

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Metamora Telephone Company	:	
	:	
Petition for Suspension or	:	
Modification of the Applicability of	:	
the Requirements of Section	:	04-0366
251(b)(2) of the Federal	:	
Telecommunications Act of 1996,	:	
47 U.S.C. 251(b)(2), pursuant to	:	
Section 251(f)(2) of said Act; for	:	
Entry of an Interim Order; and for	:	
other necessary and appropriate	:	
relief.	:	

PROPOSED ORDER

By the Commission:

I. INTRODUCTION

On April 30, 2004, Metamora 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 (“TA96”), 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 the TA96. 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 May 5, May 19, and August 4, 2004. Appearances were entered by counsel on behalf of Petitioner, Commission Staff (“Staff”), and the only intervener, Verizon Wireless (“VW”). No other appearance were entered. At the August 4 evidentiary hearing, Jason Hendricks, a Senior Consultant for GVNW Consulting, Inc.,¹ offered testimony on behalf of Petitioner. Staff called Jeff Hoagg, Principal Policy Advisor in the Commission’s Telecommunications Division, Russell Murray, a Utility Analyst in the Telecommunications Division, and Mark Hanson, a Rate Analyst in the Telecommunications Division, to testify. Michael McDermott, VW’s Regional Director of State Public Policy, testified on behalf of VW. At the end of the August 4 hearing, the

¹ GVNW provides consulting services on a variety of issues to independent telecommunications companies and their affiliates.

record was marked “Heard and Taken.” Petitioner, Staff, and VW each submitted an Initial Brief and Reply Brief. A Proposed Order was served on the parties.

II. BACKGROUND

Petitioner is a facilities-based incumbent local exchange carrier (“LEC”) 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 the Metamora and Germantown Hills exchanges, neither of which are not located in a Top 100 Metropolitan Statistical Area (“MSA”). Petitioner provides service to approximately 4,170 access lines, which is less than 2% of subscriber lines nationwide. Petitioner is a “rural telephone company” within the meaning of Section 153(37) of the TA96 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 the TA96 from the requirements of Section 251(c) of the TA96.

III. GOVERNING LAW

Section 251(b)(2) of the TA96 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”). The FCC concluded in part that LECs must port numbers to wireless carriers where the requesting wireless carriers’ “coverage area” overlaps the geographic locations of the rate center in which the customer’s wireline number was provisioned, provided that the porting-in carrier maintains the number’s original rate center designation following the port. As it pertains to incumbent LECs (“ILEC”) outside of 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 the TA96. 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

A. Petitioner's Position

Petitioner requests a suspension of its obligation to provide wireline to wireless LNP until November 24, 2006. Petitioner's initial concern is that the FCC has mandated wireline-to-wireless LNP without providing a mechanism by which small, rural carriers, such as Petitioner, may recover the incremental traffic sensitive costs associated with

completing calls placed to numbers ported to wireless carriers. There is also a question, Petitioner continues, of whether it is in the public interest generally for its entire customer base to bear the additional costs associated with the LNP surcharge that it will assess to recover the implementation costs associated with LNP when there may be no demand for the service. Petitioner represents that it has received no inquiries from customers regarding wireline-to-wireless LNP. Petitioner argues that suspension or modification of the requirements of Section 251(b)(2) with respect to the duty to provide wireline-to-wireless LNP is necessary to avoid a significant adverse economic impact on users of telecommunications services generally, and/or to avoid imposing a requirement that is unduly economically burdensome on Petitioner. Petitioner asserts further that such suspension or modification is in the public interest.

Petitioner has attempted to quantify the costs that it believes it would incur to provide wireline-to-wireless LNP. According to Petitioner, the non-recurring costs include generic upgrades of its switch, initial switch translations, setup of local routing number/global title translation database for access and transport, LNP service order administration setup, employee training, and initial administrative costs. To recover these costs, Petitioner states that it would implement a federally approved LNP surcharge pursuant to the FCC's rules. Petitioner relates that the FCC has had rules in place for some time regarding cost recovery for wireline-to-wireline LNP. Those rules allow certain investment costs and certain ongoing expenses to be recovered over a five year period via an end user surcharge. Petitioner states that it has used that type of methodology in order to estimate costs over a five-year period.

In addition to non-recurring costs, Petitioner notes that it would incur incremental traffic sensitive costs. Among such costs are costs associated with LNP database queries and intercarrier compensation. Petitioner believes, based upon the requirements of the FCC Order, that all calls from Petitioner's wireline customers to a former customer who had ported his number to a wireless carrier would first require a LNP database query to determine proper routing of the call, and then would have to be transported to SBC's tandem in Peoria, Illinois for delivery to the wireless carrier. Petitioner states that this, at a minimum, would involve the use of its transport facilities and the transport facilities provided by SBC as well as tandem switching functions performed by SBC in Peoria. The FCC Order does not determine responsibility for the payment of those costs and associated intercarrier compensation for the transport of calls and does not determine how those costs should be recovered. Petitioner understands from discussions with SBC that all of these costs will be borne by Petitioner.

Petitioner's cost analysis is attached to Petitioner's direct testimony and is marked as Exhibit 1.4.² Petitioner's analysis is based on cost support filed and approved by the National Exchange Carriers Association ("NECA") in a LNP filing made with the FCC in NECA's Transmittal #956. While its experience thus far has been that consumer interest in wireline-to-wireless LNP will be very minimal, Petitioner

² 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.

acknowledges that it is an uncertain situation. Petitioner reports that some recent market studies have shown the potential for a higher percentage of customers porting their numbers to wireless carriers. The cost summary that Petitioner has provided assumes 6% penetration in the first year with a 1% increase per year for the next four years. Petitioner states that these assumptions produce an impact on it of \$305,966 (after applying present value factors) over the first five years of providing wireline-to-wireless LNP. This amount equates to an impact of \$1.81 per subscriber per month. If the level of wireline-to-wireless LNP penetration assumed in the cost analysis is changed to 1% in the first year and a 0.5% increase per year for the next four years, Petitioner states that the impact on it would be \$279,553. This amount equates to an impact of \$1.39 per subscriber per month.

Petitioner argues further that it can not provide wireline-to-wireless LNP because it is an interexchange service for which it is not certificated. Petitioner asserts that the telecommunications service that is required to provide the type of wireline-to-wireless LNP prescribed by the FCC (ie: where there is no interconnection agreement between the LEC and the wireless carrier and where the wireless carrier has no numbers assigned in the LEC's rate center) is interexchange service. This is so, Petitioner reasons, because it requires the LEC to route the call out of its local service area to the tandem in an exchange of another LEC. This by definition is an interexchange call, according to Petitioner, which it lacks the authority to provide. Petitioner stops short of claiming that its lack of interexchange authority rises to the level of "technically infeasible" and acknowledges that there is a technical way to make the calls to the ported numbers work. Rather than just handing the calls off to the carrier that owns the tandem at the meet point like Petitioner does now with other interexchange or toll calls, which includes calls to users of wireless service, Petitioner states that the process requires it to deliver the calls to the wireless carriers' points of interconnection at the tandem. Petitioner understands that the tandem owner, SBC, will charge it to use SBC facilities to deliver these LNP calls to the wireless carriers' interconnection points as if Petitioner were an interexchange carrier. The only other technical way for a wireline-to-wireless LNP call to be completed, Petitioner notes, is for it to route the call to the customer's presubscribed interexchange carrier, which would result in the customer being charged for a toll call, which has been explicitly prohibited by the FCC.

Once any cost and technical matters are resolved, Petitioner states further that it should not have to provide wireline-to-wireless LNP until between six and ten percent of its customers indicate a desire for wireline-to-wireless LNP. If it had to provide wireline-to-wireless LNP now, Petitioner maintains that it could not do so in less than 120 days.

B. Staff's Position

As a general matter, Staff believes that the deployment of number portability capabilities by Illinois LECs is desirable. Staff points out that Congress required all telecommunications carriers to provide number portability pursuant to rules promulgated by the FCC. Staff notes that the FCC has promulgated a number of such rules and on at least one occasion has stated that the failure of telecommunications carriers to

provide number portability hampers the development of local competition. Staff also suggests 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 of suspensions in Illinois where wireline-to-wireless LNP is and is not available.

Nevertheless, Staff recommends a temporary suspension of Petitioner's obligation to provide wireline-to-wireless LNP. In making its recommendation, Staff focuses on Section 251(f)(2)(A)(i) of the TA96 as the most directly applicable of the three standards that appear in Section 251(f)(2)(A). According to Staff, 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, 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 does not believe that Petitioner has made the requisite showing regarding Section 251(f)(2)(A)(ii) and 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.

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 can not 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

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.

Petitioner's cost analysis is a reduction in the estimated costs per access line per month from \$1.81 to \$1.33. 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 because it is unclear whether the FCC will allow Petitioner to recover these costs through a LNP surcharge. Under Scenario 2, Petitioner's estimated LNP surcharge is \$0.91 per access line per month. Staff witness Hoagg relies on the Scenario 1 estimates in making his recommendation that a temporary suspension be granted.

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 the estimated LNP surcharge of \$1.33 per access line per month for Petitioner to SBC's surcharge of \$0.28 per access line per month. Staff points out that the estimated per line surcharge for Petitioner is higher than the comparable figure for SBC. While not directly comparable, Staff believes that the figure for SBC provides a useful benchmark. 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 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. As of January 2004, Staff understands that the "take rate" for wireline-to-wireless LNP in areas where it is available is quite low (less than 1%). Based upon this information and other information available to the Staff concerning Petitioner's serving area, Staff opines that the demand for wireline-to-wireless LNP in Petitioner's service area is quite low.

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 the TA96 and would be consistent with the public interest, convenience, and necessity.

Staff makes this recommendation despite its position that Petitioner has received a BFR 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 BFR should impede the grant of a suspension under the circumstances.

Petitioner's argument that the routing of a ported number to a wireless carrier constitutes interexchange service is not a factor in Staff's position. Staff witness Murray testifies to his understanding of how a call from a Petitioner wireline subscriber to a former Petitioner customer who has ported his telephone number to a wireless carrier is handled. Mr. Murray states that in those circumstances a call between two numbers within the same exchange, regardless of how it is routed, is a local call. Therefore, Staff does not believe that Petitioner can be considered an interexchange carrier even if calls from within Petitioner's service area are routed to ported numbers over toll trunks to a wireless carrier.

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 notes that the Commission previously granted suspensions to five other ILECs that were 30 months in duration.⁴

⁴ The suspensions were granted to the five ILECs in Docket Nos. 03-0726, 03-0730, 03-0731, 03-0732, and 03-0733 following a joint recommendation from Staff and each of the five carriers. No other parties participated in the hearings in the five proceedings. The suspensions are currently being reconsidered by the Commission.

C. VW's Position

VW notes that Petitioner's case is essentially identical to those presented by 39 other petitioners seeking a suspension from the Commission of the requirement to provide wireline-to-wireless LNP. VW argues that Petitioner, as well as many of its counterparts in the other proceedings, has failed to meet the applicable legal standards set forth in Section 251(f)(2) of the TA96. VW contends that the law and sound public policy necessitate the denial of Petitioner's request.

According to VW, the FCC assigned the burden of proof in a suspension request, under Section 251(f)(2) of the TA96, to Petitioner in 47 C.F.R. §51.405(b). VW maintains that Petitioner has failed to demonstrate how a suspension is necessary to avoid adverse impacts on it, its customers, wireless carriers, and customers of wireless carriers. VW acknowledges that it casts a wider net when examining the impact of a suspension and explains that it disagrees with Petitioner and Staff's narrower application of the phrase "users of telecommunications services generally" from Section 251(f)(2)(a)(i) of the TA96. Based on rules of grammatical construction, legislative intent, and statutory construction, VW insists that the word "generally" can not mean that the Commission should look only at users of Petitioner's service. Rather, VW posits, the word "generally" means that the Commission must examine the impact of a suspension on users of telecommunications services who would be affected by an additional suspension. VW contends that Petitioner failed to raise or prove that a suspension would have an adverse impact on anyone but Petitioner and its customers.

VW also raises concerns that Petitioner and Staff failed to examine various public interest standards which it believes this Commission must consider. VW first asserts that the Commission must consider the fact that LNP has already been determined by the FCC and this Commission to be in the public interest. VW avers next that this Commission must consider the fact that LNP optimizes number resources, which is in the public interest. VW contends that this is especially important since many Illinois Numbering Plan Areas ("NPA") have been declared to be in jeopardy by the North American Numbering Plan Administrator. A third public interest consideration that VW raises is the impact on competition that a suspension might have. By granting a suspension, VW is concerned that local competition will be hampered. But according to VW, denying Petitioner's request will, on the other hand, foster competition—a long stated goal of, and a statutory requirement imposed on, this Commission. A fourth consideration that VW maintains that the Commission must take into account is the adverse impact a suspension would have on the public interest because of consumer confusion caused by the fact that some residents of the state will be able to port their telephone numbers and other residents will not, creating a patchwork approach to a Federal mandate designed to benefit all consumers.

Copies of correspondence from VW that Petitioner has included with its testimony are of significance to VW. This correspondence, VW asserts, demonstrates that it sought to have LNP made available in Petitioner's service territory. But instead of

complying with the TA96 and the FCC's rules, VW points out that Petitioner sought to avoid its obligation to provide wireline-to-wireless LNP and even specifically requests that the Commission not decide whether or not the correspondence constitutes a BFR.

VW points out that Petitioner contends that it should not be required to provide wireline-to-wireless LNP until there is a demonstrated demand. Demand for the service, however, is not determinative of the public interest and is not the legal standard to be met in order to qualify for a suspension from LNP, according to VW. Moreover, VW continues, Petitioner's claim that there is little demand for wireline-to-wireless LNP is not based on substantial or credible evidence. VW observes that Petitioner has not taken any formal steps to quantify or measure if there is any demand in its service territory and that the Petitioner was unable to provide any foundational facts for the examples of LNP take rates from other unknown areas. VW states that wireline-to-wireless LNP is a new, forward-looking requirement that seeks to spur competition among carriers and in the local exchange market. VW believes that the availability and marketing of wireline-to-wireless LNP will create its own demand once consumers begin to realize the benefits of competition.

Among the shortcomings VW perceives in Petitioner's case are numerous flaws and inflations contained in Petitioner's costs analysis. VW asserts that the FCC requires that only carrier specific costs directly related to providing number portability can be recovered through an LNP surcharge. VW recommends that the reductions applied by Staff be applied to the Petitioner's cost analysis before the Commission considers the amount of any LNP surcharge in this proceeding. VW also understands that the FCC separates considerations regarding routing calls from the obligation to provide LNP. Therefore, VW asserts, this Commission should not consider transiting and transport costs in any analysis of the impact of an LNP surcharge upon the Petitioner's customers. When transiting and transport is removed from the equation, VW points out that Staff calculates Petitioner's estimated LNP surcharge to be \$0.91 per subscriber per month. VW argues that this amount is not significant and would not constitute a significant adverse impact on the Petitioner's customers and certainly not on "users of telecommunications services generally."

VW observes further that Staff's policy witness failed to analyze the LNP surcharge with transiting and transport costs removed. VW also claims that Staff's policy witness relied on Petitioner's position without independently verifying or examining assumptions made by Petitioner. VW criticizes Staff's cost witness for failing to point out a discrepancy between Petitioner's cost data and SBC's tariffed rates for transport, transport facility, and switching, despite observing identical figures in Docket Nos. 04-0182 and 04-0183. VW also points out that not all Illinois ILECs have requested a suspension of the wireline-to-wireless LNP requirements.

VW recommends that the Commission deny Petitioner's request for a suspension, and require Petitioner to provide wireline-to-wireless LNP as soon as practicable, but no later than November 24, 2004. In addition, VW requests that the

Commission order Petitioner to provide periodic updates on the progress it is making toward such provision.

V. COMMISSION CONCLUSION

Section 251(b)(2) of the TA96 obligates LECs, including Petitioner, to provide, to the extent technically feasible,⁵ number portability in accordance with requirements prescribed by the FCC. The FCC has considered number portability and determined that LECs, including Petitioner, must provide wireline-to-wireless LNP. But as is its right under Section 251(f)(2) of the TA96, Petitioner now asks this Commission to suspend its obligation to provide wireline-to-wireless LNP until November 24, 2006. Petitioner seeks the suspension under Section 251(f)(2)(A)(i) or (ii) and (B) of the TA96; and, pursuant to 47 C.F.R. §51.205, Petitioner bears the burden of proving that it is entitled to the desired suspension. Accordingly, the Commission must determine whether Petitioner has demonstrated that a suspension is necessary to avoid a significant adverse economic impact on users of telecommunications services generally and/or to avoid an undue economic burden on Petitioner and, in either case, is consistent with the public interest, convenience, and necessity.

Before addressing the statutory criteria, a word on certain correspondence from wireless carriers is warranted. Clearly Petitioner received correspondence from at least one wireless carrier inquiring about Petitioner's ability to provide wireline-to-wireless LNP. Whether or not the correspondence constitutes a BFR, however, need not be determined by the Commission since this question is not before the Commission.

The first question for the Commission to resolve concerns the proper understanding of the word "generally" in the phrase "significant adverse economic impact on users of telecommunications services generally" found at Section 251(f)(2)(A)(i). Petitioner and Staff maintain that "generally" refers to Petitioner's customers generally while VW argues that the scope of "generally" is much broader and requires an assessment of the impact on *all users* of telecommunications services who would be affected by any suspension. VW's position is thought provoking, but unpersuasive at this time. Perhaps with further explanation and support, the Commission could be persuaded that VW's interpretation truly reflects legislative intent but at present the Commission finds the interpretation of Petitioner and Staff more reasonable.

With regard to the economic impact on Petitioner's customers, the Commission is cognizant that it is not being asked to approve any particular cost to be included in a LNP surcharge. That task falls on the FCC. Nevertheless, the Commission must consider the reasonableness of including the estimated costs in a LNP surcharge. Only by doing so can the Commission properly gauge the economic impact of wireline-to-wireless LNP on Petitioner's end-users and carry out its duty under Section 251(f)(2).

⁵ No suggestion has been made in this proceeding that wireline-to-wireless LNP is not technically feasible.

After calculating the costs that it says it expects to incur and recover from customers, Petitioner insists that its estimated LNP surcharges of \$1.81 or \$1.39 per access line per month, depending on the level of demand, are accurate and at these levels constitute a significant adverse economic impact on its customers. According to Petitioner's Exhibit 1.4, Petitioner's estimate includes costs for software; operations support systems and billing; voice announcements; switch translations; regulatory and legal start up activities, as well as administrative and order processing activities; employee education; technical trouble; customer education; and query, transport, and transit costs over a five year period. Transport and transit costs represent the largest portion of Petitioner's costs estimates. In evaluating the estimated costs, however, the Commission is unfortunately without the benefit of a definitive cost analysis. During the course of this proceeding, questions have arisen regarding inclusion of certain costs for transport and transit, legal expenses, employee education, customer education, and other activities arguably associated with implementing wireline-to-wireless LNP.

With regard to customer education, for example, Staff questions the need to repeatedly mail notices to customers informing them of wireline-to-wireless LNP. Although the most appropriate number of customer mailings is uncertain, the Commission concurs that the redundancy called for by Petitioner is unnecessary. Similarly, it is questionable whether all 29 of Petitioner's employees need to receive non-technical training concerning wireline-to-wireless LNP. While the training of some employees is certainly warranted, in light of the expenses to be passed through to customers, the training of every employee, no matter what their job and without further explanation, is not reasonable.

Another troubling aspect of Petitioner's cost estimates is the inclusion of transport and transit costs ultimately reflecting a 10% demand for wireline-to-wireless LNP. Petitioner and Staff both assert that they expect demand for wireline-to-wireless LNP in Petitioner's service area to be very low—significantly less than 1%. Yet when Petitioner developed its estimated LNP surcharge, it based transport and transit costs on a significantly higher "take rate." The result of using such a high demand level is a dramatic, arguably artificial, increase in the estimated LNP surcharge. While actual demand upon implementation of wireline-to-wireless LNP is impossible to predict, the Commission finds that the record sufficiently indicates that the take rate at this time is quite low. Moreover, the Commission recognizes that uncertainty exists as to whether the FCC will prohibit recovery by the Petitioner of transport and transit costs through a LNP surcharge. Until the FCC resolves this uncertainty, however, the Commission assumes that Petitioner or its customers will bear the burden of these costs. Consequently, Staff's analysis set forth in Scenario 1 not only addresses many of the concerns regarding costs raised above, it is also most consistent with the current state of the law regarding LNP costs and surcharges. Therefore, the Commission bases its findings in this proceeding on Staff's cost analysis set forth in Scenario 1.

Notwithstanding some of these concerns regarding the costs presented by Petitioner, the Commission finds that Petitioner has met its burden of demonstrating that

a significant adverse economic impact would be imposed on its customers if required to implement wireline-to-wireless LNP.

The Commission concurs with Petitioner and Staff that the burden imposed by LNP implementation must be weighed against the benefit to be received. Although the level of demand for wireline-to-wireless LNP is difficult to predict, the Commission is convinced at this time that demand is likely to be low for some time in the future. Staff relies on take rates for wireline-to-wireless LNP for SBC and Verizon for the first two months that it was offered. While actual interest in LNP among Petitioner's customers and take rate data for SBC and Verizon over a longer period of time may or may not be higher than what Petitioner and Staff expect, estimating a future take rate is an inherently uncertain task. The Commission agrees with Staff that demand during the suspension period is nevertheless likely to be low and when weighed against the costs to Petitioner and its customers that Staff has analyzed in its Scenario 1, justifies the grant of this limited temporary suspension.

The Commission also finds that a temporary suspension of the requirement to provide wireline-to-wireless LNP is consistent with the public interest, convenience, and necessity. The FCC views LNP as a means to promote competition. The Commission concurs with this opinion. Although it is true that wireless carriers already operate in Petitioner's service area, wireline-to-wireless LNP removes an obstacle to competition by giving customers who would otherwise not switch providers because they do not want to change their telephone number the opportunity to keep their telephone number *and* switch providers. Moreover, the mere existence of this opportunity arguably benefits customers who do not take advantage of wireline-to-wireless LNP because the existence of additional competition may induce Petitioner to offer better service and/or prices to retain those customers.

Furthermore, the Commission is well aware of the NPA relief planning efforts in the various area codes in Illinois. As a general principle, care must be taken to not exacerbate, and when possible to mitigate, the need for new area codes. The Commission generally understands that the software which makes a switch LNP capable is the same software which makes number pooling possible. While competing carriers currently operating in Petitioner's service area already have NXX codes assigned to them, the availability of number pooling could allow future carriers in Petitioner's area to share the block of numbers currently assigned to Petitioner. Such sharing would forestall the need for a new area code.

That said, Petitioner and Staff have demonstrated that in balancing these benefits against the costs to Petitioner and its customers, particularly in light of low demand, the implementation of wireline to wireless LNP is not warranted in Petitioner's territory at this time. Accordingly, Petitioner's request for a temporary suspension should be granted in a manner consistent with similar suspensions granted to other carriers on August 25, 2004.

VI. FINDINGS AND ORDERING PARAGRAPHS

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

- (1) Petitioner provides local exchange telecommunications services as defined in Section 13-204 of the Act;
- (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's request for a temporary suspension of any wireline-to-wireless LNP obligations applicable to it under Section 251(b)(2) of the TA96 should be granted in a manner consistent with similar suspensions granted to other carriers on August 25, 2004;
- (5) Petitioner should be prepared to provide wireline-to-wireless LNP no later than January 1, 2006; in the event that Petitioner is able to provide wireline-to-wireless LNP prior to January 1, 2006, Petitioner should notify the Chief Clerk of such through a compliance filing as described in the prefatory portion of this Order;
- (6) all motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein; and
- (7) the granting of this suspension or reliance on the arguments presented does not have any precedential affect regarding any future request for a suspension.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Metamora Telephone Company's petition is hereby granted in a manner consistent with the Commission's August 25, 2004 granting of similar requests for suspensions of the obligation to provide wireline-to-wireless local number portability.

IT IS FURTHER ORDERED that Metamora Telephone Company shall comply with Finding (5).

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.

DATED: September 3, 2004.

Briefs on Exceptions must be received by September 10, 2004.

Briefs in Reply to Exceptions must be received by September 17, 2004.

Administrative Law Judge