

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Telephone Number Portability)	
)	CC Docket No. 95-116
Yorkville Telephone Cooperative and)	
Yorkville Communications, Inc. Petition)	
for Limited Waiver and Extension of)	
Section 52.31 of the Commission's Rules)	
)	
TMP Corp. and TMP Jacksonville, LLC)	
Petition for Waiver of Section 52.31(a) of)	
the Commission's Rules)	
)	
Choice Wireless, LC Petition for Waiver)	
of Section 52.31(a) of the Commission's)	
Rules)	

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. ("Nextel"), by its attorneys, hereby submits these comments opposing the Petitions for Waiver of Section 52.31(a) of the Federal Communications Commission's ("Commission") rules filed by Yorkville Telephone Cooperative and Yorkville Communications, Inc. ("Yorkville"), TMP Corp. and TMP Jacksonville, LLC ("TMP"), and Choice Wireless, LC ("Choice") (collectively "Petitioners").¹ For the reasons set forth below, the

¹ Yorkville Telephone Cooperative and Yorkville Communications, Inc., Petition for Limited Waiver and Extension of Section 52.31 of the Commission's Rules, CC Docket No. 95-116 (filed March 18, 2004) ("Yorkville Petition"); TMP Corp. and TMP Jacksonville, LLC, Petition for Waiver of Section 52.31(a) of the Commission's Rules, CC Docket No. 95-116 (filed March 23, 2004) ("TMP Petition"); Choice Wireless, LC, Petition for Waiver of Section 52.31(a) of the Commission's Rules, CC Docket No. 95-116 (filed March 24, 2004) ("Choice Petition") (collectively, "Petitions"). See Comment Sought on Requests for Waiver of Wireless Local Number Portability Requirements, *Public Notice*, CC Docket No. 95-116, DA 04-800 (rel. March 26, 2004).

Commission should deny the waiver requests and reaffirm that all carriers, including these wireless Petitioners, have an obligation to port telephone numbers to other carriers as of May 24, 2004.²

I. INTRODUCTION.

Nextel is one of several commercial wireless providers that, through subsidiaries, offers a range of valuable digital wireless services in its licensed markets nationwide. Under the terms of Commission orders and rules, Nextel and other Commercial Mobile Radio Service (“CMRS”) carriers have been required to allow customers to port their numbers out and accept new customers with numbers to be ported-in since November 24, 2003.³ *This number porting requirement originally was established by the Commission in 1996.*⁴ Most recently in its *Intermodal Porting Order*, the Commission re-affirmed that *all* carriers have preexisting obligation to port numbers.⁵

² The three Petitioners provide wireless service outside of the top 100 MSAs. In particular, Yorkville requests a waiver on behalf of its wireless affiliate, which operates in certain areas of western Tennessee. Specifically, Yorkville requests a temporary waiver of up to three months of wireless LNP obligation. Choice, is a CMRS carrier offering service in certain parts of Oklahoma and Texas. Choice requests a waiver of its LNP obligations until September 24, 2004. The TMP Companies are also wireless providers that serve certain areas of Missouri and Illinois. The TMP Companies request a waiver until November 24, 2004 to implement a long-term database method to support number portability.

³ As long ago as July 2002, the Commission decided that CMRS carriers within the top 100 MSAs must be LNP-capable by November 24, 2003 and that CMRS carriers in rural markets outside the top 100 MSAs must meet their porting obligations within six months of receiving their first porting request or by May 24, 2004, whichever is later. Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation And Telephone Number Portability, *Memorandum Opinion and Order*, 17 FCC Rcd 14972, ¶ 31 (2002).

⁴ Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, ¶ 155 (1996), *subsequent history omitted*. (“LNP First Report and Order”).

⁵ Telephone Number Portability – CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, FCC 03-284, ¶ 28 (rel. November 10, 2003), *appeal pending sub nom. United States Telecom Association, et al., v. Federal Communications Commission*, Case Nos. 00-1012, 00-1015, 03-1310, 03-1424 *et al.* (D.C. Cir.) (“*Intermodal Porting Order*”).

Since the LNP obligation's inception, Nextel and other carriers have prepared their networks, systems and personnel to comply with the Commission's local number portability rules. Indeed, Nextel and other wireless carriers implemented LNP with both wireless and wireline carriers through the Commission's *bona fide* request process. While Petitioners wish to forestall their LNP obligations – and thus competitive entry into their service territories – their Petitions fail to support the waivers requested.

As a matter of law, the Petitions do not meet the stringent standards for a Section 52.31(d) waiver of the LNP obligations. Indeed, the Petitioners fail to present any evidence that they are “unable to meet [the Commission's] deployment schedule” – the threshold showing under Section 52.31.⁶ Moreover, as a policy matter, any waiver of Petitioners' porting obligations past May 24, 2004 will throw into disarray the efforts undertaken by other CMRS carriers (as well as many competitive and some incumbent local exchange carriers) to implement local number portability by the required dates. Furthermore, any further delay of LNP in the Petitioners' service areas will disadvantage consumers in those markets – who expect on May 24, 2004 to be able to port their telephone numbers among carriers. The public interest requires that all carriers that received timely *bona fide* requests for portability implement LNP on May 24.

For these reasons, Nextel opposes the Petitioners' LNP waiver request and asks the Commission to re-affirm that all carriers have an obligation to port numbers as of May 24, 2004.

II. PETITIONERS FAIL TO MEET THE STANDARD OF A SECTION 52.31(d) WAIVER REQUEST.

Section 52.31 of the rules sets forth a strict standard for LNP waiver requests. As a threshold matter, the rule requires that all CMRS providers requesting an LNP extension

⁶ 47 C.F.R. 52.31(d)(1).

“demonstrate through *substantial, credible evidence* the basis for its contention that it is unable to comply with . . . [the Commission’s deadline for implementing a long-term number portability method].⁷

Notably, the Commission interpreted Section 52.31 narrowly and has warned carriers that Section 52.31(d)’s requirements are not easily avoided. At the time the Commission adopted the provision, for example, it specifically stated 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.”⁸ In addition, the Commission characterizes the §52.31(d) criteria as “rigorous,” and has expressed its expectation that the rule will “deter the filing of unsubstantiated and frivolous extension requests.”⁹ These interpretations plainly demonstrate that Section 52.31 is not meant to provide carriers with an “easy out” from their LNP obligations. And, carriers seeking a waiver pursuant to that provision must overcome a strict evidentiary standard to demonstrate why they cannot implement LNP within the Commission-specified timeframe.

Petitioners utterly fail to meet the Section 52.31(d) waiver criteria. Indeed, the Petitioners cannot even demonstrate the threshold requirement that they are incapable of meeting their LNP obligations. Nor do the Petitions show that Petitioners face “extraordinary circumstances beyond

⁷ 47 C.F.R. 52.31(d) (emphasis added). These waiver requests must set forth: (1) The facts that demonstrate why the carrier is unable to meet our deployment schedule; (2) A detailed explanation of the activities that the carrier has undertaken to meet the implementation schedule prior to requesting an extension of time; (3) An identification of the particular switches for which the extension is requested; (4) The time within which the carrier will complete deployment in the affected switches; and (5) A proposed schedule with milestones for meeting the deployment date.

⁸ *LNP First Report and Order*, 11 FCC Rcd at ¶ 168 (emphasis added).

⁹ Telephone Number Portability—CTIA Petition for Extension of Implementation Deadlines, *Memorandum Opinion and Order*, 13 FCC Rcd 16315, 16321 (1998).

[their] control.”¹⁰ For one, Yorkville’s petition is wholly lacking any explanation as to what led to its purported need for an extension. Instead, Yorkville merely lists the actions it has taken to become LNP-capable, without ever stating why, despite these purported actions, it will be unable to meet the May 24 deadline. According to Yorkville, it has “embarked upon a detailed path to compliance,”¹¹ including consultation with its switch vendor, Tecore Wireless Systems, to identify the requisite upgrades that will be necessary to complete LNP capability.¹² Yet, Yorkville offers no explanation as to why its actions or consultation with its switch vendor did not occur on a timely basis.

TMP and Choice fare no better in meeting the Section 52.31 waiver standard and demonstrating that they are unable to implement LNP. Rather, each claim that they have chosen to purchase an LNP-capable switch from a new vendor whose scheduling will not allow them to meet their LNP obligations until September 2004.¹³ Critically, neither Choice nor TMP have explained why they waited so long to change switch vendors, or whether, in the meantime, they can, in fact, implement LNP in their existing switches. Instead, the Petitioners claim that it would be financially irresponsible to attempt a portability solution for their existing switches.¹⁴ This statement demonstrates that Petitioners are capable of implementing LNP. The switch changes and other upgrades required to achieve LNP capability should and could have been completed well in

¹⁰ *LNP First Report and Order*, 11 FCC Rcd at ¶ 168.

¹¹ Yorkville Petition at 5.

¹² *Id.* at 3-4.

¹³ In addition, Choice states that it has not finalized its plan to purchase this new switch – which presumably could lead to Choice seeking further waiver and delay of its LNP obligations. *See* Choice Petition at 2.

¹⁴ TMP Petition at 3-4; Choice Petition at 5.

advance of the upcoming May 24 deadline. The Petitioners, however, chose to ignore the requirement and file an unsubstantiated waiver petition.

Critically, none of the Petitions provide information as to when each began upgrading its network to become LNP-capable. Yorkville, for instance, merely discusses efforts taken over “the past several months.”¹⁵ And, while TMP and Choice state that they have been reporting to the Commission regularly since 2002 on their LNP-related efforts, their Petitions provide no facts to show why their new switch vendor is not able to arrange an in-service training sooner than September this year.¹⁶ In fact, the omission of dates from the Petitions of when Petitioners began their network upgrades and when they decided to choose the particular upgrades that are now resulting in delays, suggests that Petitioners did not undertake the necessary upgrades in a timely manner and do not want to shed light on their compliance efforts.

What is plain from the Petitions is not that Petitioners cannot implement LNP by the May 24 deadline, *but rather that they do not want to implement LNP* based on the costs associated with upgrading their existing switches. Indeed, the Petitions on their face reveal a conscious choice by each Petitioner to avoid compliance with the Commission’s LNP deadline by delaying the necessary upgrades to their networks. This is an inadequate showing under Section 52.31, which requires Petitioners to demonstrate that they are *unable* to meet the Commission’s deployment schedule,¹⁷ or

¹⁵ Yorkville Petition at 2.

¹⁶ It is worth noting that none of the Petitions indicates when the Petitioner received a *bona fide* request. Although it can be assumed that each received a request before November 24, 2003 and therefore that it would have at least six months to comply, the timing of these requests may have given Petitioners much more than the six months notice that the rules required to become LNP-capable by May 24, 2004.

¹⁷ 47 C.F.R. 52.31(d)(1) (emphasis added).

that “extraordinary circumstances beyond [their] control”¹⁸ prevent them from achieving LNP-capability. The everyday business decisions described in each of the Petitions are quite *ordinary* and solidly *within* the control of Petitioners. Moreover, claims of added cost simply cannot suffice as justification for waiver. Indeed, Nextel and other CMRS carriers, along with other competitive and incumbent carriers, have expended hundreds of millions of dollars to upgrade and prepare their networks for LNP. The Commission must not reward Petitioners for engaging in dilatory delay tactics, and should deny the requests for waiver.

III. THE PETITIONS SEEK TO DELAY LNP IMPLEMENTATION TO THE DETRIMENT OF COMPETITION AND CITIZENS RESIDING IN THE RURAL AREAS SERVED BY PETITIONERS.

The overarching public interest supports full compliance with the LNP deadline. Indeed, the purported need for more time plainly delays nationwide LNP implementation to the detriment of other CMRS competitors and citizens residing in rural markets. As stated above, Yorkville gives no justifiable reason for why it cannot be ready to implement LNP on May 24, 2004. TMP and Choice both claim to need an extension due to delays caused by their decisions to change switch vendors – *decisions that could have been made well in advance of the upcoming deadline.*

The Commission should not allow Petitioners to use their own delay and failure to plan for the requisite network upgrades as a means to achieve a competitive advantage over other CMRS providers, who have implemented LNP and who will be unable for the length of the waiver to receive Petitioners’ customers who desire to port-in to competitors’ services. To reward any carrier for such an unaccountable delay when other carriers, like Nextel, have been preparing for years to achieve LNP capability is fundamentally at odds with federal law, Commission policy and the interests of rural consumers who, like consumers in larger urban areas, have the legal right under

¹⁸ *LNP First Report and Order*, 11 FCC Rcd at ¶ 168.

the Communications Act to port their numbers to new carriers should they so desire. Indeed, the Commission recognizes that competition and added choice for rural customers is a positive result of LNP: “the public interest is served by requiring the provision of number portability by CMRS providers because number portability will promote competition between providers of local telephone services and thereby promote competition between providers of interstate access services.”¹⁹ These rural consumers should not now be denied this opportunity. And, tactics by Petitioners to further delay LNP will disserve consumers in each of the Petitioners’ own markets, who have been told repeatedly, through the press and by Commission outreach programs, that number portability outside the top 100 MSAs will be available by May 24, 2004. On this basis, as well as Petitioners’ failure to meet the requirements of §52.31(d), the Petitions must be denied.

¹⁹ *Id.* at ¶ 153.

IV. CONCLUSION.

The Petitions are nothing more than an attempt to delay the full scope of the Petitioners' obligations to seek a competitive advantage over other wireless carriers. The Petitions are fundamentally at odds with Commission rules and policy and the interests of wireless customers who have the legal right under the Communications Act to port their numbers should they so desire. As such, the Commission should deny the Petitions for Waiver.

Respectfully submitted,

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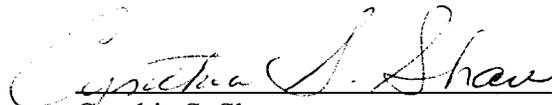
April 12, 2004

CERTIFICATE OF SERVICE

I, Cynthia S. Shaw, a legal secretary at Drinker Biddle & Reath LLP do hereby certify that on this 12th day of April, 2004, a copy of “**NEXTEL COMMUNICATIONS, INC. COMMENTS**” was mailed via first class mail to the following:

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