

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

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Petition of Valley Telephone Cooperative, Inc. for Limited Waiver and Extension of Its Porting and Pooling Obligations)	
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SPRINT OPPOSITION

Sprint Corporation, on behalf of its local, long distance and wireless divisions (“Sprint”), opposes the Petition for Limited Waiver and Extension of its Porting and Pooling Obligations submitted by the Valley Telephone Cooperative, Inc. (“Valley”).¹

Sprint understands that some RLECs may need additional time to become compliant with the Commission’s rules, and Sprint does not oppose number portability/pooling waiver requests where the RLEC makes an attempt to comply with the Commission’s deadlines and demonstrates a clear path to compliance.² In this case, however, Valley made no apparent effort to implement number portability when Sprint submitted a *bona fide* request in May 2003. Valley has not satisfied the criteria for the rule waiver it seeks, and its request suggests that Valley intends

¹ See Valley Telephone Cooperative, Inc., Petition for Limited Waiver and Extension of Its Porting and Pooling Obligations, CC Docket Nos. 95-116 and 99-200 (Nov. 21, 2003)(“Valley Petition”). Valley did not include in its filed copy page 9 of its Petition.

² See, e.g., Sprint Comments in Support of Yadkin Valley Waiver Request, CC Docket No. 95-116 (Nov. 26, 2003).

to discriminate against wireless customers with ported numbers. Its request for a rule waiver should be denied.³

I. THE COMMISSION SHOULD ADVISE VALLEY THAT IT MAY NOT DISCRIMINATE AGAINST WIRELESS CUSTOMERS WITH LOCAL PORTED NUMBERS

The Commission observed recently that at “all relevant times, industry practice among local exchange carriers . . . [has] been that calls are designated as either local or toll by comparing the NPA-NXX codes of the calling and called parties.”⁴ If the NPA-NXX codes are rated to the same local calling area, the LEC rates the call as local; conversely, if the NPA-NXX codes are rated to different local calling areas, the LEC either bills the call as toll or forwards the call to an interexchange carrier (“IXC”). Neither the telephone number nor the rate center association of the number changes when a number is ported from one carrier to another. Thus, if a call between two RLEC customers is local today, that call necessarily will remain a local call if the called RLEC customer ports his/her number to another carrier. As the Commission has recognized, “the rating of calls to the ported number stays the same”:

[A] wireless carrier porting-in a wireline number is required to maintain the number’s original rate center designation following the port. As a result, calls to the ported number will continue to be rated in the same fashion as they were prior to the port.⁵

³ The FCC must also reject Valley’s “alternative” request: clarify that the Valley customers residing in the top 100 MSAs are not actually residing in these MSAs and that therefore Valley should be treated as a LEC serving only rural areas. See Valley Petition at 1 and 4-6. The FCC has already rejected the same request made by another carrier. See *Western Wireless Waiver Denial Order*, CC Docket Nos. 95-116 and 99-2003, Order, DA 03-3744 (Nov. 24, 2003). In addition, all the cases Valley cites involved rule waivers not requests for clarification that the rules do not even apply. Valley’s request for relief must thus stand or fall on its request for a rule waiver.

⁴ *Starpower Communications v. Verizon South*, File No. EB-00-MD-19, *Memorandum Opinion and Order*, FCC 03-278, at ¶ 17 (Nov. 7, 2003).

⁵ See *Telephone Number Portability – CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, *Memorandum Opinion and Order*, FCC 03-284, at ¶ 28 (Nov. 10, 2003) (“*Intermodal Porting Order*”).

Valley refuses to recognize this fact. Rather, it states that it intends to route to IXCs calls destined to wireless customers with local ported numbers, even though Valley recognizes that its proposal would result in customer confusion:

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.⁶

In other words, Valley intends to penalize its customers that port to another carrier by converting their incoming calls from local to toll. And, to implement this discriminatory scheme, Valley is willing to create “massive confusion” among its remaining customers by forcing them to incur “surprise toll charges for calling numbers that appear to be, and have previously been, local numbers.”

Sprint submits that Valley’s proposal constitutes an unreasonable practice and would be unreasonably discriminatory under the Communications Act.⁷ Valley’s proposal also contravenes its duty under Section 251(a)(2) of the Act, which prohibits carriers from installing “network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section . . . 256.”⁸ Congress enacted Section 256 precisely to “ensure the ability of users . . . to seamlessly and transparently transmit and receive information between and across telecommunications networks.”⁹ Valley’s proposal would be inconsistent with the Congressional directive that customers should be able to “seamlessly and transparently” send their calls “between and across telecommunications networks.”

⁶ Valley Petition at 3.

⁷ See 47 U.S.C. §§ 201(b), 202(a). The FCC has ample statutory authority to preclude LECs adopting discriminatory interconnection arrangements with wireless carriers. See *id.* at § 332(c)(1)(B).

⁸ 47 U.S.C. § 251(b)(2).

⁹ 47 U.S.C. § 256(a)(2).

Valley also asserts that state law compels it to discriminate against wireless customers with ported local numbers:

Valley will not have a legal way to route calls to wireless carriers that do not have a point of interconnection within the various rate centers where Valley's local numbers are provisioned. Under Texas law, Valley is prohibited from transporting local traffic beyond its certificated service area.¹⁰

There are several flaws with this Valley argument. First, call routing is unrelated to call rating, as industry guidelines make clear.¹¹ As noted above, LECs rate calls as local or toll based on the rate center association of the calling and called numbers, and call rating is unaffected by the way a call is routed. LECs do not, as Valley intimates, rate calls as local or toll based on the interconnection point with other carriers; they rather rate calls "by comparing the NPA-NXX codes of the calling and called parties."¹²

Second, Texas law does not, as Valley asserts, "prohibit" Valley from "transporting local traffic beyond its certificated service area." The Texas statutes which Valley cites prohibit a company from providing a "retail public utility service" without a certificate of convenience, but the provision of "retail" service to customers is unrelated to a carrier's interconnection obligations with other carriers.¹³

¹⁰ Valley Petition at 7.

¹¹ Under industry guidelines, carriers may designate different routing and rating points for their telephone numbers. See Industry Numbering Committee, Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, at § 6.2.2 (Nov. 21, 2003).

¹² *Starpower* at ¶ 17.

¹³ Valley cites two Texas statutes. See Petition at n.22. Texas Utility Code 54.001 provides only that a "person may not provide local exchange telephone service . . . unless the person obtains (1) a certificate of convenience and necessity." This statute is not relevant to the present matter because Valley holds such a certificate. Valley further cites Texas Utility Code 54.052, which provides that "a public utility may not furnish or make available *retail* public utility service to an area . . . unless the utility first obtains a certificate that includes the area in which the consuming facility is located" (emphasis added). Interconnection with other carriers, however, has nothing to do with the provision of "retail" services to end user customers.

Finally, even if Texas law did “prohibit” Valley from “transporting local traffic beyond its certificated service area,” the fact remains that such a law would be preempted under the Supremacy Clause of the U.S. Constitution. FCC interconnection rules, affirmed on appeal, make clear that an originating carrier is responsible for transporting its own customers’ traffic “to the terminating carrier's end office switch that directly serves the called party.”¹⁴ Under the Commission’s the “single point of interconnection per LATA” rule,¹⁵ this transport obligation requires an originating carrier to transport its customer’s traffic subject to reciprocal compensation¹⁶ to the terminating carrier’s point of interconnection in the originating LATA.¹⁷ Any state law that conflicts with these rules necessarily is preempted by, and void under, the Supremacy Clause.¹⁸

Valley refuses to acknowledge its interconnection obligations under existing interconnection rules, and is using this refusal to make its discriminatory rating proposal. The Commission should not countenance disregard of its rules.

¹⁴ 47 C.F.R. § 51.701(b)(2). *See also id.* at § 51.701(c).

¹⁵ *See, e.g., Unified Inter-carrier Compensation*, 16 FCC Rcd 9610, 9634 ¶ 72 (2001); *Virginia Arbitration Order*, 17 FCC Rcd 27039, 27064 ¶ 52 (2002).

¹⁶ Traffic to a wireless carrier that originates and terminates within the same MTA is telecommunications traffic subject to reciprocal compensation. *See* 47 C.F.R. § 51.701(b)(2)

¹⁷ Since the inception of the mobile telephony industry 20 years ago, wireless carriers have used Type 2 interconnection, where the routing point (LATA tandem switch) is necessarily different than the rating point (a given rate center). *See, e.g., LEC-Wireless Carrier Interconnection Policy Statement*, 59 R.R.2d 1275, 1284 (1986); *LEC-Wireless Carrier Interconnection Declaratory Ruling*, 2 FCC Rcd 2910 ¶ 4, 2913 ¶ 29 (1987); 47 C.F.R. § 20.11(a)(wireless carrier, not LEC, chooses type of interconnection to use). Type 2 interconnection is consistent with the FCC’s “single POI per LATA” rule.

¹⁸ *See, e.g., Fidelity Federal Savings & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 153-54 (1982); *City of New York v. FCC*, 486 U.S. 57, 64 (1988)(“[T]he statutorily authorized regulations of an agency will preempt any state or local law that conflicts with such regulations or frustrates the purposes thereof”).

II. VALLEY SHOULD CLARIFY ITS REFERENCE TO “LOCAL TRUNKS”

The Commission has made clear that “to provide number portability, carriers can interconnect either directly *or indirectly* as required under Section 251(a)(1).”¹⁹ Under Commission rules, it is the wireless carrier, and not the incumbent carrier, which decides whether to use direct or indirect interconnection.²⁰

Valley states that it is “in the process of establishing facilities with carriers who have requested porting so that the local traffic can be carried on such facilities”:

Valley estimates that, in cooperation with these carriers, local trunks can be established to legally carry the traffic.²¹

Valley intimates that its willingness to provide number portability, including by May 24, 2004, will depend upon the installation of these “local trunks.”

Valley should confirm that it is not requiring wireless carriers to connect directly to its network as a condition to making number portability available. In this regard, the Commission has previously ruled that wireless carriers can choose to interconnect indirectly with LECs “based upon their most efficient technical and economic choices.”²²

¹⁹ *First Porting Reconsideration Order*, 12 FCC Rcd 7236, 7305 ¶ 121 (1997)(emphasis added).

²⁰ See 47 C.F.R. § 20.11(a). The Wireline Competition Bureau has further held that, under existing rules, competitive LECs cannot be required to interconnect directly with incumbent LECs. See, e.g., *Virginia Arbitration Order*, 17 FCC Rcd 27039, 27085 ¶ 88 (2002).

²¹ Valley Petition at 8.

²² See *First Local Competition Order*, 11 FCC Rcd 15499, 15991 ¶ 997 (1996). See also 47 U.S.C. § 251(a)(1); *Virginia Arbitration Order*, 17 FCC Rcd 27039, 27085 ¶ 88 (2002). Moreover, even if a wireless carrier did interconnect directly with a rural LEC, under FCC rules affirmed on appeal, the rural LEC would still be responsible for the costs of transporting its own customers’ traffic to the mobile switching carrier serving the wireless customer being called. See, e.g., 47 C.F.R. §§ 51.701(b)(2), 51.701(c), 51.703(b), 51.709(b). See also *TSR Wireless v. U S WEST*, 15 FCC Rcd 11166 (2000), *aff’d Qwest v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

III. VALLEY FAILS EVEN TO ALLEGE THAT IT MEETS THE REQUISITE WAIVER STANDARD

The Commission, Valley acknowledges, has ruled that it will entertain waivers of its number portability deadlines where the applicant “demonstrat[es] that extraordinary circumstances beyond its control prevent it from being able to comply with the deadline.”²³ However, Valley does not provide in its petition any facts, much less “substantial, credible evidence,” why it is unable to comply with the Commission’s number portability deployment rules and why this inability results from circumstances “beyond its control.”

Valley further recognizes that the Commission articulated with precision in Rule 52.23(e) the standards that an applicant must meet in order to receive a waiver of the number portability deadlines. Among other things, an applicant must submit “a detailed explanation of the activities that the carrier has undertaken to meet the implementation schedule prior to requesting an extension of time.”²⁴ However, Valley provides *no* explanation, much less a “detailed explanation,” of the steps it has taken over the past six months (since receiving *bona fide* requests from Sprint and Verizon Wireless).

Valley effectively concedes it did nothing over the first six months when it asserts that it did “not know how the Commission would deal with the complexities of intermodal porting” and that it found itself “with two short weeks to implement intermodal portability from the time the FCC ‘clarified’ the wireline to wireless porting obligation.”²⁵ These assertions are not credible. LECs, including rural LECs, have been on notice for over seven years that they are required to

²³ Valley Petition at 3, citing *First Porting Order*, 11 FCC Rcd 8352, 8397 ¶ 85 (1996)(“We emphasize, however, that carriers are expected to meet the prescribed deadlines, and a carrier seeking relief must present extraordinary circumstances beyond its control in order to obtain an extension of time. A carrier seeking such relief must demonstrate through substantial, credible evidence the basis for its contention that it is unable to comply with our deployment schedule.”).

²⁴ 47 C.F.R. § 52.23(e)(2).

provide portability to wireless carriers once wireless carriers become LNP capable and once wireless carriers submit *bona fide* requests.²⁶ Moreover, the Commission did not announce new requirements in its November 10, 2003 *Intermodal Porting Order*.²⁷ Rather, the Commission merely confirmed that the same rules used for LEC-LEC porting would be applied to LEC-wireless porting, including:

- “[T]o provide number portability, carriers can interconnect either directly or indirectly as required under Section 251(a)(1).”²⁸
- NANC’s LEC-LEC porting recommendations do not include any requirement that a competitive LEC have customers (and, therefore, telephone numbers) as a condition to an incumbent’s porting *its* customers’ numbers to the CLEC.²⁹

Valley cannot, therefore, claim any “surprise” by the Commission’s decision in its *Intermodal Porting Order*, and it would not have been reasonable for Valley to think that the Commission would impose on the eve of LEC-wireless porting new conditions or restrictions on the availability of porting that it did not apply to LEC-LEC porting.

Valley is mistaken in believing that it must revise its exchange access and intrastate toll tariffs before it uses its existing trunks to the LATA tandem switch to transport local traffic.³⁰

²⁵ Valley Petition at 7.

²⁶ See *First Porting Order*, 11 FCC Rcd 8352, 8357 ¶ 8 (1996) (“LECs are obligated under the statute to provide number portability to customers seeking to switch to CMRS carriers.”); *id.* at 8355 ¶ 3 (“Number portability must be provided in these areas by all LECs to all telecommunications carriers, including commercial mobile radio services (CMRS) providers.”); *id.* at 8431 ¶ 152 (“Section 251(b) requires local exchange carriers to provide number portability to all telecommunications carriers, and thus to CMRS providers as well as wireline service providers.”).

²⁷ See *Intermodal Porting Order* at ¶ 28.

²⁸ *First Porting Reconsideration Order*, 12 FCC Rcd 7236, 7305 ¶ 121 (1997). In this regard, NANC’s LEC-LEC porting recommendations, incorporated by reference into FCC rules, do not require direct interconnection. See *Architecture Task Force Report*, Attachment A at A-2, Scenarios A3 (“If no direct connection exists between LEC-4 and LEC-2, calls may be terminated through tandem agreement with LEC-1.”); *id.* at 8 § 7.8 (“Each designated N-1 carrier is responsible for ensuring queries are performed on an N-1 basis where the ‘N’ is the entity terminating the call to the end user, *or a network provider contract by the entity to provide tandem access.*”)(emphasis added).

²⁹ Sprint notes that the FCC’s recent statement to the contrary, see *Intermodal Porting Order* at ¶ 7, is not consistent with the recommendations NANC actually made to the FCC.

These tariffs apply to services provided over the trunks, and they do not prohibit Valley from using the same trunk groups in routing local traffic.³¹ And even if these tariffs do require revision, Valley has not explained why it could not have revised its tariffs during the six-month period following receipt of Sprint's *bona fide* request. In this regard, the Commission has already rejected the LEC argument that they can excuse themselves from complying with FCC rules simply by filing inconsistent state tariffs.³²

Valley finally asserts that a Commission grant of the requested waiver would have "a negligible impact on the Commission's stated policy of promoting intermodal competition."³³ Sprint must respectfully disagree. At issue with Valley's request is the date Valley's customers will enjoy the new option of porting their number to a competitive service. Delay in the availability of this new option would not be in the best interests of Valley's customers.

In the end, Valley has not met the requirements for a rule waiver, nor has it established any special circumstances. Sprint recommends that the Commission follow the same approach it took with another carrier making a similar request: deny the waiver request but adopt a 60-day non-enforcement period.³⁴ As Valley acknowledges, it will have finalized its arrangement to Verisign to handle port outs by "the end of January."³⁵

³⁰ See Valley Petition at 7.

³¹ Valley cites Section 2.1.1.A of its access tariffs for the proposition that they do "not permit Valley to place local traffic on these trunks." Petition at n.23. This provision contains no such prohibition, as it provides: "The Telephone Company does not undertake to transmit messages under this tariff."

³² See *TSR Wireless v. US WEST*, 15 FCC Rcd 11166, 11182-83 ¶¶ 27-29 (2000), *aff'd Qwest v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

³³ Valley Petition at 6.

³⁴ See *Western Wireless Waiver Denial Order*, CC Docket Nos. 95-116 and 99-200, DA 03-3744 (Nov. 24, 2003).

³⁵ See Valley Petition at 8.

IV. CONCLUSION

For the foregoing reasons, the Commission should deny Valley's request for a waiver of the Commission's number portability implementation rules.

Respectfully submitted,

SPRINT CORPORATION



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December 8, 2003

Certificate of Service

I, Jo-Ann Monroe, certify that on this 8th day of December, I caused a copy of the foregoing Sprint Opposition to be served by first class mail, postage prepaid, to:

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