

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

In the Matter of	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
YCOM Networks, Inc.	)	
	)	
Petition for Waiver of Section 52.23(c).	)	
of the Commission's Rules	)	
_____	)	

**SPRINT OPPOSITION**

Sprint Corporation, on behalf of its local, long distance and wireless divisions (“Sprint”), opposes the Petition for Waiver submitted by YCOM Networks, Inc. (“YCOM”), which seeks a six-month extension of its number portability obligation but which further suggests that it may never comply with the Commission’s rules.<sup>1</sup> YCOM seeks this six-month extension even though its switch is already “number portable-capable” and even though it states it needs only 60 days to activate number portability in its network.<sup>2</sup>

Sprint understands that some rural local exchange carriers (“RLECs”) may need additional time to become compliant with the Commission’s rules, and Sprint does not oppose those number portability/pooling waiver requests where the RLEC makes an attempt to comply with Commission rules and demonstrates a clear path to compliance.<sup>3</sup> In this case, however, YCOM made no apparent effort to implement number portability when Sprint submitted a *bona fide* re-

---

<sup>1</sup> See YCOM Telephone Company, Petition for Waiver, CC Docket No. 95-116 (Nov. 21, 2003) (“YCOM Petition”).

<sup>2</sup> See *id.* at 3.

quest in May 2003. YCOM has not satisfied the criteria for the rule waiver it seeks, and its claim that it is “not technically able to comply” with the Commission’s rules lacks merit.

## I. BACKGROUND FACTS

YCOM provides telecommunications services to over 13,000 customers in two rate centers, Yelm and Rainer, in the State of Washington.<sup>4</sup> YCOM’s switches have already been upgraded to provide number portability.<sup>5</sup> YCOM received from Sprint PCS on May 23, 2003 a request to provide number portability by November 24, 2003.<sup>6</sup>

On September 24, 2004, or four months after Sprint submitted its *bona fide* request, YCOM petitioned the Washington Utilities and Transportation Commission (“WUTC”) under Section 251(f)(2) of the Communications Act that it be exempted from providing portability, arguing, *inter alia*, that number portability is technically infeasible and would be economically burdensome.<sup>7</sup> Sprint opposed this request, demonstrating that YCOM had not met any of the statutory criteria and that its assertions were incompatible with available facts.<sup>8</sup> Thereafter, WUTC staff recommended that the WUTC deny the petition.<sup>9</sup> On October 28, 2003, before the

---

<sup>3</sup> See, e.g., Sprint Comments in Support of Yadkin Valley Waiver Request, CC Docket No. 95-116 (Nov. 26, 2003).

<sup>4</sup> See WUTC Staff Memorandum for October 29, 2003 Open Meeting, UT-031535, Attachment C.

<sup>5</sup> See YCOM Petition at 3.

<sup>6</sup> See *id.* at 2.

<sup>7</sup> See Washington Independent Telephone Association, Petition for Temporary Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 251(f)(2) of the Communications Act, UT-031535 (Sept. 24, 2004).

<sup>8</sup> See Sprint, Protest of WITA’s Section 251(f)(2) Petition, UT-031535 (Oct. 23, 2003).

<sup>9</sup> See WUTC Staff Memorandum for October 29, 2003 Open Meeting, UT-031535.

WUTC had an opportunity to act on YCOM's request, YCOM withdrew its Section 251(f)(2) petition "in light of Staff's recommendations in this matter."<sup>10</sup>

On November 21, 2003, or one business day before it was required to begin providing number portability, YCOM filed its FCC request for waiver.

## II. YCOM'S ASSERTION THAT IT IS "NOT TECHNICALLY ABLE TO COMPLY" WITH FCC RULES LACKS MERIT

YCOM states that although its switches are already capable of supporting number portability, it will "attempt to complete deployment in the affected switches by May 10, 2003."<sup>11</sup> YCOM further asserts that notwithstanding these network modifications, it will still "not [be] technically able to comply" with the Commission's number portability rules:

[T]he Company is not technically able to comply with what appear to be the requirements of the *Intermodal LNP Order* with respect to the transport and "rating" of calls to a number ported to a wireless carrier.<sup>12</sup>

YCOM says it is "concerned" that the routing of calls to wireless customers with ported numbers is "not technically feasible in the absence of the deployment of a physical connection of the wireless carrier to the Company's network."<sup>13</sup> In other words, according to YCOM, it cannot properly rate and route calls to wireless customers with ported numbers unless the wireless carrier connects directly with YCOM's network.

There are several flaws with YCOM's assertion. First, YCOM does not present any fact to support of its assertion that it cannot properly rate and route calls to wireless customers with ported numbers. The Commission has directed waiver applicants like YCOM to submit "sub-

---

<sup>10</sup> Letter from Richard A. Finnigan, WITA Attorney, to Carole Washburn, WUTC Executive Secretary, UT-03-1535 (Oct. 28, 2003).

<sup>11</sup> YCOM Petition at 3 and 5 (emphasis added).

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.* at 5.

stantial, credible evidence” in support of their requests.<sup>14</sup> Here, YCOM does not provide facts to support its assertion that routing and rating of calls to customers with ported numbers is “technically infeasible.”

Second, YCOM’s assertion is also inaccurate. Sprint, itself an incumbent LEC that provides services in many rural areas, has previously explained in some detail how rural LECs can properly rate and route calls to wireless customers with ported numbers.<sup>15</sup> It is unpersuasive for a carrier to continue to assert that proper call routing and rating is not technically feasible when it makes no attempt to respond to demonstrations that such routing and rating is, in fact, technically feasible. In this regard, the Commission has recognized that calls to a ported number “will continue to be rated in the same fashion as they were prior to the port” and that the routing of numbers to ported numbers is “no different than if the wireless carrier had assigned the customer a new number rated to that rate center.”<sup>16</sup>

Third, the Commission has repeatedly rejected the argument that wireless carriers can be required to connect directly to incumbent LEC networks:

- The FCC long ago required LECs to provide Type 2 interconnection to wireless carriers.<sup>17</sup> With Type 2 interconnection, the routing point (LATA tandem switch) is necessarily different than the rating point (a given rate center), with

---

<sup>14</sup> See *Telephone Number Portability – CTLA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, *Memorandum Opinion and Order*, FCC 03-284, at ¶ 30 (Nov. 10, 2003) (“*Intermodal Porting Order*”). See also *id.* at ¶¶ 23, 29.

<sup>15</sup> See, e.g., Sprint Ex Parte Letter, CC Docket No. 95-116 (Oct. 21, 2003); Sprint Opposition to Rural Carrier Petition to Stay the Wireless Porting Order, CC Docket No. 95-116, at 2-15 (Nov. 12, 2003).

<sup>16</sup> *Intermodal Porting Order* at ¶ 28.

<sup>17</sup> 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). See also Bellcore, *Notes on the Network*, TR-NPL-000275, Section 16, Cellular Mobile Carrier Interconnection, at 16-2 § 2.03 (April 1986)(“Type 2A interconnection is at the MTSO and a designed BOC tandem switching system. Through this option, the CMC [Cellular Mobile Carrier] can establish intra-LATA connections to BOC end offices connected to the tandem *and to other carriers interconnected through the tandem.*”)(emphasis added).

the result that the rural LEC-wireless interconnection inherently is indirect rather than direct.

- Type 2 interconnection is consistent with the “single point of interconnection per LATA” rule.<sup>18</sup>
- FCC rules specify that it is the competitive wireless carrier, not the incumbent LEC, which chooses whether to interconnect directly or indirectly.<sup>19</sup>
- The FCC, in implementing the 1996 Act, reaffirmed that wireless carriers can choose to interconnect indirectly with LECs “based upon their most efficient technical and economic choices.”<sup>20</sup>
- The FCC has additionally ruled in the context of number portability that “carriers can interconnect either directly *or indirectly* as required under Section 251(a)(1).”<sup>21</sup>
- Direct interconnection is not required between two LECs,<sup>22</sup> and the FCC’s LEC-LEC porting rules do not require direct interconnection.<sup>23</sup>

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.<sup>24</sup>

---

<sup>18</sup> See, e.g., *Unified Inter-carrier Compensation*, 16 FCC Rcd 9610, 9634 ¶ 72 (2001); *Virginia Arbitration Order*, 17 FCC Rcd 27039, 27064 ¶ 52 (2002).

<sup>19</sup> See 47 U.S.C. § 20.11(a). See also *Bowles v. United Telephone*, 12 FCC Rcd 9840, 9849 ¶ 15 (1997); *Third Radio Common Carrier Order*, 4 FCC Rcd 2369, 2376 ¶ 47 (1989).

<sup>20</sup> 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).

<sup>21</sup> *First Porting Reconsideration Order*, 12 FCC Rcd 7236, 7305 ¶ 121 (1997)(emphasis added).

<sup>22</sup> See, e.g., *Virginia Arbitration Order*, 17 FCC Rcd 27039, 27085 ¶ 88 (2002)(Wireline Competition Bureau holds that, under existing rules, LECs cannot be required to interconnect directly with other LECs.).

<sup>23</sup> FCC Rule 52.26(a) incorporates by reference the LEC-LEC porting recommendations made by NANC. NANC’s recommendations recognize that carriers can interconnect indirectly with each other. 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.”). See also *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).

<sup>24</sup> 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).

In the end, if YCOM does not properly rate and route its customers' calls to wireless customers with ported numbers, this will be because YCOM refuses to comply with the interconnection rules currently in effect.

### III. YCOM FAILS TO MEET THE REQUISITE WAIVER STANDARD

YCOM 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."<sup>25</sup> Sprint submitted its *bona fide* request to YCOM on May 23, 2003,<sup>26</sup> and YCOM had more than six months to begin providing number portability to Sprint. Accordingly to YCOM, since its switch is already LNP-capable, it can become number portability capable 60 days following receipt of a *bona fide* request.<sup>27</sup> Thus, YCOM effectively concedes that it could have timely provided number portability on November 24, 2003.

According to YCOM, it took no action to implement number portability upon receiving Sprint's request (other than to "question the validity of the request") because of its "understanding that the CMRS carrier requests exceeded the Commission's expectations and the statutory requirements set forth in the Act":

The Company . . . did not understand the requests of the CMRS carriers to be a request for number portability enabling a customer to retain, at the same location, the use of the number.<sup>28</sup>

---

<sup>25</sup> 47 C.F.R. § 52.23(e)(2).

<sup>26</sup> See YCOM Petition at 2. Although YCOM "question[ed] the validity of th[is] request, see *id.* at 2, YCOM has now abandoned this claim.

<sup>27</sup> See YCOM Petition at 3.

<sup>28</sup> YCOM Petition at 2 and 4-5 (underscore in original). While YCOM "questioned the validity" of Sprint's BFR (*id.* at 2), it did not demonstrate that the request was invalid under the requirements the FCC

However, the Commission made clear in its *First Porting Order* that YCOM's statutory obligation to provide number portability extends to wireless carriers such as Sprint.<sup>29</sup> Moreover, a YCOM customer would have no interest in porting his/her telephone number to Sprint unless Sprint is capable of providing its wireless services "at the same location" where the customer currently receives his/her YCOM services.

The Commission has held that to secure a waiver of the number portability deadlines, the waiver applicant must demonstrate that its inability to meet the deadlines is due to circumstances "beyond its control":

We emphasize . . . 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.<sup>30</sup>

Here, YCOM has not shown that its inability to providing number portability by November 24, 2003 is due to circumstances beyond its control. In the end, YCOM seeks a waiver of the

---

has established. The FCC long ago defined the three components of a valid request for portability: they "should specifically [1] request long-term number portability, [2] identify the discrete geographic area covered by the request, and [3] provide a tentative date six or more months in the future when the carrier expects to need number portability in order to port prospective customers." *First Porting Order*, 11 FCC Rcd at 8394 ¶ 80. See also *Fourth Porting Order*, CC Docket No. 95-116, FCC 03-126, at ¶ 10 (June 18, 2003).

<sup>29</sup> 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.").

<sup>30</sup> *First Porting Order*, 11 FCC Rcd 8352, 8397 ¶ 85 (1996). See also *OGC Telecomm Waiver Order*, 13 FCC Rcd 20839 (1998) (Two month extension granted because of vendor delays); *Roseville Telephone Waiver Order*, 13 FCC Rcd 17826 (1998) (19-day extension granted to complete intercarrier testing and to align implementation with the RBOC); *Nextlink Telephone Waiver Order*, 13 FCC Rcd 13485 (1998) (Two month extension granted to complete intercarrier testing and to align implementation with the RBOC); *Rio Virgin Telephone Waiver Order*, 13 FCC Rcd 12250 (1998) (Four month extension granted because of vendor delays in replacing a switch); *Southwestern Bell Waiver Order*, 13 FCC Rcd 9578 (1998) (One month extension granted because recently discovered problems in upgrades to network equipment); *AT&T Waiver Order*, 13 FCC Rcd 9564 (1998) (Three-week extension granted because of a change in NPAC administrator and equipment).

Commission's number portability deadlines because it apparently decided to ignore the Commission's rules.

#### IV. THE APPROPRIATE RELIEF FOR YCOM'S NON-COMPLIANCE

Available facts indicate that the apparent reason that YCOM did not timely meet its number portability obligations is because it decided to ignore the Commission's rules. The Commission now faces the difficult decision of what relief, if any, is appropriate under the circumstances.

The Commission faced a similar situation in a recent order where it determined that the waiver applicant had not satisfied the standards for a waiver of the number portability rules.<sup>31</sup> Realizing that it was not possible for the waiver applicant to become immediately compliant with the rules, the Commission announced that it would not enforce its rules, determining based on the facts of that case, that a "sixty-day non-enforcement period" was appropriate.<sup>32</sup>

Here, YCOM concedes that it can activate number portability in its LNP-capable switches in 60 days.<sup>33</sup> Accordingly to YCOM, it began implementing number portability in earnest following the Commission's November 10, 2003 *Intermodal Porting Order*.<sup>34</sup> Sprint therefore recommends that the Commission deny YCOM's waiver request, but that it announce a non-enforcement period through January 10, 2004 – or two months from the *Intermodal LNP Order*. YCOM has not provided any facts justifying delay beyond that date.<sup>35</sup>

---

<sup>31</sup> See *Western Wireless Waiver Denial Order*, CC Docket No. 95-116, DA 03-3744 (Nov. 24, 2003).

<sup>32</sup> See *id.* at ¶¶ 1, 16.

<sup>33</sup> See YCOM Petition at 3.

<sup>34</sup> YCOM Petition at 5.

<sup>35</sup> As the FCC's waiver decisions cited in note 30 *supra* make clear, the FCC grants an extension only for the period the waiver applicant demonstrates in its petition.

**V. CONCLUSION**

For the foregoing reasons, the Commission should deny YCOM's request for a waiver of the Commission's number portability implementation rules, although Sprint would not oppose a non-enforcement period through January 10, 2004.

Respectfully submitted,

**SPRINT CORPORATION**



Luisa L. Lancetti  
Vice President, Wireless Regulatory Affairs  
401 9<sup>th</sup> Street, N.W., Suite 400  
Washington, D.C. 20004  
202-585-1923

Scott Freiermuth, Attorney  
Sprint Corporation  
6450 Sprint Parkway  
Overland Park, KS 66251  
913-315-8521

December 10, 2003

**Certificate of Service**

I, Jo-Ann Monroe, certify that on this 10th day of December, I caused a copy of the foregoing Sprint Opposition to be served by first class mail, postage prepaid, to:

Stephen G. Kraskin  
Thomas J. Moorman  
John Kuykendall  
Kraskin, Lesse & Cosson  
2120 L Street, N.W., Suite 520  
Washington, D.C. 20037

A handwritten signature in cursive script that reads "Jo-Ann Monroe". The signature is written in black ink and is positioned above a horizontal line.

Jo-Ann Monroe