

**Docket Nos.:** (See Attached)  
**Bench Date:** 08-18-04  
**Deadlines:** (See Attached)

## MEMORANDUM

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**TO:** The Commission

**FROM:** John D. Albers, Administrative Law Judge

**DATE:** August 12, 2004

**SUBJECT:** Various Petitions 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.

**RECOMMENDATION:** Deny the Motions for Oral Argument

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From March 1 through March 18, 2004, 33 small local exchange carriers filed petitions under Section 251(f)(2) of the federal Telecommunications Act of 1996 ("TA96") seeking a suspension of the federal requirement to provide wireline-to-wireless local number portability ("LNP") pursuant to the rules of the Federal Communications Commission ("FCC") and Section 251(b)(2) of the TA96. A list containing the docket number, company name, estimated LNP costs, filing date, and deadline for each docket is attached. On July 28 and 29, 2004, 33 proposed orders were served in the 33 wireline-to-wireless LNP dockets. On August 9, 2004, each Petitioner filed a Motion for Oral Argument.

Petitioners argue that a suspension until November 24, 2006 is necessary to avoid imposing a significant adverse economic impact on customers and is consistent with the public interest, convenience, and necessity. Commission Staff supports the requests. Verizon Wireless has intervened in 22 of the dockets and opposes the suspensions on the grounds that they are inconsistent with the public interest, convenience, and necessity.<sup>1</sup>

In 29 of the dockets, the Proposed Orders find that the petitioning carrier has not met its burden of demonstrating that a suspension is warranted. Specifically, the Proposed Orders express concern over accuracy of the cost estimates and the impact of a suspension on competition and area code relief planning efforts. The Proposed Orders also note that it is questionable that the estimated costs constitute a "significant"

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<sup>1</sup> Verizon Wireless has intervened in Docket Nos. 04-0180 – 04-0185, 04-0189, 04-0193 – 04-0200, 04-0206, 04-0228, 04-0236, 04-0238 – 04-0240, and 04-0282.

adverse economic impact. In the remaining four dockets,<sup>2</sup> the Proposed Orders find a suspension appropriate in light of the high cost estimates and limited number of affected customers. The Proposed Orders reason that even with reasonable adjustments to the cost estimates, they are still likely to be high enough to constitute a significant adverse economic impact and concerns over the impact on competition and area code relief are mitigated by the low number of affected customers. The suspension called for in each of the four Proposed Orders would end January 1, 2006. This period should provide enough time for carriers and the Commission to discern exactly what type of costs the FCC is allowing carriers to recover through the monthly charge and hopefully enable a better review of the four carriers' cost estimates.

The Motions for Oral Argument all rely heavily on the Orders entered by the Commission in Docket Nos. 03-0726, 03-0730, 03-0731, 03-0732, and 03-0733 on May 11, 2004. These Orders granted similar requests for a suspension of the wireline-to-wireless LNP requirements to five other small local exchange carriers. Only Staff and the carriers participated in the hearings in these matters and the Orders reflect an agreement reached between Staff and each carrier. Despite the frequent references to the Orders and insistence that they must be followed, none of the Petitioners acknowledge that the records in the five earlier dockets were reopened by the Commission on June 23, 2004 for reconsideration or recognize that the records in many of these proceedings are different as a result of Verizon Wireless' participation.

The Motions for Oral Argument also point out that the Nebraska and Ohio utility commissions have recently granted similar requests for suspensions from the requirement to provide wireline-to-wireless LNP. They neglect to note that the records in some of these proceedings reflect that the FCC and New York, Indiana, and Michigan utility commissions have denied similar requests. What can be discerned from these facts is that the Commission should not feel compelled to rule one way or another simply because another commission has done so.

Because the records in these cases already adequately reflect the parties positions and arguments and the Commission is aware of its actions in Docket Nos. 03-0726, 03-0730, 03-0731, 03-0732, and 03-0733, I do not believe that oral argument is warranted in these proceedings. Oral argument is particularly unwarranted in Docket Nos. 04-0243, 04-0248, 04-0259, and 04-0282 because the Petitioner did not even file a Brief on Exceptions. If the Commission disagrees and wishes to grant oral argument, I suggest that the Commission hear oral argument in all of the dockets jointly and limit the Petitioners, Staff, and Verizon Wireless to fifteen minutes each to present their positions for a total of 45 minutes.<sup>3</sup> The Commission should also bear in mind the deadlines in the first eight of the LNP dockets. The August 25, 2004 Regular Open Meeting represents the Commission's last currently scheduled opportunity to act on the first

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<sup>2</sup> Docket Nos. 04-0243, 04-0248, 04-0259, and 04-0282.

<sup>3</sup> Because the Petitioners all presented nearly identical testimony and briefs, I do not believe that it would be unreasonable to expect them to present their oral argument together. Notably, 23 of the Petitioners are all represented by the same attorney while the remaining ten Petitioners are all represented by another attorney.

eight dockets before their respective deadlines. Therefore, oral argument, if granted, should be scheduled prior to August 25.

If the Commission hears oral argument, it should keep in mind that it need answer only two questions in resolving these dockets:

1. Has the Petitioner demonstrated that it is more likely than not that a suspension is necessary to avoid significant adverse economic impact on users of telecommunications services generally? (Section 251(f)(2)(A)(i))

AND

2. Has the Petitioner demonstrated that it is more likely than not that a suspension is consistent with the public interest, convenience, and necessity? (Section 251(f)(2)(B))

Only if the answer to *both* questions is “yes” should a suspension be granted. In attempting to resolve these questions, the Proposed Orders conclude that all but four of the Petitioners have failed to make these demonstrations.

JDA

**LNP DOCKET LIST**

<b>Docket No.</b>	<b>Company</b>	<b>Co. Cost Estimate<sup>1</sup></b>	<b>Estimate Scenario 1<sup>2</sup></b>	<b>Estimate Scenario 2<sup>3</sup></b>	<b>Filing Date</b>	<b>Deadline</b>	<b>Wireless Participation</b>
04-0180	Gridley Telephone Co.	2.10	1.30	0.94	03/01/04	08/28/04	X
04-0181	Flat Rock Telephone Co-Op, Inc.	2.37	2.30	2.18	03/01/04	08/28/04	X
04-0182	Cambridge Telephone Co.	2.69	2.12 <sup>4</sup>	0.87	03/01/04	08/28/04	X
04-0183	Henry County Telephone Co.	2.70	2.08 <sup>4</sup>	0.93	03/01/04	08/28/04	X
04-0184	LaHarpe Telephone Co.	2.31	1.65	0.82	03/02/04	08/29/04	X
04-0185	Hamilton County Telephone Co-Op	1.76	1.42	0.81	03/02/04	08/29/04	X
04-0186	McDonough Telephone Cooperative, Inc.	1.30	1.02	0.49	03/02/04	08/29/04	
04-0189	Moultrie Independent Telephone Co.	4.74	3.67	3.23	03/03/04	08/30/04	X
04-0192	Diverse Communications, Inc.	3.86	2.36	1.94	03/04/04	08/31/04	
04-0193	Glasford Telephone Co.	2.11	1.44	1.06	03/04/04	08/31/04	X
04-0194	Viola Home Telephone Co.	2.69	1.72	1.30	03/04/04	08/31/04	X
04-0195	New Windsor Telephone Co.	3.17	1.97	1.57	03/04/04	08/31/04	X
04-0196	Montrose Mutual Telephone Co.	3.44	2.87	0.86	03/04/04	08/31/04	X
04-0197	Woodhull Community Telephone Co.	3.28	2.22	1.42	03/04/04	08/31/04	X
04-0198	Leaf River Telephone Co.	3.57	2.20	1.72	03/04/04	08/31/04	X
04-0199	Oneida Network Services, Inc.	8.37	4.69	4.61	03/04/04	08/31/04	X
04-0200	Oneida Telephone Exchange	3.92	2.62	1.66	03/04/04	08/31/04	X
04-0205	McNabb Telephone Co.	3.92	2.29	2.06	03/05/04	09/01/04	
04-0206	Reynolds Telephone Co.	3.19	2.18	1.79	03/05/04	09/01/04	X
04-0228	Adams Telephone Co-Op	2.99	2.74	2.06	03/08/04	09/04/04	X
04-0232	Cass Telephone Co.	1.82	1.30	1.10	03/09/04	09/05/04	
04-0236	Shawnee Telephone Co., Inc.	3.02	2.77	0.76	03/10/04	09/06/04	X
04-0237	C-R Telephone Co.	2.59	1.94	0.99	03/11/04	09/07/04	
04-0238	The El Paso Telephone Co.	1.10	0.73	0.57	03/11/04	09/07/04	X
04-0239	Odin Telephone Exchange, Inc.	1.31	0.98	0.50	03/11/04	09/07/04	X
04-0240	Yates City Telephone Co.	2.88	1.85	1.67	03/11/04	09/07/04	X
04-0243	Kinsman Mutual Telephone Co.	12.72	7.42	6.83	03/11/04	09/07/04	
04-0248	Stelle Telephone Co.	28.66	23.71	22.56	03/12/04	09/08/04	
04-0249	Mid-Century Telephone Co-Op, Inc.	1.74	1.39	0.41	03/12/04	09/08/04	
04-0253	Wabash Telephone Co-Op, Inc.	2.33	2.09	0.51	03/12/04	09/08/04	
04-0259	Leonore Mutual Telephone Co.	8.96	5.74	5.36	03/15/04	09/11/04	
04-0282	Grandview Mutual Telephone Co.	8.99	3.93	3.56	03/18/04	09/14/04	X
04-0283	The Crossville Telephone Co.	2.80	1.62	1.19	03/18/04	09/14/04	

<sup>1</sup>Company estimated LNP surcharge.

<sup>2</sup>Staff Scenario 1 estimated LNP surcharge reflects removal of legal fees, certain employee education expenses, and certain customer education expenses.

<sup>3</sup>Staff Scenario 2 estimated LNP surcharge reflects same adjustments as Scenario 1 as well as removal of transport and transit costs.

<sup>4</sup>May be 22 cents to 26 cents lower.