

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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| IN RE:<br><br>RURAL IOWA INDEPENDENT<br>TELEPHONE ASSOCIATION AND IOWA<br>TELECOMMUNICATIONS<br>ASSOCIATION; ALPINE<br>COMMUNICATIONS, L.C., ET AL.; AND<br>COON VALLEY COOPERATIVE<br>TELEPHONE ASSOCIATION, INC.,<br>ET AL. | DOCKET NOS. SPU-04-3<br>SPU-04-5<br>SPU-04-6 |
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**ORDER CONSOLIDATING DOCKETS, ESTABLISHING PROCEDURAL  
SCHEDULE, GRANTING STAY, AND GRANTING INTERVENTIONS**

(Issued April 23, 2004)

On February 18, 2004, the Rural Iowa Independent Telephone Association (RIITA) and Iowa Telecommunications Association (ITA) filed with the Utilities Board (Board) a "Joint Petition for Suspension of Intermodal Number Portability Requirements for Iowa Two Percent Carriers," pursuant to 47 U.S.C. § 251(f)(2) and Iowa Code § 476.1 (2003), requesting that the Board suspend or modify the federal requirements relating to intermodal number portability (IMNP) for all Iowa local exchange carriers (LECs) serving fewer than 2 percent of the nation's subscriber lines. Generally speaking, "intermodal number portability" is the ability to port telephone numbers between wireline and wireless telecommunications service providers. The petition has been identified as Docket No. SPU-04-3.

On March 9, 2004, Alpine Communications, L.C., and 15 other LECs (collectively referred to as "Alpine Companies") filed a joint "Petition for Suspension of Intermodal Number Portability Requirements" pursuant to 47 U.S.C. § 251(f)(2) and Iowa Code § 476.1 (2003), requesting that the Board suspend or modify the federal requirements relating to IMNP with respect to the Alpine Companies. In support of their petition, the Alpine Companies state that they are rural telephone companies in Iowa that serve fewer than 2 percent of the nation's subscriber lines. The petition has been identified as Docket No. SPU-04-5.

Also on March 9, 2004, Coon Valley Cooperative Telephone Association, Inc., and nine additional LECs (collectively referred to as the Coon Valley Companies) filed a joint "Petition for Suspension of Intermodal Number Portability Requirements" pursuant to 47 U.S.C. § 251(f)(2) and Iowa Code § 476.1 (2003), requesting that the Board suspend or modify the federal requirements relating to IMNP with respect to the Coon Valley Companies. In support of their petition, the Coon Valley Companies state that they are rural telephone companies in Iowa with central office switches manufactured by MITEL, which will not support maintenance for local number portability (LNP) after December 31, 2007. In addition, the Coon Valley Companies state that they serve fewer than 2 percent of the nation's subscriber lines. The petition has been identified as Docket No. SPU-04-6.

On March 4, 2004, the Board issued an order in Docket No. SPU-04-3, which docketed RIITA's and ITA's joint petition for investigation, and directed RIITA and ITA

to serve a copy of their joint petition and a copy of the Board's March 4, 2004, order on any company that had submitted a bona fide request to any of their members for LNP. The Board's March 4, 2004, order also requested that RIITA and ITA file a certificate of service with the Board when service was completed. In addition, the Board requested that RIITA and ITA amend their joint petition to identify the LECs that were seeking a suspension or modification of the IMNP requirements.

On April 9, 2004, RIITA and ITA filed an amendment to their joint petition which identified the participating LECs and provided a certificate of service as requested by the Board's March 4, 2004, order. The Board has reviewed the amendment and finds that RIITA and ITA represent all but two of the Alpine Companies and Coon Valley Companies. In addition, the Board finds that the joint petition filed by RIITA and ITA on February 18, 2004, is substantially similar to the petitions filed by the Allied Companies and the Coon Valley Companies on March 9, 2004. Therefore, the Board will consolidate the petitions and refer to RIITA, ITA, Alpine Companies, and Coon Valley Companies collectively as "Petitioners."

On March 29, 2004, NPCR, Inc., d/b/a Nextel Partners (Nextel), filed with the Board a petition to intervene in Docket Nos. SPU-04-3, SPU-04-5, and SPU-04-6. No objections to the petition to intervene have been filed.

In support of its petition to intervene, Nextel states that it is a wireless telecommunications carrier licensed to provide commercial mobile cellular service (CMRS) in Iowa and seeks to compete with LECs. Nextel also states that it

competes with LECs in part by issuing requests to LECs to provide LNP in accordance with the FCC's rules and that suspension or modification of the FCC's LNP rules would insulate LECs from this area of competition and make it difficult for Nextel to expand into new Iowa markets. As such, Nextel states that it has a direct interest in the Petitioners' request and that Nextel's interests are not likely to be adequately represented by other parties.

On March 30, 2004, WWC License, LLC, Verizon Wireless, and U.S. Cellular Corporation, jointly appearing as the Wireless Coalition for Intermodal Portability (Wireless Coalition), filed with the Board a petition to intervene in Docket Nos. SPU-04-3, SPU-04-5, and SPU-04-6. No objections to the petition to intervene have been filed.

In support of its petition to intervene, the Wireless Coalition states that it consists of wireless service providers that collectively provide service throughout Iowa with one or more of its carriers providing CMRS to customers of each member of RIITA and ITA. Wireless Coalition also states that the subject matter of this proceeding specifically impacts the rights of its carriers to port telephone numbers with ITA member carriers and that its interests are not likely to be adequately represented by other parties.

On April 8, 2004, Sprint Corporation, on behalf of its wireless division, Sprint Spectrum, L.P., d/b/a Sprint PCS (Sprint), filed with the Board a petition to intervene

in Docket Nos. SPU-04-3, SPU-04-5, and SPU-04-6. No objections to the petition to intervene have been filed.

In support of its petition to intervene, Sprint states that it is a wireless provider authorized to do business in Iowa. Sprint also states that its rights and interests may be substantially affected by the Board's decisions in this proceeding and its unique interests are not likely to be adequately represented by other parties.

The petitions to intervene will be granted pursuant to 199 IAC 7.2(7)"d." As wireless service providers in Iowa, Nextel, the Wireless Coalition, and Sprint have demonstrated unique interests in these proceedings that should be represented. These intervenors shall be identified collectively as the Objectors.

Section 251(f)(2) of the 1996 Act provides that local exchange carriers with fewer than 2 percent of the nation's subscriber lines may petition a state commission for suspension or modification of the requirements of § 251(b) or (c). In this proceeding, Petitioners seek suspension of the FCC's requirement that they offer IMNP by May 24, 2004.<sup>1</sup> Section 251(f)(2) also states that:

The state commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

47 U.S.C. § 251(f)(2). The Board's receipt of the certificate of service from RIITA and ITA on April 9, 2004, completes the joint petition as of that date. Therefore, the

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<sup>1</sup> In re: Telephone Number Portability, CC Docket No. 95-116, "Order," January 16, 2004.

deadline for Board action in this docket is October 6, 2004, and the Board will establish a procedural schedule that will enable it to act on the petition in a timely manner.

While the Board will consider the Petitioners' requests as a combined petition, the Board anticipates that in the end it will have to consider each company's individual circumstances to determine whether to grant a suspension or modification. It should be possible to develop general standards that can be applied to each company, but it appears consideration of company-specific facts and circumstances may be required.<sup>2</sup> To that end, during this proceeding, the Board requests that each Petitioner provide certain specific company information, including, but not limited to, number of customers, expected cost of IMNP implementation, and expected cost per customer. The Board also requests that this information be presented in a uniform format and that cost information be presented in a reasonably detailed and specific manner.

Petitioners also request a temporary suspension of enforcement of the IMNP requirements while this matter is pending before the Board. Both Nextel and the Wireless Coalition object to the Petitioners' request for suspension. The Wireless Coalition assert that the Petitioners fail to present sufficient grounds for the Board to grant an interim stay of the IMNP requirements and that the public interest in

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<sup>2</sup> If any party disagrees with the Board's analysis in this respect, and in particular if they disagree with the expectation that a company-specific analysis is required, the party should make an appropriate filing within seven days of the date of this order describing what the party believes to be the appropriate scope of this proceeding and citing any available authority for the party's position.

competition weighs heavily against a stay. Nextel asserts that the Petitioners fail to consider a recent decision by the U.S. Court of Appeals for the D.C. Circuit that denied an emergency motion for stay of the FCC's intermodal LNP requirements.<sup>3</sup> Nextel states that as in the U.S. Telecom case, the Petitioners fail to demonstrate that (1) they are unlikely to succeed on the merits, (2) they will be irreparably harmed if a stay is not granted, (3) customers will be harmed if a stay is not granted, and (4) the public interest will be harmed if a stay is not granted.

Pursuant to § 251(f)(2) of the Act, the Board has been given the authority to suspend the enforcement of these requirements for the petitioners while the Board considers the petition. With respect to the U.S. Telecom Ass'n case cited by Nextel, it is unclear whether these four criteria considered by the Board are applicable when determining whether to grant a stay pursuant to § 251(f)(2). However, the Board notes that without a stay, the May 24, 2004, deadline imposed by the FCC will render these proceedings moot, because the Petitioners would be required to comply with the requirements they are seeking to suspend. This fact, by itself, is sufficient to justify granting a stay while the Board considers the petition. The public interest requires no less.

Therefore, the Board will grant the petitioners' request for a temporary stay of the IMNP requirements while this matter is pending. If, however, an intervenor in this proceeding can demonstrate circumstances that support lifting the temporary stay of

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<sup>3</sup> U.S. Telecom Ass'n v. FCC, "Order," No. 03-1414 (D.C. Cir. Dec. 4, 2003).

these requirements for an individual company, the Board will consider removing the stay on a company-by-company basis.

**IT IS THEREFORE ORDERED:**

1. The three petitions for suspension of intermodal number portability requirements filed on February 18, 2004, by Rural Iowa Independent Telephone Association and Iowa Telecommunications Association, and on March 9, 2004, by Alpine Communications, L.C., et al., and Coon Valley Cooperative Telephone Ass'n, Inc., et al., are combined, are considered to be complete as of April 9, 2004, and are docketed for investigation.

2. The following procedural schedule is established for this proceeding:

a. Petitioners shall file prepared direct testimony, with supporting exhibits and workpapers, on or before May 17, 2004.

b. Objectors shall file any prepared rebuttal testimony, with supporting exhibits and workpapers, on or before June 14, 2004.

c. Petitioners may file any prepared rebuttal testimony, with supporting exhibits and workpapers, on or before June 30, 2004.

d. A hearing for the purpose of receiving testimony and cross-examination of all testimony will commence at 10 a.m. on August 10, 2004, in the Board's hearing room at 350 Maple Street, Des Moines, Iowa. Parties shall appear at the hearing one-half hour prior to the time of hearing to mark exhibits. Persons with disabilities requiring assistive services or devices to

observe or participate should contact the Board at 515-281-5256 to request that appropriate arrangements be made.

e. Any party desiring to file a brief may do so on or before September 3, 2004.

3. In the absence of objection, all workpapers shall become a part of the evidentiary record at the time the related testimony and exhibits are entered in the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or cross-examination, which have not previously been filed with the Board, shall become a part of the evidentiary record. The party making reference to the data request or response shall file an original and six copies at the earliest possible time.

5. In the absence of objection, if the Board calls for further evidence on any issue and that evidence is filed after the close of hearing, the evidentiary record shall be reopened and the evidence will become a part of the evidentiary record five days after filing. All evidence filed pursuant to this paragraph shall be filed no later than seven days after the close of hearing.

6. Pursuant to 199 IAC 7.7(2) and (11), the time for filing responses or objections to data requests and motions will be shortened to five days from the date the motion is filed or the data request is served. All data requests and motions

should be served by facsimile transfer or by electronic mail, in addition to United States mail.

7. The Petitioners' request for a temporary suspension of enforcement of the FCC's intermodal local number portability requirements during the pendency of this proceeding is granted as described in this order.

8. The petitions to intervene filed by NPRC, Inc., d/b/a Nextel Partners, on March 29, 2004, the Wireless Coalition for Intermodal Portability on March 30, 2004, and Sprint Corporation on April 8, 2004, are granted.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 23rd day of April, 2004.