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

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

To: The Commission

REPLY OF VALLEY TELEPHONE COOPERATIVE, INC.
TO SPRINT OPPOSITION, AND SUPPLEMENT TO PETITION FOR LIMITED WAIVER

Valley Telephone Cooperative, Inc. ("Valley"), by its attorneys, and pursuant to Sections 1.45(c) of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission"), hereby replies to the Opposition filed by Sprint Corporation on December 8, 2003,[1] opposing the limited waiver and extension sought by Valley of its intermodal porting obligations as established by the Commission's November 10, 2003 *Intermodal Order.*[2] Valley also supplements its Petition by providing additional and updated information regarding Valley's efforts and plans to comply with its obligation to provide Local Number Portability ("LNP"). Despite Sprint's rather fanciful attempts to mischaracterize Valley's Petition as some nefarious

[1] Sprint's Opposition was filed out-of-time and was served on Valley's counsel via First Class Mail and received on December 11, 2003.
[2] *In re Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 03-284 (rel. November 10, 2003) ("*Intermodal Order*").

plan to engage in a systematic program of discrimination against customers that wish to port their telephone numbers to Sprint, the limited relief sought by Valley is simple, logical and warranted by the circumstances. Valley fully intends to comply with its obligations to provide LNP. Valley, however, needs additional time to implement intermodal LNP, and the waiver and extension that Valley seeks impacts only a very small number of customers, 735 to be exact. The Commission therefore should reject Sprint's Opposition and waive and extend Valley's compliance deadline for implementing intermodal LNP in Valley's wireline service area until of May 24, 2004.

I. VALLEY's PROVISION OF SERVICE INSIDE THE TOP 100 MSAs IS *DE MINIMIS*

In its Petition, Valley requested that the Commission treat Valley's limited service within the top 100 Metropolitan Statistical Areas ("MSAs) as *de minimis*, and allow Valley the benefit of the six-month LNP transition period afforded to rural wireline carriers in the *Intermodal Order*. Sprint opposes this request.[3] As indicated in its Petition, Valley provides local exchange service and intraLATA toll service to approximately 6,700 access lines in the southern plains of Texas in a service area encompassing 7,300 square miles. With the limited exceptions of the small portions of Atascosa and Hidalgo counties, where Valley serves a total of 35 and 700 customers, respectively, none of Valley's telephone service area falls inside one of the top 100 MSAs. Not only do these 735 customers represent a small portion of Valley's total customer base, they also represent an infinitesimally small fraction of the total number of households in each of those counties and in each of their respective MSAs. For example, Valley's 35 Atascosa County customers represent less than three tenths of one percent (0.27%) of the 12, 816 households located in that county and a barely measurable fraction of the 601,265 households

[3] *See* Opposition note 3.

located in the San Antonio MSA. Likewise, Valley's 700 Hidalgo County customers represent less than one-half of one percent (0.45%) of the 156,824 households in and less than one-third of a percent of the 506,919 population of that county.[4] Based upon the fact that Valley is clearly a rural carrier and serves a *de minimis* number of customers located any top 100 MSA, Valley requested that the Commission apply longstanding precedent, followed by the Commission in virtually all contexts, to afford Valley the same amount of time given to other rural carriers to implement intermodal portability, *i.e.*, until May 24, 2004.[5]

In the *Intermodal Order*, the FCC expressly recognized that many rural wireline carriers "may require some additional time to prepare for implementation of intermodal portability."[6] The Commission therefore established a "transition period [to] help ensure a smooth transition" for carriers to provide them with sufficient time to make necessary modifications to their systems.[7] Thus, the Commission waived the intermodal portability deadline until May 24, 2004 for wireline carriers located outside of the top 100 MSAs.[8] As indicated in its Petition, the fact that Valley serves a *de minimis* number of customers in the San Antonio, Texas and McAllen-Edinburg-Pharr, Texas MSAs does not alter the fact that, as a small, independent, rural local exchange carrier, Valley needs the same transition period that the Commission afforded to other

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[4] Hidalgo County is the sole county comprising the McAllen-Edinburg-Pharr, Texas MSA. Valley's service area extends only into the far northern rural portions of the county. Valley does not serve the more densely populated southern portions of the county.

[5] Sprint's claim that the Commission "has already rejected the same request made by another carrier" is simply untrue. *See* Opposition note 3 (*citing Western Wireless Top 100 Petition*, DA 03-3744 (rel. Nov. 24, 2003)). In that case, Western Wireless had sought clarification of the Commission's top 100 MSA policy as it related to individual counties being reassigned to top 100 MSAs by periodic changes made to the MSA list. The present case involves no such issue. Rather, Valley has sought application of the Commission's well established *de minimis* policy in a situation where Valley serves 0.27% and 0.45% of the households in two counties that admittedly fall within the top 100 MSAs.

[6] *Intermodal Order*, ¶ 29.

[7] *Id.*

[8] *Id.*

rural carriers.[9] Allowing Valley additional time, until May 24, 2004, in which to implement LNP will allow for the smooth and successful implementation of LNP and will have negligible impact on consumers.[10]

II. VALLEY IS WORKING TO ACHIEVE INTERMODAL PORTABILITY AS QUICKLY AS POSSIBLE

In its Opposition, Sprint argues that the Commission should deny Valley's waiver request because Valley did not take sufficient action to implement number portability upon receipt of Sprint's request in May 2003.[11] If fact, Valley took reasonable action consistent with industry practice and FCC guidance at the time. Upon receiving a request from Sprint, Valley sent Sprint a letter notifying Sprint that Sprint and Valley would need to negotiate an interconnection agreement in order to allow for the local routing of ported traffic. Sprint did not respond to Valley's letter. Valley also retained counsel to advise Valley of its LNP obligations and to plan for the implementation of LNP. Valley put together a team to implement LNP and began contacting vendors to support LNP. Valley also filed comments with the Commission explaining that Valley, and other similarly situated rural carriers, would need additional time beyond November 24, 2003 in which to implement LNP if the Commission were to require carriers to implement LNP in the absence of local interconnection arrangements.[12]

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[9] *See* Emergency Joint Petition for Partial Stay and Clarification filed by the Independent Telephone and Telecommunications Alliance, et al. on November 21, 2003 (requesting a blanket extension for small carriers and noting that the FCC failed to consider that many small carriers serve small portions of the top 100 MSAs) ("*Two Percent Carrier Petition*").

[10] Sprint does not allege that a single Valley subscriber has requested porting his or her number to Sprint.

[11] *See* Opposition at p. 7.

[12] *See* Comments of Valley Telephone Cooperative, Inc. filed October 17, 2003 in CC Docket No. 95-116 (advocating that LECs are not required to implement LNP to port numbers across rate center boundaries and requesting a blanket waiver for rural telephone companies should the FCC determine otherwise).

Valley, however, reasonably did not incur the cost of fully implementing LNP because it believed that the requesting carrier was required to establish a local interconnection arrangement with Valley to allow for the routing of local traffic and the establishment of a reciprocal compensation arrangement. As Sprint is well aware, the interconnection and rate center issues were closely contested issues over which the Commission and industry struggled. Contrary to Sprint's post-mortem statements about the reasonableness of Valley's position,[13] Valley is not prescient and could not predict the outcome of the FCC's decision.[14] Only on November 10, 2003 did the Commission release the *Intermodal Order*, determining the obligations of LECs to provide intermodal LNP in the absence of local interconnection arrangements. It was impossible, however, for Valley to implement LNP on the terms required by the *Intermodal Order* between November 10, 2003 and November 24, 2003.[15]

Now that the Commission has issued the *Intermodal Order* and provided the long-awaited guidance, Valley is working with all diligence to implement LNP. Valley is committed to complying with its obligations. Since filing its Petition, Valley has negotiated and executed an agreement with Verisign pursuant to which Verisign will provide LNP services to Valley.[16] Valley has also contacted its switch vendor and determined the upgrades required to its switch. Valley also has begun to develop the necessary service order procedures and billing practices,

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[13] *See* Opposition at p. 8.

[14] As discussed below in Section III, the facilities, routing and compensation issues related to LNP remain of great concern to rural telephone companies.

[15] Sprint itself concedes that some rural LECs may need additional time to become compliant. Prior to the implementation of wireless number portability, Valley was not required to be LNP capable because it had not previously received a request from another carrier.

[16] Sprint argues that since Verisign is projected to be ready to handle Valley's ports out by the end of January, 2004, Valley should be required to provide intermodal portability at that time. Finalizing arrangements with Verisign, however, is just one of many tasks that Valley must accomplish before intermodal porting can commence.

and has continued to work to resolve appropriate methods for routing traffic to ported numbers by establishing appropriate facilities and agreements.

Despite Valley's efforts, however, work remains for Valley to become LNP capable. In order to become LNP capable and to implement LNP, Valley must complete the final upgrades to its switches. Specifically, Valley must acquire and load switching software and install hardware, at an estimated cost of $92,000. This includes, among other things, upgrading its network to provide for SS7 signaling for local calls, upgrading switches to AIN 0.1 standards and provisioning switch location routing numbers. Valley also must establish service order procedures and must register, test and certify its Service Order Activation ("SOA") system. As detailed in its Petition, Valley must determine and coordinate delivery of correct 911 information to its wireline 911 database vendor, and resolve a number of back office, billing, testing and staff training issues as well. As discussed below, Sprint's arguments to the contrary notwithstanding, Valley also must establish facilities and agreements for the proper routing and billing of calls to ported numbers. [17]

Valley anticipates that it will complete the above upgrades to become LNP capable by Mid-April of 2004. Because of the prospect of unanticipated delays, however, Valley continues to request that the Commission waive and extend Valley's implementation deadline until May

[17] *See Two Percent Carrier Petition* at pp. 12-19 (explaining that it is technically infeasible for small carriers currently to fully comply with the rating and routing requirements of the *Intermodal Order*). Sprint has either misunderstood or deliberately mischaracterizes Valley's petition when it claims that Valley intends to discriminate against porting customers by converting local calls to toll calls. Just the opposite is true. Valley is seeking to put in place facilities and/or agreements to ensure that ported numbers will be treated as local calls.

24, 2004. This will allow for a smooth transition to LNP and consistency in the rural telephony market place.[18]

III. THE COMMISSION SHOULD RESOLVE ROUTING AND INTERCARRIER COMPENSATION ISSUES AS SOON AS POSSIBLE

Much of Sprint's Opposition is directed to rating, routing and interconnection related issues. Sprint's characterization of these issues is misleading and incorrect. Absent judicial or administrative reversal or modification of the *Intermodal Order*, Valley will comply with its requirements regarding the rating of ported traffic and the provision of LNP even in the absence of a local interconnection arrangement. Accordingly, no FCC action is necessary with respect to those issues in connection with Valley's waiver request.

As the Commission is well aware, however, serious routing, interconnection, billing, and intercarrier compensation issues remain unresolved in connection with LNP. The Commission specifically reserved resolution of these issues in the *Intermodal Order*.[19] In his statement accompanying the *Intermodal Order*, Commissioner Adelstein specifically stated,

> I remain concerned, however, that today's clarification of our LNP rules and obligations will exacerbate the so-called "rating and routing" problem for wireless calls that are rated local, but are in fact carried outside of wireline rate centers. While I appreciate the language in the Order that clarifies that ported numbers must remain rated to the original rate center, the rating and routing issue continues to remain unresolved for rural wireline carriers as well as neighboring LECs and the wireless carriers whose calls are being carried. I believe that we must redouble our efforts to resolve this critical intercarrier compensation issue as quickly and comprehensively as possible.[20]

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[18] Rather than granting Valley's requested waiver, Sprint argues that the Commission should deny the request but refrain from taking enforcement action against Valley for a period of 60 days. *See* Opposition at p. 9. Valley cautions the Commission that adopting this approach could cause Valley to be in non-compliance with applicable loan covenants that could result in debt acceleration or other penalties. Enforcement action is but one of the potential severe negative outcomes that could result from an FCC denial of Valley's waiver request.

[19] *See Intermodal Order* ¶ 40.

[20] Separate Statement of Commissioner Johnathon S. Adelstein.

Valley requests that the Commission consider and resolve these issues as soon as possible.

Valley particularly disputes Sprint's interpretation of a supposed rule requiring all carriers to interconnect at and deliver traffic to a single point of interconnection per LATA.[21] The Commission has never held that a rural telephone company must, at its expense, transport local traffic beyond its own network to a distant network of another carrier. While Valley fully intends to comply with the *Intermodal Order*, and to deliver local calls to ported numbers, consistent with the *Intermodal Order*, Valley expressly reserves its right to seek compensation for the costs of transporting local traffic outside of Valley's network to a distant carrier. Valley also requests that the FCC direct Sprint to honor its obligations to pay reciprocal compensation for the local traffic which Sprint's customers originate and which terminates on Valley's network and for which Sprint currently does not compensate Valley.

[21] Sprint argues that Valley, at its expense must deliver locally rated calls outside of Valley's own network to the LATA tandem. Because Valley's network and service area do not extend to the LATA tandem, Sprint effectively argues that Valley is required to utilize the IntraLATA toll network of Southwestern Bell Telephone Company ("SWBT") to transport local traffic to Sprint. Valley has no authority to route local traffic on this network. Were Valley to route local traffic over SWBTs IntraLATA toll trunks, SWBT would, at a minimum, bill Valley terminating IntraLATA access for such traffic because this is the only compensation arrangement currently established. Valley is in the process of attempting to establish alternate arrangements and facilities with SWBT, but has not completed these arrangements. Although Sprint argues that Valley could have began to put such arrangements into place after receiving Sprint's May 2003 porting request, prior to the release of the *Intermodal Order*, it was entirely reasonable for Valley to believe that arrangements for the delivery of local traffic would be worked out in the context of an interconnection agreement with the requesting wireless carrier, precisely as they would be worked out in the context of porting between two wireline carriers.

IV. CONCLUSION

For the reasons discussed above, Valley respectfully requests that the Commission clarify that Valley's provision of service inside the top 100 MSAs is *de minimis* and that Valley may take advantage of the LNP transition period. In the alternative, and to the extent necessary, Valley respectfully requests that the Commission waive and extend Valley's compliance deadlines and allow Valley to implement local number portability no later than May 24, 2004.

Respectfully submitted,

VALLEY TELEPHONE COOPERATIVE, INC.

By: _____/s/_____

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December 18, 2003

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Declaration of Charles Gowder

I, Charles Gowder, do hereby declare under penalty of perjury the following:

1. I am the General Manager of Valley Telephone Cooperative, Inc.

2. I have read the foregoing "Reply of Valley Telephone Cooperative, Inc. to Sprint Opposition, and Supplement to Petition for Limited Waiver." I have personal knowledge of the facts set forth therein, and believe them to be true and correct.

Charles Gowder

Charles Gowder

12-18-2003

Date

CERTIFICATE OF SERIVCE

I, Joy Barksdale, hereby certify that on this 18th day of December 2003, the foregoing Reply of Valley Telephone Cooperative, Inc. to Sprint Opposition, and Supplement to Petition for Limited Waiver was served upon the following party via hand delivery:

Luisa L. Lancetti
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_____/s/_____
Joy Barksdale