

**STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY,
DISSENTING IN PART**

Re: Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability, WT Docket No. 01-184, CC Docket No. 95-116, Memorandum Opinion and Order (adopted July 16, 2002).

The Commission today extends for one year the compliance deadline for wireless carriers to achieve local number portability (LNP). I believe, however, that the public interest would be better served by a lengthier delay and that the record in this proceeding supports a more substantial delay. In addition, recent events in the capital markets and the Commission's wireless competition report underscore the need for regulatory restraint. Moreover, there is nothing in this record to indicate that there is a substantial risk of competitive harm if we grant a lengthier delay. That is why we should resist substituting our judgment for the market's judgment of how best to serve consumers.

Wireless local number portability is not statutory.¹ Rather, the Commission in 1996 determined that LNP should be required for wireless carriers based largely on concerns about new carriers competing with entrenched cellular providers.² Later, LNP was justified based on numbering conservation concerns. In 1999, the Commission granted forbearance from wireless LNP until November 24, 2002.³

The case for temporary forbearance is even stronger today than it was in 1999. As the 1999 Commission put it, "[t]he record indicates that the demand for wireless number portability among CMRS consumers is currently low and that consumers are more concerned about competition in other areas such as price and service quality."⁴ The Commission thus found that granting an extension would give carriers greater flexibility to complete build out and other improvements likely to have a more immediate impact on enhancing service to the public and promoting competition.⁵ Today, I find little record support for the conclusion that consumers would readily prefer LNP to better coverage, lower prices, or more innovation services. Capital is a zero sum game; resources spent on this mandate in a competitive market will have an impact on other products and services that benefit consumers, including price, coverage, innovation and other mandates such as E911. Moreover, mandates impose costs that sap the strength and viability of the wireless market. Over the longer term, it is the strength of that market that we will rely on to deliver valued service, innovation, coverage and price competition to American consumers. The burden of additional mandates is particularly acute for providers in rural areas or those with small customer bases who are not capable of spreading their costs

¹ 47 U.S.C. 251 (b)(2).

² *Telephone Number Portability*, 11 FCC Rcd 8352 (1996). The emergence of six national wireless carriers without a LNP mandate has eviscerated this rationale.

³ *Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability*, Memorandum Opinion and Order, 14 FCC Rcd 3092 (1999) ("1999 Order").

⁴ *Id.* at ¶ 22.

⁵ *Id.* at ¶¶ 25-26.

across millions of customers. I am therefore concerned that the short-term competition considerations that are used to justify this order may be offset by the longer-term impact of weaker and fewer competitors, particularly in rural and underserved areas.

In describing the wireless LNP obligation over the years, the Commission has generally pointed to four factors in assessing the timeliness of the mandate: (1) number conservation, (2) wireline/wireless competition, (3) wireless/wireless competition, and (4) technical considerations. I believe these considerations support a delay into 2004.

(1) Number Conservation: It was originally thought that LNP was a necessary condition precedent to number pooling conservation measures. That is no longer the case. Indeed, wireless carriers' pooling responsibilities are not, and should not, be delayed by today's Order. Therefore, despite previous concerns, significant numbering conservation is not tied to the LNP mandate.⁶

(2) Wireline/Wireless Competition: Wireline/wireless substitution appears to run at around 3% and is increasing. Continued significant declines in long distance revenues prompted in part by wireless substitution underscores this trend. Thus, it does not appear that LNP is essential for wireline/wireless competition.⁷ In addition, wireless carriers who believe that wireline/wireless competition warrants it, can opt into LNP and port numbers from wireline carriers. Indeed, at least one carrier has indicated that it will implement LNP in November 2002 based on its business plan — with or without a mandate. For these reasons, I do not believe wireline/wireless competition supports mandating LNP in the short term.

(3) Wireless/Wireless Competition: In granting forbearance in 1999, the Commission stated that “not only is CMRS competition currently growing rapidly without LNP, but in the near term, LNP does not appear to be critical to ensuring that this growth continues.”⁸ Along virtually every metric, the competitive landscape has only improved: subscribership has grown, prices have fallen, and build out continues. Nonetheless, I recognize that one day wireless/wireless competition will likely provide the most valid rationale for any wireless LNP obligation. As consumers become increasingly attached to their numbers, the inability to port may distort consumer choice. When the tipping point is reached, one would expect (1) consumers to stick with their current carriers longer and (2) carriers with market share to become more entrenched thus thwarting new competitor entry. In turn, one would expect to see at least two objective signs that the marketplace is ripe for an LNP mandate: (a) a slow-down in churn and (b) smaller carriers supporting LNP. Neither has yet occurred.

⁶ Some have argued that LNP could make a difference in terms of aging numbers etc. Any potential increase in numbering efficiency would be marginal from these efforts.

⁷ There may be other very good reasons why wireline customers would not want their numbers ported to a wireless phone — including the availability of that number to telemarketers and directory assistance.

⁸ *1999 Order* at ¶ 19.

(a) Churn: In 1999, the Commission cited to consistently high churn as further evidence of the lack of consumer harm from forbearance.⁹ Prior FCC orders also concluded that consumers did not closely identify with their phone numbers.¹⁰ Therefore, to the extent that consumers have come to identify increasingly with their numbers, one would expect a slow in churn. Based on Commission data, we have not seen any significant decline in churn over time. Nor has any party to this proceeding produced any evidence of a significant decline in churn in any market segment or region of the country. Number portability cannot be justified based on a slow-down in churn due to increased customer identification with their numbers.

(b) Carriers Without Market Share Support: One would expect carriers with smaller market share to be enthusiastic about LNP as a tool to pry away existing customers from larger providers. Yet, while a few carriers (such as Leap) oppose delay, the four smallest national players (Sprint, Nextel, Alltel and Voicestream) all support significant delay. These carriers presumably believe their market resources are better spent in other areas of the business. As the Commission stated in 1999, delay would “give carriers greater flexibility to complete build out and other improvements likely to have a more immediate impact on enhancing service to the public and promoting competition.” These other efforts include coverage, customer service, and/or price – three areas which consumers consistently identify as very important in selecting a carrier. Shifting these resources to LNP substitutes government’s judgment for the carrier’s judgment on how best to compete and satisfy customers.

(4) Technological Considerations: Technical concerns also warrant some delay. As the public safety community has pointed out in support of a short delay, there are serious concerns about the impact of imposing pooling and porting and the corresponding impact on E911. We do not yet know how pooling will affect network performance or whether the existing LNP infrastructure is capable of handling the estimated increase in port volumes resulting from wireless implementation.

Based on these considerations, the Commission unanimously agrees that the 1999 Commission guessed wrong as to the appropriate date to impose LNP; however, unlike my colleagues, I believe implementation in 2004 would have been the sounder policy.

⁹ *Id.* at ¶ 23.

¹⁰ *Id.* at ¶ 34.