

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

In the Matter of

)	
Telephone Number Portability)	
)	CC Docket No. 95-116
Petition of Copper Valley Wireless, Inc. for)	
Waiver of Rule Section 52.31, or Extension of)	
Time, to Comply with the Commission's Wireless)	
Local Number Portability Requirements		

ORDER

Adopted: March 2, 2005

Released: March 3, 2005

By the Deputy Chief, Spectrum and Competition Policy Division:

I. INTRODUCTION

1. In this order, we grant the petition filed by Copper Valley Wireless, Inc. (Copper Valley) seeking a one-year extension of time to comply with the Commission's wireless local number portability (LNP) requirements.¹ We grant Copper Valley's request for a waiver and extension of time based on our finding that Copper Valley has demonstrated that special circumstances exist to warrant an extension of time to comply with the porting requirements. We also find that it is in the public interest to grant Copper Valley's petition. We find that granting a one-year extension of time will provide Copper Valley with a reasonable amount of time to properly implement and commence porting.

II. BACKGROUND

2. *Local Number Portability.* Under the Commission's LNP rules, commercial mobile radio service (CMRS) carriers were required to offer number portability upon request from a competing carrier in the largest 100 metropolitan statistical areas (MSAs) by November 24, 2003.² Outside the largest 100 MSAs, CMRS carriers were required to support number portability by May 24, 2004, or within six months after receiving a request for number portability, whichever is later.³

3. *Petition.* On December 23, 2004, Copper Valley filed a petition seeking a waiver of the

¹ See Telephone Number Portability, CC Docket No. 95-116, Petition for Waiver of Rule Section 52.31, or Extension of Time, to Comply with the Commission's Wireless Local Number Portability Requirements from Copper Valley Wireless, Inc., filed December 23, 2004 (Copper Valley Petition).

² 47 C.F.R. § 52.31; Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184 and CC Docket No. 95-116, *Memorandum Opinion and Order*, 17 FCC Rcd 14972 (2002) (*2002 Forbearance Order*).

³ Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7314 (1997) (*First Memorandum Opinion and Order*); *2002 Forbearance Order*, 17 FCC Rcd at 14986.

Commission's wireless local number portability requirements. Copper Valley contends that its unique and exceptional circumstances justify a one-year extension of time to implement wireless LNP. Specifically, Copper Valley explains that it is an extremely small wireless carrier serving a sparsely populated area in Alaska. It notes that its network uses entirely analog base station and switching equipment that cannot be retrofitted or modified to support wireless number portability. It explains that, although it is in the process of replacing its equipment with Time Division Multiple Access (TDMA) equipment, because of the extreme weather conditions in its operating area, it cannot begin installation of the new equipment until a new construction season begins in May.

4. Copper Valley asserts that its petition for waiver is timely filed. It notes that, as the result of a porting request received August 25, 2004, it would be required to implement porting by February 25, 2005. Copper Valley states that its petition is being filed at least sixty days in advance of the implementation deadline, in accordance with Section 52.31(d) of the Commission's rules.

5. *Waiver Standard.* The Commission may, on its own motion or on petition, waive its rules when good cause is demonstrated.⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁵ In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁶ Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.⁷ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.⁸ In seeking an extension of the LNP deployment deadline, a carrier must provide substantial, credible evidence to support its contention that it is unable to comply with the deployment schedule.⁹

III. DISCUSSION

6. *Special Circumstances.* We find that Copper Valley has demonstrated that good cause exists to warrant a one-year extension of time to comply with the LNP requirements. First, we find that Copper Valley faces special circumstances that warrant an extension of time to comply with the LNP requirements. Copper Valley is an extremely small wireless carrier serving remote areas in Alaska. It has approximately 1200 mobile service subscribers and provides service in an area with a population of 0.297 persons per square mile.¹⁰ Because of its small size, Copper Valley has extremely limited financial resources, and has faced declining revenues over the past several years.¹¹ Copper Valley currently uses an analog system and must replace its base station and switching equipment to be able to provide number portability. Because of the extreme weather conditions in the areas in which it provides service, Copper Valley could not have installed new equipment in the months immediately following its receipt of the porting request and cannot begin installation of its new equipment until May.¹² After completing outdoor installation work, Copper Valley must then complete inside installation work and equipment

⁴ 47 C.F.R. § 1.3; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

⁶ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

⁷ *WAIT Radio*, 418 F.2d at 1157.

⁸ *Id.* at 1159.

⁹ 47 C.F.R. § 52.23(e); *see also* 47 C.F.R. § 52.31(d).

¹⁰ Copper Valley Petition at 4.

¹¹ *Id.*

¹² *Id.* at 5.

configuration and conduct implementation and call routing testing.¹³ In view of Copper Valley's extremely small size and limited financial resources and the unusual difficulties Copper Valley faces with respect to the installation of new equipment, we find that Copper Valley has justified its need for an additional period of one year to comply with the LNP requirements.

7. *Public Interest.* We also find that Copper Valley has demonstrated that granting its request for waiver would serve the public interest. Copper Valley provides wireless service in particularly remote, sparsely populated areas in Alaska and is the sole provider of wireless service in several locations. Because of Copper Valley's limited financial resources, it is likely that denying its request for additional time to make technical upgrades necessary for porting could force it to shut down operations. We find that consumers who live in the areas in which Copper Valley provides wireless coverage would be better served by allowing the company to maintain service during the minimum time period necessary for it to convert to the more advanced equipment necessary for porting. Accordingly, we grant Copper Valley's request for a waiver and extension of time until February 25, 2006, to comply with the wireless LNP requirements for all porting requests it may receive prior to that date.¹⁴

IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 155(c), sections 1.3 and 52.31(d) of the Commission rules, 47 C.F.R. § 1.3 and 52.31(d), and the authority delegated pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, the petition filed by Copper Valley Wireless, Inc. is GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey S. Steinberg
Deputy Chief, Spectrum and Competition Policy Division

¹³ Telephone Number Portability, CC Docket No. 95-116, Supplement to Petition for Limited Waiver or Extension of Time from Copper Valley Wireless, Inc., filed February 23, 2005 at 2.

¹⁴ We reject Copper Valley's argument that it is entitled to relief under section 251(f)(2) of the Communications Act. Section 251(f)(2) applies only to local exchange carriers serving fewer than two percent of the nation's subscriber lines and does not apply to wireless carriers. See 47 U.S.C. § 251(f)(2).