

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ONEIDA NETWORK SERVICES, INC. }
 }
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. 04-0199

REBUTTAL TESTIMONY
OF
GORDON J. KRAUT, JR.

ON BEHALF OF
ONEIDA NETWORK SERVICES, INC.

June 14, 2004

1 **Q. Please state your name.**

2 A. Gordon J. Kraut, Jr.

3 **Q. Have you reviewed the Direct Testimony of Staff witnesses Jeffery H. Hoagg (ICC**
4 **Staff Exhibit 1.0) and Robert F. Koch (ICC Staff Exhibit 3.0) as well as the**
5 **testimony of Michael A. McDermott of Verizon Wireless (Verizon Wireless Exhibit**
6 **1), which has been filed in this proceeding?**

7 A. Yes, I have.

8 **Q. Please state the purpose of your testimony.**

9 A. I will respond to certain portions of the Staff's testimony and the Verizon Wireless
10 testimony in this Rebuttal Testimony. It is clear that both Oneida and the Staff agree that
11 a suspension of the wireline to wireless local number portability (LNP) requirements of
12 the Federal Communications Commission should be granted pursuant to Sec. 251(f)(2) of
13 the 1996 Telecommunications Act. We agree with Mr. Hoagg's testimony that a
14 suspension is necessary to avoid imposing a significant adverse economic impact on
15 Oneida's customers pursuant to Section 251(f)(2)(A)(i) of the Act. Oneida also agrees
16 with Mr. Hoagg's conclusion that the granting of an additional suspension is consistent
17 with the public interest, convenience and necessity of the Act. Those conclusions and
18 Mr. Hoagg's analysis underlying those conclusions are consistent with my Direct
19 Testimony and the very reason that Oneida is seeking a further suspension of the
20 obligation to provide wireline-to-wireless local number portability in this proceeding.
21 The Company disagrees with some of the cost estimates by Staff witness Koch and with
22 Verizon Wireless's interpretation of the law.

23 **Q. What issues will you be addressing in your Rebuttal Testimony?**

24 A. I will be discussing the testimony of each of the Staff witnesses. However, the primary
25 focus of my Rebuttal Testimony is to respond to the proposed changes that Mr. Koch has
26 addressed in his testimony to the incremental costs per access line to Oneida if Oneida is
27 required to provide wireline-to-wireless number portability as was estimated and
28 addressed in my Direct Testimony and Attachments. I will address issues raised in Mr.
29 Koch's testimony with regard to transport and transiting costs. I will address Mr.
30 Hoagg's testimony with regard to the reasons why a further suspension should be granted
31 by the Commission to Oneida and the length of that suspension. Finally, I will be
32 addressing, to the limited extent necessary, the testimony submitted by Mr. McDermott.

33 **Q. With regard to Mr. Koch's testimony, did you in your Direct Testimony and**
34 **Attachments present an analysis of Oneida's best estimates as to what incremental**
35 **costs might be incurred by Oneida in connection with any required provision of**
36 **wireline-to-wireless local number portability?**

37 A. Yes, I did. As I indicated in my Direct Testimony, we attempted to quantify the
38 incremental costs of providing wireline-to-wireless local number portability and to
39 estimate the amount of the per access line surcharge and/or rate increase that would be
40 required to recover those costs from Oneida's customers in connection with Oneida's
41 request for a further suspension and the statutory criteria that a suspension is necessary to
42 avoid a significant adverse economic impact on users of telecommunications services
43 generally. I made very clear in my Direct Testimony that we were not asking the
44 Commission in this proceeding to either make a determination concerning what an
45 appropriate surcharge on our access lines would be or to impose any such surcharge. In

46 fact, under the FCC's Rules, the Company would be filing a tariff with the FCC rather
47 than this Commission to establish such a surcharge.

48 **Q. Does Mr. Koch agree that local number portability costs are recovered via tariffs**
49 **filed by local exchange carriers, such as Oneida, with the FCC pursuant to the**
50 **FCC's Rules and Orders?**

51 A. Yes, I believe he does. At lines 133 through 137 on pages 6 and 7 of his testimony, he
52 states as follows:

53 "It is my understanding that the Commission has had no role in
54 determining the appropriate rates for LNP cost recovery to date.
55 To my knowledge, all cost recovery for LNP associated costs is
56 obtained via incumbent local exchange carrier tariffs filed with the
57 FCC pursuant to that agency's rules and orders."

58
59 I will comment on this further subsequently in my testimony.

60 **Q. Does Mr. Koch acknowledge in his testimony that certain cost recovery issues**
61 **related to wireline-to-wireless local number portability have not, as yet, been**
62 **addressed or resolved by the FCC?**

63 A. Yes, he does. In several different sections of his testimony, Mr. Koch discusses the fact
64 that the FCC has not resolved cost recovery issues or transport and transiting. As is
65 shown in both my Schedules and Mr. Koch's Schedules, those costs are significant.

66 **Q. Does Mr. Koch generally agree with the format of the cost development put forth in**
67 **your testimony?**

68 A. He indicates that he does and testifies that our analysis "appears to be consistent with the
69 format for LNP end-user charges in NECA Tariff FCC No. 5."

70 **Q. Mr. Koch then goes on to discuss certain of the incremental costs you have included,**
71 **and quantifies the effect of his recommendation on the potential costs or end-user**
72 **charges per access line. What is your response to these changes in costs?**

73 A. I would observe at the outset that I recognize that Mr. Koch is simply doing his job as a
74 member of the Staff and is entitled to his opinion concerning the estimates of the
75 incremental costs that I have presented for Oneida. Since I believe certain of his
76 concerns and adjustments are without merit, I am going to respond to those issues in my
77 testimony. However, before doing so, I would make the following observations. First,
78 the changes that Mr. Koch recommends have the effect of reducing potential incremental
79 costs that would have to be recovered from each of Oneida's access lines from \$8.37 per
80 month to \$4.69 per month. Since the Staff's recommendation contained in Mr. Hoagg's
81 testimony, to grant a further suspension for the reasons contained therein, was based upon
82 Mr. Koch's best estimated cost or surcharge of \$4.69, the differences of opinion that Mr.
83 Koch and I have could, at this juncture, be deemed to be academic. Secondly, it is my
84 opinion that our cost estimates are not only reasonable, they are conservatively made and
85 probably underestimate our true costs. For example, we later realized that we did not
86 include a cost for testing equipment that may be needed for LNP and we did not include
87 the cost of salaries of employees while undergoing LNP training. There are probably still
88 some costs we have not been able to identify and won't be able to do so until we actually
89 undertake the process of LNP conversion.

90 **Q. What is your response to Mr. Koch’s suggestion that the regulatory and legal costs**
91 **associated with the LNP issue should not be included in an end user LNP charge?**

92 A. Mr. Koch acknowledges and does not oppose the recovery of regulatory and legal costs
93 associated with LNP, but believes that they are “discretionary” and should not be part of
94 an end user surcharge because they are not directly related LNP costs. Mr. Koch does not
95 reveal what source of recovery he would use for regulatory/ legal costs associated with
96 LNP and I disagree with his conclusion that such costs are “discretionary.” In my Direct
97 Testimony, I indicated that the Company had just estimated an initial or start-up legal and
98 regulatory costs in the amount of \$20,000. While the amount is an estimate, I believe it is
99 a reasonable one.

100 In today’s business environment, I cannot agree with Mr. Koch that obtaining necessary
101 legal advice and performing necessary regulatory work is “discretionary” in the sense that
102 it is not necessary. Obtaining the necessary legal assistance and doing work to comply
103 with regulatory requirements is both a necessary and prudent expense to be incurred by
104 Oneida for the protection of the company itself and its customers. Incremental legal and
105 regulatory expenses will need to be incurred if the Company is required at some point to
106 provide wireline-to-wireless local number portability. Agreements will need to be
107 entered into with each of the wireless carriers seeking to port numbers and legal advice,
108 and review of any proposed agreements will be necessary to protect the Company’s
109 interests. The Company is also concerned about liability issues with other carriers and
110 will need to seek legal advice in that regard if it is required to provide wireline-to-
111 wireless local number portability. It is likely that the Company will need legal counsel to
112 review and advise the Company concerning any agreements or notices that would need to

113 be provided to 91-1 systems. Agreements with vendors to do necessary work to
114 implement wireline-to-wireless LNP may also need to be reviewed by legal counsel. On
115 both the regulatory and legal sides, incremental start-up costs will be incurred with regard
116 to any LNP tariff filed with the FCC for LNP surcharges. These costs are directly related
117 to the implementation of local number portability and should be recovered under FCC
118 Rules via the end-user surcharge for local number portability.

119 Mr. Koch goes on in his response to indicate that he does “not oppose the recovery of
120 such costs,” but does not “believe these are costs that should be recovered directly from
121 end users via an LNP surcharge.” Since the Company would have no other means to
122 recover the costs other than increasing rates to the customers, it would seem to me to
123 make little difference from the customer’s point of view whether the charges are
124 recovered through an LNP surcharge or an increase in their basic rates. The economic
125 impact on the customers would be the same.

126 **Q. Mr. Koch suggested that Oneida’s cost for employee technical training should be**
127 **reduced by one half (\$8,965) and he states that he cannot attest to whether all the**
128 **reported training is necessary. Please comment.**

129 A. On this point I vigorously disagree with Mr. Koch. As I stated in my Direct Testimony,
130 the cost that was included for training technical personnel was the cost of classes together
131 with associated travel and lodging costs for the courses that Nortel is recommending. In
132 Attachment 3 to my Direct Testimony, I provided the documents describing the
133 recommended training of technical personnel with regard to LNP capability on the Nortel
134 DMS-10 central office switch. It should be noted that the completion of certain of these
135 courses are prerequisites to participate in others.

136 Oneida is untrained in LNP matters and therefore it has to rely on the recommendations
137 of the switch manufacturer's representations on the proper course of training. Mr. Koch
138 opines that it would be "imprudent" to send more than one technical employee to receive
139 LNP training. With all due respect, that approach is unrealistic and short sighted. Oneida
140 is a small company that attempts to cross train its employees on multiple tasks. If only
141 one individual has LNP training, his absence, whether through death, disability, illness,
142 vacation, or a new job, would leave Oneida without the ability to handle LNP switch
143 issues and would leave the company vulnerable to criticism and embarrassment.
144 Certainly the company will not want to be in a position to inform the customer that it
145 could not accomplish the request because the sole person trained on LNP switch
146 conversions was unavailable for several days due to vacation or illness, etc. It is prudent
147 to train, at a minimum, 2 individuals on LNP switch matters and the cost of 2 people
148 should be included in the projected LNP surcharge.

149 **Q. Mr. Koch disagrees regarding the extent of customer education costs. Please**
150 **comment.**

151 A. Mr. Koch testified that one direct mailing to customers is all that is necessary and that 2
152 mailings per year for five years should be eliminated. Neither this Commission nor the
153 FCC has established any guidelines for customer LNP education. It is the Company's
154 belief that it needs to provide ongoing educational materials to customers associated with
155 any introduction of wireline-to-wireless local number portability. It has been Oneida's
156 management's experience that the Company needs to provide information concerning
157 such things as new services to its customers multiple times to make sure the information
158 reaches everyone and is absorbed by all of Oneida's customers. Customer education is

159 an ongoing process, and I believe the Company is in the best position to judge what is
160 needed in this regard.

161 **Q. Mr. Koch expressed two “concerns” concerning the data pertaining to transport**
162 **and transit costs. Please comment.**

163 A. Yes, Mr. Koch indicated that it was unclear to him whether or not the minutes for some
164 local calls were counted twice, once as an originating minute, and once as a terminating
165 minute. As I explained in my Direct Testimony, Oneida does not have current detailed
166 internal data concerning minutes of use for local calls made by Oneida’s customers. As I
167 indicated, I used the data that Verizon presented in Docket Nos. 00-0233 and 00-0335.
168 That information was that Verizon customers made, or originated, 100 calls per month
169 with an average holding time of four minutes per call. Therefore, the cost estimate was
170 based only on originating minutes of use and there was not or could not be any double
171 counting. In the LNP environment, the porting customers will have both originating and
172 terminating local minutes of use that move with their ported service. Because a customer
173 makes and receives calls, one needs to look at the impact on incremental network usage
174 for both situations in an LNP environment. Calls originated by a ported customer
175 become terminating minutes over the common trunks from the tandem provider and calls
176 terminated to a ported customer become originating minutes over the that same trunk
177 group. Since the company did not include any terminating minutes in the transport cost
178 calculation, we have very likely understated the cost. Secondly, Mr. Koch indicated that
179 it was unclear to him how extended area service (“EAS”) calls were treated in the
180 calculation. The Verizon USF docket testimony does reference that the local originating
181 usage calculation includes the customer’s home exchange and extended areas. Therefore,

182 there may be some component of the originating usage that is attributable to EAS calling.
183 However, I would again note that the company did not calculate any terminating minutes
184 of use in it's transport and transit cost calculation and therefore, the cost estimate may
185 well be understated.

186 **Q. Mr. Koch describes two cost scenarios. You have commented on the costs Mr. Koch**
187 **removed in scenario 2. What is the significance of scenario 2?**

188 A. Mr. Koch explains that scenario 1 removed certain legal and regulatory costs and costs
189 for employee and customer education. He prepared scenario 2, which removed the
190 aforementioned costs, as well as the transport and transit costs for informational
191 purposes. Neither scenario was presented as an appropriate end-user charge if the
192 Company were to provide LNP. Mr. Koch opined that until the FCC resolves the
193 uncertainty with respect to the cost recovery issue of transport and transit costs, he
194 believes it is appropriate to assume that the LEC will incur the transport and transiting
195 costs and that scenario 1 is the most appropriate cost estimate to consider. Furthermore,
196 the Staff's recommendation contained in Mr. Hoagg's testimony to grant a further
197 suspension was based upon Mr. Koch's scenario 1, and Mr. Hoagg termed scenario 1 as
198 the "best" cost estimate; however, even considering scenario 2 which does not include the
199 costs of transport and transit, the cost of providing LNP is several times larger than
200 SBC's surcharge and, at this point, would impose a significant adverse economic impact
201 on the Company's customers, especially given the lack of demand for the service.

202 **Q. What are your conclusions regarding Mr. Koch's testimony?**

203 A. Mr. Koch has modified the Oneida's cost analysis to a figure of \$4.69 per subscriber per
204 month as reflected on Staff Schedule 3.1. Oneida has estimated a cost of \$8.37 per

205 month per line for LNP. While I do not believe that Mr. Koch’s conclusions adequately
206 capture all of the costs properly associated with LNP, his estimate of \$4.69 under
207 scenario 1 still lends credence to the need for a longer suspension as outlined by Mr.
208 Hoagg in his testimony. Scenario 2 does not appear to be meaningful in light of the
209 ultimate recommendations contained in Mr. Hoagg’s testimony that relied on scenario 1
210 with regard to Oneida receiving a further suspension of any obligation it may have to
211 provide wireline-to-wireless number portability.

212 **Q. Mr. Jeffrey Hoagg testified for the Staff regarding certain LNP policy**
213 **considerations. What is your response?**

214 A. Mr. Hoagg found that Oneida met the statutory criteria for an LNP suspension. He
215 recommends that Oneida receive an LNP suspension for approximately 2 years
216 essentially for these reasons: (1) that the responsibility for the costs of the transport and
217 transit of ported numbers is unknown at this time and that \$4.69 charge per month to
218 Oneida’s subscribers would pose a significant adverse economic impact on users of
219 telecommunications; (2) there is no perceptible public demand for LNP as of yet; and (3)
220 under these circumstances the public convenience, interest, and necessity would be
221 served by a 2-year suspension. Mr. Hoagg has presented a thoughtful analysis by
222 recognizing that a determination of whether the granting of a suspension meets the
223 statutory criteria requires an examination not only of the costs involved but also the
224 demand for wireline-to-wireless local number portability. In my Direct Testimony, I
225 indicated Oneida’s belief that there was relatively little demand for wireline-to-wireless
226 local number portability in the rural areas that Oneida serves. The “take rates” of
227 Verizon and SBC, as cited by Mr. Hoagg at pages 11 and 12 of his testimony, indicate

228 that the demand for wireline-to-wireless local number portability is extremely low; i.e.,
229 approximately 0.02%, even in the more urban areas served by those companies. As
230 suggested by Mr. Hoagg at page 14 of his testimony, the granting of a further suspension
231 will allow for more reliable information to become available concerning any demand for
232 the service that may exist generally and with regard to the rural areas, such as those
233 served by Oneida. Mr. Hoagg, at pages 14 and 15, also correctly suggest that the
234 granting of a further suspension will allow for issues to be resolved concerning cost
235 recovery and a greater certainty about the costs involved. Oneida also specifically agrees
236 with Mr. Hoagg's testimony, appearing at lines 323-336 on page 15.

237 Mr. Hoagg's testimony also acknowledges the unresolved issues that exist concerning
238 significant cost recovery items and the unique impact of those issues on small companies,
239 such as Oneida, where wireless carriers do not have a point of presence or numbering
240 resources resulting in the requirement that calls to ported numbers be transported outside
241 of the Company's serving territory. Mr. Hoagg also recognizes the present unknowns
242 associated with any requirement that small companies, such as Oneida, provide wireline-
243 to-wireless local number portability because of the appeals of the FCC's Orders related to
244 wireline-to-wireless local number portability pending in the Federal Court of Appeals for
245 the District of Columbia (Staff Exhibit 1.0 at page 18.)

246 **Q. [Proprietary Question and Answer Redacted]**

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249 **A.**

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265 **Q. At pages 19 and 20 of Mr. Hoagg’s testimony, he discussed his recommendation for**
266 **a temporary suspension. Please comment and respond.**

267 A. At lines 443 and 444, Mr. Hoagg recommends that the length of the additional suspension
268 would be for a time period of no greater than 30 months. He goes on to observe at lines
269 448-453 that a suspension of approximately two years should be sufficient for obtaining
270 the additional vital information that is discussed and sufficient time for the resolution of
271 other relevant issues, including court cases and FCC proceedings concerning transport
272 obligations and rating arrangements. He goes on at page 20 to indicate his belief that a
273 suspension for less than two years would likely not be sufficient to accomplish the

274 objectives he has outlined and that a suspension should not be granted for longer than that
275 for legitimate purposes.

276 Finally, he correctly observes that temporary suspensions were granted by the
277 Commission in Docket Nos. 03-0726, 03-0730, 03-0731, 03-0732 and 03-0733 and were
278 for 30 months from May 24, 2004 to November 24, 2006.

279 In the Petition filed by Oneida in this docket, and in my Direct Testimony, the Company
280 has sought a further temporary suspension from the obligations it may have to provide
281 wireline-to-wireless number portability for 30 months from May 24, 2004 to November
282 24, 2006. Since the filing of the Petition and the submission of Direct Testimony, an
283 Interim Order has been entered granting a temporary suspension until a final Order is
284 entered in this docket, which is likely to occur in late August, 2004. Since the
285 suspensions granted in the first five dockets as noted above end on November 24, 2006,
286 Oneida believes it is appropriate that its requested suspension (through November 24,
287 2006) be the same as what the Commission has granted the other companies. While that
288 is now somewhat less than 30 months and somewhat more than two years, such a
289 suspension would appear to be consistent with Mr. Hoagg's recommendation and the
290 Commission's actions with regard to similar requests.

291 **Q. Was Oneida dilatory in seeking a suspension of the wireline-to-wireless number**
292 **portability requirements from this Commission as alleged by Mr. McDermott?**

293 A. No. No wireless carrier has had or now has a point of presence or numbering resources
294 within Oneida's serving area. While the FCC previously directed "service provider"
295 number portability, the so-called "geographic" or "location" number portability had not
296 been directed. Prior to the FCC's November 10, 2003 Order, Oneida, as well as other

297 companies in Illinois and throughout the nation, reasonably thought that in the
298 circumstance where wireless carrier did not have a point of presence or numbering
299 resources within the Company's area that any such request for porting would constitute
300 "location" portability that was not required.

301 As members of the Staff and the Administrative Law Judge are aware, all of the
302 companies who have filed Petitions in this round of dockets followed the requests for a
303 suspension in the first five dockets involving companies in a Top 100 MSA prior to filing
304 their own separate Petition for suspension. After the hearings in those five dockets in
305 February, 2004, which resulted in each of those five companies and the Staff jointly
306 recommending to the Commission the granting of further suspensions to November 24,
307 2006, Oneida promptly filed its Petition in this docket seeking similar relief.

308 **Q. At pages 14 and 15, Mr. McDermott claims that Oneida and the other Petitioners**
309 **needed to submit evidence "that the application of the wireline-to-wireless local**
310 **number portability obligations would be likely to cause undue economic burdens**
311 **beyond the economic burden typically associated with efficient competitive entry."**
312 **Is he correct?**

313 A. No. The criteria that you reference, if at all applicable, pertains to the requirements of
314 Section 251(f)(2)(A)(ii). The Company has submitted evidence that the suspension is
315 necessary to avoid a significant adverse economic impact on users of telecommunications
316 services generally; and Mr. Hoagg has specifically recommended a suspension based
317 upon the criteria contained in Section 251(f)(2)(A)(i), not Section 251(f)(2)(A)(ii).

318 **Q. Is the question and answer contained in Mr. McDermott’s testimony, beginning at**
319 **line 339 on page 20 and ending on line 355 on page 21, relevant to those used in this**
320 **docket?**

321 A. No, for several reasons. I would note first that the question and answer deals with the
322 issue of whether a suspension is “necessary to avoid imposing a requirement that is
323 unduly economically burdensome.” As indicated above, the Company’s evidence and
324 Mr. Hoagg’s recommendation to grant a further suspension is based upon the statutory
325 criteria that it is necessary to avoid a significant adverse economic impact on users of
326 telecommunications services generally and not based upon the requirement that it is
327 necessary to avoid imposing a requirement that is unduly economically burdensome on
328 the company.

329 Second, 83 Ill. Adm. Code 733 deals with this Commission’s implementation of the
330 Advanced Services requirement contained in Section 13-517 of The Illinois Public
331 Utilities Act and has nothing to do with the suspension of Section 251(b) local number
332 portability requirements contained in the Federal Act. Even if 83 Ill. Adm. Code 733 was
333 relevant (which it is not), the waiver standards related to a request based upon the
334 necessity to avoid a significant adverse economic impact on users of telecommunications
335 services generally are set forth in Section 733.105(a) rather than (b) cited by Mr.
336 McDermott.

337

337 **Q. Do you have any further comments with regard to Mr. McDermott’s testimony and**
338 **Verizon Wireless’ position that Oneida, at this point in time, should be required to**
339 **provide wireline-to-wireless local number portability resulting in Oneida’s**
340 **subscribers being required to pay the costs associated therewith despite the**
341 **significant adverse economic impact on Oneida’s subscribers?**

342 A. Verizon Wireless’ position is totally unsupported by factual testimony submitted in this
343 case and is contrary to the testimony and evidence that I have submitted, on behalf of
344 Oneida, and Staff witness Hoagg, has submitted on behalf of the Staff. I would draw the
345 Administrative Law Judge’s particular attention to lines 272-280 of Mr. Hoagg’s
346 testimony where he states as follows:

347 “A temporary suspension is particularly appropriate in my view,
348 since Oneida Network subscribers choosing not to “port” their
349 landline telephone number to a wireless carrier (presumably
350 because they perceive insufficient value in doing so), will pay the
351 bulk of the costs associated with W-W LNP. Most, if not all, of
352 those Oneida Network subscribers choosing to “port” their landline
353 number to wireless service likely would have no further subscriber
354 relationship with Oneida Network. These former Oneida Network
355 subscribers thus would not contribute toward the costs of W-W
356 LNP (recovered by Oneida Network on a per-access line basis).

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358 Verizon Wireless is asking that all of Oneida’s customers who choose not to port their
359 landline telephone be required to pay the costs of provisioning those services while any
360 customers who chose to port their numbers would not contribute toward the recovery of
361 those costs.

362 **Q. Does that conclude your rebuttal testimony?**

363 A. Yes it does.