

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-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)
Division of Competitive Markets & Enforcement (Maduro, Casey, Bulecza-Banks)

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: 04/05/05 – Regular Agenda – Joint Motion Seeking Approval of Stipulation and Settlement – Parties May Participate

CRITICAL DATES: None.

SPECIAL INSTRUCTIONS: None.

FILE NAME AND LOCATION: S:\PSC\GLC\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.

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.