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Public Service Commission

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

DATE: March 24, 2005

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

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

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. *[Handwritten initials]*

AGENDA: 04/05/05 – Regular Agenda – Joint Motion Seeking Approval of Stipulation and Settlement

CRITICAL DATES: None.

SPECIAL INSTRUCTIONS: None.

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

Case Background

On July 15, 2004, the Commission issued Proposed Agency Action Order No. PSC-04-0691-PAA-TL. The Order suspended the FCC's intermodal local number porting (LNP) requirement for Northeast Florida Telephone Company d/b/a NEFCOM (NEFCOM) until January 6, 2005 (six months from our July 6, 2004 vote). On August 4, 2004, NEFCOM protested that Order citing disputed issues of material fact. NEFCOM claims that implementation of the provisions outlined in Section 251(f)(2) of the Telecommunications Act of 1996 (Act) would create an extreme financial hardship on its customers and would be anti-competitive in terms of wireline versus wireless services.

On August 24, 2004, Sprint Spectrum, L.P. d/b/a Sprint PCS (Sprint) filed its Petition to Intervene. The Petition was granted and Order No. PSC-04-1049-PCO-TL, was issued October 26, 2004.

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Sprint is a commercial mobile services provider under Section 332 of the Act and provides wireless services in Florida. Sprint supports its Petition to Intervene by citing to its submission of a bona fide request for intermodal LNP to NEFCOM on May 16, 2003. Sprint argues that NEFCOM is required to comply with FCC's orders and provide intermodal local number portability to wireless carriers, and any action in this docket will directly affect Sprint's ability to do business in Florida.

On January 14, 2005, both parties filed a Joint Motion Seeking Commission Approval of Stipulation of Settlement (Attachment A). If approved, the Stipulation of Settlement requires NEFCOM to implement LNP from wireline to wireless carriers by November 24, 2005.

On March 11, 2005, the D.C. Circuit for the U.S. Court of Appeals stayed and remanded part of the FCC's intermodal LNP requirement applicable to rural carriers; however, the Court stated, "Of course, nothing in this disposition prevents small carriers from voluntarily adhering to the *Intermodal Orders*' number portability requirements during that period." United States Telecom Ass'n and CenturyTel, Inc. v. FCC, 2005 U.S. App. LEXIS 4058 (D.C.Cir., 2005).

Discussion of Issues

Issue 1: Should the Commission grant the Joint Motion Seeking Approval of the Stipulation of Settlement requiring NEFCOM to implement LNP from wireline to wireless carriers by November 24, 2005?

Recommendation: Yes. Staff recommends that the Commission grant the Joint Motion, thereby approving the Stipulation set forth in Attachment A to this recommendation. (Susac, Maduro, Casey, Bulecza-Banks)

Staff Analysis: Staff believes granting the Joint Motion and approving the Stipulation of Settlement is in the best interest of the public, the parties' end users, and will also reduce the costs, time and expenditure of resources associated with litigating the issues in this docket. In addition, it appears that the time frames in the stipulation of settlement are reasonable in light of the fact that NEFCOM may have to hire and train a new employee to comply with the stipulation of settlement.

Position of the Parties

In the Joint Motion, NEFCOM agrees to implement intermodal LNP from wireline to wireless carriers by November 24, 2005. Both parties believe that it is in the best interests of their customers to amicably resolve the issues pending in this docket¹ without the expenditure of further time, money and other resources in litigating before the Commission. The parties agree to waive any right to request further administrative or judicial proceedings. However, nothing in the Stipulation of Settlement shall be viewed to waive Sprint's rights to enforce, if necessary, NEFCOM's compliance with intermodal local number portability requirements subsequent to November 24, 2005. The parties agree that the settlement will become effective on the day following the Commission's vote.

Discussion

Staff recommends granting the Joint Motion Seeking Approval of Stipulation of Settlement that requires NEFCOM to implement LNP from wireline to wireless carriers by November 24, 2005. Staff agrees that it is in the parties' and their customers' best interest for the issues in this docket to be resolved amicably. In addition, approval of the Joint Motion will cut down on expenses that might otherwise be passed on to consumers. Staff believes that the time frames in the Stipulation of Settlement are reasonable in light of the fact that NEFCOM may have to hire and train a new employee to comply with the stipulation of settlement.

¹ Issues address NEFCOM's financial obligation(s) regarding implementation of intermodal (wireline to wireless) local number portability.

As stated in the case background, on March 11, 2005, the United States Court of Appeals for the District of Columbia Circuit stayed and remanded part² of FCC's intermodal LNP requirement; however, the Court stated, "Of course, nothing in this disposition prevents small carriers from voluntarily adhering to the *Intermodal Orders*' number portability requirements during that period." United States Telecom Ass'n and CenturyTel, Inc. v. FCC, 2005 U.S. App. LEXIS 4058 (D.C.Cir., 2005).

Issue 2: Should this docket be closed?

Recommendation: Yes. Staff recommends closing the docket because no further action is needed from the Commission. (Susac)

Staff Analysis: Yes. Staff recommends closing the docket because no further action is needed from the Commission.

² The Order was remanded solely because the Order is a legislative rule issued without the adherence to the procedural requirements of the Administrative Procedure Act (APA) and Regulatory Flexibility Act (RFA). The merits of the Order was not challenged.

Docket No. 040326-TL
Date: March 24, 2005

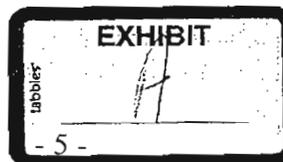
ATTACHMENT A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of the Application)
of Northeast Florida Telephone) Docket No. 040326-TL
Company d/b/a NEFCOM for)
Suspension or Modification of) Filed: January 14, 2004
Section 251(b)(2) of the)
Communications Act of 1934 as)
Amended.)

**STIPULATION AND SETTLEMENT BY AND BETWEEN
NORTHEAST FLORIDA TELEPHONE COMPANY D/B/A NEFCOM
AND SPRINT SPECTRUM, L.P. D/B/A SPRINT PCS**

Pursuant to Section 120.57(4), Florida Statutes (2004), Northeast Florida Telephone Company d/b/a NEFCOM ("NEFCOM") and Sprint Spectrum, L.P. d/b/a Sprint PCS (hereinafter "Sprint") have entered into this Stipulation and Settlement to effect an informal disposition and complete and binding resolution of any and all matters and issues raised by the parties and which might be addressed by the Florida Public Service Commission ("FPSC" or "Commission") in this docket regarding NEFCOM's Petition for a Suspension or Modification of Section 251(b)(2) of the Communications Act of 1934, as amended, with respect to the implementation of intermodal (wireline-to-wireless) local number portability. This Stipulation and Settlement avoids the time, expense and uncertainty associated with adversarial litigation in keeping with the Commission's long-standing policy and practice of encouraging parties in contested proceedings to settle issues whenever possible. Accordingly, without prejudice to any party's position in this or any other proceeding before the Commission or any other court, regulatory body or other venue, present or future, the parties stipulate and agree as follows:



1. On November 10, 2003, the Federal Communications Commission (“FCC”) released its *Intermodal Porting Order*.¹ The *Intermodal Porting Order* requires rural wireline carriers such as NEFCOM to begin porting numbers to wireless carriers on May 24, 2004.

2. This docket was opened in response to a Petition filed by NEFCOM 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, and as implemented by the FCC in the *Intermodal Porting Order*.

3. On May 11, 2004, the Commission issued Order No. PSC-04-0485-PCO-TL granting NEFCOM a suspension of the intermodal reporting requirement for sixty days. Absent that sixty day suspension, intermodal LNP would have been required for NEFCOM by May 24, 2004.

4. Thereafter, on July 15, 2004, the Commission issued Proposed Agency Action Order No. PSC-04-0691-PAA-TL (“PAA Order”) granting NEFCOM a temporary suspension of the intermodal LNP requirement until January 6, 2005. On August 8, 2004, NEFCOM timely filed a protest of the PAA Order.

5. Sprint submitted a bona fide request for local number portability to NEFCOM on May 16, 2003. Thereafter, Sprint sought and was granted intervention in this proceeding.

6. Following the filing of prefiled direct testimony and exhibits by the parties in this docket, the parties have engaged in discussions for the purposes of resolving this matter. After weighing the potential costs and benefits of implementation of intermodal LNP, including the parties’ differing views regarding such potential costs and benefits; applicable legal and regulatory

¹Telephone number portability, CC Docket No. 95-116, Memorandum and Opinion and Order and Further Notice of Proposed Rulemaking, FC 03-284, Rel. November 10, 2003 (“*Intermodal Porting Order*”).

precedents; and the costs, time and expenditure of resources associated with litigating the issues in this docket, the parties have stipulated and agreed that NEFCOM shall implement intermodal LNP from wireline to wireless carriers by November 24, 2005.

7. This Stipulation and Settlement will become effective on the day following the vote of the Commission approving this Stipulation and Settlement. The Commission's decision will be reflected in a final order.

8. No party to this Stipulation and Settlement will request, support or seek to impose a change in the application of any provision hereof. Furthermore, subject to the approvals of the Commission set forth herein, all parties hereto waive any right to request further administrative or judicial proceedings in regards to the establishment or implementation of this Stipulation and Settlement. This waiver of the right to further administrative or judicial proceedings shall include (but not be limited to): a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code; a motion for reconsideration of the decision in this matter in the form prescribed by Rule 25-22.060, Florida Administrative Code; or a notice of appeal to initiate judicial review by the Florida Supreme Court pursuant to Rule 9.110, Florida Rules of Appellate Procedure, in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure. However, nothing herein is intended to waive Sprint's rights to enforce, if necessary, NEFCOM's compliance with intermodal local number portability requirements subsequent to November 24, 2005.

9. This Stipulation and Settlement is contingent upon the Commission's acceptance of the provisions herein, which acceptance shall include explicit recognition by the Commission that all such matters are resolved by this Stipulation and Settlement.

10. This Stipulation and Settlement is also contingent upon approval in its entirety by the Commission. This Stipulation and Settlement will resolve all matters in this docket pursuant to and in accordance with Section 120.57(4), Florida Statutes (2004). This docket will be closed effective on the date of the Commission order approving this Stipulation and Settlement is final. If this Stipulation and Settlement is not accepted and approved without modification by an order not subject to further proceedings or judicial review, then this Stipulation and Settlement shall be considered null and void and of no further force or effect.

11. In the event that the Commission does not accept this document in its entirety pursuant to its terms, this document shall not be admissible in any hearing on the matters established by this docket, or in any other docket or forum. Moreover, no party to this Stipulation and Settlement waives any position on any issue that it could have otherwise asserted in this or any other docket as if this document had never been developed and written.

12. This Stipulation and Settlement dated this 14th day of January, 2005 may be executed in counterpart originals and a facsimile of an original signature shall be deemed an original.

13. The parties evidence their acceptance and agreement with the provisions of this Stipulation and Settlement by their signatures.

Sprint Spectrum L.P. d/b/a Sprint PCS

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Northeast Florida Telephone Company d/b/a
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--and--

Docket No. 040326-TL
Date: March 24, 2005

ATTACHMENT A

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Docket No. 040326-TL
Date: March 24, 2005

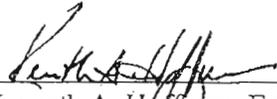
ATTACHMENT A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by telecopier and U.S. Mail this 14th day of January, 2005, to the following:

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NFTC\motionforapproval