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January 9, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Warwick Valley Telephone Company, Clarification and Supplement to the
Petition for Waiver of Section 52.23(c) of the Commission's Rules
Ex Parte Filing in CC Docket No. 95-116

Dear Ms. Dortch:

On behalf of Warwick Valley Telephone Company ("Warwick" or the "Company"), this *ex parte* letter is filed in response to the December 16, 2003 "Sprint Opposition" (the "Opposition") wherein Sprint Corporation ("Sprint") opposes the Company's November 21, 2003 Petition seeking an extension of the November 24, 2003 date for supporting intermodal number portability.¹ In light of the Opposition, Warwick has again reviewed its Petition. As explained below, Sprint is correct in its identification of an inconsistency between the text of the Petition versus the information that is contained in the Exhibits. The Company herein corrects this error in order to clarify the specific limited relief the Company seeks. Additionally, and in conformance with its pledge to provide "milestone" updates (*see* Petition at 7), this filing further refines the scope of the relief requested, and reaffirms the Company's efforts to work with requesting carriers to implement intermodal portability in a rational manner.

First Milestone Report and Clarification and Supplement of the Petition

A. Confirmation of the Prior FCC Decision Will Negate the Need for Further Action on the Petition

Warwick notes that further action regarding the Petition vis-à-vis the November 24, 2003 date for the initial supporting of intermodal local number portability ("LNP") would be unnecessary by confirming that the obligation to support LNP in the top 100 Metropolitan Statistical Areas ("MSAs") is triggered only when a company's switch is actually located within

¹ The Opposition was filed out of time and need not be considered. 47 C.F.R. § 1.45. Without waiving this objection, the Company nonetheless responds to the allegations raised by Sprint in a continuing demonstration of the Company's good faith compliance efforts with respect to supporting intermodal porting.

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one of those MSAs. See Petition at 3 citing *In the Matter of Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236,7314 (1997) (“*First Reconsideration Order*”). Sprint does not challenge Warwick’s clarification request nor does Sprint challenge the fact that Warwick’s two Host/Remote complexes (one in New York and the other in New Jersey) are not within the top 100 MSAs. Accordingly, Warwick respectfully requests that the Federal Communications Commission (“Commission” or “FCC”) confirm its decision noted above in the *First Reconsideration Order*, thereby negating the need for any further action on the Petition with respect to the November 24, 2003 date. However, as explained below, the Company requests an extension beyond the May 10, 2004 date originally requested as well as the May 24, 2004 date established by the FCC for intermodal porting outside of the top 100 MSAs.

B. Correction in the Petition

In the event that further Commission action is warranted, Warwick respectfully clarifies and corrects the relief requested in the body of Petition. Contrary to the suggestions and characterizations set forth in the Sprint Opposition, the need for clarification arises as a result of an inadvertent drafting error. The fact that the error was inadvertent is readily apparent – all of the information cited by Sprint regarding the LNP capabilities of the Company’s switches was set forth in the filing. This information was neither hidden nor in conflict, as suggested by Sprint, with information the Company provided to the New York Public Service Commission (“NY PSC”)²

Specifically, the Company’s Host/Remote complexes in New Jersey were and should have been the only switches for which relief is being requested. The Company inadvertently included its New York Host/Remote complex as part of the relief identified in the body of the Petition, although the New York switch was correctly noted as LNP capable in Exhibit 2 of the Petition. Attached hereto is a revised page 6 to the Petition that deletes the Company’s New York CLLI Codes (WRWKNYXADS0, PNISNYXARS0, FLRDNYXARS0) from the relief

² To ensure the record is clear, however, the Company disagrees with Sprint’s characterization of the November 21, 2003 action by the NY PSC. Sprint is incorrect to suggest that the NY PSC denied a “stay” request of the Commission’s November 24, 2003 deadline to support intermodal porting. See Opposition at 1, 3. Rather, the NY PSC’s action addressed a request for a temporary suspension of the porting obligations of various New York smaller telephone companies (including Warwick) until a decision was reached on the merits of the petition for suspension. This request was and is entirely consistent with the Communications Act of 1934, as amended. See 47 U.S.C. §251(f)(2)(A) (“State Commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.”) Sprint also fails to note that the NY PSC made clear that its action was taken “without prejudice to the Commission’s consideration of this matter on the merits, following that notice and comment period.” Order Denying Emergency Stay of Federal Local Number Portability Obligations, Case No. 03-C-1508, issued November 21, 2003 at 9. Sprint further failed to note that the NY PSC had specifically indicated its understanding that carriers could seek relief from the FCC from the November 24th deadline. See *id.* at 5, 8. Warwick notes that the participating companies supplemented their petition for suspension before the NY PSC on December 15, 2003.

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being requested. The Company hereby clarifies that it seeks relief only for the Company's New Jersey Host/Remote complex (CLLI Codes HGLKNJXVDS1, UGLKNJXVRS0).

C. Supplement to Requested Relief

The Company had hoped that, prior to the May 10, 2004 date initially requested by the Company for an extension (*see* Petition at 1, 10), the Commission would clarify the application of the top 100 MSA rules to the Company's operations and the FCC's intermodal porting obligations to smaller companies like Warwick. At this time, however, and in order to avoid the inefficient use of Commission resources associated with additional waiver requests, the Company supplements its Petition to request an extension until December 15, 2004 with respect to the Company's New Jersey Host/Remote complex. This is the date by which Warwick's on-going plans of eliminating the stand-alone New Jersey Host/Remote complex should be completed. The Company provides the following additional information in support of this request³

The Company's current plans are to collapse the New Jersey Host/Remote complex into the New York Host/Remote complex in December of 2004. Once completed, the Company's Vernon, New Jersey switch (973/764) and the Upper Greenwood Lakes remote (973/853) will be operated as remotes off the Company's New York switch. The Company has engaged in significant planning and activities to accomplish this consolidation. Warwick began this process in mid-2001 when the Company's engineers initiated plans for the consolidation. The decision to proceed with these plans was driven primarily by efforts to eliminate unnecessary switching expenses (such as switch software and generic upgrades), to decrease trouble shooting and response times, and to provide for more efficient use of personnel in maintaining the switching complex.

Initial fieldwork began in 2002 with the upgrading of the New Jersey Vernon switch. The necessary software and hardware upgrades were ordered in the first quarter of 2002 with all but a small portion of the necessary upgrades to the Vernon exchange completed by late December 2003. In addition, the Company is in the process of deploying GR-303 interface equipment in its New York Host switch to enable that switch to service all of the Company's customers in New Jersey. This portion of the conversion process is scheduled for completion by May 1, 2004.

³ Attached hereto is the declaration of Herbert Gareiss, Jr., Vice President of Warwick. The declaration bears a facsimile signature. Counsel will supplement this filing with the original of the declaration when received.

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Necessary software and hardware changes are also required for the change out of the Upper Greenwood Lakes remote. The Company is scheduled to deploy Next Level Remote equipment to the Upper Greenwood Lakes remote and its subtending remotes, with a completion date of April 1, 2004. Thereafter, the Company will need to replace one of its Outside Plant Modules in order to allow the completion of the Upper Greenwood Lake rehome off of the Company's New York switch. This portion of the planned upgrades is scheduled for completion by June 1, 2004. Once these two steps are completed, the Company will then be in a position to remove four Subscriber Carrier Module Access frames from the Vernon exchange so that they can be installed in the Warwick switch as part of the process of rehoming the nine Vernon remotes into the Warwick switch. This portion of the plan is scheduled for completion by September 15, 2004. At that time, Warwick will begin rehoming the nine (9) Vernon remotes into the New York switch, converting the Vernon DMS-100 switch to a Remote Concentration Controller off of the Company's New York switch. This conversion is scheduled for initial testing by late third quarter with final completion scheduled for December 15, 2004. It is only after all of these rehoming activities are completed that the New Jersey exchanges will be LNP capable.

Warwick notes that its current efforts to reconfigure its New Jersey switching facilities also entail coordination between the Company and affected carriers. Specifically, the Company will be working with both Verizon and Sprint to establish and test trunking facilities in order that the Company's New York switch will be able to transport all long distance, local calling plans and operator service traffic that had originally been transported from the former New Jersey Vernon switch. The Company's experience has shown that issues may very well arise related to the issuance and acceptance of the required Access Service Requests ("ASRs") to establish the necessary trunk groups. Although not under the Company's control, this activity will need to be accomplished by May 15, 2004 in order that the rehoming of Upper Greenwood Lakes can occur. These facilities will then be used by Vernon after it has been rehomed. If delay in this ASR process does occur, that delay will likewise delay the Upper Greenwood Lake conversion and possibly other aspects of the Company's planned conversion.

Further complicating these activities is the simultaneous work required to implement in New Jersey a new 911 network arrangements arising from plans independently initiated in March of 2003 by Verizon.

In light of its plans, the Company does not believe that the purchase of the necessary LNP software for its New Jersey operations is justified. If the LNP software is deployed and implemented in the New Jersey Host switch, it will only be used until such time as the planned conversion occurs. Thereafter, the Company has identified no use for such software.

Accordingly, the Company respectfully submits that the expense and the time, energy and effort to coordinate the internal and intercarrier testing of New Jersey LNP capability will simply

be wasted. At the same time, the Company does not believe that Sprint or other similarly situated carriers will be adversely affected by a grant of this request as explained below.

D. Interim LNP Capability for Sprint and Similarly Situated Carriers is Available

In continuing its investigation regarding its LNP capability, the Company has concluded that interim LNP arrangements are available to Sprint and similarly situated carriers that would meet the technical need of a customer who had elected to port his/her Warwick-provided telephone number to such carrier.⁴ Warwick and Sprint have in place an interconnection agreement that addresses the transport and termination between them of distinct end user traffic types. Consistent with 47 C.F.R. §52.27, Warwick believes that it can utilize remote call forwarding technology to allow number porting with Sprint.

Unlike Sprint, however, other carriers requesting intermodal porting from Warwick do not have the physical connectivity agreements in place and the Commission is well aware that these arrangements do not magically appear. Accordingly, for these companies, the Company will continue to work in good faith with a requesting carrier in an effort to identify what arrangements can be established to meet any perceived LNP need.

⁴ Sprint indicated that it sent a request for LNP to the Company on May 23, 2003. See Opposition 2 and n 5. Warwick has again reviewed its records and is unable to locate Sprint's request. Although Warwick will accept Sprint's statement that a request was sent, Sprint nonetheless did not respond to the Company's October 14th letter indicating that no request had been received. See Petition, Exhibit 2, October 14, 2003 Letter at 1. Consequently, Sprint can hardly sustain its criticism of the Company's actions when Sprint itself failed to raise what it believed to have been a *bona fide* LNP request sent to the Company. Similarly, Sprint's suggestion that the Commission's intermodal porting requirements were clear all along (see Opposition at 6) is baseless. By way of example, in its November 12, 2003 Daily Digest announcing the November 10, 2003 intermodal decision, the Commission stated that "FCC CLEARs WAY FOR LOCAL NUMBER PORTABILITY BETWEEN WIRELINE AND WIRELESS CARRIERS." Clearly, even the FCC understood that no party could have assumed the existence of this newly defined obligation until the FCC ostensibly "cleared the way." See also Petition at 7-9.

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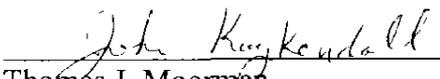
Conclusion

The Company affirms that it will continue to report benchmark milestones as this process continues. The Company also reserves its rights to respond further to the contentions raised in the Opposition should that be necessary. In the interim, however, Warwick respectfully submits that this *ex parte* letter and the information contained herein clarifies the record and supplements the extent of the relief requested by the Company. Moreover, this filing demonstrates the availability of an interim resolution that Warwick will make available to Sprint and other similarly situated carriers should they actually require LNP capability from Warwick in Warwick's New Jersey service area.

Please contact the undersigned with any questions.

Respectfully submitted,

Warwick Valley Telephone Company

By: 
Thomas J. Moorman
John Kuykendall

Its Attorneys

Attachments

cc William Maher
Eric Einhorn
Pam Slipakoff
Cheryl Callahan
Luisa L. Lancetti, Counsel for Sprint Corporation
Scott Freiermuth, Esq., Sprint Corporation
Qualex International

ATTACHMENT

and the Company is working with its switch vendor to go forward with the necessary switch changes.

C. Section 52.23(e)(3): An Identification of the Particular Switches for Which the Extension is Requested

The particular switches for which the extension is requested are:

HGLKNJXVDS1
UGLKNJXVRS0

D. Section 52.23(e)(4): The Time in Which the Carrier Will Complete Deployment in the Affected Switches

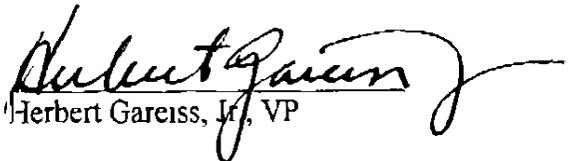
The Company will attempt to complete deployment in the affected switches by May 10, 2004, six months after the issuance of the Commission's *Intermodal LNP Order* in which the Commission provided guidance of its intermodal porting requirements. The Company notes that its implementation schedule is dependent upon its switch vendor, and coordination and testing between it and the requesting wireless provider. While the implementation of the necessary switch changes will technically enable the provision of number portability, the Company also remains concerned that technical compliance with the directives of the *Intermodal LNP Order* regarding the treatment of calls from the Company's network to a number ported to a wireless carrier is not technically feasible in the absence of the deployment of a physical connection of the wireless carrier to the Company's network.¹

¹ The relief requested herein, however, is limited to the request for a waiver of the implementation time in order to afford the company the time necessary to implement the necessary switch changes. The Company anticipates that the Commission will subsequently address the general deployment concerns regarding calls to a ported number in other proceedings, and respectfully reserves the right to seek additional relief to the extent necessary to ensure its full compliance with the Commission's applicable

DECLARATION OF HERBERT GAREISS, JR

I, Herbert Gareiss, Jr, Vice President of Warwick Valley Telephone Company do hereby declare under penalties of perjury that I have read the foregoing "Clarification and Supplement to the Petition for Waiver of Section 52 23(c) of the Commission's Rules" and that the facts stated therein are true and correct, to the best of my knowledge, information, and belief.

Date January 9, 2004


Herbert Gareiss, Jr, VP