

DIRECT TESTIMONY
OF
JEFFREY H. HOAGG

PRINCIPAL POLICY ADVISOR
TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

Petition For Suspension Or Modification Of Section
251(b)(2) Requirements Of The Federal
Telecommunications Act Pursuant To Section
251(f)(2) Of Said Act, For Entry Of Interim Order; And
For Other Necessary Relief

DOCKET NO. 04-0238

MAY 20, 2004

1 **Introduction**

2

3 **Q. Please state your name and business address.**

4 A. My name is Jeffrey H. Hoagg. My business address is 527 East Capitol
5 Avenue, Springfield, Illinois 62701.

6

7 **Q. By whom are you employed and in what capacity?**

8 A. I am employed as the Principal Policy Advisor in the Telecommunications
9 Division of the Illinois Commerce Commission

10

11 **Q. Please describe briefly your educational background and work
12 experience.**

13

14 A. I graduated from Cornell University with a Master of Arts in Economics in
15 1986. I was admitted to doctoral candidacy at Cornell and completed all
16 requirements for the Ph.D. in Economics other than completion of the
17 dissertation. My major field of graduate study was Industrial Organization
18 and Regulation.

19

20 I held the positions of Telecommunications Tariffs and Rates Analyst,
21 Telecommunications Policy Analyst, and Special Assistant to the Deputy
22 Chair of the Commission at the New York Public Service Commission. I
23 performed economic and policy analyses of industry and regulatory

24 issues, and formulated recommendations for Commission members and
25 other decision-makers. Among other duties, I served as Staff team leader
26 for issues of pricing and provisioning of unbundled network elements
27 (“UNEs”), Expanded Extend Link and Digital Subscriber Line-based
28 services, and as a member of the team that negotiated terms of Bell
29 Atlantic - New York’s Section 271 “Pre- Filing Statement”. I was appointed
30 as staff to the New York Telecommunications Exchange, a “blue-ribbon”
31 panel convened to coordinate that state’s overall telecommunications
32 policies. I also was appointed as Staff to the Federal/State Open Network
33 Architecture Joint Conference.

34

35 In 1993 I became Special Advisor to Commissioner Barrett of the Federal
36 Communications Commission on Common Carrier issues. I provided
37 analyses and policy recommendations on a wide range of
38 telecommunications issues, and functioned as liaison with the offices of
39 other Commissioners, the Chairman and the FCC’s Common Carrier
40 Bureau. I prepared testimony, speeches and presentations for delivery
41 before Congress and various regulatory and industry groups, and drafted
42 for issuance informal and formal documents, including Separate
43 Statements and Dissents from Commission Reports and Orders.

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Suspension of Local Number Portability Requirements

Q. What is the purpose of your testimony?

A The purpose of this testimony is to offer my opinion as to whether the Commission should suspend, under Section 251(f)(2) of the Federal Telecommunications Act of 1996 (“the Act”), El Paso Telephone Company’s (“El Paso”) obligation to implement wireline to wireless local number portability (“W-W LNP”) in its service territory under Section 251(b)(2) of the Act and FCC rules and orders.

Q. Please summarize your testimony.

A. I conclude that several policy factors and considerations unique to smaller, more rural ILECs in Illinois render the Federal Communications Commission (FCC) decision to require wireline-to-wireless number portability by these carriers no later than May 24, 2004 premature with respect to this carrier. It is my opinion that given the state of the record, a temporary suspension is necessary to avoid imposing a significant adverse economic impact on El Paso’s customers. I also conclude this would be in the public interest. I recommend that the Commission grant a temporary suspension of W-W LNP requirements for a period of approximately 2 years.

72 **Q. As a general matter, is deployment of number portability capabilities**
73 **by Illinois local exchange carriers desirable?**

74 Yes. Congress required all telecommunications carriers to provide
75 number portability pursuant to rules promulgated by the FCC.¹ The FCC
76 has promulgated a number of such rules. It has stated, on at least one
77 occasion, that the failure of telecommunications carriers to provide
78 number portability “hampers the development of local competition.”² The
79 FCC has emphasized that carriers offering number portability also
80 participate in number pooling to optimize numbering resources, which
81 benefits consumers by staving off the creation of new area codes.³

82

83 **Q. On what basis may the Commission consider a potential suspension**
84 **or modification of the FCC’s current W-W LNP requirements, as they**
85 **apply to El Paso?**

86 A. Section 251(f)(2) of the 1996 Act states that:

87 A local exchange carrier with fewer than 2 percent of the
88 Nation’s subscriber lines installed in the aggregate
89 nationwide may petition a State commission for a
90 suspension or modification of the application of a
91 requirement or requirements of subsection (b) or (c) to
92 telephone exchange service facilities specified in such
93 petition. The State commission shall grant such petition to

¹ See 47 U.S.C. § 251(b)(2) (requiring all telecommunications carriers to provide number portability to its customers “in accordance with requirements prescribed by the [FCC]”).

² See e.g., *Telephone Number Portability*, Third Report and Order, CC Docket. 95-116, 13 FCC Rcd 11701, 11702-04, ¶¶ 3-4 (1998) (where the FCC “recognized that the inability of customers to retain their telephone numbers when changing local service providers hampers the development of local competition”).

³ *Fourth Numbering Resource Optimization Order*, CC Docket No. 99-200, FCC 03-126, at ¶¶ 1, 15, 18 (June 18, 2003)

94 the extent that, and for such duration as, the State
95 commission determines that such suspension or
96 modification—

97
98 (A) is necessary--

99 (i) to avoid a significant adverse economic
100 impact on users of telecommunications services
101 generally;

102 (ii) to avoid imposing a requirement that is
103 unduly economically burdensome; or

104 (iii) to avoid imposing a requirement that is
105 technically infeasible; and

106
107 (B) is consistent with the public interest, convenience,
108 and necessity.
109

110 It is my understanding that El Paso has fewer than two percent of
111 subscriber lines nationwide (i.e., is a “2% carrier”). Accordingly, the
112 Commission is authorized to suspend application of W-W LNP
113 requirements for El Paso if it finds that such action would be necessary
114 under at least one of the three Section 251(f) (2)(A) “tests”, and also would
115 be consistent with the public interest, convenience and necessity.
116

117 **Q. Is it your understanding that El Paso has received a bona fide**
118 **request for number portability from at least one wireless carrier?**

119 A. Yes. Although I am not an attorney, it is my understanding that El Paso
120 has received a bona fide request for wireline to wireless number portability
121 from at least one wireless carrier.
122
123
124

125 **Section 251(f)(2)(A) of the 1996 Act**

126

127 **Q. Which of the standards set forth in Section 251(f)(2)(A) of the 1996**
128 **Act is most applicable to your analysis?**

129 A. For several reasons, I focus on Section 251(f)(2)(A)(i) of the Act as the
130 most directly applicable of the three standards that appear in Section
131 251(f)(2)(A). Specifically, I conclude that a temporary suspension is
132 necessary to avoid a significant adverse economic impact on users of
133 telecommunications services generally. First, FCC rules provide that El
134 Paso may recover most LNP-related costs from end users (on a per-
135 access line basis as prescribed in those rules) over a period of five years.
136 (47 C.F.R. §§ 52.21-52.33). It is my understanding that El Paso will do so
137 if and when it is required to implement W-W LNP. Since costs associated
138 with W-W LNP will be borne by El Paso customers generally, a central
139 question for the Commission is whether such costs would cause a
140 “significant adverse economic impact on users of telecommunications
141 services generally.”

142

143 In this specific application of Section 251(f)(2)(A)(i) of the Act, I believe the
144 phrase “users of telecommunications services generally” is best
145 understood to refer to the general body of El Paso subscribers. In my
146 view, the fact that W-W LNP costs would be borne largely by end users
147 warrants a Commission focus on Section 251(f)(2)(A)(i) of the Act.
148 Consistent with this, I do not address Section 251(f)(2)(A)(ii) of the Act.

149

150 Second, Engineering Staff members assigned to this proceeding have
151 concluded that deployment of W-W LNP by El Paso is technically feasible.

152 I believe Section 251(f)(2)(A)(ii) and Section 251(f)(2)(A)(iii) of the Act are
153 not, and should not be, at issue in this proceeding.

154

155 **Q. In your opinion, would imposition of costs associated with**
156 **deployment of W-W LNP cause a “significant adverse economic**
157 **impact on users of telecommunications services generally” for El**
158 **Paso telephone subscribers?**

159 A. Yes. Based on the available evidence, I believe imposition of these costs
160 on El Paso telephone subscribers (i.e., access line purchasers) at this
161 time would, from a policy perspective, constitute a significant adverse
162 economic impact. Based on the available information, Staff’s best
163 estimate of what El Paso’s costs per access line (single line residential
164 and business) might be, pursuant to FCC rules, is \$0.73 per line per
165 month. In comparison, the monthly per line surcharge for SBC Illinois
166 subscribers for wireline-to-wireline number portability is \$0.28. I note that
167 consumer demand for wireline-to-wireline number portability has been
168 very high. It is my understanding that consumer demand for W-W LNP, at
169 least to date, has been comparatively low.

170

171 I am not aware of any quantitative or precise measure (or any generally
172 accepted methodology) to determine whether a given level of costs or

173 charges would cause “a significant adverse economic impact on users of
174 telecommunications services generally.” I believe this is a matter
175 requiring careful application of judgment on a case-specific basis. In this
176 instance, that application leads me to conclude that a temporary
177 suspension of W-W LNP requirements is warranted. The estimated cost
178 per access line for El Paso is higher than the wireline-to-wireline
179 surcharge for SBC Illinois. While not directly comparable, in my view, the
180 figure for SBC Illinois provides a useful benchmark. In my opinion, the
181 estimated per line cost for El Paso subscribers appears unduly high in
182 view of the expected demand for (and subscriber benefits associated with)
183 W-W LNP at this time. I develop this point in the following several
184 questions and answers.

185

186 **Q. In your opinion, can the Commission determine whether W-W LNP**
187 **costs would cause significant adverse economic impact on El Paso’s**
188 **customers without examining the benefits those customers would**
189 **receive from W-W LNP?**

190 A. No. In my view, it is not possible to determine whether W-W LNP costs
191 would significantly adversely impact users without careful consideration of
192 the benefits users generally would realize from deployment of W-W LNP.

193

194 A simple hypothetical example illustrates this. Suppose a cost increase
195 of \$1.00 per access line per month was imposed on El Paso’s customers,
196 but they received in return no tangible benefits of any kind. I believe

197 under these circumstances this \$1.00 cost increase per access line would
198 cause a “significant adverse economic impact on users of
199 telecommunications services generally.” Suppose, however, that a \$1.00
200 cost increase per access line per month would enable each of El Paso’s
201 end users to obtain broadband service from the company. In this case, I
202 believe users generally would not experience a significant adverse impact
203 as a result of the surcharge. Costs cannot be examined in isolation, with
204 no reference to the associated benefits, when determining the impact on
205 users generally pursuant to Section 251(f)(2)(A)(i) of the Act.

206

207 **Q. What level of benefits would El Paso’s telephone users generally**
208 **receive as a result of deployment of W-W LNP?**

209 A. I believe an assessment of these benefits requires consideration of two
210 categories of El Paso telephone subscribers. The first category is
211 composed of subscribers who would not, for whatever reason, port their
212 wireline telephone number to a wireless carrier. These subscribers would
213 receive what could be called “indirect” benefits from W-W LNP. They
214 benefit indirectly from the fact that other El Paso subscribers can and do
215 take advantage of the ability to port numbers from wireline to wireless
216 carriers. (Note, however, that these subscribers share directly in costs
217 associated with W-W LNP since these costs are recovered over all access
218 lines). The second category of subscribers is made up of those who
219 choose to port a wireline telephone number to wireless service. These
220 subscribers take “direct” advantage of the benefits of W-W LNP.

221

222 In my opinion, these “direct” benefits (realized by those who port numbers)
223 are considerably larger, per subscriber, than any indirect benefits gained
224 by the remaining subscribers not porting numbers. If this is correct, the
225 level of benefits realized by El Paso’s subscribers would be determined in
226 large measure by the number of customers choosing to port their wireline
227 number to a wireless carrier. If no subscribers do so, in my opinion the
228 benefits from deployment of W-W LNP would be extremely low. If very
229 few subscribers do so, benefits received generally would be very modest.
230 If larger numbers of subscribers port numbers, all else equal, benefits from
231 W-W LNP would be commensurately larger.

232

233 Thus, W-W LNP benefits for El Paso’s users would be difficult to assess
234 without knowing the expected or approximate “take rate” (percentage of El
235 Paso customers opting to port numbers). This figure is unknown since El
236 Paso has not implemented W-W LNP, and would not be required to do so
237 until May 24, 2004 at the earliest. However, W-W LNP has been in effect
238 since November 24, 2004 in the territories of Illinois’ larger ILECs. Thus,
239 there is some Illinois-specific information upon which to draw conclusions
240 concerning the take rate for W-W LNP (and the level of benefits
241 associated with W-W LNP).

242

243 Based on my discussions with representatives from SBC and Verizon, the
244 information available concerning W-W LNP “take rates” in Illinois suggests

245 that the demand for (and benefits associated with) W-W LNP would be
246 very low for El Paso subscribers at this time. As of January 2004, only
247 approximately 0.02 percent of Illinois end-user customers with access to
248 W-W LNP had taken advantage of this capability.

249

250 **Q. Wouldn't at least some benefits associated with W-W LNP be**
251 **sacrificed or foregone if the Commission temporarily suspends W-W**
252 **LNP requirements?**

253 A. Yes. Some level of such benefits would be foregone, or at a minimum, be
254 deferred into the future. Significantly, however, the costs incurred to
255 receive those benefits also would, at minimum, be deferred, and thus not
256 incurred for the duration of a temporary suspension. If the current level of
257 benefits does not exceed the accompanying costs, then El Paso
258 subscribers are certain or likely to realize positive net benefits from a
259 temporary suspension of W-W LNP requirements.

260

261 **Q. Please summarize your conclusions regarding the application of**
262 **Section 251(f)(2)(A)(i) of the Act in this proceeding.**

263 A. In my view, the estimated demand for W-W LNP (and consumer benefits
264 associated with W-W LNP) currently is quite low in relation to the
265 estimated costs El Paso subscribers would bear to receive those benefits.
266 It is my opinion that deployment of W-W LNP at this time would cause a
267 significant adverse economic impact on El Paso subscribers, since all
268 such subscribers would be compelled to pay an estimated \$0.73 per

269 month to deploy the function, but very few are likely to elect to port
270 numbers. Accordingly, the Commission should grant a temporary
271 suspension of W-W LNP requirements to forestall that significant adverse
272 impact.

273

274 A temporary suspension is particularly appropriate in my view, since El
275 Paso subscribers choosing not to “port” their landline telephone number to
276 a wireless carrier (presumably because they perceive insufficient value in
277 doing so), will pay the bulk of the costs associated with W-W LNP. Most,
278 if not all, of those El Paso subscribers choosing to “port” their landline
279 number to wireless service likely would have no further subscriber
280 relationship with El Paso. These former El Paso subscribers thus would
281 not contribute toward the costs of W-W LNP (recovered by El Paso on a
282 per-access line basis).

283

284 **The Public Interest, Convenience and Necessity**

285

286 **Q. In order to suspend temporarily the FCC’s W-W LNP requirements,**
287 **must the Commission find that such action would be consistent with**
288 **the public interest, convenience and necessity?**

289 A. Yes. Although I am not an attorney, as I understand Section 251(f)(2)(B)
290 of the 1996 Act, a Commission decision to suspend or modify these
291 requirements would require an explicit Commission determination that a
292 suspension or modification would be consistent with the public interest,

293 convenience and necessity.

294

295 **Q. In your opinion, would a temporary suspension of the FCC's W-W**
296 **LNP requirements be consistent with the public interest,**
297 **convenience and necessity?**

298 A. Yes. A temporary suspension would be consistent with the public interest,
299 convenience and necessity for several reasons. First, as discussed
300 above, the available information concerning the expected demand for W-
301 W LNP by El Paso's customers indicates demand would be quite low.
302 More complete and reliable information concerning demand and benefits
303 will be available in the future through examination of demand growth for
304 W-W LNP in the territories of SBC Illinois and Verizon. Evidence
305 concerning demand for W-W LNP by Verizon and SBC Illinois customers
306 (and other subscribers nationwide) would provide a more comprehensive
307 benchmark for the expected demand of El Paso subscribers. The
308 Commission should suspend W-W LNP requirements for El Paso while
309 this evidence is gathered.

310

311 **Q. Would a temporary suspension also provide the Commission with**
312 **greater certainty about costs associated with W-W LNP (in the event**
313 **the Commission again considers suspension or modification of W-W**
314 **LNP requirements)?**

315 A. Yes. A temporary suspension would permit the Commission greater
316 certainty concerning the costs subscribers would pay for W-W LNP. Data

317 concerning actual W-W LNP surcharges around the country would
318 become available for consideration by the Commission if it grants a
319 temporary suspension in this proceeding.

320

321 There is a further important consideration stemming from the current
322 uncertainties surrounding the demand for, and costs of, W-W LNP. These
323 uncertainties give rise to an asymmetry in the impact the Commission's
324 decision in this proceeding could have upon El Paso's subscribers. If the
325 analysis presented in this testimony is correct, the risks of significant loss
326 or "downside" from a decision to temporarily suspend W-W LNP
327 requirements are quite small. As previously noted, suspension would
328 defer both the benefits and costs of W-W LNP deployment. Based on the
329 available information, it appears likely that these deferred (or foregone)
330 costs would exceed the corresponding deferred (or foregone) benefits for
331 a 2-year suspension. The same cannot be said, however, for a
332 Commission decision not to grant a temporary suspension of W-W LNP
333 requirements. In this event, El Paso subscribers would be compelled to
334 begin paying the costs of W-W LNP almost immediately.

335

336 **Q. What additional considerations cause you to conclude that**
337 **temporary Commission suspension of W-W LNP requirements would**
338 **be consistent with the public interest, convenience and necessity?**

339 A. In important respects, "2% carriers" such as El Paso are distinguishable
340 from larger Illinois carriers in the impacts W-W LNP requirements would

341 have on them, and ultimately on their customers. A significant difference
342 concerns the rating and routing arrangements for traffic to telephone
343 numbers “ported” pursuant to the FCC’s W-W LNP requirements. El
344 Paso, and other Illinois “2% carriers”, would route such traffic to the
345 tandem switches of larger Illinois carriers such as SBC Illinois and
346 Verizon. (These larger carriers, due in part to their vastly larger networks,
347 are able to route their own such “ported” traffic to their own tandem
348 switches for delivery to wireless carriers). In its W-W LNP Orders, the
349 FCC did not resolve certain rating and routing questions surrounding this
350 traffic that are specific to “2%” carriers such as El Paso. The following
351 passages make clear that such determinations are forthcoming:

352 The National Exchange Carrier Association (NECA) and
353 National Telecommunications Cooperative Association
354 (NTCA), for example, argue in their joint comments, that
355 when wireless carriers establish a point of interconnection
356 outside of a rural LEC’s serving area, a disproportionate
357 burden is placed on rural LECs to transport originating calls
358 to the interconnection points. [footnote deleted] They argue
359 that requiring wireline carriers to port telephone numbers to
360 out-of-service area points of interconnection could create an
361 even bigger burden. Other carriers point out, however, that
362 issues associated with the rating and routing of calls to
363 ported numbers are the same as issues associated with
364 rating and routing of calls to all wireless numbers. [footnote
365 deleted]

366 We recognize the concerns of these carriers, but find that
367 they are outside the scope of this order. As noted above,
368 our declaratory ruling with respect to wireline-to-wireless
369 porting is limited to ported numbers that remain rated in their
370 original rate centers. We make no determination, however,
371 with respect to the routing of ported numbers, because the
372 requirements of our LNP rules do not vary depending on
373 how calls to the number will be routed after the port occurs.
374 Moreover, as CTIA notes, the rating and routing issues
375 raised by the rural wireline carriers have been raised in the

376 context of non-ported numbers and are before the
377 Commission in other proceedings. [footnote deleted]
378 Therefore, without prejudging the outcome of any other
379 proceeding, we decline to address these issues at this time
380 as they relate to intermodal LNP.⁴
381

382 In my opinion, a significant benefit of a temporary suspension of W-W LNP
383 requirements is the likelihood that during such suspension the FCC will
384 clarify the rating, routing and compensation arrangements and procedures
385 that are now in question.

386
387 While a number of outcomes are possible, the FCC might resolve these
388 issues by relieving, or significantly reducing, any cost burdens on 2%
389 carriers (and thus ultimately their subscribers) associated with the
390 transport of traffic to telephone numbers “ported” pursuant to W-W LNP
391 requirements. Such a result, combined with evidence that subscriber
392 demand for W-W LNP is higher than El Paso currently contemplates,
393 might cause the company to conclude that W-W LNP is in the interest of
394 its subscribers.

395
396 **Q. Are you aware of any court challenges to the FCC’s requirement that**
397 **“2% carriers” such as El Paso deploy W-W LNP?**

398 A. Yes. I understand that there are three challenges (pending before the
399 Federal Court of Appeals for the District of Columbia) to various aspects of
400 the FCC’s Orders imposing W-W LNP requirements on “2%” carriers.

⁴ In re Telephone Number Portability, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 03-284 (rel. Nov. 10, 2003), at ¶¶ 39-40.

401 These court proceedings raise additional considerations that support a
402 temporary suspension of W-W LNP requirements. If the Commission
403 does not now temporarily suspend these requirements, and the “2%
404 carriers” prevail partially or wholly in these proceedings, it is possible that
405 El Paso (and ultimately its subscribers) would incur costs associated with
406 W-W LNP, even if El Paso ultimately were not required to deploy W-W
407 LNP at all. Absent a Commission suspension, it appears El Paso would
408 incur at least “start-up” costs to implement W-W LNP during 2004 if it is to
409 avoid violating current W-W LNP requirements.

410

411 **Q. Please summarize your conclusions regarding whether a**
412 **Commission suspension of the FCC’s W-W LNP requirements would**
413 **be consistent with the public interest, convenience and necessity.**

414 **A.** I believe the reasons presented above, taken together, support a
415 Commission determination that a temporary suspension of W-W LNP
416 requirements (as applied to El Paso) is consistent with the public interest,
417 convenience and necessity. I believe this conclusion is warranted even if
418 any or all of these reasons, considered individually, might not warrant a
419 temporary suspension.

420

421 **Duration of a Temporary Suspension**

422

423 **Q. In your opinion, should the Commission attach conditions to a**
424 **temporary suspension of W-W LNP requirements?**

425 A. No. However, if the Commission grants a temporary suspension, I believe
426 it should make clear such action in no way prejudices any future
427 determinations it might make concerning W-W LNP issues. The
428 Commission also should emphasize that El Paso must be prepared to
429 deploy W-W LNP at the end of any suspension period (unless further
430 Commission determinations or intervening events otherwise render such
431 preparation unnecessary). Finally, if the Commission grants a temporary
432 suspension, I believe it should explicitly underscore its authority to
433 reexamine such decision at any time in light of any new and pertinent
434 information.

435

436

437 **Q. What duration do you recommend for temporary suspension of W-W**
438 **LNP requirements?**

439 A. I recommend that the Commission suspend these W-W LNP requirements
440 for a time period no greater than 30 months.

441

442 **Q. Why do you recommend this specific time period for a temporary**
443 **suspension of W-W LNP requirements?**

444 A. In my judgment, a suspension of approximately 2 years duration should be
445 sufficient for obtaining the additional vital information discussed in this
446 testimony. In addition, I believe this period would allow sufficient time for
447 resolution of other relevant issues, including court cases and FCC
448 proceedings that should clarify key W-W LNP issues such as transport
449 obligations and rating arrangements.

450

451 I believe a suspension less than 2 years in duration likely would not be
452 sufficient to accomplish the objectives I have outlined. At the same time, I
453 recognize it is important that the Commission not grant a suspension
454 longer than that needed for legitimate purposes. I believe a suspension of
455 approximately 2 years would appropriately balance these competing
456 considerations. I also note that the temporary suspensions of W-W LNP
457 requirements previously granted by the Commission were for 30 months
458 duration.

459

460 **Q. Does this conclude your testimony?**

461 A. Yes.

462