

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: August 4, 2004

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**NORTHEAST FLORIDA TELEPHONE COMPANY d/b/a NEFCOM'S
PETITION PROTESTING PROPOSED AGENCY ACTION ORDER
GRANTING NORTHEAST FLORIDA TELEPHONE COMPANY d/b/a NEFCOM
TEMPORARY SUSPENSION OF LOCAL NUMBER PORTABILITY**

Northeast Florida Telephone Company, d/b/a NEFCOM ("NEFCOM"), by and through its undersigned counsel, and pursuant to Section 28-106.201, Florida Administrative Code, hereby files this Petition Protesting the Notice of Proposed Agency Action Order, Order No. PSC-04-0691-PAA-TL (the "PAA Order") issued by the Florida Public Service Commission ("Commission") in the instant docket on July 15, 2004. In support of its Petition, NEFCOM states as follows:

1. The name, address and telephone numbers of Petitioner are as follows:

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

CMP _____
COM _____
CTR _____
ECR _____
GCL _____
OPC _____
MMS _____
RCA _____
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OTH _____

Kim P. ✓
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3. The PAA Order proposes to grant NEFCOM a temporary suspension of the wireline to wireless ("Intermodal") local number portability ("LNP") requirement of the Federal Communications Commission ("FCC") until January 6, 2005. The PAA Order also proposes to deny NEFCOM's request for a longer suspension or waiver of the implementation of Intermodal LNP pending a decision by the FCC on pending Intermodal LNP issues that directly and substantially affect NEFCOM. Counsel for NEFCOM received a copy of the PAA Order on July 15, 2004.

BACKGROUND

4. On November 10, 2003, the FCC released its *Intermodal Porting Order*.¹ The *Intermodal Porting Order* requires rural carriers such as NEFCOM to begin porting numbers to wireless carriers on May 24, 2004. The *Intermodal Porting Order* also references the fact that there is a pending dispute in another FCC docket "as to which carrier is responsible for transport costs when the routing point for the wireless carrier's switch is located outside the wireline local calling

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

area in which the number is rated.” *Intermodal Porting Order*, at fn. 75, ¶39-40, citing *In the Matter of Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, Sprint Petition for Declaratory Rule*, CC Docket No. 01-92 (filed July 18, 2002) (“*Sprint Petition*”).

5. On April 12, 2004, pursuant to 47 U.S.C. §251(f)(2)(A)(i), NEFCOM filed a Petition with the Commission requesting a suspension or modification of the Intermodal LNP requirements imposed by the FCC, alleging, in large part, that such requirements would result in significant adverse economic impact on users of NEFCOM’s telecommunications services.

6. In the Petition, NEFCOM requested a waiver of the Intermodal LNP requirements until at least six 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 carriers. The PAA Order proposed to deny NEFCOM’s request.

THE INSTANT PETITION

7. By this Petition, NEFCOM protests the PAA Order to the extent that it does not authorize a waiver or suspension beyond January 6, 2005. As a rural local exchange carrier subject to the requirements of the Intermodal Portability Order and the federal law criteria addressing modification or suspension of such order by a state commission, NEFCOM’s substantial interests are affected by the PAA Order. Further, NEFCOM’s substantial interests are affected by the PAA Order because the PAA Order raises a host of issues that ultimately concern whether NEFCOM and its customers will derive any substantial benefit from implementation of Intermodal LNP when weighed against anticipated costs and increases in local rates and charges.

8. This protest is predicated on the 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.

9. NEFCOM maintains that the PAA Order erroneously disregards the fact that NEFCOM’s users will be subject to a significant adverse economic impact if NEFCOM’s waiver of the LNP portability requirements does not remain in place until at least six months following the FCC’s final disposition of the issues associated with porting discussed herein.

A. The Commission’s Preliminary Decision Imposes Conditions on NEFCOM’s Customers That Are Unduly Economically Burdensome.

10. Pursuant to the FCC’s rules, certain direct costs of Intermodal LNP can be recovered from end users through a monthly surcharge over a five-year period.² After that time, the costs must be recovered, if at all, through the carrier’s general rates and charges. In addition, certain costs associated with Intermodal LNP cannot be recovered through the end user LNP surcharge. These

²47 CFR §52.33.

costs also must be recovered, if at all, through the carrier's general rates and charges. As stated in its Petition for Suspension, NEFCOM estimates that costs to implement Intermodal LNP will total approximately \$295,500 in recurring costs and \$160,200 in non-recurring costs for total recoverable costs of \$455,700.³ NEFCOM's current monthly rates and charges for residential local exchange service is approximately \$9.00. Therefore, the Intermodal LNP surcharge will increase monthly rates for residential customers by approximately 8.2%. Additionally, NEFCOM estimates it will incur \$27,400.00 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.

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

12. NEFCOM further expects to incur administrative and technical costs associated with the processing of actual requests for ported numbers. Those costs will be incurred by NEFCOM on a per-port basis and therefore are dependent on the number of ports actually requested. For example, if only one customer requests to port a number to a wireless carrier, the costs outlined above will remain mostly unchanged. On the other hand, if 100 customers per year 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.

13. The total costs to implement Intermodal LNP could additionally increase significantly depending on the resolution of a number of issues at the FCC. The uncertainty regarding the

³NEFCOM calculates these costs to its customers to be \$.74 per month for 60 months (\$455,700 divided by 60 months divided by 10,277 access lines).

resolution of issues at the FCC in the future makes it difficult, if not impossible, for NEFCOM to accurately project its total costs. 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. This uncertainty is further complicated by the FCC's requirements that wireless carriers maintain the ported number's 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, for example, if an end user in NEFCOM's local exchange area calls another end user in NEFCOM's exchange area, the call simply goes over NEFCOM's local loops to a 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 are recovered by NEFCOM through its local rates. However, in a porting environment, where the wireless carrier has no POI in NEFCOM's basic local service territory, NEFCOM will have to route the call to the wireless carrier over toll or ELC trunks, but the call will be rated like a local call, depriving NEFCOM of the compensation necessary to recover the costs of the trunk facilities required to complete the call. In addition, the fact that local calls have never traversed toll or ELC trunks before, may result on an even bigger cost burden on NEFCOM to accommodate the increased volume of traffic.⁴

14. In addition, if the total costs of Intermodal LNP are assigned to NEFCOM's subscribers through a surcharge and local rate increases, some segment of NEFCOM's subscribers

⁴The undue burden on NEFCOM's customers is highlighted by the fact that the FCC may, in the *Sprint Petition*, require the wireless carriers to bear the costs of transport. If so, the PAA would require NEFCOM to needlessly burden its customers with increased rates.

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 costs of Intermodal LNP, which, in turn, could lead to more rate increases followed by additional losses in lines. It is important to note that the FCC does not require *wireless* carriers to port numbers to *wireline* carriers when the wireless carrier has no point of interconnection or numbers in the ILEC's rate center. Thus the current porting requirement is a one way requirement. NEFCOM will, in all likelihood, sustain a net loss of its customer base under the current regulatory regime where wireless carriers are not required to port numbers to wireline carriers.

15. It is unduly economically burdensome to require NEFCOM to implement Intermodal LNP when a number of outstanding implementation issues are still unresolved at the FCC. It would be more efficient and less costly to implement Intermodal LNP only after the Intermodal LNP parameters and "rules of the road" are more certain. Requiring a rural carrier such as NEFCOM to implement Intermodal LNP without the benefit of FCC decisions that will directly affect Intermodal LNP and the costs ultimately borne by NEFCOM's retail customers is premature and does not serve the public interest.

B. The Commission's Preliminary Decision is Not Consistent with the Public Interest, Convenience, and Necessity.

16. The standard of public interest, convenience, and necessity addressed in 47 U.S.C. §251(f)(2) consists of an evaluation of the benefit that consumers will receive from Intermodal LNP compared to the costs of its implementation and use. Central to this evaluation is the level of demand that exists for Intermodal LNP in NEFCOM's service area. While NEFCOM is uncertain as to how many of its wireline customers may at some point in the future desire to port their number to a wireless carrier, it is significant to note that to date, *zero* inquiries have been made to NEFCOM

by end users to the availability of number porting. Further, the current demand for Intermodal LNP nationwide is very small or non-existent. Nationwide, 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 are between wireline and wireless carriers.⁵ Even if some level of Intermodal LNP demand develops in the future, the exorbitant costs that would be incurred by NEFCOM to implement and maintain Intermodal LNP for only a *few* customers, (although the costs ultimately will be borne by *all* rate payers) does not justify the costs of Intermodal LNP, and to require Intermodal LNP is contrary to the public interest.

C. Disputed Issues of Material Fact and Law

17. Disputed issues of material fact and law include, but are not limited to:
- (a) The costs to implement Intermodal LNP;
 - (b) The benefits, if any, that will accrue to NEFCOM's customers by implementation of Intermodal LNP;
 - (c) The level of demand, if any, for Intermodal LNP in NEFCOM's service area;
 - (d) Whether NEFCOM or a wireless carrier requesting Intermodal LNP with a point of presence outside of NEFCOM's local exchange area should be required to bear the costs of interconnection necessary to implement Intermodal LNP;
 - (e) The level and extent to which NEFCOM's local rates and charges will increase as a result of implementation of Intermodal LNP;
 - (f) The status of potential implementation by the FCC of a reciprocal Intermodal LNP

⁵See NARUC Notebook, *Communications Daily*, Vol. 24 No. 46, p.4 (March 9, 2004).

requirement on wireless carriers;

(g) The anticipated effect on NEFCOM's customer base of implementation of Intermodal LNP and the commensurate impact on the need for potential future local rate increases;

(h) The appropriateness of weighing all relevant costs and benefits, and delaying implementation of Intermodal LNP pending FCC decisions on relevant issues, at minimum in the *Sprint Petition* case, prior to requiring NEFCOM to implement Intermodal LNP;

(i) Whether the Commission's preliminary decision imposes a requirement on NEFCOM's customers that is unduly economically burdensome; and

(j) Whether the Commission's preliminary decision is consistent with the public interest, convenience, and necessity.

D. Ultimate Facts Alleged and Grounds for Relief

18. NEFCOM realleged and incorporates by reference the allegations set forth in paragraphs 10 through 16 above. Pursuant to 47 U.S.C. §251(f)(2)(A), NEFCOM maintains that the minimal benefit of implementation of Intermodal LNP in NEFCOM's local service area on or before January 6, 2005, is far outweighed by the near term and potential long term costs of implementation which will ultimately be borne by NEFCOM's residential customers through increases in local rates and charges. NEFCOM maintains that a suspension or modification of the FCC's requirements as set forth in the *Intermodal Porting Order* is justified and appropriate until, at minimum, six months after the FCC has issued its ruling on the *Sprint Petition* and addressed other pending issues relevant to Intermodal LNP, including cost recovery issues that will ultimately affect NEFCOM's residential rates and charges. **[Debi/Mary/Ben - - are there any other issues?]** Such a determination is necessary to avoid a significant adverse economic impact on NEFCOM's customers and is consistent

with the public interest, convenience and necessity.

WHEREFORE, NEFCOM protests the PAA Order, requests a hearing to resolve the disputed issues of material fact and law as set forth herein pursuant to Sections 120.569 and 120.57, Florida Statutes, and requests that the Commission suspend NEFCOM's Intermodal LNP obligations until at least six months after the FCC finally disposes of the issues associated with the porting and routing of calls between wireline and wireless carriers.

Respectfully submitted this 4th day of August, 2004.



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