

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
Telephone Number Portability)
)
The North-Eastern Pennsylvania Telephone) CC Docket No. 95-116
Company Petition for Waiver of)
Section 52.23(b) of the Commission’s Rules)

To: Chief, Wireline Competition Bureau

OPPOSITION OF VERIZON WIRELESS

The North-Eastern Pennsylvania Telephone (“NEP”) Company’s request for a waiver¹ of the Commission’s local number portability (“LNP”) rule is one of a growing number of such requests before the FCC and state utility commissions, which should promptly be denied. These requests pretend to be based on “good cause,” but in fact are based on the entirely foreseeable consequences of much delayed efforts to comply with intermodal porting. The failure of NEP and other LECs to prepare for intermodal porting, despite the existence of the rule for many years, does not constitute grounds for additional time. Carriers, regardless of size, should not be able to benefit from a willful lack of diligence or lax attempts to comply with the Commission’s rules. In such cases, no “good cause” exists and the waiver requests should be denied.

At this point, carriers and customers alike have expectations created by the Commission’s deadlines – that LNP will be available everywhere there is competitive activity (based on bona fide requests) by May 24, 2004. Verizon Wireless sent NEP a bona fide request on October 22, 2003, more than 6 months before the May 24, 2004

¹ *Public Notice*, Wireline Competition Bureau Seeks Comment on the Petition of the North-Eastern Pennsylvania Telephone Company for Temporary Waiver of the Commission’s Number Portability Requirements, CC Docket No. 95-116, DA 04-798 (March 26, 2004).

deadline, consistent with the FCC's rules. Delays are inconsistent with the Commission's precedent and worse, will cause customer confusion and operational difficulties for compliant carriers.² Customers will seek to port their numbers in May and will be turned away because of waivers.

The FCC blurred its clear, bright line rule that all wireline carriers with BFRs had to implement intermodal porting inside the top 100 MSAs by November 24, 2003 by its decision in January 2004 to extend the deadline for certain wireline carriers with less than two percent of access lines until May 24, 2004.³ This significantly complicated the job of our sales and customer care forces to handle porting inquiries from customers. In order to serve customers well, carriers need clear rules and advance notice of where LNP will and will not be available on May 24, 2004. Granting a patchwork of last minute petitions is a prescription for customer confusion and porting errors.

Thus far, there has been little focus at the state level or by applicants for federal waivers on the customer burdens that result when wireline carriers receive waivers from LNP – which in turn impacts intermodal competition. Beyond depriving customers of the benefits of porting their numbers, some wireline carriers incorrectly adopt the position that their waivers also exempt them from the obligation to properly route calls to ported and/or pooled telephone numbers (by performing “dips” to the LNP database), resulting in misrouted or uncompleted calls. As discussed below in section II, this is a serious customer burden even if one does not wish to port his or her telephone number.

² If the FCC grants waivers from the LNP rule, (and it should not) it should help the industry and consumers to deal with the consequences of a patchwork of LNP-capable carriers by publishing information listing non-LNP capable carriers and the corresponding market areas where LNP will not be available by May 24, 2004.

³ Telephone Number Portability, *Order*, 19 FCC Rcd. 875, ¶1 (2004) (“*Two Percent Carrier Order*”).

The FCC should deny NEP's waiver request and reaffirm its position that LNP is necessary for intermodal competition and for consumers. The FCC's precedent supports this position.⁴ NEP has not met the legal burden for receiving a waiver – especially one that seeks until the end of 2005 to complete switch upgrades that should have been done two years ago.

I. NEP HAS NOT MET ITS LEGAL BURDEN UNDER THE COMMISSION'S WAIVER STANDARD

The Commission may waive its rules for “good cause shown.”⁵ “In demonstrating such good cause, an applicant for waiver ‘faces a high hurdle even at the starting gate.’”⁶ The FCC may exercise its discretion to waive a rule only “where particular facts would make strict compliance inconsistent with the public interest.”⁷ Strict compliance is in the public interest, not further waivers, especially for carriers, such as NEP, that have waited until the last possible minute to seriously pursue compliance with the mandate.

A. NEP Has Not Demonstrated Facts Justifying a Waiver

LECs have known since 1997 that they would need to support LNP within six months of request from a competing carrier,⁸ and since July 2002 that wireless carriers would be offering LNP in November 2003.⁹ There is no justification for NEP to claim that it needs more time to get ready for this long-standing mandate. At every

⁴ Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 8352 (1996) (“*First Report and Order*”).

⁵ 47 C.F.R. § 1.3.

⁶ *Numbering Resource Optimization, Petition of TeleCorp PCS, Inc.*, Order, 16 FCC Rcd 19535, 19536 (2001) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969)).

⁷ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁸ Telephone Number Portability, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 7236, ¶¶ 60-66 (1997) (“*Recon Order*”).

⁹ 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) (“*VZW Forbearance Order*”).

opportunity, in the face of requests to extend, remove, or forbear from the wireless LNP obligation, the FCC reinforced its intention to require LNP as an intermodal competitive tool.¹⁰ The Commission determined that the competitive reasons that led it to mandate wireless number portability in the *First Report and Order* remained fundamentally valid and stated that it remained committed to the basic regulatory approach outlined in prior orders.¹¹

Despite the Commission's clear statements regarding LEC's obligations to port numbers, NEP, by its own admission, waited over two years before contracting with a vendor to purchase upgraded switches containing software capable of LNP.¹² This does not constitute special circumstances justifying a waiver. NEP has not presented substantial and credible evidence supporting its contention that it is unable to comply with the deployment deadline. The phased in schedule for eight switches is not necessary. NEP offers no evidence, beyond cursory statements, of technical or economic hardships sufficient to warrant an additional nineteen months to complete upgrades to eight switches.¹³ Verizon Wireless sent NEP a bona fide request and therefore opposes NEP's request to waive 47 C.F.R. § 52.23(e), and to extend the deadline for LNP compliance for various switches in eight exchanges as far out as December 31, 2005.

B. Granting the Waiver Petition Would Not Serve the Public Interest

Even if NEP's inability to meet an already extended deadline was excusable through no fault of its own, further extension is not be in the public interest since

¹⁰ *Id.*; Telephone Number Portability, CTIA Petition for Extension of Implementation Deadlines, *Memorandum Opinion and Order*, 13 FCC Rcd. 16315 (1998); Telephone Number Portability, CTIA Petition for Forbearance from CMRS Number Portability Obligations, *Memorandum Opinion and Order*, 14 FCC Rcd. 3092 (1999).

¹¹ *VZW Forbearance Order*, ¶ 6.

¹² NEP Petition, filed March 23, 2004, at 3.

¹³ NEP Petition at 2-3.

American consumers have been told by this Commission, countless news stories, and carriers' ads that they could expect to keep their telephone numbers when switching providers in major markets by November 24, 2003, and everywhere else by May 24, 2004. Verizon Wireless has first-hand experiences with customers who come into stores expecting to port their numbers, but are thwarted by the current patchwork of where and when LNP is available. The result is customer confusion and anger. Not only does a cheesecloth approach to LNP impact consumers, it also makes it exceedingly difficult for compliant carriers like Verizon Wireless to develop automated porting tools and to educate customer care and sales forces about the porting exceptions. With the proliferation of state waiver requests and orders (many with different end dates), the bright-line, uniform application of LNP has been eroded, creating problems for companies trying to comply with the mandate.

The FCC can deny a waiver request on the grounds that denial “was entirely consistent with the Act, our regulations, precedent and policy.”¹⁴ Such is the case here where the FCC (as indicated above in Section I, A.) has affirmed the competitive and consumer protection policies that underpin its mandate in many challenges to the rule. There is ample precedent indicating the FCC’s strong resolve to foster intermodal competition through LNP and its refusal to revoke or forbear from its LNP rules.¹⁵

¹⁴ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Third Report and Order*, 15 FCC Rcd. 3696 (1999)(“*Third R&O*”). The FCC has also denied waiver applications when parties are less than diligent in their efforts to comply in the first place. Specifically, applicants for television construction permits seeking to amend the financial portion of applications must show that they acted with due diligence, that amendment was not necessitated by voluntary acts of their own, and that amendment will not otherwise disrupt the application process or prejudice other parties. *Pontchartrain Broadcasting Co., Inc. v. F.C.C.*, 15 F.3d 183, 184 (D.C. Cir. 1994).

¹⁵ In denying Verizon Wireless’s petition for forbearance from the CMRS LNP requirement, the FCC rested its decision in significant part on “increasing” wireless-wireline competition. *VZW Forbearance Order*, ¶ 17.

Specifically, when faced with the wireless industry's petition for permanent forbearance from the LNP requirement, the FCC granted only a one-year extension.¹⁶

More recently, when the FCC considered the Two Percent carriers' extension request, the Commission granted an extension only until May 24, 2004 – thus, not beyond the outside implementation date for wireless carriers outside the largest 100 MSAs.¹⁷ The FCC specifically found that the brief extension did not excuse the two percent carriers from their intermodal LNP obligation and that it would “not adversely impact rural customers because of its *limited nature*.”¹⁸ Similarly, the FCC denied Western Wireless's petition for waiver of the LNP requirement based on a finding that it would not face costs or burdens greater than other Tier II wireless carriers.¹⁹ In denying Western Wireless's petition, the FCC specifically noted “even rural telephone companies and Tier III wireless providers ... must implement and bear the cost of ... LNP if they receive a request to implement LNP.”²⁰

The Commission must stand by its firm finding in its 2002 *VZW Forbearance Order* that LNP is necessary to protect consumers,²¹ which naturally must include consumers who live in rural America. The Commission aptly stated, “Similarly, as more consumers choose to use wireless instead of wireline services, the inability to transfer their wireline number to a wireless service provider may slow the adoption of wireless by those consumers that wish to keep the same telephone number they had with their

¹⁶ *VZW Forbearance Order*, ¶¶ 23-33.

¹⁷ *Two Percent Carrier Order*, ¶ 7.

¹⁸ *Id.*, ¶11 (emphasis added).

¹⁹ Telephone Number Portability, Western Wireless' Limited, Conditional Petition for Waiver of Local Number Portability and Thousands-Block Number Pooling Obligations, Order, 18 FCC Rcd. 24692 (Wireline Comp. Bur. 2003).

²⁰ *Id.*

²¹ *Id.*, ¶16.

wireline service provider.”²² The Commission’s efforts should not be thwarted by wireline carriers seeking additional extensions when they have already benefited from industry extensions dating back to 1997 that have delayed the onset of intermodal porting until now – especially when the Commission has continuously reaffirmed its rules. NEP’s grounds for waiver are clearly insufficient, and its request should thus be denied.

II. WAIVERS SHOULD NOT BE USED AS AN EXCUSE TO MISHANDLE CALLS TO CUSTOMERS WITH PORTED AND POOLED NUMBERS

Other parties are prejudiced not only by the inability of customers to port, but also, the inability of some non-porting capable carriers to properly route calls to customers with pooled or ported numbers. In acting on this petition, the FCC should reiterate that relief from the obligation to offer LNP as a service to customers does not relieve NEP or any other LEC of its independent obligation to route calls to customers with ported or pooled numbers.

When some wireline carriers fail to properly route calls in a porting and pooling environment, the result is an undue burden on other carriers to perform default routing (without compensation) and/or call completion failures. Even before the roll-out of national pooling began two years ago, the FCC mandated certain responsibilities for properly routing calls (regardless of whether they were LNP capable) as part of the N-1 call routing²³ scheme for LNP. The routing obligation is not limited to the top 100 MSAs. The FCC’s precedent is clear and unambiguous, providing no justification for wireline carriers to have escaped implementing upgrades to properly route calls in a porting and/or pooling environment. The FCC’s extension of the deadline by which all

²² *Id.*, ¶18.

²³ In the LNP *First Report and Order*, the FCC described the N-1 call routing scenario as, “under which the carrier immediately prior to the terminating service provider performs the database query or dip.” *First Report and Order*, ¶ 42.

landline carriers must facilitate intermodal porting with wireless carriers did not supercede the FCC's settled policy for routing calls in a pooling and porting environment.²⁴

Prior to becoming fully LNP capable (and despite several deadline extensions given to the industry), Verizon Wireless, like other non-LNP capable carriers, nevertheless made network upgrades to properly route calls once portability and thousands-block number pooling began. Two things are clear: (1) non-LNP capable carriers were required to fulfill the role of the N-1 carrier by FCC Orders dating back to 1996, either by upgrading their networks or by contracting with a third party entity to do so for them; and (2) non-LNP capable carriers were nevertheless required to participate in pooling in the top 100 MSAs, with limited exception, which required implementation of the LRN architecture.

Some carriers, especially small LECs and those operating outside the top 100 MSAs, are citing the recent FCC LNP waiver order granting relief to Two-Percent Carriers as also excusing their failure to implement N-1 call routing, despite the pooling mandate and the FCC's precedent. The *Two Percent Waiver Order* did not address routing issues, and merely allowed additional time for certain carriers to become fully LNP capable. The granting of relief from the LNP obligation does not provide defacto relief from the N-1/LRN routing obligation (as evidenced by the FCC's recognition that the LRN technology provided the routing capability necessary for thousands block number pooling ("TBNP") without requiring full LNP capability). The FCC did not expressly address or reverse its decisions in previous orders requiring N-1 call routing

²⁴ See Telephone Number Portability, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd. 23697 (2003) ("*Intermodal Porting Order*"); See *Two-Percent Carrier Order*.

and LRN technology for pooling – nor should it; failure to route calls to pooled or ported numbers based on the LRN (rather than the NPA-NXX) results, in most cases, in uncompleted calls. The Commission therefore should reaffirm that waivers from LNP do not excuse Two-Percent Carriers (or any other carriers, including NEP) from upgrading their networks to properly route calls to ported and pooled numbers. Any non-compliant carriers must be referred to the Enforcement Bureau.

Many Two-Percent Carriers have also filed petitions seeking waivers of the LNP mandate from state commissions pursuant to Section 251(f)(2).²⁵ Often the petitions seek relief from a laundry list of LNP-related tasks that include routing, despite the FCC’s clear decisions requiring N-1 call routing capability. Even assuming, *arguendo*, that the state commissions have the power to modify the Commission’s intermodal LNP obligation pursuant to 251(f), the states cannot modify the Commission’s requirement that all carriers ensure that they are capable of properly routing traffic to ported numbers – whether or not the carrier itself has implemented LNP and/or pooling.²⁶ Failure to hold otherwise will create a situation where an ever-expanding percentage of land-to-mobile calls (as more and more wireless customers hold pooled or ported numbers) will fail to complete.

²⁵ In its Opposition filed last year, Verizon Wireless noted: “Moreover, to allow state proceedings regarding the scope of the inter-modal portability requirement would be inconsistent with the Commission’s jurisdictional basis for imposing the requirement. As described in section II, above, the FCC ordered the inter-modal portability LNP requirement pursuant to sections 1, 2, 4(i), and 332. Thus, it is beyond the authority of state commissions to abrogate the inter-modal LNP requirement in proceedings under section 251(f) or any other provision.” See Opposition of Verizon Wireless to LEC Waiver Petitions, CC Docket No. 95-116, dated October 17, 2003, at 6. Therefore, this petition is correctly before FCC instead of a state commission.

²⁶ While N-1 call routing technology is necessary because of LNP (and TBNP), it is not full LNP capability. Even if N-1 call routing could be subsumed as part of a larger LNP waiver, carriers would still be required under the FCC’s numbering orders to implement the LRN technology to enable them to perform N-1 call routing to pooled or ported numbers. TBNP is premised on the FCC’s exclusive jurisdiction over the North American Numbering Plan under Section 251 (e). As a legal matter, the state commissions have no authority to waive the FCC’s TBNP requirements.

Waivers not only complicate the provision of porting customers' numbers upon their request, they also will be used as an excuse to delay upgrades necessary to properly route calls in a pooling and porting environment. Regardless of the FCC's ultimate decision regarding NEP's waiver request, the Commission should reiterate that all carriers must fulfill their duties as N-1 carriers to dip and route calls to customers with pooled and ported telephone numbers.

III. CONCLUSION

For the foregoing reasons, the Commission should deny NEP's request for a waiver of the LNP rule.

Respectfully submitted,

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