

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

<b>In the Matter of</b>	)	
	)	
<b>Telephone Number Portability</b>	)	<b>CC Docket No. 95-116</b>
	)	
<b>Petition of Leaco Rural Telephone Cooperative, Inc.</b>	)	
	)	
<b>For a Limited Waiver and Extension of its Porting Obligations</b>	)	

To: The Commission

**PETITION OF LEACO RURAL TELEPHONE COOPERATIVE, INC.  
FOR LIMITED WAIVER AND EXTENSION**

Leaco Rural Telephone Cooperative, Inc. (“Leaco”), by its attorneys and pursuant to Sections 1.3 and 52.31(d) of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”),<sup>1</sup> hereby requests a temporary waiver and extension of the May 24, 2004 deadline for the implementation of wireless long-term Local Number Portability (“WLNP”) in Leaco’s Commercial Mobile Radio Services (“CMRS”) switch.<sup>2</sup> Specifically, due to a contractual dispute involving the installation of software upgrades to Leaco’s wireless switch, Leaco will not be able to implement WLNP by May 24, 2004, and

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<sup>1</sup> 47 C.F.R. §§ 1.3, 52.31(d).

<sup>2</sup> Leaco provides wireless services outside of the top 100 Metropolitan Statistical Areas (“MSAs”), and accordingly, is not required to implement WLNP prior to May 24, 2004. *See generally Verizon Wireless’s Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, Memorandum Opinion and Order, 17 FCC Rcd 14972 (2002). Leaco does not seek a waiver of the deadline for implementing number portability in its wireline switches.

requests that the Commission waive and extend until November 24, 2004, the deadline by which Leaco must implement WLNP in its wireless switch.<sup>3</sup>

## **I. STATEMENT OF THE FACTS**

Leaco is a small, subscriber-owned, rural telephone cooperative with approximately 2,500 access lines. Leaco, a non-profit New Mexico Corporation, has been providing telephone service since 1954 in some of the most remote and least populated portions of New Mexico. The population density in the study area that Leaco serves as an incumbent local exchange carrier (“ILEC”) is approximately one customer for every two square miles. Leaco meets the statutory definition of rural telephone company.<sup>4</sup> Leaco’s wireline switches will comply with the Commission’s number portability requirements by May 24, 2004.<sup>5</sup>

In addition to providing wireline local exchange service, Leaco also provides cellular and personal communications service (“PCS”) service to approximately 7,000 customers in rural New Mexico in a partitioned portion of the New Mexico 6 – Lincoln Rural Service Area (“RSA”) (CMA 558-B3) and the Carlsbad and Hobbs, New Mexico Basic Trading Areas (“BTAs”) (BTA068-C) and (BTA191-C2).

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<sup>3</sup> To the extent necessary, Leaco also requests a waiver of the requirement that a request seeking an extension of the deadline for implementing WLNP be filed 60 days prior to the deadline. *See*, 47 C.F.R. § 52.31(d). As explained in greater detail below, Leaco has been working diligently to resolve the contractual dispute as quickly as possible. Even as of the 60<sup>th</sup> day prior to the WLNP deadline, Leaco reasonably believed that the contractual dispute would be resolved and that Leaco’s wireless switch would be upgraded to become WLNP compatible by May 24, 2004. It has recently become apparent, however, that Leaco likely will have to resort to litigation in order to ensure that its vendors satisfy their contractual obligations, thereby allowing Leaco to become WLNP compliant. Leaco filed the instant waiver request as soon as possible upon determining that Leaco would be unable to meet the May 24, 2004 deadline.

<sup>4</sup> *See* 47 U.S.C. § 153(37).

<sup>5</sup> Leaco utilizes a Nortel switch and a Lucent 5ESS dual platform switch for its ILEC and Competitive Local Exchange Carrier operations. The Nortel switch and the wireline portion of the Lucent 5ESS will be LNP compliant by the Commission’s May 24, 2004 implementation deadline.

On January 24, 2000, Leaco purchased a dual-platform 5ESS wireless/wireline switch (“Lucent Switch”) and a service contract from Lucent Technologies, Inc. (“Lucent”).<sup>6</sup> In exchange for the purchase of its equipment, Lucent agreed to provide annual software upgrades and support for the Lucent Switch, which would be free of charge until January 2003 (“Service Agreement”). In January 2001, however, Lucent billed Leaco for services it performed to upgrade software on the Lucent Switch. Although the Service Agreement did not require Leaco to pay for such upgrades, Leaco remitted payment to Lucent in full. Since that time, however, although Leaco had pre-paid the annual upgrade fee for 2003-2004, neither Lucent nor CommNet Wireless, Inc. (“CommNet”) (collectively, “Vendors”), assignee of the Service Agreement, have provided Leaco with adequate software upgrades to the Lucent Switch, an omission in violation of the express terms of the Service Agreement.<sup>7</sup> To date, more than \$700,000 worth of goods and services is currently in dispute.<sup>8</sup>

## II. ARGUMENT

### A. **Good Cause Exists for an Extension of Leaco’s Compliance Deadline Because the Vendors’ Failure to Perform the Necessary Switch Upgrades Pursuant to the Service Agreement is an Extraordinary Circumstance Beyond Leaco’s Control**

Pursuant to Rule Section 1.3, the Commission may waive a rule for good cause shown. In addition, pursuant to Rule Section 52.31(d), a carrier may request an extension of its WLNP implementation deadline by demonstrating that extraordinary circumstances beyond its control

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<sup>6</sup> The Lucent Switch, which is the subject of this waiver request, is OCN 0972, CLLI code HBBSNMCRM1.

<sup>7</sup> See, *Letter from Lewis C. Cox III to Lucent Technologies, Inc. and CommNet Wireless, Inc.*, March 29, 2004, attached hereto.

<sup>8</sup> Disclosure of the specific details of the contract and sale of wireless equipment in this matter arguably would violate a confidentiality agreement between Leaco and Lucent. Upon Commission request, however, Leaco will provide such information to the Commission, subject to appropriate protections.

prevent it from being able to comply with the deadline.<sup>9</sup> Specifically, the carrier must: (1) demonstrate why it is unable to meet the deadline, (2) explain what steps it has taken to comply, (3) identify particular switches,<sup>10</sup> (4) provide a time when deployment will be complete in the switch(es), and (5) propose milestones for compliance.<sup>11</sup>

Good cause exists for a waiver and extension of Leaco's deadline because the Vendors' failure to upgrade the Lucent Switch pursuant to the terms of the Service Agreement is an extraordinary circumstance beyond Leaco's control. When Leaco purchased the Lucent Switch from Lucent in 2000, Leaco specifically contemplated and planned for the eventual implementation of WLNP utilizing the Lucent Switch.<sup>12</sup> Since that time, Leaco has worked very closely with the Vendors in an effort to ensure timely deployment of WLNP in the wireless portion of the Lucent Switch. It is only now, less than two months prior to the Commission's established WLNP deadline, that the parties have reached an impasse in which the Vendors refuse to fulfill their contractual obligations to perform the necessary switch upgrades to allow Leaco to become WLNP compliant.

In an effort to ensure compliance with the Commission's WLNP deadline, Leaco has offered to pay the Vendors an additional amount not owed under the Service Agreement to ensure that the wireless side of the Lucent Switch is WLNP-capable by the May 24, 2004 deadline. The Vendors, however, have declined to entertain such compromise offers from Leaco. Instead, they insist that Leaco pay more than \$400,000 for upgrades to the Lucent Switch—upgrades that have already been paid for by Leaco, but that have not yet been

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<sup>9</sup> See 47 C.F.R § 52.31(d); *Telephone Number Portability*, First Report and Order, 11 FCC Rcd 8352 ¶ 85 (1996) *subsequent history omitted*.

<sup>10</sup> See *supra* note 6.

<sup>11</sup> See 47 C.F.R § 52.31(d).

<sup>12</sup> As noted above, the wireline portion of the Lucent Switch has been upgraded to support number portability.

performed—to make the Lucent Switch fully WLNP capable. For Leaco, a small rural wireless carrier with approximately 7,000 customers, remitting \$400,000 in addition to the amounts already paid to the Vendors, is economically infeasible. While Leaco acknowledges that every wireless carrier has had to incur costs related to the deployment of WLNP, the amount being charged by the Vendors is substantially over and above the amount originally quoted in the Service Agreement, and is unduly burdensome to Leaco and its wireless customers who would ultimately bear the cost.<sup>13</sup>

Leaco is not attempting to avoid its regulatory obligations or reasonable costs related to compliance. As noted above, Leaco has implemented number portability in its wireline switches, and but for the Vendors' failure to upgrade the wireless portion of the Lucent Switch as required by the Service Agreement, would be implementing WLNP in the wireless portion of the Lucent Switch. Leaco has contracted with an independent service bureau to handle WLNP service order activation, and has already begun educating its staff and customers on WLNP. But for the Vendors' failure to perform, Leaco would be timely implementing WLNP. Because of this failure, however, Leaco needs additional time.

In order to lessen the impact on its customers, Leaco will work with its customers and other carriers to utilize interim portability techniques such as call forwarding while Leaco continues to work toward full WLNP capability. In addition, Leaco also is actively exploring other equipment and technology options to help speed its implementation of WLNP, including for example, routing its wireless traffic through its LNP-enabled wireline switches. Leaco is

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<sup>13</sup> According to the Vendors, the cost of upgrading the Lucent Switch is significantly higher because additional software upgrades are needed as well. As noted above, however, these additional software upgrades were to have been performed pursuant to the Service Agreement thereby allowing Leaco to implement WLNP in the Lucent Switch for a fraction of the approximate \$400,000 current demand.

currently in discussions with several equipment vendors and is working closely with its consulting engineers to ensure that, should the contractual dispute with the Vendors continue unresolved, Leaco has other alternatives available to ensure a swift WLNP deployment. Implementing WLNP pursuant to one of these alternatives, however, will take additional time and may not be the most cost effective solution for Leaco's customers.

The best alternative remains rapidly resolving the contractual dispute and upgrading the Lucent Switch. An upgrade of Leaco's existing infrastructure, which has been contracted for and paid for by Leaco, will likely be the swiftest means by which Leaco can implement WLNP. As explained above, however, it will take additional time for Leaco to resolve the dispute and achieve the Vendors' performance.

As demonstrated herein, despite Leaco's good faith efforts to comply with the Commission's WNLN implementation deadline, Leaco's wireless switch will not be WLNP capable as of the May 24<sup>th</sup> deadline because of the refusal by the Vendors to upgrade the Lucent Switch. The Vendors' failure to perform their contractual obligations is an extraordinary circumstance beyond Leaco's control that warrants a temporary waiver and extension of the May 24, 2004 deadline.

**B. Leaco Will Continue to Update the FCC on the Progress of its WLNP Deployment**

As indicated above, Leaco seeks additional time, until November 24, 2004, to allow the company to settle the contract dispute with the Vendors or to develop a new engineering solution to deploy WLNP as soon as possible. In the meantime, upon grant of Leaco's waiver request, Leaco will provide the Commission with bi-monthly updates on the status of its WLNP deployment. These reports will provide detailed accounts of Leaco's progress toward meeting its WLNP deployment obligations and a summary of the status of its contract dispute and the steps

being taken to formulate alternative solutions for WLNP deployment during the extension period. Leaco is committed to complying with the Commission's WLNP requirements as soon as practicable.

### **III. CONCLUSION**

For the reasons discussed herein, Leaco respectfully requests that the Commission waive and extend Leaco's WLNP compliance deadline for the wireless portion of the Lucent Switch until November 24, 2004.

Respectfully Submitted

**LEACO RURAL TELEPHONE COOPERATIVE,  
INC.**

By: \_\_\_\_\_/s/\_\_\_\_\_  
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April 2, 2004

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F.L. HEIDEL  
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March 29, 2004

Lucent Technologies, Inc.  
17208 Opal Hill Dr.  
Parker, CO 80134

CommNet Wireless, Inc.  
16 W. 127-83rd St.  
Burr Ridge, Ill. 60521

**Re: Contract No. LNM00NMK304000 between  
NM RSA6-III Partnership and Lucent Technologies, Inc.**

To Whom It May Concern:

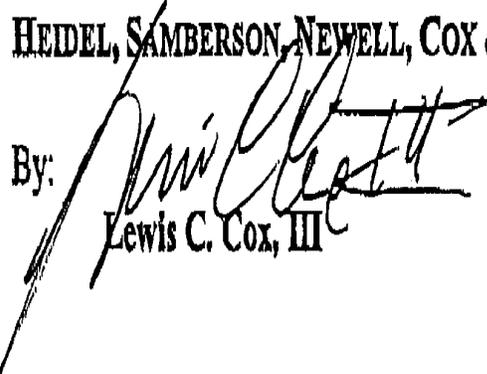
New Mexico RSA6-III Partnership (Leaco) requested that this firm correspond with Lucent and CommNet concerning the above referenced contract. This contract was executed by the parties in January, 2000. The contract unequivocally requires Lucent to provide software upgrades and support for each year during the term of the contract (BRSS). Annual billing from Lucent for the BRSS was not to start until January 2003. However, Lucent billed \$94,800.00 for software upgrades in January, 2001. Since the annual billing would have been approximately \$40,000.00 per year for 2003 and 2004, Lucent has been overpaid for the annual BRSS billing. Obviously, Lucent recognized this because no BRSS billing has been sent to Leaco since the contract began. Despite the fact that Lucent has been paid, Leaco has not been provided with the software upgrades and support required under the contract.

Demand is hereby made upon Lucent and CommNet to immediately provide and install the software upgrades and support which are necessary to get Leaco's system up to ECP release 20, as required by the terms of the contract.

Sincerely,

HEIDEL, SAMBERSON, NEWELL, COX & MCMAHON

By:

  
Lewis C. Cox, III

LCC:dg

cc: John Smith

## DECLARATION OF JOHN SMITH

I, John Smith, General Manager of Leaco Rural Telephone Cooperative, Inc., hereby declare under penalty of perjury that I have read the foregoing Petition for Limited Waiver and Extension and that the facts stated therein are true and correct, to the best of my knowledge, information and belief.

  
John Smith

Date: 4-2-04