

**STATE OF ILLINOIS**

**BEFORE THE ILLINOIS COMMERCE COMMISSION**

Gridley Telephone Company	)	Docket Nos.	04-0180
Flat Rock Telephone Co-Op, Inc.	)		04-0181
Cambridge Telephone Company	)		04-0182
Henry County Telephone Company	)		04-0183
LaHarpe Telephone Company	)		04-0184
Hamilton County Telephone Co-Op	)		04-0185
Moultrie Independent Telephone Company	)		04-0189
Glasford Telephone Company	)		04-0193
Viola Home Telephone Company	)		04-0194
New Windsor Telephone Company	)		04-0195
Montrose Mutual Telephone Company	)		04-0196
Woodhull Community Telephone Company	)		04-0197
Leaf River Telephone Company	)		04-0198
Oneida Network Services, Inc.	)		04-0199
Oneida Telephone Exchange	)		04-0200
Reynolds Telephone Company	)		04-0206
Adams Telephone Co-Operative	)		04-0228
Shawnee Telephone Company	)		04-0236
The El Paso Telephone Company	)		04-0238
Odin Telephone Exchange, Inc.	)		04-0239
Yates City Telephone Company	)		04-0240
Grandview Mutual Telephone Company	)		04-0282
Metamora Telephone Company	)		04-0366
	)		
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 VERIZON WIRELESS**  
**IN OPPOSITION TO PETITIONS TO REOPEN**  
**ON THE COMMISSION'S OWN MOTION**

NOW COMES Verizon Wireless, by and through its attorneys, and respectfully submits its response to the Illinois Commerce Commission (“ICC” or “Commission”) in opposition to the Petitions filed by Gridley Telephone Company, Flat Rock Telephone Co-Op, Inc., Cambridge Telephone Company, Henry County Telephone Company, LaHarpe Telephone Company, Hamilton County Telephone Co-Op, Moultrie Independent Telephone Company, Glasford

Telephone Company, Viola Home Telephone Company, New Windsor Telephone Company, Montrose Mutual Telephone Company, Woodhull Community Telephone Company, Leaf River Telephone Company, Oneida Network Services, Inc., Oneida Telephone Exchange, Reynolds Telephone Company, Adams Telephone Co-Operative, Shawnee Telephone Company, The El Paso Telephone Company, Odin Telephone Exchange, Inc., Yates City Telephone Company, Grandview Mutual Telephone Company, and Metamora Telephone Company (collectively “Petitioners”) in the above-captioned proceedings. Verizon Wireless respectfully asks the Commission to deny the Petitions. In support, Verizon Wireless states as follows:

1. The Petitions seek to have the Commission reopen the above-captioned dockets in light of the recent decision by the United States Court of Appeals for the District of Columbia Circuit in *United States Telecom Association v. Federal Communications Commission*.<sup>1</sup> In that decision, the Appellate Court **upheld** the FCC’s finding ordering local exchange carrier to provide local number portability with wireless carriers.<sup>2</sup> The Court solely “stay[ed] future enforcement of the *Intermodal Order* only as applied to carriers that qualify as small entities under the [Regulatory Flexibility Act]”<sup>3</sup> (“RFA”)

2. The Court ordered this stay only until “the FCC prepares and publishes” a final regulatory flexibility analysis for small carriers under the RFA.<sup>4</sup>

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<sup>1</sup> 400 F.3d 29 (D.C. Cir. 2005) (“*USTA*”).

<sup>2</sup> *Telephone Number Portability, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* 18 FCC Rcd. 23697 (2003) (“*Intermodal Order*”)

<sup>3</sup> *USTA*, 400 F.3d at 44.

<sup>4</sup> *Id.*

3. The Petitioners claim that this limited stay creates regulatory uncertainty and may “cause a direct conflict with” this Commission’s Orders. Such an allegation is without merit and should be rejected. The Court specifically noted that its decision does not prohibit carriers from offering Local Number Portability, but rather prohibits the FCC from imposing a requirement that certain small carriers provide Intermodal Local Number Portability, until such time as the FCC completes the regulatory flexibility analysis for small carriers under the RFA.<sup>5</sup>

4. The Petitioners rely on the already existing record in these proceedings for a rationale as to why the Commission should reopen these proceedings. The records in these proceedings are almost a year old and are not relevant to whether or not the Commission should reopen these proceedings. They provide no basis to do so.

5. In their Petitions, the Petitioners fail to note that the very limited stay granted by the Court does not apply to all rural carriers, as defined under Section 251(f)(2) of the Federal Telecommunications Act,<sup>6</sup> and relied upon by this Commission in issuing its final orders in the above-captioned proceedings. Rather the Court applied the stay only to small carriers under the RFA, a much smaller subsection of rural carriers. Under the FCC’s rules, in determining whether or not a carrier is a small carrier, this Commission must also consider “the gross revenues of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of the applicant’s controlling interests shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee)

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<sup>5</sup> “Of course, nothing in this disposition prevents small carriers from voluntarily adhering to the Intermodal Order’s number portability requirements during that period.” *Id.*

<sup>6</sup> 47 U.S.C. § 251(f)(2).

is eligible for status as a small business”<sup>7</sup> There is very little evidence in the record, in any of these proceedings, examining affiliate relationships for consideration of whether or not, and to whom, the Court’s limited stay would apply.<sup>8</sup> While Verizon Wireless does not advocate reopening these proceedings, any reopening of these proceedings should examine which of the petitioning carriers are small businesses, as defined by the FCC’s guidelines, and subject to the Court’s stay of the provision of Local Number Portability.

6. Through the previous proceedings, held in the above-captioned dockets, the Illinois Commerce Commission Staff is now aware of the significant negative impacts that suspensions can cause to customers seeking to port their wireline numbers to wireless carriers, to wireless carriers, and on the Commission’s policies to promote number conservation. As the Commission noted in its previous orders:

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.

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<sup>7</sup> 47 C.F.R. § 1.2110.

<sup>8</sup> Based on the service lists and witnesses who testified in the above-captioned proceedings, it is clear that several of the carriers are owned or managed by the same entities, i.e., The El Paso Telephone Company (Docket No. 04-0238), Odin Telephone Exchange, Inc. (Docket No. 04-0239), and Yates City Telephone Company (Docket No. 04-0240) are owned and operated by FairPoint Communications, Inc. See, FairPoint Communications, Inc. <<http://www.fairpoint.com>>.

Though Verizon Wireless opposes reopening these proceedings, if the Commission chooses to reopen these proceedings the Commission should examine the impact of its previous decisions on the level of competition in the Petitioner's territories.

7. Though Verizon Wireless opposes reopening these proceedings, if the Commission chooses to reopen these proceedings, it should consolidate these proceedings to allow for more efficient participation and proceedings to examine the impact of the Court's decision. Evaluating these claims – which are essentially identical – through separate dockets – will waste administrative resources.

8. Through the previous proceedings, held in the above-captioned dockets, The Illinois Commerce Commission Staff is now aware of the significant negative impacts that suspensions can cause to customers seeking to port their wireline numbers to wireless carriers, to wireless carriers, and on the Commission's policies to promote number conservation. The Illinois Commerce Commission and Staff are responsible for upholding the Telecommunications Act and ensuring that the public interest in Intermodal Local Number Portability is protected. Verizon Wireless notes that small incumbent local exchange carriers have implemented Intermodal Local Number Portability across America since May 2004, without economic harm to participating local exchange carriers. Petitioners must overcome a very high burden to prove any continued claims of economic or technical infeasibility, given that rural customers served by similarly situated local exchange carriers in other communities in America are now benefiting from the competitive and pro-consumer benefits of Intermodal Local Number Portability.

## **CONCLUSION**

For all of the reasons above, the Commission should decline Petitioners' request to reopen the above-captioned proceedings. If the Commission does choose to reopen these

proceedings, on its own motion, Verizon Wireless respectfully requests that the Commission: 1) consolidate these proceedings; 2) examine and determine which of the Petitioners are subject to the stay issued by the Court of Appeals; and, 3) examine the impact of its previous decisions on the level of competition in the Petitioners' territories as compared to the levels of competition in Illinois communities where customers have access to Intermodal Local Number Portability.

Respectfully submitted,

CLARK HILL PLC

Anne E. Hoskins, Esq.  
Lolita D. Forbes, Esq.  
Verizon Wireless  
1300 "Eye" Street N.W.  
Suite 400 West  
Washington, DC 20005  
(202) 589-3740  
(202) 589-3750 Fax

E-Mail:   anne.hoskins@verizonwireless.com  
          lolita.forbes@verizonwireless.com

By: \_\_\_\_\_

Roderick S. Coy, Esq.  
Haran C. Rashes, Esq.  
Brian M. Ziff, Esq. (ARDC No. 6239688)  
212 East Grand River Avenue  
Lansing, MI 48906  
(517) 318-3100  
(517) 318-3099 Fax

E-Mail:   rcoy@clarkhill.com  
          hrashes@clarkhill.com  
          bziff@clarkhill.com

Attorneys For Verizon Wireless

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