

State of Florida



Public Service Commission

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DATE: June 24, 2004

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

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

RE: Docket No. 040249-TL – Amended Petition of GTC d/b/a GT Com to modify requirement to institute local number portability pursuant to Section 251(f) of the Telecommunications Act of 1996. *AK*

AGENDA: 07/06/04 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

CRITICAL DATES: 11/07/04 – In accordance with §251(f)(2), the Commission should act on GT Com's petition within 180 days of the amended petition.

SPECIAL INSTRUCTIONS: Request that this recommendation immediately precede the recommendation in Docket No. 040326-TL.

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040249.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

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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.

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 FCC 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)

On March 19, 2004, GTC, Inc. d/b/a GT Com, filed a petition requesting that this Commission suspend the GT Com intermodal porting requirement for an additional 12 months from the FCC required date of May 24, 2004. GT Com claimed the intermodal porting

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.

requirement would be economically burdensome on the company. By Order No. PSC-04-0486-PCO-TL, issued May 11, 2004, in this docket, the Commission temporarily suspended the intermodal porting requirement for GT Com for 60-days from the date of the Order, to allow staff additional time to review the petition and obtain discovery. The Order also stated that staff would bring a recommendation on the merits of the petition to the Commission prior to the expiration of the 60-day suspension period which ends July 12, 2004. Also on May 11, 2004, GT Com filed an amended petition substituting a request for a suspension of the intermodal porting requirement based upon economical burden, and stated that it could now implement LNP by August 24, 2004.

GT Com is a wholly-owned subsidiary of FairPoint Communications, Inc. (FairPoint) which is headquartered in Charlotte, North Carolina. FairPoint provides telecommunications services through 26 rural LECs in more than 119 communities in 17 states. GT Com serves approximately 50,524 access lines in and around Taylor, Gulf, Calhoun, Franklin, Liberty, Madison, Jefferson, Bay, Gadsden, Jackson, Okaloosa, and Walton Counties.

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, under Section 120.80(13)(d), Florida Statutes, when the Commission implements the federal Telecommunications Act, it is authorized to employ procedures consistent with the Act.

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 GT Com's amended request for a temporary suspension of the intermodal porting requirement until August 24, 2004?

Recommendation: Staff recommends that the Commission grant GT Com a temporary suspension of the intermodal porting requirement until August 24, 2004. (**MADURO, CASEY, BULECZA-BANKS, SUSAC**)

Staff Analysis: Carriers were 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) GT Com has received three (3) bonafide requests from telecom carriers to support intermodal porting, one dated July 21, 2003, one dated September 24, 2003, and one dated April 6, 2004. Since carriers were 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 prevailed. GT Com has submitted an amended petition which seeks an extension of the FCC's porting requirement until August 24, 2004, in order to enable full implementation of intermodal porting⁵. GT Com's amended petition, filed May 11, 2004, removed the financial hardship assertion.

GT Com 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.

⁵ GT Com's original petition (March 19, 2004) sought a 12 month extension and claimed that the implementation of the FCC's porting requirement would be economically burdensome.

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.

GT Com states in its amended petition that it is no longer requesting a suspension based on financial hardship, and has already installed Siemens Software, which enables the existing switch to perform intermodal porting functions. GT Com further communicated that it has overcome all financial hurdles to modifying the porting requirements and has commenced the process necessary to ensure adequate number portability.

In accordance with §251(f)(2), the Commission should act on GT Com's petition within 180 days of the amended petition filing date of May 11, 2004. Thus, final action is due on November 7, 2004.

In conclusion, GT Com has indicated that it has installed the Siemens Software necessary to implement the intermodal porting functions, and is in the final stages of testing and evaluating its porting equipment and system, and can be capable of porting by August 24, 2004. The ability to port numbers to wireless carriers will encourage competition by creating incentives for carriers to reduce prices for telecommunications services, and to invest in innovative technologies. In addition, the ability of a wireline carrier porting numbers to a wireless carrier will enhance flexibility for users of telecommunications services. Therefore, staff recommends that the Commission temporarily suspend the GT Com intermodal porting requirement to allow GT Com to become in full compliance with the FCC porting requirements by August 24, 2004.

Docket No. 040249-TL

Date: June 24, 2004

Issue 2: Should this docket be closed?

Recommendation: If no person whose interests are substantially affected by the proposed agency action files a protest within the 21-day protest period, this docket should be closed upon the issuance of a consummating order. **(SUSAC)**

Staff Analysis: If no person whose interests are substantially affected by the proposed agency action files a protest within the 21-day protest period, this docket should be closed upon the issuance of a consummating order.