

State of Florida



Public Service Commission

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COMMISSION CLERK

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DATE: April 21, 2004

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

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

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: 05/03/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: 05/24/04 – Requirement to Provide Intermodal Local Number Portability

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.

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The FCC released the Local Number Portability (LNP) First Report and Order in 1996¹. 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 Commission 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 03-284², 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 04-12⁴, 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)

Northeast Florida Telephone Company (NEFCOM) is a Florida corporation whose principal office is located in Macclenny, Florida. NEFCOM 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. NEFCOM currently provides service in the Macclenny and Sanderson Exchanges, and as of March 1, 2004, had 10,227 access lines in service.

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.

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, the Commission is authorized to implement procedures consistent with the Act in accordance with Section 120.80(13)(d), Florida Statutes.

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 an additional twelve months to comply with the FCC's intermodal porting requirements?

Recommendation: Staff recommends that the Commission suspend NEFCOM's intermodal porting requirement for 60 days to allow staff time to review NEFCOM's petition and seek discovery. (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 two bonafide requests from wireless carriers to support intermodal porting, one dated May 16, 2003, and one dated May 28, 2003. 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 prevails. NEFCOM has requested that this Commission grant it an extension of that 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. Thereafter, NEFCOM may seek further relief 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;

(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.

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.

NEFCOM states in its petition that it will need to expend approximately \$455,700 to meet the LNP requirements as prescribed by the FCC. Accordingly, it believes these costs make implementation of intermodal porting unduly economically burdensome.

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. However, that date is after the FCC's required intermodal porting date of May 24, 2004. Thus, staff believes suspension for 60 days from the date of the Commission's order is appropriate and necessary to allow staff time to review the petition and obtain additional discovery.

Staff emphasizes that Section 251(f)(2) of the Act allows the Commission, while an application is pending, to "suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers." Therefore, staff recommends that the Commission suspend the intermodal porting requirement for NEFCOM for 60 days to allow staff to review NEFCOM's petition and seek discovery. In the event the 60-day suspension expires on a holiday or weekend, the next business day should apply. Staff will bring a recommendation on the merits of this petition to the Commission prior to the expiration of the 60-day suspension period.

Any decision to grant a suspension should in no way serve as a precedent as to how the Commission will rule on the merits of the underlying petition.

Docket No. 040326-TL

Date: April 21, 2004

Issue 2: Should this docket be closed?

Recommendation: If Issue 1 is approved, this docket should remain open pending further review of NEFCOM's petition. **(SUSAC)**

Staff Analysis: If Issue 1 is approved, this docket should remain open pending further review of NEFCOM's petition.