

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

C-R TELEPHONE COMPANY)
)
)
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. 04-0237

PROPOSED ORDER

By the Commission:

I. INTRODUCTION

On March 11, 2004, C-R Telephone Company (“Petitioner”) filed with the Illinois Commerce Commission (“Commission”) a verified Petition pursuant to Section 251(f)(2) of the Federal Telecommunications Act of 1996 (“TA 96”), 47 U.S.C. 151 *et seq.* Petitioner seeks an Order suspending or modifying the local number portability (“LNP”) requirements imposed by Section 251(b)(2) of TA 96. On May 11, 2004, the Commission entered, as requested by Petitioner, an Interim Order suspending any obligation of Petitioner to provide wireline-to-wireless LNP until a final Order is entered in this proceeding.

Pursuant to due notice, hearings were held in this matter before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois on April 1, 5 and 27 and June 7, 2004. Appearances were entered by counsel on behalf of Petitioner and Commission Staff (“Staff”). No other appearances were entered. Petitioner and Staff each presented testimony and other evidence in support of their positions. At the end of the June 7 hearing, the record was marked “Heard and Taken”. Briefs and Proposed Orders were filed by Petitioner (**and Staff**) on June 30, 2004. On July ____, 2004, an Administrative Law Judge’s Proposed Order was served on Petitioner and Staff. **No Briefs on Exceptions were received.**

II. BACKGROUND

Petitioner is a telephone company and a facilities-based incumbent local exchange carrier (“ILEC”) providing local exchange telecommunications services as defined in Section 13-204 of the Public Utilities Act (“Act”), 220 ILCS 5/1-101 *et seq.*, and is subject to the jurisdiction of the

Commission. Petitioner provides service in its Cornell and Ransom exchanges. As of December 31, 2003, Petitioner provided service to approximately 979 access lines. Petitioner's service territory is rural and sparsely populated. Petitioner is a "rural telephone company" within the meaning of Section 153(37) of TA 96 and Section 51.5 of the rules of the Federal Communications Commission ("FCC"). As a rural telephone company, Petitioner possesses a rural exemption under Section 251(f)(1)(A) of TA 96 from the requirements of Section 251(c) of TA 96. None of the Petitioner's exchanges are located in a Top 100 MSA.

III. GOVERNING LAW

Section 251(b)(2) of TA 96 provides in part:

(b) Obligations of All Local Exchange Carriers.—Each local exchange carrier has the following duties:

(2) Number Portability.—The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the [FCC].

In implementing its authority, the FCC, on November 10, 2003, released a *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in CC Docket No. 95-116 ("FCC Order"). As it pertains to incumbent LECs outside the Top 100 MSAs, the FCC Order concludes, in part, at paragraph 29 as follows:

[W]e hereby waive, until May 24, 2004, the requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned. We find that this transition period will help ensure a smooth transition for carriers operating outside of the 100 largest MSAs and provide them with sufficient time to make necessary modifications to their systems.

Previously, however, the FCC adopted 47 C.F.R. 52.23(c), which also concerns LNP and provides that:

(c) Beginning January 1, 1999, all LECs must make a long-term database method for number portability available within six months after a specific request by another telecommunications carrier in areas in which that telecommunications carrier is operating or plans to operate.

Despite the FCC's rules, though, rural telephone companies may still avoid LNP requirements pursuant to Section 251(f)(2) of TA 96. This section states:

(2) Suspensions and Modifications For Rural Carriers.—A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the

aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification—

(A) is necessary—

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

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

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

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

IV. PARTIES' POSITIONS AND EVIDENCE

A. Petitioner's Position and Evidence

Petitioner seeks a suspension of any obligation it may have to provide wireline-to-wireless LNP until November 24, 2006. At the hearing on June 7, 2004, Petitioner indicated that it was limiting the grounds for its request to the criteria contained in Section 251(f)(2)(A)(i); i.e., to avoid a significant adverse economic impact on users of telecommunications services generally, and (B); i.e., as consistent with the public interests, convenience and necessity. Petitioner indicated that it was limiting its request in this manner since that was the statutory criteria under which Staff was recommending in its testimony that the Petitioner be granted a temporary suspension. The November 24, 2006 end date of the temporary suspension is the same end date for which temporary suspensions were granted to five other small ILECs by the Commission in Docket Nos. 03-0726, 03-0730, 03-0731, 03-0732 and 03-0733.

As a general matter, Petitioner states that it provides to its customers the services they want when a sufficient number of customers desire the service and all of its customers are willing to pay the associated costs. Petitioner does not believe that it should be required to incur the associated costs to provide wireline-to-wireless LNP nor its customers be required to pay for what it characterizes as a discretionary service until its customers want the service and are willing to pay for wireline-to-wireless LNP. The testimony submitted by Petitioner's witness indicated that Petitioner, as a small company, is in close contact with its customers and sees no

evidence of any demand for wireline-to-wireless number portability. Petitioner has received no request from its customers for wireline-to-wireless LNP.

While correspondence and documents received by Petitioner from wireless carriers related to wireline-to-wireless LNP were entered into the record, it is Petitioner's position that this Commission need not make a determination as to whether or not those documents constitute a bona fide request in connection with the determinations to be made in this docket with regard to Petitioner's request for a suspension pursuant to Section 251(f) of TA 96. Regardless of whether or not it has received a bona fide request for wireline-to-wireless LNP, it is Petitioner's basic position that it should not be required to provide wireline-to-wireless LNP within its serving area until such time as the operational, administrative and technical problems associated with its provision have been worked out on a more global basis by the larger ILECs, such as SBC, and the larger wireless carriers requesting number portability. Petitioner in its testimony indicated its belief that it is significant that: (1) it has not received a 251(c) bona fide request for interconnection, services, or network elements from any telecommunications carrier; (2) no telecommunications carrier has asked the Commission to terminate Petitioner's rural exemption pursuant to the provisions of 251(f)(1)(B) of TA 96; and (3) no wireline telecommunications carrier has requested LNP. These facts, Petitioner argues, evidence the lack of sufficient or significant demand for LNP or service from competitive providers. These facts, according to Petitioner, also indicate that Petitioner lacks any experience in providing LNP and would have to incur new or incremental costs to provide LNP now.

Companies such as SBC, on the other hand, have been providing some type of LNP for a number of years, according to Petitioner. Those companies, Petitioner observes, have already made the incremental investment to provide LNP and have trained employees and have had ongoing business experience in the provision of at least some type of LNP. Petitioner asserts that statements from the FCC, news stories, and the trade press have made clear that there are indeed operational, administrative, and technical problems that need to be worked through on an industry basis.

In Petitioner's view, from a policy and industry perspective, this would appear to be similar to the situation when customers were initially allowed to presubscribe to interexchange carriers. Petitioner states that presubscription was initially implemented by the large carriers, such as the regional bell operating companies; and the operational, administrative, and technical difficulties associated with presubscription were worked out over a period of time between those large ILECs and the large interexchange carriers, such as AT&T, MCI, and Sprint. In connection with determinations made related to the Primary Toll Carrier Plan in Illinois, Petitioner relates that the Commission provided a different and subsequent timetable of presubscription for small companies, such as itself, after experience had been gained from the larger companies.

From a technical perspective, Petitioner's evidence indicates that while the current generic software contained in the Cornell switch will accommodate number portability, that capacity or feature has not been "loaded" or "activated". Personnel from the switch manufacturer would, according to Petitioner, have to load and activate that capability, as well as make translations in switches and perform testing and verification. Petitioner indicates in its

testimony that it would need to file an application with NPAC and sign agreements to access the NPAC service management system and would need to enter into an agreement with a vendor to provide local number portability Service Order Administration Services. Since at least calls to ported numbers would need to have a database dip in connection with the provision of LNP, Petitioner further asserts it would need to enter into an agreement with an LNP database provider, which would include query charges being assessed to Petitioner. Technical training for its employees, Petitioner continues, would also be necessary. Petitioner's witness also testified that incremental costs would be incurred by Petitioner in connection with administrative, order processing, customer service, regulatory and legal costs, as well as costs associated with general employee training and customer education.

With regard to implementing wireline-to-wireless LNP, Petitioner reports that the FCC's orders and rules as they now stand do not require a wireless carrier to have a point of presence within Petitioner's serving area, nor do they require the wireless carrier to establish direct trunks to Petitioner for the purpose of delivering calls. Since no wireless carrier has a point of interconnection or numbering resources in any exchange or rate center within its serving area, Petitioner believes, based upon the FCC's current requirements, that all calls from one of its wireline customers to one of its customers who had ported his/her number to a wireless carrier would have to be transported to the tandem that particular Petitioner office subtends for delivery to the wireless carrier where it does have interconnection. Petitioner states that the routing of a call to a location outside of its local calling area would normally lead to such a call being rated as an interexchange call or toll call.

Additionally, Petitioner argues that it should in no event be required to provide wireline-to-wireless LNP until such time as regulatory decisions have been made and mechanisms put in place that will allow it to recover all of its costs associated with the provision of wireline-to-wireless LNP. Petitioner complains that the FCC's orders to date, including the November 10, 2003 FCC Order, fail to address how numerous significant costs, such as the cost of transporting calls to wireless points of interconnection outside of the ILEC's serving area and associated transiting or tandem switching costs, will be recovered. While it is Petitioner's belief that those costs should not be borne by it or its customers, Petitioner states that no regulatory decision by the FCC or this Commission has been made as to how those costs will be recovered and mechanisms put in place to allow for such recovery.

While it does not believe that it or its customers should be responsible for the transport and transiting costs associated with delivering calls to wireless carriers, for purposes of evaluating the economic burden in this proceeding Petitioner has assumed that it, and ultimately its customers, will be responsible for such costs.¹ Petitioner uses the FCC's existing rules regarding cost recovery for wireline-to-wireless LNP pursuant to which a federal end-user surcharge could be tariffed and filed. The FCC's rules contain certain investment costs and certain ongoing expenses to be recovered over a five-year period. In estimating its costs, Petitioner uses a model based on cost support filed and approved by the National Exchange

¹ Petitioner does not seek Commission approval of any type of end user surcharge or other increased rate associated with the provision of wireline-to-wireless LNP.

Carrier Association (“NECA”) in a LNP filing it made with the FCC in NECA’s Transmittal #956.

Petitioner calculates that initial LNP start-up costs and certain ongoing expenses over a five year period amount to \$125,960 before applying present value factors. After applying present value factors, the cost is \$103,023. To recover its costs, Petitioner’s evidence indicates that it would have to recover \$2.59 per month from each access line. Attachment 1 to Petitioner’s Direct Testimony shows how Petitioner arrived at these cost estimates.² In light of these costs, it is Petitioner’s position that a suspension or modification of any obligation it may have to provide wireline-to-wireless LNP is necessary to avoid a significant adverse economic impact on its customers and that the granting of such further suspension is consistent with the public interest, convenience and necessity. After all cost recovery and technical matters are resolved, Petitioner states that it should not have to provide wireline-to-wireless LNP until there is a proven demand for the service and Petitioner’s customers are willing to pay for wireline-to-wireless LNP being available.

In Petitioner’s Rebuttal Testimony, Petitioner concurs with and supports the costs/benefit analysis contained in the testimony of Staff witness Hoagg, as well as his recommendation that Petitioner be granted a further temporary suspension. Petitioner indicates that the costs/benefit analysis and the focus on the adverse impact of cost recovery on Petitioner’s customers is particularly appropriate since the FCC surcharge is imposed on all customer access lines that do not elect to port their landline number, rather than the cost causers; i.e., the wireless carriers and any customer who does elect to port his or her number.

B. Staff’s Position and Evidence

In making its recommendation, Staff focuses on Section 251(f)(2)(A)(i) of TA 96 as the most directly applicable of the three standards that appear in Section 251(f)(2)(A). Staff explains that FCC rules, specifically 47 CFR §§ 52.21-52.33, provide that Petitioner may recover most LNP-related costs from end users (on a per-access line basis as prescribed in the rules) over a period of five years. Staff understands that Petitioner will do so if and when it is required to implement wireline-to-wireless LNP. Since costs associated with wireline-to-wireless LNP will be borne by Petitioner’s customers generally, Staff asserts that a central question for the Commission is whether such costs would cause a “significant adverse economic impact on users of telecommunications services generally.” In this specific application of Section 251(f)(2)(A)(i), Staff states that the phrase “users of telecommunications services generally” is best understood to refer to the general body of Petitioner’s subscribers. Thus, while Section 251(f)(2)(A)(ii) also may apply, Staff believes that the fact that wireline-to-wireless LNP costs would be borne largely by end-users warrants a Commission focus on Section 251(f)(2)(A)(i). Staff also asserts that Section 251(F)(2)(A)(iii) is not at issue in this proceeding since deployment of wireline-to-wireless LNP by Petitioner is technically feasible.

² While Petitioner does not necessarily agree with some of Staff’s adjustments to its cost estimates, Petitioner acknowledges that any discussion of the adjustments is academic in light of Staff’s support for a temporary suspension, and the fact, that the Staff’s support for a temporary suspension is based upon the lower per access line per month charge necessary to recover the costs of \$1.94 as calculated by Staff.

With regard to the cost burden on end-user customers and Petitioner, Staff states that there are two cost-related circumstances that are of concern. First, Staff notes that Petitioner does not currently provide wireline-to-wireline LNP. Because of this fact, Staff relates that Petitioner would need to recover all LNP related costs for the sole purpose of providing wireline-to-wireless LNP. This is in contrast, Staff observes, to carriers that already have LNP capabilities and whose incremental cost of extending the capability to wireless carriers is minimal at best. Second, Staff agrees with Petitioner that the issue of cost recovery for transit and transport has not yet been resolved. Because of its current routing arrangements, all calls from Petitioner's local exchange customers to numbers that have been ported (from Petitioner to wireless carriers) would incur routing and transport costs. Without a recovery mechanism in place, Staff indicates that it cannot be determined how these costs will impact Petitioner or its end-users.

In an attempt to determine whether Petitioner's customers would experience a significant adverse economic impact, Staff reviewed Petitioner's cost estimates associated with providing wireline-to-wireless LNP.³ Staff's testimony questions Petitioner's characterization of some costs and Petitioner's estimates of certain other costs. The impact of Staff's recommendations (Staff Scenario 1) regarding the Petitioner's cost analysis is a reduction in the estimated costs per access line per month from \$2.59 to \$1.94. Staff emphasizes that this figure is not a recommended rate for a LNP surcharge, but rather is a means to gauge the impact of wireline-to-wireless LNP on Petitioner's end-users. Staff also submitted a Scenario 2, where in addition to the adjustments made in Scenario 1, Staff also deleted transport and transiting costs. Staff, however, indicated that it was more appropriate to use Scenario 1, which included transport and transiting costs at this point in time.

Because Staff is not aware of any quantitative or precise measure (or any generally accepted methodology) to determine whether a given level of costs or charges would cause "a significant adverse economic impact on users of telecommunications services generally," Staff recommends the careful application of judgment on a case specific basis. Staff compares Petitioner's charge of \$1.94 per access line per month to SBC's charge of \$0.28 per access line per month. Staff points out that the estimated per line surcharge for Petitioner is notably higher than the comparable figure for SBC.

Moreover, Staff asserts that the estimated per line surcharge for Petitioner's subscribers appears unduly high in the context of the expected demand for and subscriber benefits associated with wireline-to-wireless LNP at this time. In this instance, Staff therefore concludes that the application of judgment warrants a temporary suspension of the wireline-to-wireless LNP requirements.

In evaluating the anticipated benefits of wireline-to-wireless LNP, Staff considered both direct and indirect benefits. Indirect benefits are, according to Staff, those benefits that non-porting customers receive by virtue of the fact that other customers of Petitioner can and do take advantage of the ability to port numbers from wireline-to-wireless carriers. Staff notes that the

³ Staff notes that the Commission has no role in determining the appropriate rates for LNP cost recovery. All cost recovery for LNP associated costs is obtained via ILEC tariffs filed with the FCC.

indirect beneficiaries share directly in the costs associated with wireline-to-wireless LNP since these costs are recovered over all access lines. Staff describes direct beneficiaries of wireline-to-wireless LNP as those customers who port a wireline telephone number to a wireless service. Staff states that the direct benefits are considerably larger, per subscriber, than any indirect benefits gained by those who do not port their telephone number. Assuming its assessment of the benefits is accurate, Staff indicates that the level of benefits realized by Petitioner's customers depends on the number of customers choosing to port their wireline number to a wireless carrier. Based upon available information, Staff believes the "take rate" for wireline-to-wireless LNP in areas where it is available is quite low (significantly less than 1%). Based upon this information and other information available to the Staff concerning Petitioner's serving area, it is Staff's opinion that the demand for wireline-to-wireless LNP in Petitioner's service area is quite low, particularly in relation to the estimated costs Petitioner's subscribers would bear to receive those benefits.

In response to questions from the Administrative Law Judge, Staff concluded that the Commission should consider the fact that granting a suspension to Petitioner (and to other petitioners in other dockets) will have the effect of creating a patchwork geography in the State of Illinois where wireline-to-wireless LNP is and is not available. Staff also agreed that the Commission should consider the fact that requiring wireline-to-wireless LNP would have the effect of making Petitioner number pooling capable. Nonetheless, neither of these considerations changed Staff's recommendation.

Whether such a temporary waiver is consistent with the public interest, convenience, and necessity is Staff's next inquiry. As noted above, Staff believes that there is currently very little interest in wireline-to-wireless LNP among Petitioner's customers. Furthermore, Staff continues, the risks of a significant loss or downside from a decision to temporarily suspend the wireline-to-wireless LNP requirements are quite small. The fact that court challenges to various aspects of the FCC's orders imposing wireline-to-wireless LNP on small carriers are currently pending also leads Staff to believe that a temporary waiver is appropriate. If the Commission does not now temporarily suspend these requirements and the small rural carriers prevail partially or wholly in the pending federal court proceedings, Staff is concerned by the possibility that Petitioner and/or its customers would incur at least some costs associated with wireline-to-wireless LNP even if Petitioner ultimately was not required to deploy wireline-to-wireless LNP. For these reasons, Staff believes that a temporary suspension of the wireline-to-wireless LNP requirements is consistent with the public interest, convenience and necessity.

In light of the foregoing, Staff concludes that several factors and several policy considerations unique to smaller, more rural ILECs in Illinois render the FCC decision to require wireline-to-wireless LNP by these carriers no later than May 24, 2004 premature. Specifically, Staff opines that given the record, a suspension is necessary to avoid imposing a significant adverse economic impact on Petitioner's customers. Staff believes that a temporary suspension of these requirements by the Commission is warranted under Section 251(f)(2) of TA 96 and would be consistent with the public interest, convenience and necessity.

Staff makes this recommendation despite its position that Petitioner has received a bona fide request for wireline-to-wireless LNP from a wireless carrier. From both a policy and a legal

perspective, Staff does not believe that a receipt of a valid bona request should impede the grant of a suspension under the circumstances.

Staff recommends a suspension of approximately two years and no more than 30 months in length. Staff indicates that a suspension of approximately two years should be sufficient to allow for the resolution of relevant issues addressed in its testimony and to obtain additional vital information related to customer demand and the costs of providing wireline-to-wireless LNP. Staff noted that the Commission previously granted suspensions to five other ILECs that were 30 months in duration.

V. COMMISSION CONCLUSION

For the reasons cited by Petitioner and Staff, the Commission finds that a temporary suspension of the requirement to provide wireline-to-wireless LNP pursuant to Section 251(b)(2) of TA 96 is warranted. Specifically, the Commission concludes that a temporary suspension is necessary to avoid a significant adverse economic impact on the users of telecommunications services generally and that such a suspension is consistent with the public interest, convenience and necessity. The Commission concludes that it is important to bear in mind that wireless carriers are already providing service in Petitioner's serving area and, in that sense, are already competing with Petitioner. Temporarily suspending wireline-to-wireless LNP will not reduce the current level of competition. Rather, it will delay only the incremental competitive benefit of allowing a wireless carrier to compete to take a wireline number from Petitioner where a customer wishes to forego its business relationship with the Petitioner altogether.

The Petitioner has sought a further suspension of any obligation it may have to provide wireline-to-wireless LNP until November 24, 2006. The duration of a suspension requested by Petitioner is in the range recommended by the Staff and consistent with the temporary suspensions granted by the Commission in other dockets. The Commission concludes that a further suspension until November 24, 2006 is reasonable and will be adopted. During the suspension period, the Commission anticipates that Petitioner and Staff will get a better understanding of the level of demand for wireline-to-wireless LNP and the costs associated with wireline-to-wireless LNP.

The Commission notes that granting this suspension will tend to create a patchwork of geography where wireline-to-wireless LNP is available and is not available, but the Commission does not believe that the inconvenience created by that patchwork outweighs the public interest benefits of a temporary suspension. The Commission agrees with Petitioner that patchworks with regard to the availability of telecommunications services already exist and have not proven to be overly problematic. The Commission also concludes that the Petitioner's inability to pool numbers until it becomes LNP capable will not have a significant impact on competition or any existing wireless carrier since those wireless carriers already have numbering resources for their serving areas that overlap with Petitioner's serving area.

VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) Petitioner is a telecommunications carrier as defined in Section 13-202 of the Act providing telecommunications services to customers in Illinois;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (4) Petitioner should be granted, pursuant to Section 251(f)(2) of TA 96, a temporary suspension of any wireline-to-wireless LNP obligations applicable to Petitioner under Section 251(b)(2) of TA 96; said suspension should begin on the date this Order is entered and end on November 24, 2006; and
- (5) all motions, petitions, objections and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED, by the Illinois Commerce Commission that any obligation of C-R Telephone Company to provide wireline-to-wireless local number portability under Section 251(b)(2) of the Federal Telecommunications Act of 1996 is hereby temporarily suspended pursuant to Section 251(f)(2) of the Federal Telecommunications Act of 1996 for the period beginning on the date this Order is entered and ending on November 24, 2006.

IT IS FURTHER ORDERED that all motions, petitions, objections and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this _____ day of August, 2004.

Certificate of Service

(Docket No. 04-0237)

A copy of C-R Telephone Company's Proposed Order was served upon the following persons by e-mail this 30th day of June, 2004.

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