ORIGINAL

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040326-TL

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April 12, 2004

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COMMISSION CLERK

Ms. Blanca S. Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

Re: In the Matter of the Application for Northeast Florida Telephone Company d/b/a NEFCOM for Suspension or Modification of Section 2519(b)(2) of the Communications Act of 1934 as amended

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket on behalf of Northeast Florida Telephone Company d/b/a NEFCOM are an original and fifteen (15) copies of NEFCOM' Petition for A Suspension or Modification of Section 251(b)(2) of the Communications Act of 1934 as amended.

Please acknowledge receipt of these documents by stamping the extra copy of this letter filed and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman

KAH/rl
Enclosures
NFTC\bayo.412ltr

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of the Application of Northeast Florida Telephone Company d/b/a NEFCOM for Suspension or Modification of Section 251(b)(2) of the Communications Act of 1934 as amended.	)	Docket No. 040326-TL Filed: April 12, 2004

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

Pursuant to Section 251(f)(2) of the Telecommunications Act of 1996 ("the Act"), 47 U.S.C. § 251(f)(2), Northeast Florida Telephone Company d/b/a/ NEFCOM (NEFCOM) hereby respectfully petitions the Florida Public Service Commission (Commission) for a suspension or modification of the local number portability (LNP) requirement in Section 251(b)(2) of the Communications Act of 1934, as amended (the Act). NEFCOM also requests an immediate temporary suspension of Section 251(b)(2) pending this Commission's consideration of the suspension request until six (6) months following the Commission's decision. In support of this Petition, NEFCOM states as follows:

1. All notices, pleadings, staff recommendations, orders or other documents filed or served in this docket should be provided to the following representatives of NEFCOM:

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I. INTRODUCTION

2. Section 251(b)(2) states that all local exchange carriers (LECs) have "[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[1] The Federal Communications Commission (FCC) previously promulgated rules and deployment schedules to implement local number portability (LNP) by wireline carriers.[2] The FCC later adopted recommendations from the North American Numbering Council (NANC) for the implementation of wireline-to-wireline number portability.[3] The guidelines developed by NANC limited porting between LECs to carriers with facilities or numbering resources in the same rate center to accommodate technical limitations associated with the proper rating of wireline calls. It was unclear, however, what obligations wireline carriers had to port numbers to wireless carriers until the FCC released its Intermodal Porting Order on November 10, 2003.[4] The FCC found that LECs must implement LNP to allow porting to wireless carriers even when the wireless carrier does not have a point of interconnection or telephone numbers in the LEC's affected rate center. The FCC's Intermodal Porting Order required wireline carriers to begin porting numbers to wireless carriers on November 24, 2003 or May 24, 2004, depending on whether the wireline carrier had exchanges in the top 100 MSAs. Finally, the FCC Intermodal Porting Order asks but does not resolve, how LNP can be implemented to allow porting from

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[1] 47 U.S.C. §251(b)(2).
[2] Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (First Report and Order).

[3] Telephone Number Portability, CC Docket No, 95-116, Second Report and Order, 12 FCC Rcd 12,281 (1997) (Second Report and Order).
[4] Telephone Number Portability, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 03-284, rel. Nov. 10, 2003. (Intermodal Porting Order).

a wireless carrier to a wireline carrier when there is a "mismatch" in rate centers.

II. BACKGROUND

3. NEFCOM is a Florida corporation with its principal office located at 130 North Fourth Street, Macclenny, Florida. NEFCOM is engaged in the provision of general telecommunications services in the State of Florida subject to the jurisdiction of this Commission. NEFCOM currently provides basic local exchange service in the Macclenny and Sanderson exchanges, and, as of March 1, 2004, had 10,227 access lines in service.

4. On May 16, 2003, NEFCOM received a request for LNP from Sprint PCS, a wireless carrier. Sprint PCS does not have a point of interconnection with NEFCOM within NEFCOM's basic local service area. On May 28, 2003, NEFCOM received a request for LNP from Verizon Wireless, which also does not have a point of interconnection or numbering resources in NEFCOM's rate centers. Prior to receiving the request from Sprint PCS and Verizon Wireless, NEFCOM had not received any requests for LNP from wireline or wireless carriers.

5. NEFCOM was unsure if it would be required to implement wireline-to-wireless LNP by November 24, 2003 since the carriers requesting LNP did not have a point of interconnection in NEFCOM's rate centers and because of certain other issues concerning the FCC's rules. The FCC's November 10, 2003 Intermodal Porting Order clarified the obligations to provide LNP by November 24, 2003 even when the requesting carrier did not have a point of interconnection or numbers in the LEC's rate centers. Accordingly, NEFCOM submitted a Petition for Clarification and Waiver to the FCC on November 21, 2003 requesting a clarification and, if necessary, waiver until May 24, 2004 of the

requirement to port telephone numbers to wireless carriers.

6. The FCC issued a limited waiver until May 24, 2004 of the wireline-to-wireless porting requirement for certain local exchange carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide located in the top 100 MSAs. The FCC's limited waiver applied to NEFCOM; therefore NEFCOM is now required to implement LNP by May 24, 2004.

7. NEFCOM is a rural telephone company as defined in 47 U.S.C. § 153(37). NEFCOM provides telephone exchange service, including exchange access, to fewer than 50,000 access lines (47 U.S.C §153(37)(B)), and it serves a study area of fewer than 100,000 access lines. (47 U.S.C. §153(37)(C).

8. Section 251(f)(2) of the Act allows a rural telephone company with fewer than two percent (2%) of the subscriber lines installed in the aggregate nationwide, (as of December 2002, approximately 188 million local telephone lines)[5] to petition a state commission for a suspension or modification of the application of a requirement provided by 47 U.S.C. § 251(b) and (c).

9. According to 47 U.S.C. § 251(f)(2), the Commission shall grant a petition for suspension or modification to the extent that, and for such duration as, the 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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[5] *See* "Federal Communications Commission Releases Study on Telephone Trends", FCC News Release (rel. Aug. 7, 2003).

(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.

10. Section 251(f)(2) of the Act requires the Commission to act on this application within 180 days after receipt. Pending such action, the Commission "may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers." 47 U.S.C. § 251(f)(2).

III. ARGUMENT

A. LNP Would Impose a Significant Adverse Economic Impact on Users of Telecommunications Services

1. The known cost of LNP is excessive

11. NEFCOM requests suspension of the LNP requirement in Section 251(b)(2) of the Act because, as shown in Exhibit 1, implementation of LNP would impose a significant adverse economic impact on users of telecommunications services generally. Exhibit 1 shows the known costs to implement LNP at this time. Pursuant to the FCC's rules, certain direct costs of LNP can be recovered from end users through a monthly surcharge over a five-year period.[6] After that time, these costs must be recovered, if at all, through the carrier's general rates and charges. In addition, certain costs associated with LNP cannot be recovered through the end user LNP surcharge. These costs also must be recovered, if at all, through the carrier's general rates and charges.

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[6] 47.C.F.R. § 52.33.

12. NEFCOM estimates that in order to implement LNP, it will have recurring and non-recurring costs as set forth in Exhibit 1 attached hereto and incorporated herein by reference. Of these costs, NEFCOM believes that $455,700 can be recovered through the five-year, monthly end-user surcharge. Based on NEFCOM's access lines, NEFCOM estimates that the LNP surcharge assessed to end-users would equal $.74 per month per end user for five years. NEFCOM's current monthly charge for residential local exchange service is $9.00. Therefore, the LNP surcharge will increase monthly rates for residential customers by 8.2%.

13. As shown in Exhibit 1, NEFCOM will incur $27,400 per year that it believes is not recoverable from end users through the LNP surcharge. This could increase local rates by an additional $.22 per end user per month.

14. In addition, after the five-year recovery period, NEFCOM will not be able to recover the recurring costs of LNP, amounting to $59,100 per year, as a surcharge on end users. NEFCOM will have to seek other means to recover this on-going cost, including increases to local rates.

15. Certain administrative and technical costs associated with the processing of actual requests for ported numbers, shown on Exhibit 1 will be incurred by NEFCOM on a per port basis and therefore, are dependent on the number of ports actually requested. NEFCOM cannot project how many ports will be requested within this five-year recovery period and has not included an estimate of the annual costs for these functions in the costs to be recovered through a surcharge detailed above. If only one customer requests to port their number to a wireless carrier, the costs detailed above will remain mostly unchanged.

However, if one hundred customers per year (or roughly 1% of NEFCOM's access lines) request to be ported, the annual costs will increase by approximately $10,000. At this time, NEFCOM has received no inquiries from customers desiring to port their wireline numbers to a wireless carrier.

2. Additional Unknown Costs of LNP and Lost Revenues Could Increase the Burden

16. Moreover, the implementation costs in Exhibit 1 could increase significantly depending on the resolution of a number of issues at the FCC. For example, when ordering wireline to wireless porting, the FCC did not address the issue of how calls to ported numbers should be routed when the wireless carrier does not have a point of interconnection or telephone numbers in the wireline carrier's rate center.[7] Instead, the FCC found that this issue would be resolved in a Petition for Declaratory Ruling proceeding pending at the FCC.[8]

17. This is further complicated by the fact that the FCC requires wireless carriers to maintain the ported numbers original rate center designation for rating purposes following the port. This creates an inconsistency that does not exist today between the rating and routing of what will appear to the end user as a local call. Today, if an end user in Macclenny calls another Macclenny customer, the call simply goes over NEFCOM's local loops to the Macclenny central office and then out to the called party on another local loop. The call is routed and rated as a local call. The costs to route the traffic in the manner described is recovered by NEFCOM through its local rates.

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[7] Order, para. 40.

[8] *In the Matter of Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of traffic by ILECs*, CC-Docket 01-92, Petition of Sprint, May 9, 2002 ("Sprint Petition").

18. Calls today from NEFCOM's wireline customers to a wireless customer still go over the local loop to NEFCOM's switch, but then they are transported to the wireless carrier via a shared trunk arrangement to the RBOC's tandem. Depending on the NPA-NXX of the wireless customer, the call to the wireless carrier may be a toll call to the calling party or an Extended Local Call (ELC) for which the calling party pays $.25 per call. In either event, NEFCOM is compensated for the cost to transport that traffic outside of its basic local service territory by the rates it charges its end users for toll (or by billing access charges to an IXC) or ELC calling.

19. In a porting environment, where the wireless carrier has no POI in NEFCOM's basic local service territory, NEFCOM will still have to route the call to the wireless carrier over the toll or ELC trunks, but the call will be rated like a local call, depriving NEFCOM of the compensation necessary to recover the cost of the trunk facilities required to complete the call. In addition, the fact that local calls that never traversed the toll or ELC trunks before may now be placed on these facilities will result in an even bigger cost burden on NEFCOM to accommodate the increased volume of traffic.

20. Establishing direct trunks with the wireless carriers would resolve some of the technical problems of having local and toll traffic traveling on the same trunk facilities, but wireless carriers normally do not want to share in the cost. If the FCC requires LECs to bear the entire cost to establish direct trunks with wireless carriers in order to implement LNP, Exhibit 1 identifies the recurring and nonrecurring costs *per direct trunk arrangement.* One direct trunk arrangement with a wireless carrier would increase the monthly LNP surcharge on end users by an additional $.43 per month for five-years. After that time, this

cost would have to be recovered, if at all, through local rates.

21. The FCC also is examining whether the current four-day porting interval for wireline carriers should be shortened. If the FCC shortens the porting interval, then the costs to implement LNP would also increase. At this time, NEFCOM has not been able to project the additional costs required to insure the shorter porting intervals can be met.

22. The implementation costs also do not include the cost of implementing wireless to wireline porting, which is under consideration by the FCC. In this regard, the FCC has asked for comment on whether wireline carriers should be required to absorb the cost of providing a customer with a ported wireless number with the same local calling area as the customer received from the wireless carrier and whether LECs should be required to provide LNP through foreign exchange (FX) or virtual FX service. These proposals also would increase the cost of LNP, however, it is not clear to what extent.

B. LNP Would Be Unduly Economically Burdensome

23. As shown, LNP implementation could result in the assessment of a new LNP surcharge on end users and could increase local rates. These actions would make NEFCOM's service offering less competitive with the services provided by wireless carriers. Wireless carriers already enjoy a number of competitive advantages over wireline carriers. For example, because of their FCC licensed service areas, wireless carriers have larger local calling areas, larger service territories and more potential customers to absorb the cost of LNP. By increasing the cost of service, LNP would make wireline services even less competitive with wireless services.

24. In addition, if the total cost of LNP is assigned to NEFCOM's subscribers through a surcharge and local rate increases, some segment of NEFCOM's subscribers may discontinue service or decrease the number of lines to which they subscribe. The resulting reduction in line count would increase further the per-subscriber cost of LNP, which, in turn, could lead to more rate increases followed by additional losses in lines.

25. In addition, pursuant to the FCC's Order, although wireline carriers have been ordered to port numbers to wireless carriers when the wireless carrier has no point of interconnection or numbers in the LEC's rate centers, the FCC does not require wireless carriers to port numbers under the same circumstances to wireline carriers, even where the wireline carrier may chose to accept such ports. Thus, the current porting requirement is a one-way requirement – NEFCOM can lose customers through porting to the wireless carriers, but it cannot gain customers from them.

26. It also is unduly economically burdensome to require NEFCOM to implement LNP when a number of implementation issues are not resolved. It would be more efficient and less costly to implement LNP only once, after the LNP parameters are more certain, rather than require carriers to implement LNP when important issues are unresolved (such as whether a trunk connection will be required) or could be changed (such as whether the porting interval will be reduced).

27. Finally, where NEFCOM must route a ported call to the wireless carrier over the toll or ELC trunks, but the call is rated like a local call, NEFCOM will be deprived of the compensation necessary to recover the cost of the trunk facilities required to complete the call. Moreover, the increase in call volume over the toll or ELC trunks will result in an even

bigger cost burden on NEFCOM to accommodate the increased volume of traffic.

C. Suspension of the Requirement to Implement LNP Is Consistent With The Public Interest, Convenience, and Necessity.

28. The standard of public interest, convenience, and necessity consists of an evaluation of the benefit that consumers will receive from LNP compared to the costs of its implementation and use. Central to this evaluation is the level of demand that exists for LNP in NEFCOM's service area.

29. NEFCOM is uncertain that any of its wireline customers will want to port their number to a wireless carrier. No inquiries have been made to NEFCOM by end users as to the availability of number porting. Further, the current demand for LNP nationwide is very small or non-existent. With respect to wireless LNP, nationwide, to date, the demand for wireless porting has been far less than expected and most ports have been from one wireless carrier to another. According to Neustar, 95% of wireless ports have been from one wireless carrier to another and only 5% of wireless ports were between wireline and wireless carriers.[9] No public benefit will be derived from LNP absent demand for such service in NEFCOM's service area.

30. Even if some level of LNP demand develops in the future, the costs that would be incurred by NEFCOM to implement and maintain LNP, which ultimately would be borne by all ratepayers, would not be justified to provide the benefit of number portability to a few end users.

31. Moreover, the rating and routing issues associated with wireline to wireless portability as currently ordered by the FCC are contrary to the public interest.

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[9] *See* NARUC Notebook, *Communications Daily,* Vol. 24, No. 46, p. 4 (March 9, 2004).

32. Accordingly, grant of the requested suspension is consistent with the public interest, convenience and necessity.

D. Request for Immediate Suspension Pending Consideration of this Petition is Warranted and Necessary to Serve the Public Interest

33. Section 251(f)(2) provides that the Commission is to act on this instant Petition within 180 days.[10] Pending such action, the Commission "may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers."[11] NEFCOM requests immediate suspension of the 251(b)(2) requirement pending this Commission's consideration of this request until six (6) months following the Commission's decision. Suspension of enforcement would allow rational public policy decision-making without a "rush-to-judgment" based on the impending May 24, 2004 deadline. Moreover, without an immediate suspension, Petitioner may be forced to start expending capital and personnel resources toward meeting the impending May 24, 2004 deadline. All such efforts may ultimately be wasted effort depending on the Commission's decision.

IV. CONCLUSION

34. As demonstrated, NEFCOM has met the criteria set forth in 47 U.S.C. § 251(f)(2)(A) and the suspension requested in this proceeding is consistent with the public interest, convenience and necessity requirement set forth in 47 U.S.C. § 251(f)(2)(B). Accordingly, the Commission must grant the petition for suspension or modification.

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[10] 47 U.S.C. § 251(f)(2).
[11] *Id.*

35. NEFCOM requests suspension of the LNP requirement until the FCC resolves all outstanding issues that will contribute to the overall costs of implementing LNP, so that the a true cost/benefit analysis to its end users can be performed. At a minimum, suspension should be granted until six (6) months following the FCC's full and final disposition of the issues associated with the porting interval and the routing of calls between wireline and wireless providers, at which time NEFCOM may need to seek further Section 251(f)(2) relief based upon the economic impact of these decisions.

36. NEFCOM also requests immediate suspension of the 251(b)(2) requirement pending this Commission's consideration of this request until six (6) months following this Commission's decision. Immediate suspension is necessary so that NEFCOM does not have to start incurring LNP implementation costs until after the Commission acts on the petition.

WHEREFORE, NEFCOM respectfully requests the Commission to:

(A) Issue an interim order that suspends any obligation that may exist for NEFCOM to provide LNP until six (6) months after entry of a final order herein;

(B) Issue a final order that grants a permanent suspension of NEFCOM's obligation to implement LNP until the conditions are met as described herein; and

(C) Grant such other and further relief that may be proper.

Respectfully submitted,

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Attorneys for Northeast Florida Telephone
Company db/a NEFCOM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following by hand delivery this 12th day of April, 2004:

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Kenneth A. Hoffman, Esq.

NEFCOM

The following is a list of estimated costs to comply with the FCC's WLNP order.

1) Switching-Related Costs:

COST ELEMENT	NON-RECURRING	RECURRING
Switch Generic Software Level – The switch generic level may need to be upgraded to support LNP and associated feature software. (Note: Switch generics already upgraded for CALEA may meet LNP switch generic requirements.)	No impact we are aware of	No impact we are aware of
Additional Software Feature Requirements – Additional software feature requirements may be required, such as AIN, SS7, ATT Expanded AMA Format, ISUP and LNP number pooling.	$119,600 (Recoverable)	No impact we are aware of
LNP Software – Each switch vendor has unique LNP software pricing and pricing methods.	Included in SW	No impact we are aware of
Hardware Requirements – Additional hardware will not be required in most cases, unless a carrier prefers to record call data for validation.	Included in SW	No impact we are aware of
Installation Costs for above.	Included in SW	No impact we are aware of
Additional Vendor Fees – the pro-rata portion of any subscription "partnership" fees that provide benefit for upgrades.	No impact we are aware of	No impact we are aware of
Maintenance – The amount by which your recurring switch maintenance expense will increase due to LNP.	No impact we are aware of	No impact we are aware of
Billing/Customer Care Systems – Any costs associated with upgrading Billing and Customer Care systems to process LNP AMA records. LNP requires additional fields in the standard Bellcore AMA Format (BAF) record.	$3,000 + (Recoverable)	Unknown at this time.

2) Number Portability Administration Center ("NPAC") – Related Costs:

COST ELEMENT	NON-RECURRING	RECURRING
Service Order Administration (SOA) – Costs for connection to and use of the NPAC for handling porting service orders between carriers; charges typically include a one time fee and recurring charges per month and per number ported.	$2,000 (Recoverable)	$2,625/mo. $31,500/yr. (Recoverable)
LNP Queries (Data "Dips") – Costs for database lookups (via SS7 to the NPAC) to route calls to a ported number; may include a start-up fee and a base monthly fee plus a charge per data dip and/or a minimum monthly fee per OCN, exchange or point code.	$1,000 (Recoverable)	$1,500/mo. $18,000/yr. (Recoverable)
Connection costs with LNP Database – The start-up and recurring expense for signaling links (SS7) with the LNP database. A number of third-party vendors such as TSI or Verisign (among many others) may be used for these connections and services.	$600 (Recoverable)	$800/mo. $9,600/yr. (Recoverable)

3) Administrative/Technical Costs:

An estimate of the cost of personnel and associated G&A expense to implement and process LNP, including the cost of additional computer, office space, supplies, etc. for the following activities:

COST ELEMENT	NON-RECURRING	RECURRING
Translation Costs – Whether by staff switch translations specialist or consultant. Normally a one time effort, but on-going attention may be needed as LNP is expanded. Include translation costs for establishing LNP, new SS7 links, and for designing new or expanded trunk groups for Transport (see Transport below).	$4,000 (Recoverable)	$200/mo. $2,400/yr.
Technical Implementation and Testing – The cost for implementing and testing inter-carrier porting at the network level.	$4,000 (Recoverable)	Unknown at this time
Testing and Verification of Each Ported DN – Each DN must be tested under a variety of conditions to ensure the porting was successful.	No impact we are aware of	$50/ported number

COST ELEMENT	NON-RECURRING	RECURRING
Administrative Expense – The cost of processing SOAs, as well as the associated Local Service Requests (LSRs) and Firm Order Confirmations (FOCs) between porting carriers. Include costs for handling troubles within these processes.	$10,000 (Recoverable)	$50/port
Regulatory – The cost of NANPA and LERG filings and updates for ported NXXs and associated Local Routing Numbers (LRNs); NECA 4 Tariff updates	$1,000 (Recoverable)	None
Customer Care – The cost of increased customer care staff and training for handling customer trouble calls and the inevitable customer confusion that will result.	$10,000 (Recoverable)	$2,000/mo. $24,000/yr.
Marketing – Expense will be required for general customer education at the marketing and sales level.	$5,000 (Recoverable)	$1,000/yr.

4) Transport Costs:

Until clarification is obtained on the use of IXCs or leased facilities for compelled transport of ported calls outside the LCA, the assumption is that the ILEC will be required to provision a trunk group between each of our switches and the requesting carrier's POI in the LATA. Included are engineering, design and installation costs for these trunk groups and our non-recurring costs.

WIRELESS CARRIERS *	NON-RECURRING	RECURRING
Verizon	$5,000	$800/mo
Sprint PCS	$5,000	$800/mo
Nextel	$5,000	$800/mo
Alltel Communications	$5,000	$800/mo
AT&T Wireless	$5,000	$800/mo
US Cellular	$5,000	$800/mo
Cingular Wireless	$5,000	$800/mo

* List is not all inclusive of every wireless carrier providing service in portions of NEFCOM's study area.

NEFCOM
Summary of Recurring and Nonrecurring Costs

Total Recoverable Non-Recurring Costs		**$160,200**
Total Recoverable Recurring Costs:		
Annual Costs	**$59,100**	
	X 5	
	$295,500	**$295,500**
Total Recoverable Costs		**$455,700**

Calculation of Monthly Surcharge:

$455,700 divided by 60 months = $7, 595 per month

$7,595 divided by 10,227 access lines = $.74