State of Florida

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: June 24, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Maduro, Bulecza-Banks, Casey) DM
Office of the General Counsel (Susac) BLC

RE: Docket No. 040326-TL – Petition of Northeast Florida Telephone Company d/b/a NEFCOM for a suspension or modification of Section 251(b)(2) of the Communications Act of 1934 as amended.

AGENDA: 07/06/04 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

CRITICAL DATES: 10/09/04 - In accordance with §251(f)(2), the Commission should act on NEFCOM's petition within 180 days of the amended petition.

SPECIAL INSTRUCTIONS: Request that this recommendation immediately follow the recommendation in Docket No. 040249-TL.

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040326.RCM.DOC

Case Background

Number Portability is one of the obligations that Congress imposed on all local exchange carriers, both incumbents and new entrants, in order to promote the pro-competitive, deregulatory markets it envisioned. Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace. Number Portability is defined as the ability of users of telecommunications services to retain at the same location, their existing telephone number without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. (§52.21(k), C.F.R.) Location Portability means the ability of users of telecommunications services to retain their existing telephone number without impairment of quality, reliability, or convenience when moving from one physical location to another. (§52.21(i), C.F.R.) The Federal Communications

Commission (FCC) requires number portability, but not location portability. However, some carriers allow limited location porting within a rate center as a courtesy to their customers.

The FCC released the Local Number Portability (LNP) First Report and Order in 1996[1]. In it, the FCC highlighted the critical policy goals underlying the LNP requirement, indicating that "the ability of end users to retain their telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of telecommunications services they can choose to purchase." The FCC found that "number portability promotes competition between telecommunications service providers by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers." (¶ 30) The order also pointed out that Section 251(b) of the Telecommunications Act "requires local exchange carriers to provide number portability to all telecommunications carriers, and thus to Commercial Mobile Radio service (CMRS) providers as well as wireline service providers." (¶ 152)

In Order FCC 03-284[2], the FCC noted that local number portability will encourage CMRS-wireline competition, creating incentives for carriers to reduce prices for telecommunications services and to invest in innovative technologies, and enhancing flexibility for users of telecommunications services. (¶ 9) This order also mandated that local exchange companies (LECs) in the top 100 metropolitan statistical areas (MSAs)[3] must have the ability to port numbers to wireless carriers as of November 24, 2003. (¶ 22) The FCC also recognized that many wireline carriers operating outside the top 100 MSAs may require some additional time to prepare for implementation of intermodal portability, and waived until May 24, 2004, the requirement that wireline carriers operating outside the top 100 MSAs 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. (¶ 29)

In Order FCC 04-12[4], the FCC acknowledged that Two Percent Carriers (carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide) who have not previously upgraded their systems to support LNP may need a limited amount of time to overcome the technical obstacles they face to successfully meet a request for wireline-to-wireless porting. (¶ 8) The FCC also stated in the order that "While we continue to believe rapid implementation of number portability to be in the public interest, we also believe it to be just as important that carriers implement and test the necessary system modifications to ensure reliability, accuracy and efficiency in the porting process." (¶ 9)

On April 12, 2004, Northeast Florida Telephone Company d/b/a NEFCOM, filed a petition requesting that this Commission suspend the FCC's intermodal porting requirement for a period of at least 6 months following the FCC's final disposition of issues pertaining to porting and routing. NEFCOM claims that implementation of the provisions outlined in Section 251(f)(2) would create an extreme financial hardship on their customers and would be anti-

[1] FCC 96-286, In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, Released July 2, 1996.

[2] FCC 03-284, In the Matter of Telephone Number Portability – CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No. 95-116, Released November 10, 2003.

[3] The FCC's list of Florida MSAs in the top 100 include Tampa-St. Petersburg (20), Miami (23), Orlando (34), Fort Lauderdale (36), West Palm Beach-Boca Raton (56), Jacksonville (58), and Sarasota-Bradenton (90).

[4] FCC 04-12, In the Matter of Telephone Number Portability, CC Docket No. 95-116, Released January 16, 2004.

competitive in terms of wireline versus wireless services. By Order No. PSC-04-0485-PCO-TL, issued May 11, 2004, in this docket, the Commission temporarily suspended the intermodal porting requirement for NEFCOM for 60 days from the date of the order to allow staff additional time to review the petition and obtain discovery. The order also stated that staff would bring a recommendation on the merits of the petition to the Commission prior to the expiration of the 60-day suspension period, which ends July 12, 2004.

NEFCOM is a Florida corporation whose principal office is located in Macclenny, Florida. It is a subsidiary of Townes Telecommunications, Inc. (Townes), a family-owned corporation headquartered in Lewisville, Arkansas. Townes owns seven rural operating telephone companies operating in six states. In Florida, NEFCOM provides service in the Macclenny and Sanderson Exchanges, and as of April 30, 2004, had 10,207 access lines in service.

This recommendation addresses NEFCOM's petition to suspend LNP requirements for a minimum of six months after the FCC's full and final disposition of issues associated with the porting interval and the routing of calls between wireline and wireless providers. Thereafter, NEFCOM may seek further relief pursuant to economic impact provisions prescribed in Section 251(f)(2).

JURISDICTION

The Commission is vested with jurisdiction in this matter pursuant to Section 364.16(4), Florida Statutes. Section 364.16(4), Florida Statutes, provides the Commission with authority over both temporary and permanent number portability issues, and acknowledges that providers must have permanent portability in place ". . . as soon as reasonably possible after the development of national standards." Furthermore, under Section 120.80(13)(d), Florida Statutes, when the Commission implements the federal Telecommunications Act, it is authorized to employ procedures consistent with the Act.

The federal Telecommunications Act contemplates that state commissions will act in this area. Specifically, Section 251(f)(2) states that 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." It is Section 251(b)(2) that requires local exchange companies to provide number portability, to the extent technically feasible, in accordance with the requirements prescribed by the Federal Communications Commission (FCC). The FCC has interpreted this requirement to include porting numbers to wireless carriers. See 18 FCC Rcd 23697 (FCC 2003); and 11 FCC Rcd 8352, 8368 (FCC 1996). In accordance with Section 251(f)(2), the Petitioner in this case is seeking relief from the requirements of Section 251(b)(2) as implemented by the FCC.

Based on the foregoing, staff believes that the Commission has substantive and procedural authority to address the Petition in this Docket in the manner herein recommended.

Discussion of Issues

Issue 1: Should the Commission grant NEFCOM's request for a suspension of the intermodal porting requirements for a minimum of six months after the FCC's full and final disposition of issues associated with the porting interval and the routing of calls between wireline and wireless providers?

Recommendation: No. However, staff recommends that the Commission suspend NEFCOM's intermodal porting requirement until six months from the date of the Commission vote on this recommendation. **(MADURO, CASEY, BULECZA-BANKS, SUSAC)**

Staff Analysis: Carriers are required to support number portability in areas outside the largest 100 MSAs within six months after receiving a request for number portability or by May 24, 2004, whichever is later. (FCC 02-215, ¶ 31) NEFCOM has received three bonafide requests from wireless carriers to support intermodal porting, one dated May 16, 2003, one dated May 28, 2003, and one dated March 31, 2004. Since carriers are required to support number portability in areas outside the largest 100 MSAs within six months after receiving a request for number portability or by May 24, 2004, whichever is later, the May 24, 2004, date prevailed.

NEFCOM has requested that this Commission grant it an extension of the porting requirement for six months following the FCC's full and final disposition of issues associated with the porting interval and the routing of calls between wireline and wireless providers. NEFCOM has also stated that it may seek further relief thereafter, pursuant to economic impact provisions prescribed in Section 251(f)(2).

NEFCOM is basing its petition on authority granted to state Commissions in §251(f)(2) of the Telecommunications Act of 1996 which states:

> 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;
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> (ii) to avoid imposing a requirement that is unduly economically burdensome; or
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> (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.

In accordance with §251(f)(2), the Commission should act on NEFCOM's petition within 180 days of the petition filing date of April 12, 2004. Thus, final action is due on October 9, 2004.

NEFCOM states in its petition that it will need to expend approximately $455,700 to meet the LNP requirements as prescribed by the FCC, and believes these costs make implementation of intermodal porting unduly economically burdensome to its customers. NEFCOM indicates that an LNP surcharge of $0.74 per month over a five-year period will be necessary, and this would equate to an increase of 8.2% over its standard rate of $9.00. In addition, NEFCOM stated that it anticipates non-recurring charges of $27,400 which could increase the average customer bill by an additional $0.22 per month.

NEFCOM also pointed out that after the initial five-year period when the surcharge expires, it anticipates that the company will continue to expend approximately $59,100 annually in costs associated with LNP. Because those costs will occur after the requisite LNP five-year cost recovery period, NEFCOM would most likely seek recovery thorough an end-user surcharge.

Staff submitted two sets of data requests to NEFCOM to determine the appropriateness of the estimated costs. It is not this Commission's responsibility to approve the amount of an LNP surcharge. According to 47 C.F.R. § 52.33, NEFCOM must petition the FCC for LNP cost recovery. However, the Florida PSC must determine, through this petition, if NEFCOM customers will experience a significant adverse economic impact due to LNP implementation.

An examination of the $455,700 estimated cost shows that it includes $160,200 in non-recurring costs and $295,500 in recurring costs ($59,100/year over five years).

	Non-Recurring	5Yr Total	Annual-Recurring
Additional Software Feature Requirements	$119,600		
Billing/Customer Care Systems	$ 3,000		
Service Order Administration	$ 2,000	157,500	$31,500
LNP Queries	$ 1,000	90,000	$18,000
Connection Costs with LNP Database	$ 600	48,000	$ 9,600
Translation Costs	$ 4,000		
Technical Implementation and Testing	$ 4,000		
Administrative Expense	$ 10,000		
Regulatory	$ 1,000		
Customer Care	$ 5,000		
Total	$160,200	$295,000	$59,100

Staff believes that some of the costs proposed by NEFCOM may need to be broken down and not included in the LNP surcharge. According to NEFCOM's petition, the software cost of $119,600 includes features such as AIN, SS7, and CLASS which should not be recoverable through the LNP surcharge. In Order FCC 98-82[5], the FCC states:

> The Commission tentatively defined carrier-specific costs directly related to providing number portability as costs such as "the costs of purchasing the switch software necessary to implement a long-term number portability solution." The Commission tentatively defined carrier-specific costs not directly related to providing number portability as costs such as "the costs of network upgrades necessary to implement a database method." The Commission listed as examples of costs not directly related to providing number portability "the costs of upgrading SS7 capabilities or adding intelligent network (IN) or advanced intelligent network (AIN) capabilities," and explained that "[t]hese costs are associated with the provision of a wide variety of services unrelated to the provision of number portability, such as custom local area signaling service (CLASS) features."

In answer to staff data request No. 40, NEFCOM states that the $600 in non-recurring and $9,600 cost for recurring connection costs are estimates of new SS7 links to BellSouth which may be needed. As stated earlier, staff believes SS7 costs should not be included in the LNP surcharge.

As stated above, NEFCOM also believes that it will incur additional non-recurring charges of $27,400/year which would include $2,400 for translation costs, $1,000 for marketing, and $24,000 for a customer service representative. In response to data request No. 44, NEFCOM stated that the customer service representative would be dedicated to working only on LNP issues. Staff questions the need to employ a full-time person to handle LNP for a carrier with a customer base of 10,207 consumers.

Other issues that NEFCOM brought up in its petition include time intervals for porting numbers, wireless to wireline porting, and porting numbers outside of a wireline rate center, all issues which will be addressed by the FCC in future rulings. In FCC 03-284, the FCC found that the current four day porting interval represents the outer limit of what they would consider to be a reasonable amount of time in which wireline carriers may complete ports. (¶38)

The FCC did recognize in FCC 03-284 that wireline carriers cannot currently accommodate all potential requests from customers with wireless service to port their numbers to a wireline service provider due to a mismatch between the rate center associated with the wireless number and the rate center in which the wireline carrier serves the customer. The FCC stated that to the extent that wireline carriers may have fewer opportunities to win customers through porting, the disparity results from the wireline network architecture and state regulatory

[5] In the Matter of Telephone Number Portability, CC Docket No. 95-116, Third Report and Order, Adopted: May 5, 1998 Released: May 12, 1998

requirements, rather than FCC rules, and the focus on porting is to promote competition, rather than protecting individual competitors. (¶27)

NEFCOM's concerns regarding porting numbers outside of a wireline rate center are associated with the routing and rating of calls where porting results in calls to the ported number being routed outside the original rate center. The FCC, in 03-284, clarified that the requirements of the LNP rules do not vary depending on how calls to the number will be routed after the port occurs.

NEFCOM is not asserting that intermodal LNP is technically infeasible if a six month implementation period is allowed, or that it is a financial burden on the company. In fact, in response to data request No. 12, NEFCOM stated that it "stands ready to provide the necessary capital to implement LNP, should that be the ultimate decision of the commission." In response to staff data request No. 29, NEFCOM states that if the PSC denies NEFCOM's request to suspend the LNP requirement until six months after the FCC has made rulings in all the outstanding issues, absent an appeal or stay of the PSC Order, NEFCOM would follow the PSC and FCC directive to implement LNP.

As mentioned in the case background, NEFCOM is a subsidiary of Townes Telecommunications, Inc., which owns seven rural operating telephone companies in six states. NEFCOM is the largest of the Townes seven companies with 10,227 lines. Townes has already implemented LNP in two of its companies, Electra Telephone Company (Electra) in Texas, and MoKan Dial, Inc. (MoKan Dial) in Kansas. Electra has 1,868 access lines, and MoKan Dial has 4,236 access lines, both of which are significantly smaller that NEFCOM.

NEFCOM has long known of its requirement to provide intermodal LNP. It has received three bonafide requests from wireless carriers to support intermodal porting beginning in May 2003. It was granted a six-month waiver of the November 24, 2003 deadline by the FCC through Order FCC 04-12[6]. It also was granted an additional 60-day temporary suspension by this Commission to allow staff to obtain discovery.

Staff believes that it would be imprudent to allow NEFCOM to wait for the FCC to make final rulings on all outstanding intermodal LNP issues before implementing intermodal LNP. Intermodal LNP has occurred, and it is working in other areas. While it is true that there are outstanding issues at the FCC, intermodal LNP is something that will be continually evolving. Staff also believes that in the final analysis, the LNP surcharge placed on NEFCOM customers would not be an undue burden, especially if non-LNP costs, and other administrative costs found unnecessary, are removed from the surcharge calculation.

Staff agrees with the FCC that number portability is an important tool for promoting competition and bringing more choice to consumers, and that these benefits are particularly important in smaller markets where competition may be less robust than in more urban areas.

[6] In the Matter of Telephone Number Portability, CC Docket No. 95-116, Adopted: January 13, 2004, Released: January 16, 2004.

carriers to provide innovative service offerings, higher quality services, and lower prices. (DA 04-1382[8], ¶7) While staff would like to see intermodal LNP implemented as soon as possible for NEFCOM's customers, we recognize the timeframe and logistics necessary to do so. Therefore, staff recommends that the Commission suspend NEFCOM's intermodal porting until six months from the date of the Commission vote.

Participate in Thousands-Block Number Pooling, Petition of TMP Corp. and TMP Jacksonville, LLC for Waiver of Section 52.31(a) of the Commission's rules, Petition of Choice Wireless, LC for Waiver of Section 52.31(a) of the Commission's Rules, CC Docket No. 95-116, Adopted: May 21, 2004, Released: May 24, 2004.

8 In the matter of Telephone Number Portability, NOW Licenses, LLC Request for Temporary Partial Waiver of Section 52.31 of the Commission's Rules Pertaining to the Porting In of Numbers, CC Docket No. 95-116, Adopted: May 14, 2004, Released: May 17, 2004.

Issue 2: Should this docket be closed?

Recommendation: If no person whose interests are substantially affected by the proposed agency action files a protest within the 21-day protest period, this docket should be closed upon the issuance of a consummating order. **(SUSAC)**

Staff Analysis: If no person whose interests are substantially affected by the proposed agency action files a protest within the 21-day protest period, this docket should be closed upon the issuance of a consummating order.