

wireless Local Number Portability (“WLNP”) in the Tennessee 2 – Cannon Rural Service Area (“RSA”) until the later of May 24, 2004, or six months after receiving a request.¹

I. BACKGROUND

Advantage is a licensed provider of cellular service in the Tennessee 2 RSA. The FCC defines the Tennessee 2 RSA as being comprised of Smith, De Kalb, Cannon, Coffee, White, Warren, Grundy, and Van Buren counties in Tennessee.² The Tennessee 2 RSA has never been included in the list of the “top 100” MSAs based on either the 1990 or 2000 Census.³

Accordingly, Advantage has always understood its porting and pooling obligations to be those of a carrier that provides service outside the “top 100” MSAs.

On September 23, 2003, however, counsel for Advantage discovered that as of June 6, 2003, the Office of Management and Budget (“OMB”) now includes Cannon County, Tennessee in the Nashville-Davidson-Murfreesboro, Tennessee MSA (“Nashville MSA”).⁴ Prior to June 6, 2003, MSAs were defined as of June 30, 1999, and OMB did not include Cannon County in the Nashville MSA.⁵ Counsel notified Advantage of this discovery on September 24, 2003. The Nashville MSA *is* one of the “top 100” MSAs. Accordingly, by providing service in Cannon County (within the Tennessee 2 RSA), Advantage could be considered to be providing cellular

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 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).

³ 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.

⁴ See OMB Bulletin No. 03-04.

⁵ See OMB Bulletin No. 99-04.

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.⁶ 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*.⁷

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,⁸ the Commission has yet to address the specific treatment of shifts in MSA boundaries and the impact that such 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.

⁶ 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*”).

⁷ Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association filed May 13, 2003 in CC Docket 95-116 (“*Implementation Petition*”).

⁸ 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*”).

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

II. ARGUMENT

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

Advantage 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. The Commission has never provided notice of a change in MSA boundaries for the purpose of FCC-regulations, and Advantage has reasonably relied on the FCC and OMB definition of MSAs prior to June 6, 2003. Appendix D to the *NRO III* lists the "Nashville, TN" MSA and not the "Nashville-Davidson--Murfreesboro, TN" MSA as currently, defined by OMB. Therefore, Advantage 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, 2003.⁹ Were Advantage forced to implement WLNP on November 24, 2003, it would have only 61 days notice to implement WLNP from the time it learned of the June 6, 2003 redefinition. This would be unduly burdensome and would cause serious disruption in Advantage's network deployment. This result would be grossly unfair to Advantage and contrary to the public interest. Advantage should be able to rely on a reasonable degree of regulatory consistency in planning to comply

⁹ See 47 C.F.R § 52.31(a)(1)(ii).

with regulatory requirements. Because Advantage did not provide service within any top 100 MSA as of February 24, 2003, Advantage requests that the Commission clarify that Advantage's porting and pooling obligations within its licensed service area--the Tennessee 2 RSA--are those of a carrier providing service outside of the top 100 MSAs. Alternatively, and to the extent necessary, Advantage requests a waiver and extension of its porting and pooling obligations.

B. Good Cause Exists for an Extension of Advantage's Compliance Deadlines Because the June 2003-Redefinition of MSA Boundaries is an Extraordinary Circumstance Beyond Advantage'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.¹⁰ 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 switch, (4) provide a time when deployment will be complete in the switch, and (5) propose milestones for compliance.¹¹

Good cause exists for a waiver and extension of Advantage's deadline because the June 6, 2003 redefinition of MSAs is an extraordinary circumstance beyond Advantage's control, and of which Advantage learned only on September 24, 2003. At the time that Advantage received a request, no portion of the Tennessee 2 RSA was included within the Nashville MSA.¹² Accordingly, Advantage was not required to, and did not plan to implement WLNP prior to May

¹⁰ See *Telephone Number Portability*, First Report and Order, 11 FCC Rcd 8352 ¶ 85 (1996) *subsequent history omitted*.

¹¹ See 47 C.F.R. § 52.31(d).

¹² Although the validity of the request is in dispute, for the limited purpose of this Petition, Advantage assumes that the request was *bona fide*.

24, 2004. The intervening OMB redefinition of the Nashville MSA was clearly beyond Advantage's control.

The Commission has never provided Advantage with notice of any change in the FCC's definition of MSAs and RSAs,¹³ much less of the June 6, 2003 redefinition of MSAs. Accordingly, Advantage has reasonably relied on the FCC's unambiguous definition of the Tennessee 2 RSA in planning for the implementation of WLNP.

As noted above, were Advantage required to implement WLNP by November 24, 2003, it would have only 61 days notice from the time it learned of the redefinition, and it would be virtually impossible for Advantage to implement WLNP by November 24, 2003. Advantage's entire cellular system, including Cannon County, is served by its switch in Alexandria, Tennessee. Advantage is currently in the process of upgrading its TDMA system to Global System for Mobile Communication ("GSM"). This will include an upgrade of its existing system to deploy WLNP capabilities. Were Advantage forced to attempt to deploy WLNP prior to May 24, 2004, it would profoundly and negatively impact and delay Advantage's deployment of its GSM system. This grossly accelerated deployment would derail Advantage's network planning and construction and would force Advantage to divert resources in an inefficient manner. This result would not serve the public interest. Such a grossly accelerated deployment 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.

¹³ 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 "top 100" list. *Id.* note 312. The Commission, however, never recognized or noted any change in the boundaries of any of the MSAs. To Advantage'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 previously did not, but that as of June 6, 2003, now serve a top 100 MSA.

Moreover if Advantage 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 Cannon County.

Advantage also notes that significant issues remain pending at the FCC regarding the implementation of WLNP by small and rural carriers.¹⁴ Rural wireless carriers and the nationwide wireless carriers differ sharply over their implementation obligations. Extending Advantage’s implementation deadline until May of 2004 will allow the Commission time to address these pending issues in a rulemaking proceeding and will save the Commission, Advantage, and porting partners the need to litigate these disputed issues on an *ad hoc* basis in complaint proceedings prior to November 24, 2003.

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

¹⁴ See *Ex Parte* Presentation of the Rural Wireless Working Group Re Rural Wireless Number Portability Guidelines, filed August 25, 2003 in CC Docket No. 95-116; Comments of the Rural Telecommunications Group filed June 13, 2003 in CC Docket 95-116.

Declaration of WAYNE GASSAWAY

I, Wayne Gassaway, do hereby declare under penalty of perjury the following:

1. I am the General Manager of Advantage Cellular Systems, Inc.
2. I have read the foregoing "Petition of Advantage Cellular Systems, 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/_____
H. Wayne Gassaway

September 24, 2003

Date