

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Citizens Telecommunications Companies)
Petition for Waiver of Section 52.33(a)(1)(iv))
Of the Commission's Rules to Reduce)
Recovery Period of Local Number Portability)
Surcharge)

ORDER

Adopted: April 30, 2004

Released: April 30, 2004

By the Chief, Pricing Policy Division, Wireline Competition Bureau:

1. The Citizens telecommunications companies (Citizens)1 seek a waiver of section 52.33(a)(1)(iv) of the Commission's rules2 to shorten the recovery period of the Local Number Portability (LNP) end-user charge from the required 60 months to 47 months in service areas where the monthly charge of 41 cents is currently in effect.3 Due to unique circumstances, we find that a waiver of this section of the Commission's rules is warranted and grant Citizens' petition.

2. Section 52.33(a)(1)(iv) of the Commission's rules requires that incumbent local exchange carriers "levelize the monthly number-portability charge over five years."4 Citizens began filing tariffs in 2001 for a monthly LNP charge of 41 cents in several exchanges to be recovered over five years in accordance with this rule.5 Because these filings were made at different times, the five-year recovery periods will also end at staggered times in the future in these various exchanges.6 In its petition, Citizens explains that "[i]n reviewing the costs for a

1 Citizens telecommunications companies provide access services in exchanges for parts of Arizona, California, Idaho, Illinois, Minnesota, Montana, Nebraska, Nevada, New Mexico, New York, Oregon, Pennsylvania, Tennessee, Utah, West Virginia, and Wisconsin. See Citizens Tariff FCC No. 1, Title Pages 1-3.6.

2 47 C.F.R. § 52.33(a)(1)(iv).

3 Letter from Robert Binder, Manager, Regulatory-Pricing and Tariffs, Frontier (a Citizens Communications Company), to Secretary, Federal Communications Commission (filed April 15, 2004) (Citizens Waiver Petition).

4 47 C.F.R. § 52.33(a)(1)(iv).

5 Citizens Waiver Petition (supporting documentation).

6 Citizens Waiver Petition at 1.

recent filing, it was determined that the cost study [underlying] this rate included certain costs that should have been excluded.”⁷ As a result, Citizens plans to file a revised cost study in support of a monthly LNP end-user charge of 34 cents for the remaining exchanges where Citizens implements the LNP charge in the future.⁸

3. For exchanges where the charge of 41 cents has already been implemented, “Citizens believes the most reasonable thing to do . . . is to reduce the recovery period sufficiently to ensure that Citizens does not over-recover the costs of providing Local Number Portability.”⁹ To accomplish its plan to shorten the recovery period from the required 60 months to 47 months for these customers, Citizens seeks a waiver of section 52.33(a)(1)(iv).¹⁰

4. The Commission’s rules allow it to waive its regulations for good cause shown.¹¹ In general, a waiver may be granted when the relief requested would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹² For the reasons discussed below, we find that good cause exists to grant Citizens’ waiver request.¹³

5. The factual circumstances presented here are unique. Initially, we note that Citizens began imposing its uniform LNP charge of 41 cents in different exchanges and at different starting dates going back to 2001, so that there are currently eight different overlapping five-year recovery periods involving 89 exchanges.¹⁴ Recognizing that there is a problem in its cost study on which the LNP rate is based, Citizens put forth a proposal that will ensure it does not over-recover LNP costs and takes into account the best interests of its customers. We believe that Citizens faces special circumstances that warrant a deviation from the rules, so that Citizens can implement its plan to correct the cost recovery problem affecting customers who have already started paying Citizens the LNP end-user charge.

6. Furthermore, we do not believe that permitting a waiver of the five-year recovery period under these circumstances undermines the policy objectives of this rule. It is part of our overall policy designed to promote appropriate LNP cost recovery and ensure that the LNP charge is not only recovered in a proper *manner*, but also that the proper *amount* is recovered. Moreover, in the *Cost Recovery Order*, the Commission imposed the five-year rule in order to “enable incumbent LECs to recover their portability costs in a timely fashion, but . . . also [to] help produce reasonable charges for customers and avoid imposing those charges for an unduly long period.”¹⁵ A waiver here to enable Citizens to shorten its recovery period so that it does not

⁷ Citizens Waiver Petition at 1.

⁸ Citizens Waiver Petition at 1.

⁹ Citizens Waiver Petition at 1.

¹⁰ 47 C.F.R. § 52.33(a)(1)(iv); Citizens Waiver Petition (supporting documentation).

¹¹ 47 C.F.R. § 1.3.

¹² See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

¹³ 47 C.F.R. § 52.33(a)(1)(iv); Citizens Waiver Petition (supporting documentation).

¹⁴ Citizens Waiver Petition (supporting documentation).

¹⁵ *Telephone Number Portability*, CC Docket No. 95-116, Third Report and Order, 13 FCC Rcd 11701, 11777 at para. 144 (1998) (*Cost Recovery Order*), *aff’d*, *Telephone Number Portability*, CC Docket No. 95-116,

over-recover the appropriate *amount* of LNP revenues only promotes this proper balance between carriers and consumers. Any other result in this case would undercut our LNP cost recovery policy objectives.

7. Citizens had two choices as a result of correcting its LNP cost study and having to modify its cost recovery plans; both would have required a waiver of section 52.33(a)(1)(iv).¹⁶ It could have proposed either to decrease the current end-user LNP rate for the remainder of the five-year recovery period (which would de-levelize the charge), or keep the present rate and shorten the five-year recovery period specified in the rules. If Citizens had chosen the former option, it would have had to calculate and track eight different sets of rate reductions across 89 exchanges. We believe that Citizens properly sought to avoid the administrative burdens and customer confusion inherent in this more complicated approach. By contrast, the plan that Citizens selected takes into account the best interests of its customers by passing along to them the savings resulting from simply shortening the time period over which the current LNP rate will be charged, thus reducing the number of customer payments. Accordingly, we find that under these particular circumstances, Citizens not only acted reasonably by choosing the more simplified plan, but that this also serves the public interest.

8. In conclusion, we believe that Citizens demonstrates that a waiver of the five-year rule is warranted. Therefore, we grant Citizens a waiver of section 52.33(a)(1)(iv) of the Commission's rules to shorten the recovery period of the LNP charge from 60 to 47 months in service areas where the monthly LNP end-user charge of 41 cents is currently in effect.¹⁷

9. Accordingly, IT IS ORDERED that, pursuant to sections 201, 202, and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 202, 251(e), section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the five-year recovery rule set forth in section 52.33(a)(1)(iv) of the Commission's rules, 47 C.F.R. § 52.33(a)(1)(iv), IS WAIVED to allow Citizens to shorten the recovery period of its monthly LNP end-user charge in exchanges where its 41-cent charge has already been implemented.

FEDERAL COMMUNICATIONS COMMISSION

Tamara L. Preiss
Chief, Pricing Policy Division
Wireline Competition Bureau

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Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002).

¹⁶ 47 C.F.R. § 52.33(a)(1)(iv).

¹⁷ 47 C.F.R. § 52.33(a)(1)(iv).