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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
BRISTOL BAY CELLULAR PARTNERSHIP)
)
Petition for Waiver of the)
Federal Communications Commission's Rules)
Concerning Implementation of Long-)
Term Number Portability)
)

File No. 98-108
CC Docket 95-116

To: Common Carrier Bureau

PETITION FOR WAIVER AND EXTENSION OF WAIVER

Bristol Bay Cellular Partnership ("Bristol Bay" or "Petitioner"), by its attorneys, respectfully requests a waiver of Section 52.31(b) of the Federal Communications Commission's rules, including the June 30, 1999 deadline for the implementation of number portability, and an extension of its current waiver of the December 31, 1998 implementation deadline. In October 1998, Petitioner requested a waiver of the requirement that a carrier be capable of querying the appropriate number portability database systems in order to deliver calls from their networks to ported numbers anywhere in the country by December 31, 1998, and that its obligation for compliance be deferred until such time in the future that its switching equipment is replaced and it has the capability to comply with the rule. On December 30, 1998 the FCC granted the waiver request indicating that an extension until June 30, 1999 is warranted since that is the earliest date by which any local exchange carrier ("LEC") in Alaska could be required to implement service provider local number portability ("LNP").

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At this time Petitioner requests an extension of the waiver of that requirement as well as a waiver of the upcoming June 30, 1999 requirement that carriers be capable of offering number portability without the impairment of quality, reliability, or convenience when switching service providers, including the ability to support roaming throughout their networks. As demonstrated herein, good cause exists for both the waiver and the extension of waiver^{1/} because it is economically and technically infeasible for Petitioner to comply with either implementation deadline for number portability.

Background and Facts

1. Since the time the original waiver request was granted the facts as presented in the original Petition remain accurate. In addition, Petitioner has made further efforts to obtain the equipment necessary to come into compliance with Section 52.31(b). Specifically, Petitioner has been continuing to negotiate the cost of the equipment needed to implement number portability and has been unable to come to terms for the purchase of the necessary equipment. As it currently stands, the purchase of the required equipment would force Petitioner to incur prohibitively uneconomical costs. Petitioner's inability to obtain the necessary equipment hinders not only its ability to comply with the original December 31, 1998 requirement, but also the upcoming June 30, 1999 deadline

^{1/} "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative. Northeast Cellular Telephone Co., L.P. v. FCC 897 F.2d 1164, 1166 (D.C. Cir. 1990).

requiring the full implementation of number portability. With respect to both deadlines, Petitioner has determined that due to the unique circumstances of its service areas and the limitations of its equipment that compliance with Section 52.31(b) continues to be impossible without Petitioner incurring prohibitively uneconomical costs. If obligated by the rule to incur expenses for switch replacement and data circuits, Petitioner would have no choice but to terminate services and shut the systems down.^{2/}

Request for Waiver

2. Petitioner requests a waiver of Section 52.31(b) which requires that number portability be implemented without the impairment of quality, reliability, or convenience when switching service providers, including the ability to support roaming throughout their networks; and an extension of the waiver of the first phase of number portability to originally be implemented by December 31, 1998. The unique circumstances surrounding the offering of service in rural Alaska villages warrant special consideration by the Commission.^{3/} Compliance with the June 30, 1999 deadline for both aspects of number portability is technically infeasible and economically prohibitive for Petitioner

^{2/} Petitioner has determined that it would cost in the range of \$450,000 to \$500,000 for replacement of each of its eight cellular switches in order to have the capability to provide number portability services. There is no money available to Petitioner to replace its switches because there is no business plan which Petitioner can develop to show how Petitioner would recover the cost of new switches.

^{3/} The Commission previously has recognized the unique problems faced by cellular service providers in rural Alaska, and has waived its rules accordingly. See Order In Re Alaska RSA No. 1 General Partnership and Bristol Bay Cellular Partnership Petition for Waiver and Special Relief, DA 97-2211 (October 15, 1997).

and would not be in the best interests of its customers.^{4/}

3. Grant of Petitioner's request for waiver and extension of waiver continues to be in the public interest because the unique and unusual circumstances surrounding Petitioner's inability to comply with the implementation deadline is due to circumstances beyond its control. Furthermore such circumstances only exist in service areas with the unique attributes of Petitioner's service areas.

4. The size and terrain of a state such as Alaska warrant special attention by the Commission when new rules threaten the ongoing viability of service. Petitioner initiated cellular service in 1990 (beginning in the King Salmon/Naknek area), attempting to offer the best service possible to the rural portions of Alaska which would not otherwise receive cellular service. In this case, the public interest would not be served by requiring a carrier to comply with a new and burdensome requirement which is detrimental to the interests of the carrier and to its customers. The FCC has stated numerous times that it seeks to be a proponent of the spread of telecommunications services to rural areas.^{5/} In this case, Bristol Bay requests the opportunity to continue service to its rural area customers by means of a waiver of Section 52.31(b) the FCC's rules.

5. Petitioner plans to continue to reassess the economic feasibility of obtaining the necessary equipment and negotiate its purchase. Petitioner will reassess the viability of purchasing the desired equipment as a matter of course no less than every six months and will notify the Commission of the status of these assessments accordingly. At the same time Petitioner will also notify the

^{4/} Bristol Bay serves about 2,000 customers through eight separate, stand-alone cellular systems in Alaska RSA 2.

^{5/} Report and Order In the Matter of Federal-State Joint Board on Universal Service 12 FCC Rcd 8776, 8799-8806 (May 7, 1997).

Commission of the progress it is making in its equipment negotiations.

6. In its Order, the Commission stated that further extensions of the implementation deadline could be warranted so long as, in the context of LNP, there continues to be no carrier in Alaska that:

1) receives calls routed directly from Bristol Bay's system, and 2) is required to deploy service provider LNP pursuant to section 52.23(c) of the rules based on a competing carrier's request.

Petitioner certifies that these conditions continue to be true with respect to Alaska LECs.

Conclusion

For the reasons explained, Petitioner requests a waiver of the Commission's June 30, 1999 number portability implementation deadline and an extension of its waiver of the deadline for capability to query databases. The public interest benefit in this case equals or exceeds that which the Commission has found in other instances to be sufficient for waiver. Accordingly, Petitioner requests that a waiver and further extension be granted as proposed.

Respectfully submitted,

BRISTOL BAY CELLULAR PARTNERSHIP

By: B. Lynn F. Ratnavale
David L. Nace
B. Lynn F. Ratnavale
Its Attorneys

Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036
Telephone: 202-857-3500
May 14, 1999

DECLARATION

I, Duane C. Durand, hereby state and declare:

1. I am General Manager of the General Partner of Bristol Bay Cellular Partnership, Cellular Radiotelephone Service provider in Alaska RSA 2 (B)(2) - Bethel.
2. I am familiar with the facts contained in the Petition For Waiver & Extension of Waiver, and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 5/10/99 day of May, 1999.



Duane C. Durand, General Manager of General Partner of
Bristol Bay Cellular Partnership

CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 14th day of May, 1999, sent by hand-delivery, a copy of the foregoing PETITION FOR WAIVER AND EXTENSION OF WAIVER to the following:

Lawrence Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-C450
Washington, DC 20054

Mr. Al McCloud
Network Services Division
Common Carrier Bureau
445 12th Street, S.W., Room 6-A423
Washington, D.C. 20554

Ms. Gayle Radley Teicher
Network Services Division
Common Carrier Bureau
445 12th Street, S.W., Room 6-A464
Washington, D.C. 20554

Tom Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room C-3207
Washington, D.C. 20554

Steven Weingarten, Chief
Commercial Wireless Branch
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-C224
Washington, D.C. 20554

David Furth
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-B522
Washington, D.C. 20554


Loren Costantino