



## II. PETITIONER'S REPLY TO VW'S ARGUMENTS

VW filed a Brief on Exceptions with nothing new. Contrary to VW's Brief on Exceptions, the Administrative Law Judge ("ALJ") in his Proposed Order found that Petitioner met its burden of proof by demonstrating that a significant economic impact would be imposed on its customers if it were forced to implement wireline-to-wireless LNP ("WLNP") and that a temporary suspension is consistent with the public interest, convenience and necessity because, among other reasons, there is little or no demand for WLNP. The Brief on Exception of VW unfairly criticizes the ALJ by asserting: "[i] inexplicably, the ALJ's conclusions in this Proposed Order depart significantly from his 33 earlier Proposed Orders...." (Brief on Exceptions of VW, p.2) This simply is not true!<sup>1</sup> The significant "departure" is explicable and VW knows it is capable of being explained. "Verizon Wireless acknowledges that the Commission amended the [33] Proposed Orders in the earlier cases, adding an additional year onto the proposed relief...." (Brief on Exceptions of VW, p.2). So, what should the ALJ have done after the Commission spoke in 33 orders to grant a temporary suspension of the implementation of WLNP? The explanation is obvious, the ALJ yielded to the wisdom of a unanimous Commission.

VW further unfairly argues that the ALJ should not follow the 33 other cases<sup>2</sup> because there are "significant differences in the alleged costs and burdens to be born by each LEC and its customers." VW should not be taken seriously because they fail to detail the, so called "significant differences in the alleged costs and burdens." (Brief on Exceptions of VW, p. 2).

Absent a evidentiary showing of "significant differences" that are reasonably articulated, the

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<sup>1</sup> Counsel for Petitioner was present at the Commissioner's August 25<sup>th</sup> regular open meeting, when the Commission directed the ALJ to revise the orders in those 33 WLNP cases.

<sup>2</sup> If an administrative agency departs significantly from its own precedent, it must confront the issue squarely and explain why the departure is reasonable. Absent such an explanation, the agency's decision may be vacated on judicial review as arbitrary and capricious or an abuse of discretion. 2AM Jur 2d Section 376; Gatica v. Ill. Dept. of Public Aid, 98 Ill.App.3d 101, 106, 423 N.E.2d 1292, 1296 (1<sup>st</sup> Dist. 1981); Texas Office of public Utility Counsel v. FCC, 265 F. 3d 313, 322 (citing Motor vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co. 463 U.S. 29, 56 (1983)).

final Order in the First Five WLNP Orders and the Orders entered in the other 33 WLNP cases on August 25, 2004 are precedent for this case. This VW exception should be rejected.

Demand is an important factor despite VW's unpersuasive argument that "Section 251 (f) does not list demand as a factor to be considered..." (Brief on Exceptions of VW, p. 3). Why should the customers of Metamora Telephone Company pay for a feature that only one of the customers have asked for? A feature that no customer wants certainly decides whether it is in the public interest, convenience and necessity for customers to pay for that feature.<sup>3</sup>

Since the evidence provided by Petitioner's witness Hendricks regarding WLNP demand in Metamora's service area and in rural areas generally, the evidence provided on cross-examination of Mr. McDermott regarding WLNP demand in Metamora's service area (as well as the presumption regarding WLNP demand generally that arises from VW's failure to present evidence within its exclusive or primary control), and the evidence provided by Mr. Hoagg regarding WLNP demand in non-rural areas all show WLNP demand levels of 0.02 percent or less there can be no doubt about the weight to be given to the evidence. The record clearly shows that there is little to no demand for WLNP in Metamora's service area. In other words – and to paraphrase Chairman Hurley's remarks from the Commission's August 25, 2004, Regular Open Meeting on the 33 similar WLNP suspension cases, the chances that a landline customer in these rural areas will cancel their landline phone service and move the number to a wireless phone are "slim and none." This VW exception should be rejected.

VW "shotguns" a variety of allegations in one sentence among which is the statement that Petitioner "refused to cooperate with multiple wireless carriers that requested LNP in its territory...." (Brief on Exceptions of VW, p.3). VW's argument that Metamora "refused to

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<sup>3</sup> VW's witness McDermott testified on cross examination that he was aware of only one Metamora customer who had inquired about WLNP. Tr. 141-146.

cooperate” has been rejected in each and every case in which VW has intervened. The testimony in the record from Metamora’s witness clearly shows why Metamora did not implement WLNP, as well as, the timing of the filing of the petition in this case. Direct Testimony of Jason Hendricks, Metamora Exhibit 1.0, pp. 5-14. This VW exception should be rejected.

VW alleges that Metamora “claimed limited demand for purposes of claiming limited benefits for LNP, while inconsistently claiming substantial customer demand to justify high routing expenses....”. (Brief on Exceptions of VW, p.3). This argument is disingenuous. Metamora clearly explained the calculation of demand from 6 to 10 percent. Testimony of Jason Hendricks, Metamora Exhibit 1.0, pp. 33-34, Metamora Exhibit 2.0, pp. 9-16. This demand percent was used so that the Commission could compare this case with the first five cases it had already approved. Metamora provided in testimony the results of the calculations using the lower demand figure and even the dollar amount that results from a zero demand figure. Even the lower demand amount is within the range the Commission found significant in the other 38 cases. This VW exception should be rejected.

VW further alleges that Petitioner “failed to acknowledge that it could contribute to forestalling number exhaustion in Illinois by implementing LNP.” (Brief on Exception of VW, p.3). To the contrary, the evidence of record shows that WLNP would not significantly effect number exhaustion in its service area.

On cross-examination by VW’s attorney in the Metamora case, Commission Staff witness Hoagg testified as follows:

Q. Yet isn’t it correct that you did not mention number pooling or number conservation anywhere in your testimony?

A. Oh, that’s correct. And the reason I didn’t is because as I have tried to increase my understanding of that issue, it has become more and more apparent to me that it is likely that that concern is not one that is very significant with respect



CERTIFICATE OF SERVICE

Docket No. 04-0366

The undersigned, Troy A. Fodor, hereby certifies that on the 17th day of September, 2004 he served a copy of the foregoing instrument by personally delivering a copy thereof and or mailing a copy thereof by electronic mail and/or United States Mail, postage prepaid, at Springfield, Illinois to the individuals named on the attached Service List in envelopes plainly addressed to each of them.

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