

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the ) Application No. C-3207  
Application of Cambridge )  
Telephone Company For ) ORDER GRANTING LIMITED  
Suspension or Modification of ) SUSPENSION  
the Federal Communications )  
Commission Requirement to )  
Implement Wireline-Wireless )  
Number Portability Pursuant )  
to 47 U.S.C. §251(f)(2). ) Entered: August 3, 2004  
)

BY THE COMMISSION:

B A C K G R O U N D

Introduction

On May 14, 2004, an application was filed by Cambridge Telephone Company of Cambridge, Nebraska ("Cambridge"), pursuant to 47 U.S.C. § 251(f)(2) seeking suspension or modification of the requirements of 47 U.S.C. § 251(b)(2) concerning number portability, and in particular, suspension or modification of the requirements set forth *In the Matter of Telephone Number Portability*, CC Docket 95-116, Memorandum Opinion and Order and the Further Notice of Proposed Rulemaking, FCC 03-284 (rel. November 10, 2003) (the "*Intermodal Order*"),<sup>1</sup> insofar as the Order requires Cambridge to implement wireline-to-wireless local number portability ("LNP"). The contents of the application were verified by the Affidavit of Roger Hoffman, Executive Vice President of Cambridge, filed with the Commission on July 6, 2004 (the "Hoffman Affidavit").

Notice of the application was published in the Daily Record, Omaha, Nebraska, on May 18, 2004. No protests were filed; therefore, we process this application pursuant to the Commission's Rule of Modified Procedure.

The *Intermodal Order* obligates local exchange carriers located outside the top 100 metropolitan statistical areas ("MSAs") to provide LNP and to port numbers to wireless carriers

<sup>1</sup> The Commission notes that the appeal of the *Intermodal Order* is pending in *United State Telecom Association v. FCC*, Cases No. 03-1414 & 03-1443 (D.C. Cir.).

when certain conditions have been met. Such obligation commenced on May 24, 2004, or commences within six months of the date that the wireline carrier receives a bona fide request for LNP from a commercial radio service ("CMRS") provider.<sup>2</sup>

In Section 251(f)(2), Congress granted state commissions jurisdiction to suspend or modify the application of a requirement of Section 251(b) or (c) for rural carriers.<sup>3</sup> The language of Section 251(f)(2) reads, in pertinent part, as follows:

(2) Suspensions and modifications for rural carriers . . . 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.

#### Procedural Summary

This application is the most recent filing in a series of applications seeking suspensions of the implementation of the *Intermodal Order*. The first of these applications, which was assigned docket number C-3096, was filed by Great Plains Communications, Inc. on January 27, 2004. The public hearings

<sup>2</sup> See, Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8394, ¶ 80 (1996) and *Intermodal Order* at ¶ 29.

<sup>3</sup> Cambridge is a "rural telephone company" as such term is defined in 47 U.S.C. § 153(37).

on Application No. C-3096 and 30 other applications seeking suspension of implementation of the *Intermodal Order* were held by the Commission on June 2-4, 2004.

On May 14, 2004, Cambridge filed a Motion for Order Granting Interim Relief Pursuant to 47 U.S.C. § 251(f)(2). On May 18, 2004, the Commission granted interim relief to Cambridge pursuant to Section 251(f)(2) from the requirements of 47 U.S.C. § 251(b)(2) and the *Intermodal Order* "until a date later to be determined by the Commission."

On July 20, 2004, the Commission entered its Order in Application No. C-3096, and in the other 30 applications seeking suspension of implementation of the *Intermodal Order*, granting relief to the applicants. In light of such Order, the similarity of the issues involved in this application and the fact that no protests were filed herein, the Commission will proceed with the disposition of this case consistently with the other Section 251(f)(2) cases.

## O P I N I O N   A N D   F I N D I N G S

### Commission Jurisdiction Over this Docket

Congress specifically delegated jurisdiction to state commissions to receive petitions by rural telephone companies for suspension or modification of the requirements of Section 251(b) and (c). No challenge to the Commission's jurisdiction to act upon this application has been made, and the Commission finds that it possesses jurisdiction to hear and dispose of this application.

### Cambridge's Burden of Proof

Cambridge is required to establish at least one of the criteria listed in Section 251(f)(2)(A), and that the suspension or modification "is consistent with the public interest, convenience and necessity" as provided in Section 251(f)(2)(B). As such, the Commission will proceed to analyze the evidence in the record relating to each of these criteria.

### Section 251(f)(2)(A)(iii) Technical Infeasibility

The Applicant states that intermodal LNP is technically feasible. We observe that the North American Number Council (NANC) advised the FCC in its Report dated May 18, 1998, that unresolved issues exist as a consequence of the differences in the local serving areas of wireless and wireline carriers.

We believe that absent a direct connection between the network of the CMRS provider and the rural local exchange carrier, that facilities are not currently in place in the Nebraska telecommunications network architecture that allow the implementation of intermodal LNP absent imposition of a requirement on the Applicant to transport local exchange traffic outside of the rural local exchange carrier's service area to a distant point (typically the tandem switch at which the CMRS provider has a point of interconnection). Calls to a point outside of the carrier's network are generally carried by interexchange carriers. We gave in depth consideration to this issue in Application No. C-2872 and concluded that in the Great Plains exchanges where Western Wireless had not requested a direct connection to Great Plains, Great Plains shall continue to route calls originating from its exchanges to Interexchange Carriers in compliance with its equal access and toll dialing parity requirements.<sup>4</sup>

We conclude that in light of our decision in Application No. C-2872, the Commission's current rules, the existing network architecture, intermodal LNP in the context of indirect connections between a CMRS provider and a local exchange carrier is technically infeasible at this time. We note that a determination 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 area in which the number is rated,<sup>5</sup> is pending before the FCC.

Because we conclude that the applicant has met its burden to prove that intermodal LNP is technically infeasible at this time, we do not need to address sections 251(f)(2)(A)(i) or (ii) which turn on the economic impact on the users and the applicant. Nevertheless, we will generally discuss and analyze

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<sup>4</sup>In the Matter of the Petition of Great Plains Communications, Inc., Application No. C-2872, Interconnection Agreement as Modified (Sept. 23, 2003) at paras. 44-52.

<sup>5</sup>See, *Intermodal Order* at FN. 75 and paras. 39-40.

the evidence submitted by the applicant with respect to those issues.

Section 251(f) (2) (A) (i) Significant Adverse Economic Impact on Users

In its application, Cambridge's estimated its cost to implement wireline-to-wireless LNP to include an estimated monthly recurring costs of approximately \$4,300 and an estimated total non-recurring cost of approximately \$78,000. These amounts are presented in greater detail in Exhibit 1 attached to the Hoffman Affidavit. FCC Rules allow recovery of non-recurring and recurring LNP costs over a five-year recovery period. 47 CFR § 52.33. According to the Applicant, the monthly subscriber charge to recover LNP costs, taxes and surcharges, excluding transport costs, based upon such estimates, would be \$2.49.

The Commission believes that Cambridge does not have a duty to construct transport facilities for the purpose of transporting wireline-wireless traffic outside of its local exchange service area, nor should Cambridge bear such transport costs. The Commission further believes that direct connections between CMRS providers and Cambridge's network are properly required. However, in light of the uncertainties surrounding transport obligations and the entities that will bear transport costs, we will not engage in speculation as to whether transport costs will be included in the monthly surcharge to subscribers. In taking this position, however, we nonetheless find that transport costs are indeed a part of the costs associated with implementation of LNP, and that such costs, if assigned to either the end user or to Cambridge, will either cause an economic impact on end users or will be an economic burden on Cambridge.

Based on the information filed with the Commission, an imposition of the monthly surcharge as set out in the application filed by Cambridge, even excluding costs of transport, may constitute a significant adverse economic impact on Cambridge's users of telecommunications services.

Section 251(f) (2) (A) (ii) Undue Economic Burden

Cambridge asserts that there will be expenses associated with implementation of intermodal porting that cannot be recovered by Cambridge from its end users. There are circumstances that may result in implementation costs that are not recoverable from the end users. These include costs incurred that are submitted, but not included in tariffs filed with the FCC pursuant to 47 C.F.R. § 52.33; and additional costs that are identified after the end user tariff rate for the 5-year recovery is established.

Further, transport costs may be determined by the FCC to be unrecoverable through the end user surcharge. As illustrated by the Exhibit 1 attached to the Hoffman Affidavit, the non-recurring and recurring costs of transport relating to direct connections may be significant.

In connection with our consideration of the economic burden of implementing intermodal LNP, we are also mindful of the admonitions contained in FCC Chairman Michael Powell's June 18, 2004 letter to the President of NARUC. In such letter, Chairman Powell states: ". . . I urge state commissions to consider the burdens on small businesses in addressing those waiver requests and to grant the requested relief if the state commissions deem it appropriate."

Based upon the information that Cambridge assembled relating to the costs to implement intermodal LNP, and the uncertainties that currently exist with regard to the extent to which currently identified or future costs of such implementation that may fall upon the rural local exchange carriers, the Commission believes that suspension of the requirements of the *Intermodal Order* could be necessary to avoid imposing a requirement on Cambridge that is unduly economically burdensome.

Section 251(f)(2)(B) Consistent with Public Interest, Convenience and Necessity

On the basis of the foregoing analysis and findings, the Commission concludes that Cambridge has sustained its burden to prove the requirements of 47 U.S.C. §§ 251(f)(2)(A)(i) and (ii) with regard to its requested suspension of the implementation of the *Intermodal Order*. However, Cambridge must also establish that the requested suspension is consistent with the public

interest, convenience and necessity pursuant to 47 U.S.C. § 251(f)(2)(B).

The Commission believes that its determination of the public interest in this case inherently involves a cost versus benefit analysis. The costs to end users of telecommunications services and to Cambridge of implementing intermodal LNP has been thoroughly analyzed previously in this Order. An analysis of the benefits of such implementation turns on whether there is a demand for intermodal LNP among the telecommunications users served by Cambridge.

In balancing the costs and benefits at stake in this case, we believe that an 18-month suspension of the LNP implementation requirement is appropriate. We believe that Applicant continues to face the technical obstacles observed by the FCC in its January 16, 2004 Order where the FCC stated,

. . . [I]n order to offer intermodal portability to their subscribers, these smaller carriers must acquire the hardware and software necessary to provide porting, make the necessary network upgrades, and ensure that their upgraded networks work reliably and accurately. Some of the Petitioners also assert that Two Percent Carriers often lack the experience and technical experience with number porting to quickly implement the necessary upgrades to their systems to ensure accurate porting. Accordingly, we conclude that special circumstances exist to grant Two Percent Carriers who have not previously upgraded their systems to support LNP a limited amount of additional time to overcome the technical obstacles they face to successfully meet a request for wireline-to-wireless porting.<sup>6</sup>

An 18-month suspension of the LNP requirements should give the Applicant adequate time to make necessary upgrades and to

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<sup>6</sup>See In Re Telephone Number Portability, CC Docket No. 95-116 (January 16, 2004).

prepare for intermodal portability. In addition, we do not believe that the limited 18-month suspension would adversely impact consumers. According to the Applicant, they have seen no demand for intermodal LNP from its wireline customers.<sup>7</sup>

While the Commission acknowledges that introduction of competition into telecommunications markets is a key policy of the 1996 Telecommunications Act, without any evidence that demand for intermodal LNP exists and thus, that consumer choice is being thwarted, this Commission must assign greater weight to another Congressional policy of the Act.

Based the application and accompanying affidavit filed in this matter, we find that Cambridge has sustained its burden of proof pursuant to 47 U.S.C. § 251(f)(2)(B) that suspension of the requirements of the Intermodal Order is consistent with the public interest, convenience, and necessity.

## O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that based on the findings set forth herein, Cambridge has met its burden of proof to receive a suspension of its obligation to implement intermodal local number portability, as such obligation has been interpreted and ordered for implementation by the FCC pursuant to the *Intermodal Order*, and such implementation obligations are hereby suspended in accordance with 47 U.S.C. § 251(f)(2).

IT IS FURTHER ORDERED that such suspension shall remain in effect until January 20, 2006, unless otherwise ordered by the Commission. Prior to the expiration of such suspension period, the Applicant may seek further relief under 47 U.S.C. § 251(f)(2) based upon the circumstances that prevail at that time. An application for further relief shall be filed on or before July 20, 2005, to give the Commission time to decide whether additional time is appropriate pursuant to 47 U.S.C. § 251(f)(2).

<sup>7</sup> See paragraph 17 of the application, where Cambridge states that it has experienced no demand for intermodal LNP.

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MADE AND ENTERED in Lincoln, Nebraska on this 3rd day of August, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Lowell Johnson*

*Anne C. Bufile*

*Ted Johnson*

//s// Frank E. Landis

//s// Gerald L. Vap

Chairman

*Gerald F. Vap*

ATTEST:

*And J Pollock*

Executive Director