

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

In the Matter of	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Warwick Valley Telephone Company	)	
	)	
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 Warwick Valley Telephone Company (“Warwick”), 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> In seeking this extension, Warwick neglects to advise the Commission that (a) it is “currently LNP capable in one of its two switches,” and (b) the New York Commission has denied its request under Section 251(f)(2) of the Communications Act to stay the November 24, 2003 deadline.

Sprint understands that some rural local exchange carriers (“RLECs”) may need additional time to become compliant with the Commission’s rules and, as previously advised, 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>2</sup> In this

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

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

case, however, Warwick apparently made no effort to implement number portability when Sprint submitted a *bona fide* request in May 2003, even though its network is already capable of supporting portability. Warwick 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. Its request should be denied.

## I. BACKGROUND FACTS

Warwick provides telecommunications services to approximately 30,000 customers in Orange County, New York, and Sussex and Passaic Counties in New Jersey.<sup>3</sup> Warwick acknowledges that a portion of its service area is located within an MSA that is among the largest 100 MSAs.<sup>4</sup> Sprint PCS sent to Warwick on May 23, 2003 a request to provide number portability by November 24, 2003.<sup>5</sup> Warwick told the New York Commission that one of its switches is already LNP capable and that it could soon become LNP capable throughout its network:

WVT [Warwick] is currently LNP capable in one of its two switches. WVT plans to collapse the non-LNP capable switch into the LNP capable switch in the fall of 2004. This will negate the need to expend additional capital dollars on the non-LNP capable switch in the event that WVT receives “bona fide” requests in the future.<sup>6</sup>

On October 22, 2003, or five months after Sprint submitted its *bona fide* request, the New York State Telecommunications Association (“NYSTA”), on behalf of Warwick and certain

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<sup>3</sup> See New York State Telecommunications Association, Petition for Suspension, No. 03-C-1508 (Oct. 22, 2004), Exhibit 1 (“Warwick New York Exhibit”).

<sup>4</sup> Warwick Petition at 2. Completely without merit is Warwick’s assertion that it can exempt itself from providing portability on November 24, 2003 because its switches serving its customers located in one of the top MSAs are not physically located in the MSA. Compare 47 C.F.R. §§ 52.23(b)(2), 52.31(a)(1)(v).

<sup>5</sup> See Attachment A. Warwick’s assertion – Sprint PCS sent it “a request for information regarding number portability but did not send a request of implement number portability” (Warwick Petition at 2) – is not factually accurate.

other New York LECs, petitioned the Public Service Commission of New York under Section 251(f)(2) of the Communications Act asking that they be exempted from providing portability and arguing, *inter alia*, that number portability is technically infeasible and would be economically burdensome.<sup>7</sup> On November 21, 2003, Chairman Flynn denied the request for an immediate stay of the FCC's number portability rules.<sup>8</sup> The New York Commission has established a briefing schedule for the remainder of the NYSTA Section 251(f)(2) petition, although NYSTA has indicated that it may file in the near future a new Section 251(f)(2) petition.

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

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

Warwick states that although one of its two switches has already been upgraded to support number portability, it "will *attempt* to complete deployment in the affected switches by May 10, 2004," but it also adds that it is "unable at this time to estimate when it will be compliant."<sup>9</sup> This is because its switch vendor supposedly has "not provided information regarding when necessary switch upgrades will be completed."<sup>10</sup> This explanation is confusing. As noted above, Warwick told the New York Commission that one of its switches is "currently LNP capable" and

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<sup>6</sup> Warwick New York Exhibit. Although Warwick told the New York Commission that it operates only two switches, its FCC petition identifies five switches. *See* Petition at 5. Sprint cannot explain this apparent discrepancy. Perhaps the other switches are used in Warwick's capacity as a CLEC.

<sup>7</sup> *See* New York State Telecommunications Association, Petition for Suspension, No. 03-C-1508 (Oct. 22, 2004).

<sup>8</sup> *See* Order Denying Emergency Stay of Federal Local Number Portability Obligations, No. 03-C-1508 (Nov. 21, 2003). The other four Commissioners later joined in this decision. *See* Confirming Order, No. 03-C-1508 (Nov. 28, 2003).

<sup>9</sup> Warwick Petition at 4 and 6 (emphasis added).

<sup>10</sup> *Id.* at 4.

that it “plans to collapse the non-LNP capable switch into the LNP capable switch” so as to conserve on capital expenditures.<sup>11</sup>

Warwick additionally asserts that notwithstanding these unspecified 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>

Warwick 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 Warwick, it cannot properly rate and route calls to wireless customers with ported numbers unless the wireless carrier connects directly with Warwick’s network.

Sprint has previously demonstrated that there are numerous flaws with the assertions that RLECs like Warwick make concerning call rating and routing.<sup>14</sup> Further, in this case, Warwick acknowledges that Sprint PCS and it have executed an interconnection contract whereby Warwick routes calls to Sprint customers indirectly *via* the LATA tandem switch.<sup>15</sup> The transfer, or port, of a telephone number from one carrier to another has nothing to do with the way calls are routed between carriers. The Warwick/Sprint PCS interconnection arrangement thus confirms

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<sup>11</sup> Warwick New York Exhibit.

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

<sup>13</sup> *Id.* at 6.

<sup>14</sup> See, e.g., Sprint Opposition to YCOM Waiver Request, CC Docket No. 95-116, at 3-6 (Dec. 10, 2003); Sprint Opposition to Bentleyville Waiver Request, CC Docket No. 95-116, at 2-5 (Dec. 8, 2003); Sprint Ex Parte Letter, CC Docket No. 95-116 (Oct. 21, 2003).

that RLECs and wireless carriers can interconnect indirectly and properly route and rate calls, whether the calls are to customers with ported or non-ported numbers.

In the end, if Warwick does not properly rate and route its customers' calls to wireless customers with ported numbers, this will be because Warwick refuses to comply with current interconnection rules and its existing interconnection contract with Sprint.

### **III. WARWICK FAILS TO MEET THE REQUISITE WAIVER STANDARD**

Warwick 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>16</sup> Sprint submitted its *bona fide* request to Warwick on May 23, 2003,<sup>17</sup> and Warwick had more than six months to begin providing number portability to Sprint. Especially since one of its two switches had already been updated to support number portability,<sup>18</sup> Warwick should have been able to begin providing number portability on November 24, 2003.

According to its petition, Warwick took no action to implement number portability upon receiving requests from Sprint and other wireless carriers (other than to “question the validity of the requests”) because of its “understanding that the CMRS carrier requests exceeded the Commission’s expectations and the statutory requirements set forth in the Act”:

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<sup>15</sup> See Warwick Petition 5. This interconnection contract further specifies that the originating carrier is responsible for paying transit charges for delivering its customers' traffic to the terminating carrier's network.

<sup>16</sup> 47 C.F.R. § 52.23(e)(2).

<sup>17</sup> See Attachment.

<sup>18</sup> See Warwick New York Exhibit.

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>19</sup>

However, the Commission made clear in its *First Porting Order* that Warwick's statutory obligation to provide number portability extends to wireless carriers such as Sprint.<sup>20</sup> Moreover, a Warwick 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 Warwick 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>21</sup>

Here, Warwick has not shown that its inability to provide number portability by November 24, 2003 is due to circumstances beyond its control.

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<sup>19</sup> Warwick Petition at 2 and 5 (underscore in original).

<sup>20</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>21</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).

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

Available facts indicate that the apparent reason that Warwick 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>22</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 short "non-enforcement period" was appropriate.<sup>23</sup>

One of Warwick's switches is already capable of providing number portability and Warwick has stated that it intends to use this same switch to provide number portability elsewhere in its network. According to Warwick, it began taking other steps to implement number portability in earnest following the Commission's November 10, 2003 *Intermodal Porting Order*.<sup>24</sup> Sprint therefore recommends that the Commission deny Warwick's waiver request, but that it announce a non-enforcement period through January 10, 2004 – or 60 days from the *Intermodal LNP Order*. Warwick has not provided facts justifying delay beyond that date.<sup>25</sup>

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<sup>22</sup> See *Western Wireless Waiver Denial Order*, CC Docket No. 95-116, DA 03-3744 (Nov. 24, 2003).

<sup>23</sup> See *id.* at ¶¶ 1, 16.

<sup>24</sup> Warwick Petition at 2-3 and 5.

<sup>25</sup> As the FCC's waiver decisions cited in note 23 *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 Warwick'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**

s/s Luisa L. Lancetti  
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December 16, 2003

## **Bonafide Request Form (BFR)**

**Purpose:** This form is used to request deployment of long-term Local Number Portability as defined in the FCC mandates (CC

Docket 95-116). Specifically, this form requests that ALL codes be opened for portability within the Metropolitan Statistical

Area and wireline switch CLLI codes designated below. This form may be used for both wireless and wireline requests.

### **TO (RECIPIENT):**

**OCN:** 0135  
**Company Name:** WARWICK VALLEY TELEPHONE CO.  
**Contact Name:** RICHARD DZIERZEK

**Contact's Address:** 47 MAIN STREET

WARWICK NY 10990  
fromig01@sprintspectrum.com

**Contact's Phone:** 845-986-2727

### **FROM (REQUESTOR):**

**Company Name:** Sprint PCS  
**Contact Name:** Fawn Romig  
**Contact's Address:** 6580 Sprint Parkway  
Mailstop: KSOPHW0516-5B360

Overland Park, KS 66210

**Contact's Email:**

**Contact's Fax:** (913) 523-8333

**Contact's Phone:** (913) 794-9486

### **TIMING:**

**Date of Request:** May 23, 2003

**Receipt Confirmation Due By:** June 9, 2003

**Effective Date:** November 24, 2003

### **Designated Wireline Switch CLLI Codes:**

**1st CLLI:** FLRDNYXARS0

**2nd CLLI:** WRWKNYXADS0

**3rd CLLI:**

**4th CLLI:**

**5th CLLI:**

**6th CLLI:**

### **Designated Metropolitan Statistical Areas (MSAs):**

Note: MSAs refer to the U.S. Census Bureau MSAs. These may differ from the MSAs as separately defined by the wireless or wireline industries.

**MSA\_NAME:**

Newburgh, NY-PA

### **Actions Required of the Recipient:**

1. Within 10 days of receipt, provide confirmation to the requestor that this form has been received.
2. For all currently released codes, and those to be released at any future time, within the designated U.S. Census Bureau MSAs and wireline switch CLLI codes (where applicable), open all for porting within the LERG.
3. For all currently released codes, and those to be released at any future time, within the designated U.S. Census Bureau MSAs and wireline switch CLLI codes (where applicable), open all for porting within the NPAC (Number Portability Administration Center).
4. Ensure that all switches handling codes within the designated MSAs are Local Number Portability capable.

Monday, May 12, 2003

BFR Checklist Form v04 020204.doc

## **Certificate of Service**

I, Anthony Traini, certify that on this 16th 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

s/s Anthony Traini  
Anthony Traini