

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

In the Matter of
Telephone Number Portability
United States Telecom Association and
CenturyTel of Colorado, Inc. Joint Petition for
Stay Pending Judicial Review
CC Docket No. 95-116

ORDER

Adopted: November 20, 2003

Released: November 20, 2003

By the Commission:

I. INTRODUCTION

1. In this Order, we deny the Joint Petition for Stay Pending Judicial Review, filed by the United States Telecom Association (USTA) and CenturyTel of Colorado, Inc. (collectively, "petitioners").

II. BACKGROUND

2. On January 23, 2003, the Cellular Telecommunications and Internet Association (CTIA) filed a petition requesting that the Commission issue a declaratory ruling that wireline carriers have an obligation to port their customers' telephone numbers to wireless carriers whose service areas overlap the wireline rate center that is associated with the number.

1 United States Telecom Association and CenturyTel of Colorado, Inc Joint Petition for Stay Pending Judicial Review, CC Docket No. 95-116 (filed Nov. 18, 2003) (Nov. 18th Petition).

2 Telephone Number Portability, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 03-284, rel. Nov. 10, 2003. (Intermodal LNP Order).

3 CTIA Petition for Declaratory Ruling, CC Docket No. 95-116 (filed Jan. 23, 2003) (January 23rd Petition).

wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port. The order defined wireless "coverage area" as the area in which wireless service can be received from the wireless carrier.

3. On November 18, 2003, petitioners filed a motion for stay pending judicial review of the Commission's November 10th order. Petitioners contend that the Commission's decision to require wireline carriers to port numbers to any wireless carrier that provides service in the customer's rate center constitutes a new rule adopted without proper notice. Petitioners argue that allowing the order to go into effect will cause severe harm for petitioners because they will be unable to compete for customers currently served by wireless carriers. Moreover, petitioners contend, the public interest will benefit from the avoidance of expense and customer confusion that the Commission's order will cause.

III. DISCUSSION

4. The Commission evaluates petitions for stay under well settled principles. To warrant a stay, a petitioner must demonstrate that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if a stay is not granted; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest favors granting a stay.⁴ If the last three factors strongly favor the party requesting the stay, then the Commission may grant the stay if a petitioner makes a substantial case on the merits, rather than demonstrating likely success.⁵ We find that the petitioners have not satisfied these criteria.

5. First, we continue to believe that our actions contained in the *Intermodal LNP Order*, for the reasons articulated in that Order, are lawful and supported by the record. The showings made by the Joint Petitioners are repetitive of matters specifically considered and rejected by the Commission in that underlying Order, and thus do not satisfy the first factor set forth above. In particular, we considered and rejected petitioners' "notice" argument in the underlying order, finding that the requirement that LECs port numbers to wireless carriers is not a new obligation.⁶

6. Moreover, an evaluation of the Joint Petitioners' request under the three remaining factors reveals that the balance of the equities clearly weighs against granting a stay. In alleging irreparable harm, Joint Petitioners suggest that the new rules establish an "unfair fight" by permitting only a one-way migration of customers from wireline to wireless carriers.⁷ As the Commission established in the *Intermodal LNP Order*, however, intermodal number portability is a two-way obligation.⁸ Indeed, wireline carriers can port in some number of wireless numbers today. Moreover, a wireline carrier may compete to win back a customer who ported his home telephone number to a wireless carrier, provided that customer has remained at the same location. While there are circumstances under which a wireless carrier need not port a number to a requesting wireline carrier (*i.e.*, where the wireless customer seeks to port a number to a wireline telephone falling in a different rate center), the Commission has sought comment on how to facilitate wireless-to-wireline porting in these instances. Petitioners have not

⁴ *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); *see also* *Washington Metropolitan Transit Commission v. Holiday Tours, Ind.*, 559 F.2d 841 (D.C. Cir. 1977).

⁵ *See* *Cuomo v. NRC*, 772 F.2d 972, 974 (D.C. Cir. 1985); *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985); *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843-44 (D.C. Cir. 1977).

⁶ *Intermodal LNP Order* at para. 26.

⁷ Joint Petition at 14 ("wireless carriers will have no obligation to port customers' numbers to competing wireline carriers").

⁸ *Intermodal LNP Order* at para. 22 ("We also reaffirm that wireless carriers must port numbers to wireline carriers with the number's originating rate center.").

demonstrated, however, that they will be disadvantaged during the pendency of this further proceeding, much less that this harm will be substantial and irreparable.⁹

7. Our consideration of the final two factors – the impact of a stay on other parties and on the public interest – also weighs against granting the stay. As explained in the Order, the new rules eliminate impediments to competition among wireless carriers, and between wireless and wireline carriers.¹⁰ In this manner, number portability promotes competition between telecommunications service providers, allowing customers the flexibility to respond to price and service changes without changing their telephone numbers. We see no reason, based on the instant petition, to delay these benefits to consumers, carriers and to the competitive marketplace.

8. Petitioners also raise the matter that wireline customers who port to wireless carriers may be unaware they may not, in every instance, be able to rely on the 911 system's ability to direct emergency personnel to the customer's location. The Commission recognizes the importance of customers' ability to access emergency services from wireless devices and receive timely emergency services, and has a number of initiatives aimed at ensuring prompt and accurate location and callback information to public safety answering points.¹¹ Through various consumer outreach programs, this Commission, wireless carriers, and the public safety community are actively getting the message out to consumers about what they can expect from their wireless devices' ability to access emergency services. We do not find that these concerns, however, warrant a stay of the number portability rules.

9. Petitioners also assert that high implementation costs associated with LNP deployment in rural markets place a disproportionate burden on rural customers even though there may be no immediate benefit from LNP. Because LNP is request driven—that is, carriers do not need to deploy LNP until receiving a request from another carrier to do so—it is difficult to see how there would be no immediate benefit from deploying the necessary architecture to support LNP. If a carrier receives a request to deploy LNP, it is highly likely that a competitor has in fact entered a market and will seek to market service, wireless or wireline, to end users of the incumbent carrier. Finally, with no factual backup, petitioners assert that there is no established method for routing and billing calls ported outside of the local exchange. We note that today, in the absence of wireline-to-wireless LNP, calls are routed outside of local exchanges and routed and billed correctly. We thus find that, without more explanation, the scope of the alleged problem and its potential effect on consumers is unclear.

⁹ See *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)(to warrant a stay, the harm must be shown to be “both certain and great; it must be actual and not theoretical”; and it must be “of such imminence that there is a ‘clear and present’ need for equitable relief to prevent irreparable harm” (*internal citations omitted*)).

¹⁰ *Intermodal LNP Order* at para. 27.

¹¹ See, e.g., FCC Expands E911 Rules, *News Release*, CC Docket 94-102, IB Docket 99-67 (rel. Nov. 13, 2003) (announcing adoption of order adding services to FCC's E911 rules); Prevention of Unintentional Wireless 911 Calls, *Staff Report*, CC Docket 94-102, 17 FCC Rcd. 24820 (2002) (reporting on steps taken to reduce number of unintentional wireless 911 calls); Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, *Report and Order and Further Notice of Proposed Rulemaking*, CC Docket 94-102, 11 FCC Rcd. 18676 (1996) (requiring transmission of call-back number and location information to public safety answering points).

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that the USTA and CenturyTel of Colorado, Inc. November 18th Petition for Stay is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary