

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Petition for Suspension of the Federal)	
Communications Commission Requirement)	Case No. IO-2004-0231
To Implement Number Portability.)	

**SPRINT APPLICATION TO INTERVENE
AND RESPONSE TO PETITION FOR SUSPENSION
AND MOTION FOR EXPEDITED TREATMENT**

COMES NOW Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint") and respectfully files its Application to Intervene and Response to Petition for Suspension in the above mentioned matter. Sprint opposes Petitioners request for a complete waiver of its porting obligations; however, Sprint does not oppose a six month extension from the date of the FCC's clarifying order until May 10, 2004. In support of its Application and Response, Sprint states as follows:

1. On November 19, 2003, Cass County Telephone Company (Cass County), Citizens Telephone Company of Higginsville, Missouri Inc. (Citizens), Green Hills Telephone Corporation (Green Hills), KLM Telephone Company (KLM), and Lathrop Telephone Company (Lathrop), (hereinafter "Petitioners") files its Petition for Suspension and Motion for Expedited Treatment in this case. "Petitioners seek suspension and waiver of this decision because it is technically infeasible for them to comply with the Order by November 24, 2003." (Page 2). However, in its Conclusion, "Petitioners seek a Commission Order on November 21, 2003, granting temporary suspension of the FCC's intermodal porting obligations until May 24, 2004." (page 13)

2. Sprint Spectrum L.P. is a Commercial Mobile Radio Service provider as that term is defined in the Federal Telecommunications Act and is subject to the jurisdiction of the FCC. Further, Sprint Spectrum L.P. is a limited partnership organized under the laws of the State of

Delaware. Sprint Spectrum L.P. is duly authorized to conduct business in Missouri with its principle office located at 6200 Sprint Parkway, Overland Park, KS 66251.

3. No party to this action will be adversely affected or otherwise harmed and the interests of justice would be served. Sprint will accept the case and its current schedule as it stands.

4. Copies of pleadings, correspondence, and orders should be addressed to:

Lisa Creighton Hendricks
6450 Sprint Parkway, Bldg. 14
Mail Stop: KSOPHN0212-2A253
Overland Park, Kansas 66251
Voice: 913-315-9363 Fax: 913-762-0509
lisa.c.creightonhendricks@mail.sprint.com

5. Pursuant to the Commission's Rules related to intervention [4 CSR 240-2.075(2)], Sprint opposes the complete waiver and/or suspension of the FCC's obligations. However, Sprint realizes, based upon Petitioner's representations, that it is not feasible for these carriers to become LNP capable in one week. Sprint notes, however, that this situation is one largely of the Petitioners' own making. As noted in its Petition, Petitioners received bona fide requests some time ago from Sprint and Verizon Wireless ("Verizon"). Rather than take prudent steps to implement LNP within the FCC mandated timeline, the carriers waited until the eleventh hour to file an application for a suspension and even then failed to support the application with specific reasons for its requested suspension. Petitioners have not presented "substantial, credible evidence" that they need a full six-month extension of their LNP obligation (as opposed, for example, to a sixty day extension).¹ Sprint also notes that Sprint and Verizon have already established agreements with their wireline affiliates that specifically provide for intermodal porting. Nevertheless, the Petitioners concede they can become LNP capable within six months, and Sprint does not oppose a six-month extension

¹ In this regard, the FCC has established implementation benchmarks for LECs. *See* 47 C.F.R. § 52.23(b)(2)(iv).

from the date of the FCC order, *i.e.*, until May 10, 2004, of the requirement for the Petitioners to provide LNP. However, Petitioners should exercise appropriate measures to provide LNP as soon as possible and should provide LNP prior to that date, if feasible.

6. The FCC in its November 10, 2003 *LEC-Wireless Porting Clarification Order* reaffirmed that LECs must support LEC-wireless porting upon request. Under FCC Rule 52.23(c), LECs must provide LNP "within six months after a specific request by another telecommunications carrier."² In its *Clarification Order*, the FCC confirmed that LECs providing their services in the top 100 Metropolitan Statistical Areas ("MSAs") must provide LNP by November 24, 2003 if they received a bona fide request ("BFR") before May 24, 2003.³ In contrast, LECs providing their services outside the top 100 MSAs need not begin providing LNP before May 24, 2004.

7. Petitioners acknowledge that some or all of its service areas are within the Kansas City MSA which is one of the top 100 MSAs. Petitioners also acknowledge that Verizon and/or Sprint sent correspondence to Petitioners requesting LNP by November 23, 2003. Petitioners argue that because neither Sprint nor Verizon have either (a) interconnection agreements with any of the Petitioners or (b) number resources associated with any of the Petitioners' rate centers⁴, that the bona fide request is not valid. Sprint notes, however, that the FCC explicitly rejected claims that interconnection agreements and/or number resources are required for intermodal number porting.

² 47 C.F.R. § 52.23(c). *See also id.* at 52.23(b)(1) ("All LECs must provide a long-term database method for number portability in the 100 largest [MSAs] . . . in switches for which another carrier has made a specific request for the provision of number portability."). The FCC has made clear that LECs must begin providing LNP on the date that the requesting carrier specifies in its BFR, so long as the date is at least six months in advance of the identified start date. *See Fourth LNP Order*, CC Docket No. 95-116, FCC 03-126, at ¶ 10 (June 18, 2003).

³ *See LEC-Wireless Porting Clarification Order* at ¶ 29 ("[O]ur holding in this order requires wireline carriers to support wireline-to-wireless porting in accordance with this order by November 24, 2003."). *See also id.* at ¶ 22 ("We conclude that, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.").

⁴ Petitioners' Motion, page 8

Both the (a) number resource and (b) interconnection agreement issues are discussed in detail below.

8. In its January 10, 2003 Order, the FCC explicitly ruled that wireless carriers are not required to have points of interconnection or numbering resources in the same rate center as the assigned number for wireline-to-wireless porting. Specifically, the FCC stated as follows (footnotes omitted):

24. Second, neither the Commission's LNP rules nor any of the LNP orders have required wireless carriers to have points of interconnection or numbering resources in the same rate center as the assigned number for wireline-to-wireless porting. In the Local Number Portability *Second Report and Order*, the Commission adopted NANC recommendations regarding several specific aspects of number portability implementation, including technical and operational standards for the provision of number portability by wireline carriers. In this context, the Commission adopted the NANC recommendations concerning the boundaries applicable to wireline-to-wireline porting. Specifically, the Commission adopted NANC recommendations limiting the scope of ports to wireline carriers based on wireline carriers' inability to receive numbers from foreign rate centers.

26. We reject the argument advanced by certain wireline carriers, that requiring LECs to port to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number would constitute a new obligation imposed without proper notice. In fact, the requirement that LECs port numbers to wireless carriers is not a new rule. Citing the D.C. Circuit's decision in the *Sprint* case specifying the distinction between clarifications of existing rules and new rulemakings subject to APA procedures, Qwest, for example, argues that the permitting wireline-to-wireless porting in the manner outlined above would change LECs' existing porting obligations. As described earlier, however, section 251(b) of the Act and the Commission's Local Number Portability *First Report and Order* impose broad porting obligations on wireline carriers. Specifically, these authorities require wireline carriers to provide portability to all other telecommunications carriers, including wireless service providers. While the Commission decision in the Local Number Portability *Second Report and Order* limited the scope of wireline carriers' porting obligation with respect to the boundary for wireline-to-wireline porting, the Commission, as noted above, has never established limits with respect to wireline carriers' obligation to port to wireless carriers. The clarifications we make in this order interpret wireline carriers' existing obligation to port numbers to wireless carriers. Therefore, these clarifications comply with the requirements of the Administrative Procedure Act as well as the D.C. Circuit's decision in the *Sprint* case.

9. Likewise, the FCC's January 10, 2003 Order could not have been clearer in addressing the interconnection agreement issue raised by the Petitioners (footnotes omitted).

34. *Discussion.* We find that wireless carriers need not enter into section 251 interconnection agreements with wireline carriers solely for the purpose of porting numbers. We note that the intermodal porting obligation is also based on the Commission's authority under sections 1, 2, 4(i) and 332 of the Act. Sprint argues that interconnection agreements are not required to implement every section 251 obligation. Sprint also claims that because porting involves a limited exchange of data (e.g., carriers need only share basic contact and technical information sufficient to allow porting functionality and customer verification to be established), interconnection agreements should not be required here. We agree with Sprint that wireline carriers should be required to port numbers to wireless carriers without necessarily entering into an interconnection agreement because this obligation can be discharged with a minimal exchange of information. We thus find that wireline carriers may not unilaterally require interconnection agreements prior to intermodal porting. Moreover, to avoid any confusion about the applicability of section 252 to any arrangement between wireline and wireless carriers solely for the purpose of porting numbers, we forbear from these requirements as set forth below.

35. To the extent that the *Qwest Declaratory Ruling Order* could be interpreted to require any agreement pertaining solely to wireline-to-wireless porting to be filed as an interconnection agreement with a state commission pursuant to sections 251 and 252 of the Act, we forbear from those requirements. First, we conclude that interconnection agreements are not necessary to prevent unjust or unreasonable charges or practices by wireless carriers with respect to porting. The wireless industry is characterized by a high level of competition between carriers. Although states do not regulate the prices that wireless carriers charge, the prices for wireless service have declined steadily over the last several years. No evidence suggests that requiring interconnection agreements for intermodal porting is necessary for this trend to continue.

36. For similar reasons, we find that interconnection agreements for intermodal porting are not necessary for the protection of consumers. The intermodal LNP requirement is intended to benefit consumers by promoting competition between the wireless and wireline industries and creating incentives for carriers to provide new service offerings, reduced prices, and higher quality services. Requiring interconnection agreements for the purpose of intermodal porting could undermine the benefits of LNP to consumers by preventing or delaying implementation of intermodal porting. We also do not believe that the state regulatory oversight mechanism provided by Section 251 is necessary to protect consumers in this limited instance.


37. Finally, we conclude that forbearance is consistent with the public interest. Number portability, by itself, does not create new obligations with regard to exchange of traffic between the carriers involved in the port. Instead, porting involves a limited exchange of data between carriers to carry out the port. Sprint, for example, notes that to accomplish porting, carriers need only exchange basic contact information and connectivity details, after which the port can be rapidly accomplished. Given the limited data exchange and the short time period required to port, we conclude that interconnection agreements approved under section 251 are unnecessary. In view of these factors, we conclude that it is appropriate to forbear from requiring interconnection agreements for intermodal porting.

10. In not opposing a six-month extension of the FCC's requirement that the Petitioners provide LNP, it is important to note that Sprint's action is **not** based upon any concession that such an extension is warranted by § 251(f)(2). To the contrary, Sprint believes that the Petitioners have not met their burden to obtain an extension pursuant to §251(f)(2). While Sprint does not challenge the claim that the individual carriers represent less than two percent of the Nation's subscriber lines, Sprint points out that there are additional criteria that the Petitioners must meet. However, Sprint believes that it is not a productive use of the Commission's time and resources to spend further time and expense on requiring the Petitioners to give greater specificity concerning the alleged obstacles to complying in a shorter time period.

WHEREFORE, Sprint respectfully seeks a Commission Order granting its Application for Intervention and, in accordance with its comments above, Sprint does oppose any extension beyond May10, 2004 with the understanding that LNP will be implemented as soon as feasible. However, these carriers have not met their burden of proof demonstrating entitlement to more permanent relief under the criteria Congress established in Section 251(f)(2) of the Communications Act. Accordingly, Sprint submits that this Commission's order should clearly state that any extension is not based upon any finding under § 251 (f)(2).

Respectfully submitted,

SPRINT


Lisa Creighton Hendricks
6450 Sprint Parkway, Bldg. 14
Mail Stop: KSOPHN0212-2A253
Overland Park, Kansas 66251
Voice: 913-315-9363
Fax: 913-523-9829
lisa.c.creightonhendricks@mail.sprint.com


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been faxed, mailed or hand-delivered to the following counsel of record on this 20th day of November 2003:

General Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

W.R. England
Brydon, Swearengen & England
P. O. Box 456
Jefferson City, MO 65102

Michael F. Dandino
Office of Public Counsel
P.O. Box 2230
Jefferson City, MO 65102



Lisa Creighton Hendricks