitly rejects the absurd interpretation of “location portability” advanced by the Petitioners, the Alabama Rural LECs, Leaco and Valley Telephone, and other LECs are likely to ignore BFRs and port requests from customers seeking to switch to CMRS providers, which would “hamper the

¹⁵ Leaco Comments at 1-2; Valley Telephone Comments at 1-2.

¹⁶ *Comments of Alabama Rural LECs* at 2.

¹⁷ 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. *See, e.g., Verizon Wireless’s Petition for Partial Forbearance*, 17 FCC Rcd 14972, ¶ 2 (2002).

¹⁸ *Telephone Number Portability*, 11 FCC Rcd 8352, ¶8 (1996).

¹⁹ *Id.* at ¶184.

²⁰ *Id.* at ¶8.

development of competition in areas served by smaller and rural LECs that competing carriers want to enter.”²¹ As Western Wireless explained in its opposition, [i]f the mobile nature of CMRS 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.”²²

III. TCA’S COMPLAINTS ABOUT T-MOBILE’S BFR HAVE NO MERIT

In its comments, TCA complains about a BFR that T-Mobile submitted to one of TCA’s clients, arguing that T-Mobile submitted the “vague” LNP request in an attempt to make an end run around the Commission’s rules in order to gain location portability.²³ To the contrary, it is TCA’s clients who are trying to bypass their statutory LNP obligations by ignoring valid BFRs and asserting nonsensical claims about location portability. As explained above and in its opposition, the BFRs that T-Mobile and other CMRS providers have submitted request the implementation of service provider portability, not location portability. Moreover, T-Mobile’s BFR complies with the Commission’s requirements for a valid BFR:

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.²⁴

First, T-Mobile’s BFR specifically requests portability, which TCA does not deny. Second, T-Mobile’s BFR explicitly identifies the discrete geographic area covered by the request, which coincides with the top 100 MSAs (all of which T-Mobile currently serves). Since TCA’s clients know whether or not they have switches that fall within these MSAs, there is nothing “vague” about T-

²¹ *Id.* at ¶114.

²² *Comments of Western Wireless*, CC Docket No. 95-116, 3 (fil. Oct. 17, 2003).

²³ TCA Comments at 2-3.

²⁴ *Telephone Number Portability*, CC Docket No. 95-116, FCC 03-126, at ¶10 (rel. June 18, 2003) (“*LNP Fourth Report and Order*”) (emphasis added).

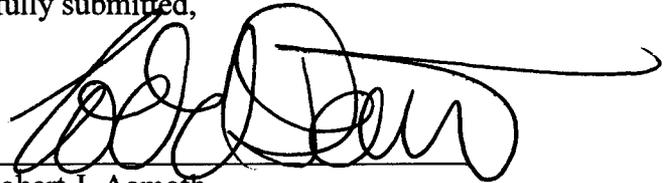
Mobile's request. Third, T-Mobile's BFR provides a tentative date by which T-Mobile expect to utilize number portability to port prospective customers (*i.e.*, November 24, 2003). Accordingly, T-Mobile's BFR satisfies the three requirements for a valid BFR, and TCA has no basis for complaint.

IV. CONCLUSION

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

Respectfully submitted,

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