

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

In the Matter of)
)
Telephone Number Portability)
) CC Docket No. 95-116
New Jersey Board of Public Utilities Petition for)
Delegated Authority to Implement Wireless)
Number Portability)

Order

Adopted: April 29, 2004

Released: April 30, 2004

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this order, we deny a petition from the New Jersey Board of Public Utilities (New Jersey BPU) for authority to immediately implement wireless number portability in four New Jersey counties outside of the 100 largest Metropolitan Statistical Areas (MSAs). We conclude that, in view of the upcoming May 24, 2004, deadline for implementation of wireless number portability in areas outside the 100 largest MSAs, accelerating the implementation schedule in New Jersey is unnecessary. In addition, we find that it is in the public interest to maintain the current national implementation schedule.

II. BACKGROUND

2. Under the Commission’s local number portability (LNP) rules, commercial mobile radio service (CMRS) carriers were required to offer number portability in the largest 100 MSAs by November 24, 2003.¹ Outside the largest 100 MSAs, CMRS carriers are required to support number portability within six months after receiving a request for number portability or by May 24, 2004, whichever is later.²

3. In setting the implementation schedule for number portability, the Commission concluded that a six-month interval between the deployment of LNP in the 100 largest markets and the rest of the country was appropriate in view of the differing levels of competition that were likely to

¹ 47 C.F.R. § 52.31; Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184 and CC Docket No. 95-116, *Memorandum Opinion and Order*, 17 FCC Rcd 14792 (2002) (*2002 Forbearance Order*).

² Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7314 (1997) (*First Memorandum, Opinion and Order*); *2002 Forbearance Order*, 17 FCC Rcd at 14986.

emerge across the country.³ In addition, the Commission found that allowing a six-month interval between deployment in the 100 largest markets and the remaining areas across the country was reasonable given the more significant network upgrades that might be necessary for carriers operating in smaller areas.⁴ In the Local Number Portability *First Memorandum Opinion and Order*, the Commission rejected proposals to allow state commissions to accelerate the deployment schedule, concluding that the deployment schedule represented a reasonable balance of competing interests and that carriers needed to have certainty about the requirements with which they had to comply.⁵

4. On January 15, 2004, the New Jersey BPU filed a Petition for Delegated Authority to immediately implement wireless LNP in four New Jersey counties - Mercer, Somerset, Cape May, and Cumberland.⁶ The New Jersey BPU contends that, given the significant presence of wireless carriers in these counties and the substantial consumer demand for wireless services, and because CMRS carriers in these counties already have the technical capacity to pool and port numbers, the Commission should give the New Jersey BPU delegated authority to immediately implement wireless number portability in these areas. The New Jersey BPU asserts that the population in these counties is greater than the population in some other counties included in the largest 100 MSAs, and that three of the four counties border at least one county in the largest 100 MSAs. The New Jersey BPU also requests that Mercer, Atlantic, Cape May, and Cumberland counties be treated as counties in the largest 100 MSAs in any forthcoming Commission order addressing numbering resource optimization, number portability and/or any other action affecting the largest 100 MSAs.

5. The Cellular Telecommunications and Internet Association (CTIA) filed comments opposing the New Jersey petition, arguing that the petition offers no compelling reason that would justify implementation of wireless number portability in the four New Jersey counties prior to the May 24, 2004, implementation deadline.⁷ Moreover, CTIA argues that the New Jersey BPU Petition does not address the problems wireline and wireless carriers, and their customers, would encounter with patchwork LNP implementation that deviates from the national schedule.⁸ The California Public Utilities Commission and Michigan Public Service Commission filed separate comments supporting the petition, arguing that states should be given authority to order carriers to implement LNP.⁹ In addition, the state commissions argue that the narrow set of circumstances the New Jersey BPU describes in its petition justifies the delegation of authority it requests.¹⁰

III. DISCUSSION

6. We share the New Jersey BPU's view of the importance of LNP for promoting competition and its desire to make porting available to all consumers as quickly as possible. However, in view of the impending May 24, 2004, deadline for the implementation of wireless LNP in areas outside the largest 100 MSAs, we find that accelerating the wireless LNP implementation schedule in New Jersey

³ Telephone Number Portability, CC Docket No. 95-116, *First Report and Order*, 11 FCC Rcd 8352, 8395 (1996).

⁴ *Id.* at 8395-96.

⁵ *First Memorandum Opinion and Order*, 12 FCC Rcd at 7297-98.

⁶ Telephone Number Portability, CC Docket No. 95-116, Petition for Delegated Authority to Implement Wireless Local Number Portability from the New Jersey Board of Public Utilities, filed Jan. 15, 2004 (New Jersey BPU Petition).

⁷ See Cellular Telecommunications & Internet Association Comments at 1 (CTIA Comments).

⁸ *Id.* at 2.

⁹ See California Public Utilities Commission Comments at 1 (CA PUC Comments) and Michigan Public Service Commission Comments at 3 (Michigan PSC Comments).

¹⁰ See CA PUC Comments at 2 and Michigan PSC Comments at 2.

is unnecessary. As stated above, CMRS carriers are required to implement number portability in areas outside the largest 100 MSAs within six months of receiving a request, or by May 24, 2004, whichever is later. Accordingly, assuming requests have been made, number portability will be available throughout New Jersey in less than a month.

7. From a practical perspective, it is unlikely that granting authority to the New Jersey BPU to accelerate the deployment schedule would bring porting to consumers much sooner. Although, as the New Jersey BPU asserts,¹¹ carriers may already have facilities in place to support porting, there is evidence carriers would still need to make programming changes to databases and routing schedules before porting can actually begin.¹² Carriers would need sufficient time to make and test these modifications. As a result, it is unlikely that porting would actually be available to consumers significantly in advance of the current schedule.

8. Moreover, to the extent that accelerating deployment in New Jersey could disrupt carrier efforts to otherwise prepare for the May implementation deadline, we find that it is in the public interest to maintain the current schedule. Over the past several years, wireless carriers have been preparing their networks, systems, and personnel to implement wireless LNP in accordance with the national schedule. Beginning last November, wireless carriers focused initially on deploying porting in the 100 largest markets across the country. With porting now running smoothly for the majority of consumers in these areas, carriers have shifted their focus to preparing for deployment across the rest of the country. As mentioned above, to prepare for porting in additional areas ahead of the current schedule, wireless carriers would need to make programming changes to the databases and routing schedules used to support LNP. To the extent that making such changes would, in any way, interfere with carrier efforts to prepare for the May implementation deadline, we find that it is in public interest to maintain the current deployment schedule. Maintaining a consistent national schedule will provide carriers with the certainty they need to manage the deployment process efficiently for the benefit of consumers.

9. In addition to these practical considerations, we also find that there is insufficient basis to distinguish these four counties in New Jersey from areas in other states that are outside the 100 largest MSAs. We are not convinced that the size of the counties in question or the existence of competitive service and consumer demand, without more, constitute sufficient grounds for relief. Indeed, as the New Jersey BPU acknowledges,¹³ consumers in seventeen of New Jersey's twenty-one counties are already able to port to and from CMRS carriers, whereas in some states there is currently no wireless porting because no area in the state is within one of the largest 100 markets. In view of these circumstances, singling out these four counties for acceleration of the LNP implementation schedule would not be in the public interest.

10. Finally, we also deny the New Jersey BPU's request to treat Mercer, Atlantic, Cape May, and Cumberland counties as counties in the largest 100 MSAs in any forthcoming order addressing numbering resource optimization, number portability, and/or any other action affecting the largest 100 MSAs. We find that there is insufficient evidence in the record to determine, with respect to any future proceeding, whether these areas should be included in the list of the 100 largest MSAs. We note, however, that the Commission has already held that state commissions may determine whether to extend thousands-block number pooling to areas included in combined metropolitan statistical areas (CMSAs)

¹¹ New Jersey BPU Reply Comments at 2.

¹² CTIA Comments at 4.

¹³ New Jersey BPU Petition at 1.

that otherwise would not be included on the list of the 100 largest MSAs.¹⁴

IV. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 155(c), and the authority delegated pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, the petition filed by the New Jersey Board of Public Utilities is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

John B. Muleta
Chief, Wireless Telecommunications Bureau

¹⁴ Telephone Number Portability, CC Docket No. 95-116 and CC Docket No. 99-200, *Fourth Report and Order in CC Docket No. 99-200 and CC Docket No. 95-116 and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 99-200*, 18 FCC Rcd 12472 (2003).