

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

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Petitions of Franklin Telephone Company, Inc.,)	
Inter-Community Telephone Company, LLC,)	
and, North Central Telephone Cooperative, Inc.,)	
for Waiver and Extension of)	
Local Number Portability Obligations)	

To: The Wireline Competition Bureau

COMMENTS OF VALLEY TELEPHONE COOPERATIVE, INC

Valley Telephone Cooperative, Inc. (“Valley”), by its attorneys, and in response to the Federal Communications Commission (“FCC” or “Commission”) request for comments in its October 2, 2003 *Public Notice*,¹ hereby submits comments regarding petitions (“Waiver Requests”) submitted by Franklin Telephone Company, Inc. (“Franklin”), Inter-Community Telephone Company, LLC (“Inter-Community”), and North Central Telephone Cooperative, Inc. (“North Central”) (collectively, “Petitioners”) seeking, “to the extent necessary,” a waiver of Petitioners’ obligations to provide long-term Local Number Portability (“LNP”) by November 24, 2003. Valley comments on this matter, not to oppose the Waiver Requests *per se*, but to ensure that the Commission, in disposing of the Waiver Requests, does not impose a new *de facto* obligation on rural telephone companies where none otherwise exists. Specifically, based on the facts presented in the Waiver Requests, no waiver is required because the Petitioners are

¹ *In re* Wireline Competition Bureau Seeks Comment on Requests for Waiver or Temporary Extension of the Requirement to Provide Local Number Portability to CMRS Providers, CC Docket No. 95-116, DA 03-3014 (October 2, 2003).

not required to implement LNP by November 24, 2003, because there is no requirement that local exchange carriers (“LECs”) implement geographic location portability to port numbers across rate center boundaries or in the absence of local interconnection arrangements as requested in the Verizon and Sprint requests. Accordingly, the Verizon and Sprint requests were not bona fide requests that triggered the November 24, 2003 compliance deadline for the Petitioners. If the Commission determines otherwise, however, it should grant the Waiver Requests, and also grant a blanket waiver and extension to Valley and the hundreds of other rural telephone companies that are identically situated to the Petitioners.

I. Statement of Interest

Valley, like the Petitioners, is a rural telephone company as defined by the Communications Act of 1934, as amended (the “Act”). Valley provides local exchange and exchange access service to 6,700 access lines in the southern plains of Texas in a service area encompassing 7,300 square miles. Valley’s service area has a subscriber density of 0.92 lines per square mile.

Despite the extreme rural nature of Valley’s service area, Valley, like the Petitioners, received letters from Verizon Wireless and Sprint PCS (“CMRS Carriers”) requesting that Valley implement LNP. Neither Verizon, nor Sprint currently has an interconnection arrangement or agreement with Valley, nor have they established local numbers, local interconnection facilities or a local point of presence (“POP”) in Valley’s rural service area. Calls from Valley-customers to Sprint or Verizon are toll calls that are carried by the customer’s presubscribed (“PICed”) interexchange carrier (“IXC”). Porting to Sprint or Verizon would require Valley to port numbers across rate center boundaries and would result in massive

customer confusion because Valley customers would incur “surprise” toll charges for calling numbers that appear to be, and have previously been, local numbers.

Valley, like the Petitioners, notified the CMRS Carriers that it was not required to implement geographic location portability or to implement portability in a remote area that a requesting carrier does not actually intend to serve. Verizon sent a letter to Valley with a generic response that did not respond to Valley’s concerns other than to indicate that Verizon is unwilling to enter into interconnection negotiations. Although Valley is working toward implementation of LNP, consistent with current obligations for LECs, it would be impossible for Valley to implement intermodal LNP on the terms advocated by Verizon and the Cellular Telecommunications & Internet Association (“CTIA”)² by November 24, 2003. Accordingly, Valley is situated identically to the Petitioners.

Valley firmly believes neither it nor the Petitioners are obligated to implement LNP on the terms currently requested. To the extent that the Commission grants the Waiver Requests, however, it could create a *de facto* obligation for similarly situated LECs where none previously existed. Accordingly, to the extent the Commission determines that waivers are required and grants the Waiver Requests, the Commission should afford Valley and, in fairness, other rural telephone companies, an additional twelve months from the issuance of an order disposing of the Waiver Requests to implement LNP.

² See, Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association filed January 23, 2003 (“Rate Center Petition”); Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association filed May 13, 2003 (“Implementation Petition”).

II. ARGUMENT

A. No Waiver is Necessary Because the Petitioners Are Not Required to Implement LNP by November 24, 2003

No waiver is necessary because nothing in the Act, the Commission's rules, or the Commission's orders require LECs to port numbers across rate center boundaries or in the absence of interconnection agreements for the routing and exchange of local traffic.³ Section 251(b)(2) of the Act requires LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."⁴ The Act defines "number portability" as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."⁵ In the *First Report and Order*,⁶ the FCC specifically limited the portability mandate to service provider portability and did not mandate geographic location portability.⁷ The FCC made this determination in large part because of the recognition that implementing geographic portability would lead to customer confusion and "the loss of geographic identity" of a number.⁸ Specifically, customers would no longer be able to determine whether they were making a local call or one that would incur toll charges.

In addition, in establishing the requirements for LNP, the Commission specifically codified the recommendations of the North American Numbering Council ("NANC") as set forth

³ See, e.g., Comments of the United States Telecom Association in CC Docket No. 95-116 (filed Feb. 26, 2003) ("USTA Comments").

⁴ 47 U.S.C. § 251(b)(2).

⁵ 47 U.S.C. § 153(30).

⁶ *Telephone Number Portability*, First Report and Order, 11 FCC Rcd 8352 (1996) ("*First Report and Order*").

⁷ See *id.*, ¶ 184.

⁸ *Id.*

in the report to the Commission prepared by the NANC's Local Number Portability Administration Selection Working Group, dated April 25, 1997 (“Working Group Report”) and its appendices.⁹ Section 7.3 of Appendix D to the Working Group Report specifically limits porting to the current LEC rate center boundary due to rating and routing concerns.¹⁰ Accordingly, there is simply no current requirement that a rural telephone company or any other LEC port numbers across rate center boundaries to a CMRS carrier in a distant geographic location.

Were a rural telephone company required to port numbers across rate center boundaries and in the absence of a local interconnection arrangement, it would lead to massive customer confusion because customers would not be able to determine whether they were making local or toll calls to what appear to be and, previously have been, local numbers. For example, if Valley were required to port numbers to the CMRS Carriers in the absence of a local interconnection arrangement, calls from Valley customers to former customers with numbers ported to the CMRS Carriers would either be dropped, or would have to be switched to the customer’s PICed IXC and routed over toll trunks for delivery to the wireless switch serving the ported number. The PICed IXC would issue a bill to the end user based on the called number, and the Valley customer would therefore incur “surprise” toll charges for calls to what appear to be local numbers.¹¹ The customer confusion resulting from this surprise toll is precisely the type of confusion that the FCC determined would be unacceptable when it rejected imposing location

⁹ See 47 C.F.R. § 52.26(a); Second Report and Order, 12 FCC Rcd 12281 (1997) (“*Second Report and Order*”).

¹⁰ Working Group Report, App. D, § 7.3.

¹¹ Although the PICed IXC would bill the end user, Valley would not be able to collect originating access from the PICed IXC because Valley’s switch could not generate an access record for the call.

portability.¹² The Commission should not inadvertently introduce such confusion in its disposition of the Waiver Requests.

CTIA and Verizon have also taken the position that no interconnection agreement is required in order to implement LNP. They have argued that portability has no impact on the rating and routing of calls. As illustrated above, however, this is simply not true. Portability fundamentally impacts the routing, billing, and exchange of local traffic in rural areas where the requesting carriers have not established a local presence and facilities. Because any arrangement or agreement implementing portability would of necessity amount to an agreement governing routing and interconnection (albeit indirect interconnection), Valley believes that such agreement amounts to an interconnection agreement that Valley is obligated to file with the state commission for commission approval.¹³ In the *Local Competition Order*, the Commission concluded that “the 1996 Act requires all interconnection agreements ... to be submitted to the state commission for approval pursuant to section 252(e). The 1996 Act does not exempt certain categories of agreements from this requirement.”¹⁴

¹² See *First Report and Order* ¶ 184.

¹³ Were Valley to enter into a porting agreement with the CMRS Carriers without seeking state commission approval, Valley could be in violation of the Act for entering into a secret interconnection agreement. See, e.g., *in re Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Order Adopting ALJ’s Report and Establishing Comment Period Regarding Remedies, Minnesota Public Utilities Commission, Docket No. P-421/C-02-197 (November 1, 2002) (subsequent history omitted). Valley notes that absent the filing of agreements, incumbent LECs could give affiliated wireless carriers sweetheart porting deals that are not subject to the anti-discrimination protections of Section 252(i) of the Act. This provision allows any requesting carrier to opt-in to the terms of any Section 251-arrangement that is approved by a state commission thereby discouraging affiliated carriers from entering into anti-competitive arrangements. See 47 U.S.C. § 252(i); 47 C.F.R. § 51.809(a).

¹⁴ See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 165 (1996) (footnote omitted) (subsequent history omitted) (“*Local Competition Order*”).

The rate center issue has been before the Commission for almost five years. The FCC, however, has never indicated that rural telephone companies are required to implement geographic porting to port numbers across rate center boundaries to CMRS carriers, and the Commission may not impose such an obligation pursuant to the CTIA petitions. As the United States Telecom Association (“USTA”) correctly argued, overturning the *First Report and Order* and the *Second Report and Order* and imposing geographic portability, would at a minimum, require a formal rulemaking including notice of the proposed changes and an opportunity for comment.¹⁵ Accordingly, absent a final Commission order—adopted pursuant to the requirements of the Administrative Procedures Act —imposing a new obligation on LECs, neither the Petitioners nor Valley are required to implement intermodal geographic local portability to port numbers across rate centers or in the absence of interconnection agreements. Accordingly, to the extent that the Commission addresses the Waiver Requests, Valley requests that the Commission clarify that no waiver is required because the Petitioners are not obligated to implement LNP by November 24, 2003.

B. Alternatively, To the Extent the Commission Grants the Waiver Requests, It Also Should Waive and Extend the Deadline for Valley and All Similarly Situated Rural Telephone Companies

As discussed above, rural telephone companies are not required to implement geographic portability as of November 24, 2003. To the extent, that the Commission deems the waivers necessary, however, it should grant the Waiver Requests, and also should waive and extend the deadline for Valley and all similarly situated rural telephone companies.

¹⁵ See USTA Comments, p. 8. Routing and compensation issues also must be resolved prior to the imposition of geographic portability. See *In re Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, 16 FCC Rcd 9610, Notice of Proposed Rulemaking (2001) (“*Unified Inter-carrier Compensation NPRM*”).

Although the rate center and interconnection issues have been pending before the Commission for years, the Commission has never indicated that rural telephone companies are required to port across rate center boundaries and in the absence of interconnection agreements. While the Commission has indicated that it would provide clarification well before November 24, 2003, none has been forthcoming. Despite this lack of guidance, the Commission has encouraged LECs to deploy LNP. It was reasonable, however, for Petitioners and Valley to conserve resources, and not to attempt to implement geographic portability to the extent that they were not required to do so.¹⁶ Although Valley has taken steps to implement LNP consistent with the requirements of Rule Section 52.26(a), it has not implemented intermodal LNP across rate centers. Valley agrees with the Petitioners that even were the FCC to provide “guidance” today requiring rural telephone companies to implement intermodal LNP by November 24, 2003, it would be impossible for them to do so. It also would be utterly impossible for Valley to implement intermodal LNP by November 24, 2003.

As the Petitioners correctly argue, the implementation of LNP will be extremely complex and will require major changes in switching and billing software, the development of new processes and procedures, retraining of customer service representatives, operations, and accounting personnel, and an extensive customer education campaign to educate customers that upon implementation of LNP, they may incur toll charges for what appear to be local calls. The

¹⁶ In addition, the Commission’s rules only require a LEC to implement LNP in areas in which another carrier “is operating or plans to operate.” 47 C.F.R. § 52.23(c). As noted above, Valley serves an extremely remote geographic area. Valley has advised Verizon that it is Valley’s understanding that Verizon is not presently operating within Valley’s service area and has not provided any indication that it plans to operate in Valley’s service area, but Verizon has not addressed these concerns. It would be unduly burdensome and inefficient to require Valley or any other rural telephone company to implement LNP in remote rural areas that a CMRS carrier does not serve and has no intention of serving. In addition, where a CMRS carrier has limited or “spotty” coverage, porting to such carrier may also result in an impairment of service quality and reliability inconsistent with the requirements of the Act. *See* 47 USC §153(30).

implementation of intermodal LNP will tax the resources of small telephone companies with limited staff. More problematically, it will also require the establishment of new industry standards for the implementation of geographic porting beyond rate center boundaries. Even if the Petitioners had made all internal upgrades necessary to implement LNP, it would still be technically infeasible for Petitioners to implement LNP. It would similarly be technically infeasible for Valley to implement. There are simply no industry standards for implementing geographic portability.

Nor are the Petitioners or Valley alone in this respect. There are literally hundreds of rural telephone companies that will not be capable of implementing intermodal geographic porting by November 24, 2003.¹⁷ Accordingly, to the extent that the Commission determines that rural telephone companies are required to implement LNP to port numbers across rate center boundaries or to port numbers in the absence of interconnection agreements, the Commission should afford all rural telephone companies at least twelve months from the issuance of any such order in which to implement LNP. Granting additional time to all affected rural telephone companies will allow rural telephone companies to focus their resources on compliance efforts and will save the Commission from a flood of individual waiver requests.

III. CONCLUSION

For the reasons discussed above, no waivers are required because the Petitioners are not required to implement LNP by November 24, 2003 and merely sought waivers “out of an abundance of caution” and “to the extent necessary.” To the extent that the Commission determines that the waivers are required, however, the Commission should waive and extend the

¹⁷ See, e.g., Ex Parte Communication of Sprint in CC Docket No. 95-116, p. 1 (filed August 8, 2003) (indicating that Sprint sent 500 “requests” to landline carriers but that the requests had been disputed or otherwise “dishonored”).

implementation deadline for the Petitioners, Valley, and all similarly situated rural telephone companies until at least twelve months following the issuance of an order addressing the merits of the Waiver Requests and the porting obligations of rural telephone companies.

Respectfully submitted,

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