

Rural Service Area (“RSA”) until the later of May 24, 2004, or six months after receiving a request.¹

I. BACKGROUND

Plateau operates a cellular system in a partitioned portion of the New Mexico 4 RSA.² The FCC defines the New Mexico 4 RSA as being comprised of Los Alamos, Santa Fe, San Miguel, Quay, Curry, Roosevelt, De Baca, Guadalupe and Torrance counties in New Mexico.³ The New Mexico 4 RSA has never been included in the list of the “top 100” MSAs based on either the 1990 or 2000 Census.⁴ Accordingly, Plateau has always understood its porting and pooling obligations to be those of a carrier that provides service outside the “top 100” MSAs.⁵

On October 23, 2003, however, counsel for Plateau discovered that as of June 6, 2003, the Office of Management and Budget (“OMB”) now includes Torrance County, New Mexico in the Albuquerque, New Mexico MSA (“Albuquerque MSA”).⁶ Prior to June 6, 2003, MSAs were defined as of June 30, 1999, and OMB did not include Torrance County in the Albuquerque MSA.⁷ Counsel notified Plateau of this discovery on October 25, 2003. The Albuquerque MSA is one of the “top 100” MSAs. Accordingly, by providing service in Torrance County (within

¹ See generally *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).

² Plateau’s parent, E.N.M.R. Telephone Cooperative, is the operating general partner of the licensee, New Mexico RSA 4 East Limited Partnership.

³ See 47 C.F.R. § 22.909; Public Notice Report No. CL-92-40 “Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties”, dated January 24, 1992, DA 92-109, 7 FCC Rcd 742 (1992).

⁴ See *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, 17 FCC Rcd 252 (2001) (“*NRO III*”) App. D.

⁵ Plateau also serves the New Mexico 2 RSA, the Texas 3 RSA, and a partitioned portion of the New Mexico 6 RSA. These markets are entirely outside the top 100 MSAs.

⁶ See OMB Bulletin No. 03-04.

⁷ See OMB Bulletin No. 99-04.

the New Mexico 4 RSA), Plateau could be considered to be providing cellular service within one of the “top 100” MSAs and could therefore be subject to the November 24, 2003 deadline for implementing WLNP.

Western Wireless Corporation (“Western Wireless”) previously brought this MSA-definition issue before the Commission in a petition requesting clarification of the porting and pooling obligations applicable to cellular carriers.⁸ In its petition, Western Wireless requested that the Commission clarify that cellular carriers licensed to provide service in RSAs or small MSAs are by definition not subject to the number porting and pooling obligations applicable to carriers providing service in the “top 100” MSAs. The Cellular Telecommunications & Internet Association (“CTIA”) also requested clarification of the MSA-definition issue in its May 13, 2003 *Implementation Petition*.⁹

To date, the Commission has yet to act on the *Western Wireless Petition*, the *CTIA Implementation Petition*, or the individual requests of carriers that may be affected by periodic shifts in MSA boundaries. Although the Commission clarified that all MSAs included in the original list of the “largest 100 MSAs” as well as any subsequent list of the largest 100 are included in the largest “100 MSAs” for the purpose of pooling and porting,¹⁰ the Commission has yet to address the specific treatment of shifts in MSA boundaries and the impact that such

⁸ See Supplement to Petition for Waiver And Petition for Clarification of Western Wireless Corporation filed March 3, 2003 (“*Western Wireless Petition*”). See also, *The Commission Seeks Comment on the Petition of Western Wireless for Waiver of the Commission’s Number Pooling Requirements*, DA 03-860 (March 24, 2003) (“*Public Notice*”). At the time that the FCC sought comment on the *Western Wireless Petition*, OMB had not yet redefined the Albuquerque MSA to include Tarrant County, and accordingly, Plateau was clearly outside the top 100 MSAs.

⁹ Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association filed May 13, 2003 in CC Docket No. 95-116 (“*Implementation Petition*”).

¹⁰ See *Numbering Resource Optimization, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Telephone Number Portability*, Fourth Report and Order in CC Docket No. 99-200 and CC Docket No. 95-116, and Further Notice of Proposed Rulemaking in CC Docket No. 99-200, FCC 03-126 ¶ 20 (rel. June 18, 2003) (“*NRO IV*”).

shifts have on the obligations of carriers operating in small or predominately rural MSAs or RSAs that have subsequently been included in a large MSA.

While Plateau does not believe it is required to implement WLNP by November 24, 2003, out of an abundance of caution, Plateau requests that the Commission confirm this position. Alternatively and to the extent necessary, Plateau requests that the Commission waive and extend Plateau's porting and pooling compliance deadlines to make them consistent throughout its service area as a carrier providing service outside of the top 100 MSAs.

II. ARGUMENT

A. The Commission Should Clarify That Plateau's Obligations Are Those of a Carrier Providing Service Outside of the Top 100 MSAs

Plateau supports the position of Western Wireless that FCC-licensed RSAs are by definition not within the top 100 MSAs for the purpose of pooling and porting. Plateau also supports the position of Advantage Cellular Systems, Inc. that the June 6, 2003 redefinition of MSAs should not accelerate a wireless carrier's compliance deadline from May 24, 2004 to November 24, 2003.¹¹ The Commission has never provided notice of a change in MSA boundaries for the purpose of FCC-regulations, and Plateau has reasonably relied on the FCC and OMB definition of MSAs prior to June 6, 2003. Therefore, Plateau believes that its service area does not fall within a top 100 MSA for purposes of porting and pooling.

In addition, FCC rules only require Commercial Mobile Radio Services ("CMRS") carriers to implement WLNP in markets in which they received a request by February 24, 2003.¹² Were Plateau forced to implement WNLN on November 24, 2003, it would have only 30 days notice to implement WLNP from October 25, 2003, the time it learned of the June 6, 2003

¹¹ See Petition of Advantage Cellular Systems, Inc. for Clarification, or in the Alternative, Limited Waiver and Extension, filed September 25, 2003 in CC Docket Nos. 95-116 and 99-200.

¹² See 47 C.F.R § 52.31(a)(1)(ii).

redefinition. This would be unduly burdensome and would cause serious disruption in Plateau 's network deployment. This result would be grossly unfair to Plateau and contrary to the public interest. Plateau should be able to rely on a reasonable degree of regulatory consistency in planning to comply with regulatory requirements. Because Plateau did not provide service within any top 100 MSA as of February 24, 2003, Plateau requests that the Commission clarify that Plateau's porting and pooling obligations within the New Mexico 4 RSA are those of a carrier providing service outside of the top 100 MSAs. Alternatively, and to the extent necessary, Plateau requests a waiver and extension of its porting and pooling obligations.

B. Good Cause Exists for an Extension of Plateau's Compliance Deadlines Because the June 2003-Redefinition of MSA Boundaries is an Extraordinary Circumstance Beyond Plateau's Control

Pursuant to Rule Section 1.3 the Commission may waive a rule for good cause shown. In addition, pursuant to Rule Section 52.31(d) a carrier may request an extension of its WLNP implementation deadline by demonstrating that extraordinary circumstances beyond its control prevent it from being able to comply with the deadline.¹³ Specifically, the carrier must: (1) demonstrate why it is unable to meet the deadline, (2) explain what steps it has taken to comply, (3) identify particular switches, (4) provide a time when deployment will be complete in the switch(es), and (5) propose milestones for compliance.¹⁴

Good cause exists for a waiver and extension of Plateau 's deadline because the June 6, 2003 redefinition of MSAs is an extraordinary circumstance beyond Plateau 's control, and of which Plateau learned only on October 25, 2003.¹⁵ At the time that Plateau received requests, no

¹³ See *Telephone Number Portability*, First Report and Order, 11 FCC Rcd 8352 ¶ 85 (1996) *subsequent history omitted*.

¹⁴ See 47 C.F.R § 52.31(d).

¹⁵ Immediately upon learning of the inclusion of Tarrant County as part of the Albuquerque MSA, Plateau moved with all reasonable diligence and alacrity in filing this petition.

portion of the New Mexico 4 RSA was included within the Albuquerque MSA.¹⁶ Accordingly, Plateau was not required to, and did not plan to implement WLNP prior to May 24, 2004. The intervening OMB redefinition of the Albuquerque MSA was clearly beyond Plateau's control.

The Commission has never provided Plateau with notice of any change in the FCC's definition of MSAs and RSAs, much less of the June 6, 2003 redefinition of MSAs.¹⁷

Accordingly, Plateau has reasonably relied on the FCC's unambiguous definition of the New Mexico 4 RSA in planning for the implementation of WLNP.

As noted above, were Plateau required to implement WLNP by November 24, 2003, it would have only 30 days notice from the time it learned of the redefinition, and it would be impossible for Plateau to implement WLNP by November 24, 2003. Plateau's cellular system in the New Mexico 4 RSA, including Torrance County, is served by Plateau's switch in Clovis, New Mexico. Plateau is currently in the process of upgrading its TDMA system to Global System for Mobile Communication ("GSM"). Were Plateau forced to attempt to deploy WLNP prior to May 24, 2004, it would profoundly and negatively impact and delay Plateau's deployment of its GSM system. This grossly accelerated deployment would derail Plateau's network planning and construction and would force Plateau to divert resources in an inefficient manner. This result would not serve the public interest. Such a grossly accelerated deployment

Accordingly, to the extent necessary, Plateau requests a waiver of the sixty-day advance filing requirement contained in section 52.31(d) of the Commission's rules.

¹⁶ Although Plateau disputes the validity of the requests, for the limited purpose of this Petition, Plateau assumes that the requests were *bona fide*.

¹⁷ In *NRO III*, the Commission noted that the 100 largest MSAs had changed in several respects from the list identified in the 1990 U.S. Census. *See NRO III*, ¶126. In footnote 312, the Commission specifically enumerated the changes in the ordering of "top 100" list. *Id.* note 312. The Commission, however, never recognized or noted any change in the boundaries of any of the MSAs. To Plateau's knowledge, the Commission has yet to notify carriers of the June 6, 2003 redefinition of MSAs or to address the impact on carriers that, due exclusively to OMB boundary changes, serve individual counties that were never considered to be part of a top 100 MSA but are now considered by OMB to be part of a top 100 MSA.

also would be inconsistent with the Commission's determination to allow carriers at least nine months notice prior to a requirement to implement WLNP by November 24, 2003.

Moreover if Plateau is required to implement WLNP as a carrier in a top 100 MSA, it will be forced to implement WLNP throughout its network on a grossly accelerated schedule even though the vast majority of its service area and customers are clearly outside the "top 100" MSAs. The cost and burden of implementing WLNP throughout its network on an accelerated basis far outweighs the benefit to the small percentage of customers within Torrance County.

As noted above, Plateau is in the process of deploying a GSM network and upgrading its existing network. Plateau has purchased equipment and is in the process of receiving, installing and testing the equipment. Plateau anticipates commencing service on its GSM system in the first quarter of 2004, and anticipates working toward WLNP capability by May 24, 2004, subject to and consistent with additional clarification from the FCC regarding the obligations of carriers to implement WLNP. Because Plateau is merely seeking to comply with the FCC-established implementation schedule for carriers operating outside of the top 100 MSAs, Plateau does not believe that reporting additional milestones is necessary; such reporting would only further burden Plateau and Commission staff.

Because of the unusual facts in this case, requiring Plateau to implement WLNP on the schedule established for carriers operating in the top 100 urban markets would be inequitable, unduly burdensome and contrary to the public interest. The June OMB redefinition of MSAs was a circumstance clearly beyond Plateau's control, and it will be impossible for Plateau to implement WLNP on November 24, 2003. Good cause therefore exists for the Commission to grant a limited waiver and extension of Plateau's deadline for implementing number porting and

pooling to make those requirements consistent with the requirements applicable to other carriers providing service outside of the top 100 MSAs.

III. CONCLUSION

For the reasons discussed above, Plateau respectfully requests that the Commission clarify that Plateau's porting and pooling obligations are those of a carrier providing service outside of the top 100 MSAs. In the alternative, and to the extent necessary, Plateau respectfully requests that the Commission waive and extend Plateau's compliance deadlines and allow Plateau to implement WLNP as a carrier providing service outside the "top 100" MSAs.

Respectfully submitted,

PLATEAU TELECOMMUNICATIONS, INC.

By: _____/s/
Gregory W. Whiteaker
Howard Shapiro
Bennet & Bennet, PLLC
1000 Vermont Avenue, N.W., 10th Floor
Washington, D.C. 20005
(202) 371-1500

Its Attorneys

October 30, 2003

U:\Docs2\Clients\Plateau Cellular Network\Wireless Number Portability\Plateau Petition & Waiver re top 100 MSA Deadline Oct 27.doc

Declaration of Tom M. Phelps

I, Tom M. Phelps, do hereby declare under penalty of perjury the following:

1. I am the Chief Executive Officer of Plateau Telecommunications, Inc.
2. I have read the foregoing "Petition of Plateau Telecommunications, Inc. for Clarification, or in the Alternative, Limited Waiver and Extension." I have personal knowledge of the facts set forth therein, and believe them to be true and correct.

_____/s/_____
Tom M. Phelps

October 30, 2003_____

Date