

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Telephone Number Portability |) | CC Docket 95-116 |
| |) | |

SPRINT LOCAL TELEPHONE COMPANIES PETITION FOR WAIVER

The Sprint Local Telephone Companies (“Sprint”), the incumbent local exchange carrier (“ILEC”) subsidiaries of Sprint Corporation, respectfully submit this petition for waiver of the Commission’s rules regarding recovery of wireless local number portability (“WLNP”) implementation costs. Sprint requests that the Commission grant a waiver of Section 52.33(a)(1) of the Commission’s rules¹ in order to provide Sprint a reasonable opportunity to recover the costs to implement WLNP in accordance with Section 251(e)(2) of the Telecommunications Act of 1996 (“1996 Act”),² the Commission’s cost recovery order,³ and its implementing rules. Specifically, the Commission has already found that the Sprint ILECs are entitled to recover the costs to implement WLNP through charges imposed on end users, except for Lifeline customers,⁴ and has approved Sprint’s

¹ 47 CFR § 52.33(a)(1).

² 47 U.S.C. § 251(e)(2).

³ *Telephone Number Portability*, CC Docket No. 95-116, RM 8535, *Third Report and Order*, 13 FCC Rcd 11701 (1998) (“*Third Report and Order*”). The Commission defines cost recovery as “the collection of funds by carriers to cover some or all of their costs of providing number portability.” *Id.* at 11717 n. 100.

⁴ The Commission’s rules disallow LNP charges on Lifeline customers. 47 U.S.C. § 52.33(a)(1)(i)(C).

current WLNP cost recovery tariff filing, which is attached as Exhibit 1. Sprint seeks a waiver of Section 52.33(a)(1)⁵ of the Commission's rules to allow Sprint to extend its current end user LNP charge beyond the original five-year period specified in the *Third Report and Order* and correct an inadvertent, ministerial error made in the rate development of the current WLNP recovery rate.

I. INTRODUCTION AND SUMMARY

In this Docket, the Commission has twice granted LNP cost recovery to ILECs: First, in 1998, the Commission allowed ILECs to recover wireline LNP costs in its *Third Report and Order*⁶ and, earlier this year, the Commission permitted ILECs to recover costs related to wireless LNP in its *Order*⁷ regarding the BellSouth Petition.⁸ Per a tariff filing approved by the Commission, Sprint began assessing a \$0.43 (\$0.47, including USF recovery) WLNP cost recovery surcharge per access line per month, including PBX and ISDN-PRI equivalency ratios,⁹ consistent with the Commission's rules on July 16, 2004. The cost recovery assessment will be in effect for five months, ending on December 15, 2004.

Upon review of its first month's billing of the WLNP cost recovery assessment, Sprint realized that a ministerial error had occurred in the rate computation that supported its tariff filing. This petition seeks to correct that error.

⁵ 47 C.F.R. § 52.33(a)(1).

⁶ See *Third Report and Order*, 13 FCC Rcd 11701.

⁷ *Telephone Number Portability*, CC Docket No. 95-116, FCC 04-91, 19 FCC Rcd 6800 (2004) ("*BellSouth Waiver Order*").

⁸ BellSouth Corporation Petition for Declaratory Ruling and/or Waiver, *Telephone Number Portability*, CC Docket No. 95-116 (November 14, 2003) at 3-5 ("*BellSouth Petition*").

⁹ 47 C.F.R. § 52.33 (a)(1)(i)(A) and (B).

II. THE COMMISSION HAS ALREADY APPROVED SPRINT'S WLNP COST RECOVERY. ALLOWING CORRECTION OF RATE DEVELOPMENT ERROR WILL RESULT IN RECOVERY AT COMMISSION-APPROVED LEVEL.

The Commission approved Sprint's WLNP cost recovery when it allowed its WLNP cost recovery tariff, filed on July 1, 2004, to take effect on July 16, 2004. However, in its rate computation, Sprint erroneously stated its number of ISDN-PRI demand quantities. Due to utilizing ISDN-PRI voice grade equivalents (B Channels) instead of ISDN-PRI primary lines as the assessable billing units, the rate computation overstated the number of assessable ISDN-PRI units by a factor of nearly 22¹⁰. This rate development error will result in less cost recovery than the level approved by the Commission unless Sprint is allowed the necessary corrective action. Sprint seeks to correct the error in its rate computation by including the correct number of assessable ISDN-PRI units and extend its tariff for one additional month at the rate of \$0.28 (\$0.30, including USF recovery) per access line per month, including PBX and ISDN-PRI equivalency ratios, in order to fully recover its Commission-approved WLNP costs.

III. GRANT OF THIS PETITION IS CONSISTENT WITH PRIOR COMMISSION ORDERS IN THIS DOCKET.

The tariff filing that Sprint intends to make if the instant waiver request is granted would be in the nature of an "erratum." The purpose would not be revisiting or "truing-up" assumptions, such as forecasted access line demand or costs, but instead correcting its rate development computation to ensure that the amount of cost recovery is consistent with

¹⁰ The original ISDN-PRI demand forecast, including the appropriate ISDN-PRI equivalency ratio, was 5,301,238. The correct ISDN-PRI demand forecast is 244,072, resulting in an original demand forecast overstatement of 5,057,166 units.

the total amount approved by the Commission. As such, a supplemental tariff filing is consistent with the Commission's *Third Report and Order* regarding the level and timing of a levelized end-user charge.¹¹

IV. THIS PETITION MEETS THE STANDARD FOR WAIVER OF THE COMMISSION'S RULES.

It is well established law that an agency "will adhere strictly to its rules unless a party can demonstrate that 'in the public interest the rule should be waived.'"¹² The Commission may only waive a provision of its rules for "good cause shown."¹³ In response to an application for waiver, the Commission must take a "hard look" and must consider all relevant factors when determining if good cause exists.¹⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest and it may take into consideration such factors as hardship and equity.¹⁵

In the situation described in this Petition, the public interest would be served if Sprint is allowed to correct the effect of its computational error and make an accurate WLNP cost recovery. The Commission has held that it does "... not believe that

¹¹ See *Third Report and Order*, 13 FCC Rcd 11776-11777.

¹² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 17 FCC Rcd 157, 159 (Com. Car. Bur. 2001), citing *FPC v. Texaco Inc.*, 377 U.S. 33, 39 (1964).

¹³ 47 C.F.R. § 1.3.

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

¹⁵ *Request for Review of a Decision by the Universal Service Administrator by Pioneerland Library System*, 16 FCC Rcd 3428, 3430 & nn. 11, 12 (Com. Car. Bur. 2001) ("*Pioneerland Waiver Order*"), citing *WAIT Radio* and *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

permitting a limited extension of the LNP recovery period undermines the policy objective upon which the limit originally was based.”¹⁶ As in the case of the waiver granted to incumbent LECs to permit recovery of intermodal LNP costs, grant of the instant waiver request will “not produce unreasonable charges for customers or impose them for an unduly long period.”¹⁷

Moreover, grant of this petition will allow for the correction of a ministerial error in computing the WLNP cost recovery rate. The Common Carrier Bureau has held that the public interest is served by correcting inadvertent errors of a ministerial nature, even in cases where strict adherence to deadlines is required (unlike the instant case), in order to avoid an unfair result.¹⁸ The Commission should grant Sprint’s petition because it seeks to correct such a ministerial error and the public interest would be served if Sprint is permitted to recover fairly its WLNP costs.

V. THIS PETITION IS TIMELY FILED AND SHOULD BE TIMELY APPROVED.

Sprint discovered its error during its initial review of WLNP surcharge recovery and brought the matter to the attention of the Commission in a timely manner. Based upon advice of Commission staff, Sprint is filing this instant petition. Because Sprint’s current WLNP surcharge is due to expire on December 15, 2004, Sprint seeks expeditious approval of this petition in order to minimize the impact to consumers. A timely grant of this petition will permit Sprint to commence billing the modified one-month rate on

¹⁶ *BellSouth Waiver Order*, 19 FCC Rcd at 6806 (¶ 12).

¹⁷ *Id.*

¹⁸ *See Pioneerland Waiver Order*, 16 FCC Rcd at 3431.

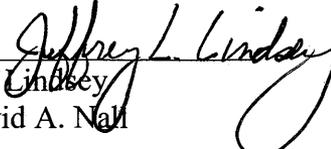
December 16, 2004, thus correcting the WLNP cost recovery deficit with minimum impact on consumers.

VI. CONCLUSION

In the instant petition, Sprint requests authority to recover fully the costs incurred by its ILECs, and already approved by the Commission, in the form of an additional tariff filing to provide an additional one-month recovery period in the amount of \$0.28 (\$0.30, including USF recovery) per access line. Because the error Sprint seeks to correct was computational in nature only and was discovered in a timely manner, and because a timely request – in the form of this petition – was made to correct the error while the WLNP cost recovery surcharge remains in effect, there is no substantial reason why this petition should not be granted. Grant of this petition serves the public interest and is not inconsistent with prior Commission orders in this docket. Sprint therefore requests that the Commission grant the instant waiver request in an expeditious fashion.

Respectfully submitted,

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November 2, 2004

CERTIFICATE OF SERVICE

I hereby certify that a copy of Sprint Corporation's Petition for Waiver was sent by electronic filing on this the 2nd day of November, 2004 to the following parties.


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