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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE PETITION)
OF IDAHO TELEPHONE ASSOCIATION FOR) Case No. GNR-T-04-01
SUSPENSION OF NUMBER PORTABILITY)
REQUIREMENTS)**

**WESTERN WIRELESS' CONDITIONAL OPPOSITION TO ITA'S PETITION
FOR TEMPORARY SUSPENSION**

WWC Holding Co., Inc., doing business in Idaho as Cellular One ("Western Wireless"), hereby submits its Comments on the Petition for a Temporary Suspension of Wireline To Wireless Number Portability Responsibilities ("Petition") filed by the Idaho Telephone Association ("ITA") member companies. For the reasons explained herein, Western Wireless opposes the Petition, unless the following conditions are imposed upon any suspension of ITA's members' local number portability ("LNP") obligations:

1. the length of any temporary suspension is the earlier of 180 days from a final order in this proceeding or November 24, 2004;
2. ITA members are required to file in this proceeding monthly updates on their progress towards implementation of wireline-to-wireless number portability and hold informational meetings with interested parties within one week of each monthly update filing;

3. ITA members agree to implement wireline-to-wireless number portability consistent with North American Numbering Council (“NANC”) Recommendations, and to the extent that such Recommendations do not specifically address certain routing, porting interval, information exchange, and other implementation issues, ITA agrees to actively work with wireless carriers and other interested parties to establish porting processes and procedures that ensure the timely and accurate completion of all porting requests;
4. ITA members agree establish porting processes and procedures, as explained in No. 3 above, by August 30, 2004, or two months prior to wireline-to-wireless porting implementation, whichever is earliest, and file these processes and procedures in this proceeding; and
5. ITA members agree to implement wireline-to-wireless number portability consistent with all applicable rules.

I. WESTERN WIRELESS HAS A DIRECT INTEREST IN ITA’S PETITION AND WOULD BE IMPACTED BY ANY COMMISSION’S ACTION.

Western Wireless has an interest in ITA member companies’ implementation of LNP because it specifically impacts its rights to port telephone numbers with wireline carriers. Furthermore, Western Wireless sent a lawful bona fide request (“BFR”) to CTC Telecom, Inc. and Farmers Mutual Telephone Company to implement number portability by the May 24, 2004 deadline, as required by the Federal Communications Commission (“FCC”) rules. Moreover, because rural consumers are increasingly choosing wireless service for their telecommunications needs and may choose to port their wireline

numbers to Western Wireless upon implementation of number portability, Western Wireless has an interest in this proceeding with respect to the implementation of number portability by all ITA member companies.

II. THERE IS A VERY HIGH STANDARD TO BE MET FOR SUSPENSION OF ITA MEMBER COMPANIES' LNP OBLIGATIONS.

Congress established a very high standard to be met for a local exchange carrier (“LEC”) to obtain a suspension of its LNP obligations. Section 251(f)(2) of the Communications Act of 1934, as amended (“Act”), permits state commissions to suspend a carrier’s LNP obligations only:

to the extent that, and for such duration as, the State commission determines that such suspension or modification —
(A) is necessary: (i) to avoid significant adverse 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.¹

“Congress intended exemption, suspension, or modification of the section 251 requirements to be the exception rather than the rule.... We believe that Congress did not intend to insulate smaller or rural LECs from competition.”²

¹ 47 U.S.C. § 251(f)(2).

² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report & Order, 11 F.C.C.R. 15499, 16118 (1996) (“*LNP First Report and Order*”).

A. ITA Members Have Had Ample Opportunity To Prepare For And Implement Their LNP Obligations.

ITA members, like all LECs, have known since 1996 that they would be required to provide LNP. Section 251(b)(3) of the Act requires all LECs to provide LNP.³ In its rules implementing the LNP requirements of the Act, the FCC recognized that the public interest would be served by requiring carriers to implement LNP in all areas, but conditioned the requirement to implement LNP in rural areas on a carrier receiving a BFR from another carrier.⁴ Although Section 251(f) of the Act provides that rural carriers may obtain a suspension of their LNP obligations, the FCC has concluded that a suspension is only appropriate under unique and compelling circumstances:

We believe that Congress did not intend to insulate smaller or rural LECs from competition.... Thus, we believe that, in order to justify continued exemption once a bona fide request has been made, or to justify suspension or modification of the Commission's section 251 requirements, a LEC must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry. State commissions will need to decide on a case-by-case basis whether such a showing has been made.⁵

Because consumers increasingly view wireless service as a substitute for wireline service, it is imperative that consumers are able to take their telephone numbers with them if they switch to a wireline or wireless carrier. The FCC has recognized that "there would be a greater likelihood that consumers would view their wireless phones as a potential substitute for their wireline phones and thus the ability of consumers to port their numbers was likely to become an increasingly important factor in consumer

³ 47 U.S.C. § 251(b)(3).

⁴ 47 C.F.R. § 52.26.

⁵ *LNP First Report and Order* at 16118.

choice.”⁶ In fact, “an increasing number of wireless carriers offer service plans designed to compete directly with wireline local telephone service.”⁷ Indeed, Western Wireless, as a rural wireless service provider, competes directly with rural telephone companies, but, without LNP, a significant barrier will remain to full and vibrant competition in rural areas between wireline and wireless carriers.

Clearly, granting ITA members a suspension of a critical component of local competition, *e.g.*, LNP, would undermine the national goal of fostering intermodal competition and would have a direct and adverse impact on emerging competition in rural Idaho. Consumers in rural areas stand to gain the most from LNP, but only if the Commission requires LECs to meet their obligations necessary to open the local telephone market to competition. Other state commissions have recognized that the public interest is served by not allowing the LECs to avoid their legal obligations. For example, the Ohio Commission held that grant of Section 251(f)(2) LNP suspensions should be the exception, rather than the rule:

We believe that Congress did not intend to insulate smaller or rural LECs from competition, and thereby prevent subscribers in those communications from obtaining the benefits of competitive local exchange service.⁸

The Pennsylvania Commission has recognized that “rural residents have as much right to competitive choices as their more numerous urban counterparts” and that as a result, rural LEC suspension petitioners “must present competent evidence that such relief is

⁶ *Verizon Wireless’s Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, Memorandum Opinion and Order, 17 FCC Rcd. 14972 (2002) (“*Verizon Wireless Forbearance Order*”).

⁷ *Id.*

⁸ *Western Reserve Petition*, Case Nos. 99-1542-TP-UNC and 00-430-TP-UNC, 2002 Ohio PUC LEXIS at *13 (Public Utilities Comm’n of Ohio, May 18, 2000), quoting *LNP First Report and Order*, 11 FCC Rcd 15499, 16118 ¶ 1262 (1996).

necessary under Section 251(f)(2).”⁹ Several other state commissions have also rejected rural LEC LNP suspension petitions.¹⁰

1. ITA Has Not Demonstrated That LNP Is Technically Infeasible.

The FCC recently ruled that there is “no persuasive evidence in the record” indicating that LEC-wireless porting even poses “technical difficulties.”¹¹ The Iowa Commission, after conducting a hearing, determined it is “uncontested that it is technically feasible for Iowa Telecom to provide LNP in the exchanges at issue in this case.”¹² Moreover, in other states, rural LECs have implemented the necessary network and equipment changes necessary to provide LNP. Therefore, there is no basis for the Commission to conclude that grant of ITA’s Petition “is necessary to avoid imposing a requirement that is technically infeasible.”¹³

2. ITA Has Not Demonstrated That Implementing LNP Would Be Unduly Economically Burdensome.

Section 251(f)(2) permits the Commission to suspend a LEC’s LNP obligation if such action is “necessary to avoid imposing a requirement that is unduly

⁹ *Petition of Rural and Small Incumbent Local Exchange Carriers for Commission Action Pursuant to Section 251(f)(2) and 253(b) of the Telecommunications Act of 1996*, Docket Nos. P-00971177 and P-00971188, 1997 Pa. PUC LEXIS 146 at *44 (Pennsylvania Public Utility Comm’n, July 10, 1997).

¹⁰ *See, e.g., Petition by the Alliance of North Carolina Independent Telephone Companies for Limited Modification of the Requirement to Provide Number Portability, Order Dismissing Petition Without Prejudice*, Docket No. P-100, Sub 133r (North Carolina Utilities Comm’n, Oct. 7, 2003)(LNP suspension petition dismissed for failure to meet burden of proof); *Iowa Telecommunications Services*, Docket No. SPU-02-18 (SPU-02-19), 2003 Iowa PUC LEXIS 141 (Iowa Utilities Board, April 15, 2003)(LNP suspension petition denied for failure to meet burden of proof); *In the matter of the application of Waldron Telephone Company and Ogden Telephone Company for temporary suspension of wireline to wireless number portability obligations pursuant to §251(f)(2) of the federal Telecommunications Act of 1996, as amended*. Opinion and Order in Case Nos. U-13956 and U-13958). (Michigan Public Service Commission, February 12, 2004).

¹¹ *In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, FCC 03-284 at ¶ 23 (rel. November 10, 2003).

¹² *Iowa Telecommunications Services*, Docket No. SPU-02-18 (SPU-02-19), 2003 Iowa PUC LEXIS 141 at *14 (Iowa Utilities Board, April 15, 2003).

¹³ 47 U.S.C. § 251(f)(2)(A)(iii).

economically burdensome.”¹⁴ The Ohio Commission has held that the statutory phrase, “unduly economically burdensome,” means economic burdens “beyond the economic burdens typically associated with efficient competitive entry.”¹⁵ Without an evidentiary hearing to analyze the facts indicating the likely costs ITA members would incur for implementing LNP, there is no way to conclude that suspension of ITA member companies’ LNP obligations “is necessary to avoid imposing a requirement that is unduly economically burdensome.”¹⁶

It is also important to note that the FCC has established a federal cost recovery plan that enables LECs to recover their LNP implementation costs. FCC Rule 52.33(a) provides:

Incumbent [LECs] may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the [FCC] a monthly number portability charge, as specified in paragraph (a)(1), a number portability query-service charge, as specified in paragraph (a)(2), and a monthly number portability query/administration charge, as specified in paragraph (a)(3).¹⁷

Therefore, there is no basis to conclude that LNP implementation by the ITA members would be “unduly economically burdensome.”

3. ITA Has Not Demonstrated That LNP Would Impose Significant Adverse Impact On Customers Generally.

Section 251(f)(2) permits the Commission to suspend a LEC’s LNP obligations if such action is “necessary to avoid imposing a significant impact on users of telecommunications services generally.”¹⁸ Although LNP could result in a LNP

¹⁴ 47 U.S.C. § 251(f)(2)(A)(ii).

¹⁵ *Western Reserve Petition* at 13.

¹⁶ 47 U.S.C. § 251(f)(2)(A)(ii)(emphasis added).

¹⁷ 47 U.S.C. § 251(f)(2)(A)(ii)(emphasis added).

¹⁸ 47 U.S.C. § 251(f)(2)(A)(i).

surcharge imposed on customers, consumers will also receive numerous offsetting benefits as the FCC has recognized:

We recognize consumers' sensitivity to end-user charges. . . . We anticipate that the benefits of number portability, namely the increased choice and lower prices that result from the competition that number portability helps make possible, will far outweigh the initial costs.¹⁹

ITA has presented no evidence that LNP will have "a *significant* adverse impact on users of telecommunications services generally."²⁰

B. The Public Interest Would Not Be Served By Unconditionally Suspending ITA Member Companies' LNP Obligations.

Section 251(f)(2) of the Act requires the Commission to determine that grant of a carrier's LNP obligations would be "consistent with the public interest, convenience and necessity."²¹ The provision of LNP by LECs is a critical component of a competitive local telephone market. The FCC has observed that the inability of customers to retain their telephone numbers when changing local service providers hampers the development of local competition:

Section 251(b)(2) removes a significant barrier to competition by ensuring that consumers can change carriers without forfeiting their existing telephone numbers.²²

The implementation of LNP will also conserve scarce number resources because it is a precursor to a rural LEC's participation in thousands-block number pooling. If ITA members are relieved of their LNP obligations, then they also will be relieved of their

¹⁹ *Third LNP Order*, 13 FCC Rcd 11701, 11707 ¶ 10 (1998).

²⁰ 47 U.S.C. § 251(f)(2)(A)(i)(emphasis added).

²¹ *See* 47 U.S.C. § 251(f)(2)(B).

²² *Third LNP Order*, 13 FCC Rcd 11701, 11702-04 ¶¶ 3-4 (1998).

responsibility to participate in number pooling, resulting in the underutilization of thousands of telephone numbers.

III. ITA MEMBERS, HOWEVER, HAVE PRESENTED A REASONABLE PLAN FOR IMPLEMENTATION OF LNP, WHICH THE COMMISSION SHOULD CONDITIONALLY GRANT

Notwithstanding the aforementioned concerns raised by Western Wireless, it would appear that ITA members are taking reasonable steps toward compliance, albeit a bit late. Rather than just asking the Commission to grant a temporary suspension without any plan for compliance with the LNP obligations established by the Act and FCC rules, ITA has asked for a 6-month suspension in order to implement a LNP solution based upon using shared infrastructure. Western Wireless commends ITA members for considering an innovative approach to cost-effectively implementing LNP. As a rural wireless carrier, Western Wireless, likewise, has shouldered the burden of implementing LNP over a relatively small customer base. Nonetheless, Congress, the FCC, and state commissions have recognized that LNP is a critical service for consumers and must be implemented.

Western Wireless therefore conditionally supports granting ITA member companies a suspension of their LNP obligations provided that:

1. the length of any temporary suspension is the earlier of 180 days from a final order in this proceeding or November 24, 2004;
2. ITA members are required to file in this proceeding monthly updates on their progress towards implementation of wireline-to-wireless number

portability and hold informational meetings with interested parties within one week of each monthly update filing;

3. ITA members agree to implement wireline-to-wireless number portability consistent with North American Numbering Council ("NANC") Recommendations, and to the extent that such Recommendations do not specifically address certain routing, porting interval, information exchange, and other implementation issues, ITA agrees to actively work with wireless carriers and other interested parties to establish porting processes and procedures that ensure the timely and accurate completion of all porting requests;
4. ITA members agree establish porting processes and procedures, as explained in No. 3 above, by August 30, 2004, or two months prior to wireline-to-wireless porting implementation, whichever is earliest, and file these processes and procedures in this proceeding; and
5. ITA members agree to implement wireline-to-wireless number portability consistent with all applicable rules.

IV. CONCLUSION

For the reasons explained herein, Western Wireless opposes ITA's Petition, but supports a conditionally grant of temporary relief.

Respectfully submitted,

WESTERN WIRELESS CORPORATION

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of March, 2004 a true and correct copy of the foregoing document, *Western Wireless' Conditional Opposition to ITA's Petition for Temporary Suspension*, was forwarded, with all required charges prepaid, by the method(s) indicated to the following:

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