

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

KINSMAN MUTUAL TELEPHONE COMPANY	:	
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	:	
	:	04-0243
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.	:	

**RESPONSE OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION
TO VERIFIED PETITION TO REOPEN ON THE COMMISSION'S OWN MOTION**

INTRODUCTION

The Staff of the Illinois Commerce Commission (“Staff”), by its attorneys, submits its response to Kinsman Mutual Telephone Company’s (“Kinsman” or “Petitioner”) verified petition requesting the Illinois Commerce Commission’s (“Commission”) to reopen this docket on its own motion. Petitioner requests that the Commission reopen this proceeding to extend the suspension of the wireline-to-wireless local number portability requirements. For the reasons described more fully below, Petitioner’s petition should be granted and this proceeding reopened to allow the Commission to consider whether further suspension of Petitioner’s obligation to provide wireline-to-wireless local number portability, if applicable, is warranted.

BACKGROUND

On August 25, 2004, the Commission issued an order granting Petitioner a temporary suspension of the FCC’s wireline-to-wireless local number portability (“LNP”) requirements until January 1, 2006. The Commission found that Petitioner “has sufficiently demonstrated that its estimated costs, even with reasonable adjustments, would result in a significant adverse economic

impact on customers” if required to implement wireline-to-wireless LNP. Order at 12. In reaching that conclusion, the Commission noted that although “Petitioner’s final FCC approved surcharge would likely be less than what the Petitioner presents in this proceeding, the Commission is concerned that the final surcharge will still be high enough to result in a significant adverse economic impact on customers.” Id. In addition, the Commission found on balance that a temporary suspension was consistent with the public interest, convenience, and necessity. Id. at 12. The Commission concluded that the costs were outweighed by the benefits until more certain information is available regarding whether the FCC would allow Petitioner to recover its transport and transit costs from other carriers.¹ Id.

In its petition, Petitioner requests that the Commission reopen this docket, on its own motion, and enter an Amendatory Order on Reopening extending the suspension of the wireline-to-wireless local number portability requirements for an additional year from January 1, 2006 to January 1, 2007 or, alternatively, a continuing suspension until further order of the Commission. Pet. at 1. In support of its petition, Petitioner states that “there has been no substantial increase nationally in the ‘take rate’ for rural companies that offer wireline-to-wireless LNP and that [Petitioner] (which does not) has not received any requests for wireline-to-wireless LNP either from its customers or from any wireless carriers.” Pet. ¶ 5. Petitioner also states that to date the FCC has not resolved the uncertainty regarding the recovery of transport and transit costs. Id. ¶ 7.

Petitioner further informs that the U.S. Court of Appeals for the District of Columbia in United States Telecom Ass’n v. FCC, No. 03-1414, slip op. (D.C. Cir. Mar. 11, 2005), recently

¹ The Commission based its findings on the assumption that Petitioner (and ultimately its customers) would

stayed future enforcement of the FCC's requirement that Petitioner provide wireline-to-wireless LNP until the FCC prepares and publishes a required analysis under the Regulatory Flexibility Act. Id. ¶ 7. Furthermore, Petitioner contends that the USTA decision "may cause a direct conflict" with the Commission's August 25, 2004 Order because, according to Petitioner, the Commission's Order "states an affirmative obligation for the Petitioner to implement wireline-to-wireless LNP by January 1, 2006," and "[i]f the FCC has not completed its RFA analysis by that time, that Commission directive will conflict with the USTA decision's stay of enforcement." Id. ¶ 8. Finally, Petitioner states that there has been no material change in the projected technical, administrative and operational requirements or the relevant costs associated with implementing wireline-to-wireless LNP from the evidence presented in the record in this docket, nor any reason for the Commission to alter its findings and conclusions in the August 25, 2004 Order. Id. ¶ 9.

Petitioner also states that granting the requested reopening and further suspension is consistent with the public interest, convenience, and necessity, for the same reasons identified in the Commission's August 25, 2004 Order. Id. ¶ 11. Petitioner also states that the requested action is in the public interest insofar as it removes any potential conflict with the USTA decision. Id. Petitioner informs that without reopening and an Amendatory Order on Reopening, Petitioner would need to file a new suspension petition to avoid the significant adverse economic impact on all of its customers of the costs associated with implementing the wireline-to-wireless LNP requirement. Id. ¶ 12. Petitioner further informs that the evidence in the new suspension petition would be virtually identical to the evidence already in the record in this docket, as well as the affidavit included with Petitioner's petition. Id. ¶ 12. Accordingly, Petitioner, seeks an order from

incur transport and transit costs that were not recoverable from other carriers. Order at 12.

the Commission reopening this docket and further suspending Petitioner's obligation to provide wireline-to-wireless LNP.

DISCUSSION

The Commission should grant Petitioner's request to reopen this docket. Under Section 200.900 of the Commission's Rules of Practice, [a]fter issuance of an order by the Commission, the Commission may, on its own motion, reopen any proceeding when it has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, such reopening." 83 Ill. Admin. Code § 200.900; see 220 ILCS 5/10-113 (West 2000). Petitioner states that the Commission, in its Order, anticipated changes in available information regarding take rates and anticipated clarification of the regulatory framework of wireline-to-wireless LNP. Petitioner contends that the change in fact supporting reopening is that, to date, neither of these anticipated events has occurred. Pet. ¶ 13. Petitioner also contends that the change in law supporting reopening is the "procedural complication and potential direct conflict created by the USTA decision. Id. Petitioner further contends that it is "contrary to the public interest to impose the costs of implementing wireline-to-wireless LNP on customers when there is no substantial demand for the service." Id.

Petitioner identifies the recent decision in USTA in which the D.C. Court of Appeals remanded the FCC's Intermodal Order to the FCC because the FCC failed to prepare a regulatory flexibility analysis, as required by law. USTA, No. 03-1414, slip op. at 28. The court "stay[ed] future enforcement of the Intermodal Order against carriers that qualify as "small entities" under the RFA. Id. The court indicated that the stay remains in effect until the FCC completes its final regulatory flexibility analysis. Id. Thus, assuming the court's stay is applicable to Petitioner, unless and until the FCC completes its analysis, Petitioner is under no current federal obligation to

provide wireline-to-wireless LNP pursuant to the Intermodal Order. Petitioner understands the Commission's Order to impose an affirmative obligation on it to implement wireline-to-wireless LNP by January 1, 2006. Pet. ¶ 8. According to Petitioner, if the FCC has not completed its RFA analysis by that time, the Commission's directive will conflict with USTA's stay of enforcement. Id. Petitioner raises a legitimate question of whether the Commission has imposed on it an affirmative obligation to implement wireline-to-wireless LNP on January 1, 2006, regardless of whether Petitioner is under a federal obligation to provide such service. The USTA decision represents a change in law that merits reopening this docket.

In addition, reopening this proceeding is in the public interest. Administrative economy supports reopening this docket rather than establishing a new docket to consider Petitioner's request for further suspension. Petitioner indicates that "there has been no material change in the projected technical, administrative and operational requirements nor the costs thereof from those describe in the evidence introduced into the record in this Docket nor any reason why the Commission should alter its Findings and Conclusions in regard to that evidence from that set forth in the August 25, 2004 Order." Pet. ¶ 9. Further, Petitioner contends that since entry of the Commission's August 25, 2004 Order there has been no substantial increase in demand for wireline-to-wireless LNP (even where it is actually available) and no change in the regulatory uncertainties" involving cost recovery of any transport and transit costs Petitioner may incur in conjunction with implementing wireline-to-wireless LNP. Id. ¶ 2. An order reopening this docket will allow Petitioner, interested parties, Staff and the Commission to make use of an existing record, supplemented by additional evidence, thereby conserving resources and avoiding duplicative efforts. Further, reopening this proceeding instead of creating an additional docket to consider Petitioner's second suspension request coordinates the Commission's rulings on

Petitioner's requests and simplifies administration of Commission proceedings. Of course, reopening this proceeding on the Commission's own motion does not relieve Petitioner of its obligation to demonstrate that it is entitled to a further suspension of its wireline-to-wireless LNP obligation, if applicable, by satisfying the statutory criteria in 47 U.S.C. § 251(f)(2). Accordingly, the petition should be granted and this docket reopened to consider whether Petitioner's request for further suspension of its wireline-to-wireless LNP obligation, if applicable, is warranted.

CONCLUSION

For all of the foregoing reasons, the petition should be granted and this docket reopened to consider whether further suspension of Petitioner's obligation to provide wireline-to-wireless LNP, if applicable, is warranted.

April 4, 2005

Respectfully submitted,

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