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BEFORE THE PUBLIC UTILITY COMMISSION**

OF OREGON

UM 1146

In the Matter of)	
)	
ST. PAUL COOPERATIVE TELEPHONE ASSOCIATION)	ORDER
)	
Petition for Temporary Suspension of Wireline to Wireless Number Portability Obligations.)	

DISPOSITION: PETITION GRANTED AND MODIFIED

On April 23, 2004, St. Paul Cooperative Telephone Association (St. Paul) filed a petition for temporary suspension of wireline to wireless number portability obligations until December 31, 2007. St. Paul is a small telephone cooperative, serving approximately 670 customers.

Background. Local Number Portability (LNP) is the ability of a customer to retain a currently used telephone number, even as the carrier providing service to that number is changed. LNP is an obligation placed on all local exchange carriers (LEC) by Section 251(b) of the Telecommunications Act of 1996 (the Act). The term LEC includes both Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs). Both the Act and the rules of the Federal Communications Commission (FCC) specify that state commissions administer many aspects of LNP implementation. Under 251(f)(2) of the Act, the Oregon Commission has the authority and obligation to act on the petition within 180 days of the filing date. In the instant case, the Commission must act by October 20, 2004.

The FCC has issued a number of orders setting forth the obligations of carriers to participate in the porting of customers' telephone numbers, including one which addresses the porting of numbers from wireline to wireless carriers ("Intermodal Porting").¹ The FCC directed wireline carriers outside the top 100 metropolitan areas, including both ILECs and CLECs, to implement number portability by May 24, 2004. Carriers outside the metropolitan areas have 180 days after receiving a bona fide request to implement number portability. On May 23, 2003,

¹ Memorandum Opinion & Order & Further Notice of Proposed Rulemaking, *In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, FCC Docket No. 95-116 (FCC released November 10, 2003) ("Intermodal Porting Order").

Sprint PCS sent St. Paul a request for intermodal portability. Sprint PCS did not object to St. Paul's petition for a temporary suspension.

The Petition. St. Paul requests that the Commission grant a temporary suspension of the obligation to provide intermodal portability until December 31, 2007.

Discussion. Section 251(f)(2) of the Act provides guidelines for state commissions to determine whether to grant waivers from, or suspension of, various requirements of the Act. The Commission recently granted a temporary waiver for seven petitions in the Portland Metropolitan Area. *See* Order No. 03-746, docket UM 1114.

St. Paul's current switch is not LNP compatible and has not been upgraded to use Signaling System 7. Staff initially recommended a temporary suspension of wireline to wireless number portability obligations until December 31, 2004. The Commission considered St. Paul's petition and Staff's recommendation at the June 22, 2004, public meeting. At the public meeting, St. Paul discussed its reasons for the requested waiver until December 2007. The Commission directed Staff and St. Paul to discuss technical issues, timing, the feasibility of upgrading or replacing its switch, and whether another date would be acceptable to both parties. After discussions, the parties agreed that St. Paul could meet its LNP obligations by July 1, 2006.

During the proceedings of the June 22, 2004, public meeting, the Commission received a copy of a public letter from Michael K. Powell, Chairman of the Federal Communications Commission (FCC), regarding waivers of LNP obligations. The letter urged the Commission to consider the burdens on small businesses in addressing those waiver requests and to grant the requested relief if found appropriate. The letter indicates some relaxing of the FCC's general approach to requests for waivers of LNP obligations.

At its July 20, 2004, public meeting, the Commission adopted Staff's recommendation and granted St. Paul's petition for temporary suspension of its wireline to wireless number portability obligations until July 1, 2006. Staff's recommendation is attached as Appendix A and is incorporated by reference.

ORDER

IT IS ORDERED that St. Paul Cooperative Telephone Associations' petition for temporary suspension of wireline to wireless number portability obligations until July 1, 2006, is granted.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

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Number portability allows customers to keep their telephone numbers when changing from one service provider to another. Number portability was first implemented by wireline carriers in large metropolitan areas, and it has been in effect in Portland since September 1998.

Since enactment of the Act, the FCC has issued several orders related to number portability. For areas outside the top 100 metropolitan statistical areas, the FCC directed wireless carriers (that is cellular carriers, aka CMRS providers) and wireline carriers to implement LNP by May 24, 2004, or within 180 days of receiving a bona fide request for LNP.² Carriers within the top 100 metropolitan areas were required to implement number portability by November 24, 2003. Number portability from wireline to wireless is called inter-modal portability.

On May 23, 2003, Sprint PCS sent St. Paul a request for inter-modal portability. Staff advised Sprint PCS that we received the petition from St. Paul. The cellular carrier did not indicate that it objected to St. Paul's petition.

Section 251(f)(2) of the Act provides guidelines for state commissions to make determinations whether to grant waivers from, or suspensions of, various requirements of the Act. Section 251(f)(2) provides:

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;

(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.

² Memorandum Opinion & Order and Further Notice of Proposed Rulemaking, *In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, Order No. FCC 03-284, CC Docket No. 95-116, released November 10, 2003. ("Inter-modal Porting Order")

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The Petition and Procedural History

St. Paul originally requested the Commission to grant a waiver from number portability obligations until December 31, 2007. The company was considering whether to upgrade its current switch or buy a replacement. The company's current switch is not LNP compatible, and, on inquiry, the company said that its switch is not able to use Signaling System 7 (SS7), which technology is necessary for LNP to function.

The Commission considered St. Paul's petition at the June 22, 2004, public meeting, where the company articulated its reasons for a waiver until December 2007. Staff had recommended that the company be granted a waiver until December 2004. The Commission directed staff and the company to meet and discuss technical issues, timing, and the feasibility of upgrading or replacing its switch, and whether another date for a waiver would be acceptable to both parties. St. Paul and staff did meet.

The result is a compromise. The reasons will be discussed below. Staff now recommends that St. Paul be granted a waiver until July 1, 2006, and the company accepts that deadline.

Staff Comments

The Commission has four general options regarding the petition.

- A. Grant a waiver until December 31, 2007, as requested.
- B. Deny the petition.
- C. Grant a waiver until some date before December 2007.
- D. Grant an interim waiver and set the petition for investigation and hearing.

Staff believes that St. Paul's initial request for a waiver until December 2007 is too far into the future. The Commission indicated that it had the same reaction. Obviously, the company has not met the deadline of May 24, 2004. However, the company cannot implement number portability for about a year because of the time needed to select a switch vendor, order a switch, have it delivered and installed, and undergo thorough testing before 'going live' with the new switch.

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We also discussed the feasibility of upgrading St. Paul's switch. The current switch is a Stomberg-Carlson DCO, an early generation digital switch. It was installed in 1987, and St. Paul is depreciating it over 20 years (until December 2007). An upgrade would cost in the order of \$200,000, which would include SS7, LNP, and meeting the requirements of the Communications Assistance for Law Enforcement Act (CALEA). An upgrade to St. Paul's switch could be done this year, however, staff agrees with the company that it would not make economic sense, given the current switch is nearing the end of its economic life. The \$200,000 estimate is about \$298 per line.

St. Paul is considering buying a 'soft switch'. A 'soft switch' is a new generation digital switch. In early versions of digital switches many of the capabilities are hard wired. In a 'soft switch' those capabilities are controlled by software and computer processing. The new switches are physically smaller than earlier ones. A 'soft switch' is fairly new technology, but it is not cutting edge. Other companies, such as Pine Telephone Systems and Verizon, have recently installed 'soft switches'.

St. Paul expressed reluctance to invest its customers'/members' money in what it perceives as cutting edge technology. The company does not have the resources that large companies do to cope with the problems that routinely accompany brand new technology. However, we believe that over the next year or so, vendors of 'soft switches' will iron out many of the problems associated with the new technology.

Staff understands St. Paul's preference to keep its current switch until it is fully depreciated in 2007. That is an economic issue rather than a technical issue. As staff stated in its report for the June 22 public meeting, the FCC has been pretty hardnosed about granting waivers to wireline or wireless carriers from obligations to implement number portability.

The costs indicated above illustrate the problem facing ILECs that serve relatively few customers from a given switch. Costs to upgrade a switch are about the same, whether the switch serves 670 customers or 6700 customers. But, the cost per customer does vary widely. Staff does not assert that such costs would be paid explicitly by, or entirely by, St. Paul customers because, as a small rural company, the company is eligible for various subsidies. However, such costs would be incurred and would fall on some telecommunications users somewhere.

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On June 22, while this Commission was holding its regular public meeting, we received an e-mail copy of a public letter, from Michael K. Powell, Chairman of the FCC, regarding waivers of LNP obligations. In the letter he stated, "I urge state commissions to consider the burdens on small businesses in addressing those waiver requests and to grant the requested relief if the state commissions deem it appropriate." Under Section 251(f)(2) of the Act, the Oregon Commission has the authority to comply with Chairman Powell's request. The letter does not change the law or the FCC's rules, however, it indicates some relaxing of the FCC's approach to requests for waivers from LNP obligations.

State commissions are left in something of a quandary. On one hand they must consider the question, 'Is it in the public interest, or is it unduly economically burdensome, to require deployment of number portability at a cost of \$50 or \$200 per line, for all customers, so that a few customers can port their telephone numbers to a competing carrier?' On the other hand the state commissions must recognize that the Act and the FCC require that number portability be deployed. The FCC has not given any guidance concerning what level of dollar costs per line would justify granting a long term or permanent waiver from requirements to implement LNP. The FCC has not stated that if it costs more than \$50 per line, or more than \$150 per line, to implement LNP, then there is a presumption that LNP for that carrier is not in the public interest.

Staff discussed these issues with Dale Merton, President of St. Paul's Board of Directors. He agreed that the company could meet its LNP obligations by July 1, 2006, and would be willing to accept that implementation date, even though it would require St. Paul to replace its switch one and a half years before the intended retirement date. In view of the burden on St. Paul and the fact that 'soft switch' technology is relatively new, staff recommends that the Commission grant a waiver until July 1, 2006. That date is halfway between our original recommendation of December 2004 and St. Paul's original request of December 2007.

PROPOSED COMMISSION MOTION:

St. Paul Cooperative Telephone Association be granted a temporary suspension of wireline to wireless number portability obligations until July 1, 2006.