

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: RURAL IOWA INDEPENDENT TELEPHONE ASSOCIATION AND IOWA TELECOMMUNICATIONS ASSOCIATION; ALPINE COMMUNICATIONS, L.C., ET AL.; AND COON VALLEY COOPERATIVE TELEPHONE ASSOCIATION, INC., ET AL.	DOCKET NOS. SPU-04-3 SPU-04-5 SPU-04-6
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**ORDER REQUESTING ADDITIONAL INFORMATION AND
SETTING PREHEARING CONFERENCE**

(Issued July 23, 2004)

On February 18, 2004, the Rural Iowa Independent Telephone Association (RIITA) and the 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 Group") filed a "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 Group. 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 Group) filed a "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 Group. The petition has been identified as Docket No. SPU-04-6.

On April 23, 2004, the Board issued an order consolidating these dockets, granting a stay of the federal requirements pending the outcome of this proceeding, establishing a procedural schedule, and granting intervention to NPCR, Inc., d/b/a Nextel Partners (Nextel), WWC License, LLC, Verizon Wireless, and U.S. Cellular Corporation, jointly appearing as the Wireless Coalition for Intermodal Portability (Wireless Coalition), and Sprint Corporation, on behalf of its wireless division, Sprint Spectrum, L.P., d/b/a Sprint PCS (Sprint). After consolidation of these dockets, this proceeding involves 144 local exchange carriers providing service throughout Iowa.

Section 251(f)(2) of the Telecommunications Act of 1996 (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 Federal Communications Commission's (FCC) requirement that they offer IMNP by May 24, 2004.¹ Section 251(f)(2) gives state public utility regulatory commissions the authority to suspend the federal requirement in appropriate circumstances:

SUSPENSIONS AND MODIFICATIONS FOR RURAL CARRIERS- A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. 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.

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

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). In its April 23, 2004, order, the Board determined that its receipt of a completed certificate of service received from RIITA and ITA on April 9, 2004, completed the joint petition as of that date.

Therefore, the deadline for Board action in this docket is October 6, 2004.

Based on experience with a recent hearing in a similar docket,² Board staff has recommend that the Board require that certain additional information be filed in this consolidated docket, as that information may be helpful to the Board when it is considering these consolidated dockets and preparing for hearing.

First, the Board will request individualized cost data from the LECs involved in this proceeding. Specifically, the Board requests the estimated cost per customer that would be reflected in the local number portability (LNP) cost-recovery charge authorized by the FCC pursuant to 47 C.F.R. § 52.33 (2003). This would be similar in form and content to the cost-per-customer information already filed on behalf of the 26 companies in the Alpine Group and the Coon Valley Group. Without prejudging the issues, it appears there is a significant possibility that the Board's final decision

² In re: Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, Docket No. SPU-04-8 (the "Iowa Telecom docket").

will require consideration of the cost of implementing IMNP for each individual company in order to make a determination of whether the requirement is "unduly economically burdensome" for that company and its customers, so it is appropriate to prepare that information now, as there may not be time to compile all of the necessary data after the hearing but before the October 6, 2004, deadline.

At this time, the Board will not require that the worksheets and other supporting data be filed with the estimated cost per customer. As will be discussed below, it is not clear that the supporting cost information is directly relevant to the Board's decision. However, the worksheets and other supporting data should be made available to the other parties to this proceeding, pursuant to confidentiality agreement if necessary.

The Board is aware that it is requiring information for a relatively large number of companies, and the Board has no information regarding the time required to estimate the per-customer costs for a company. Nonetheless, the Board believes that most, if not all, of this information should be filed in advance of the August 10, 2004, hearing in this matter. Accordingly, the Board will direct RIITA and ITA to file as much of the required information as possible on or before July 30, 2004, along with a schedule for submitting the rest of the required information.

Section 251(f)(2) sets out a multi-factor test for the Board's consideration in this proceeding, and one of those factors is whether the suspension or modification is consistent with the public interest, convenience, and necessity. As a part of this

factor, the intervenors have raised issues concerning the availability of thousands-block number portability (TBNP), which is a more efficient way of assigning telephone numbers in exchanges that are served by more than one local exchange carrier.

TBNP allows two or more carriers to share blocks of telephone numbers. In considering this factor, the Board believes it will be helpful to know which exchanges are likely to benefit from network-facilities-based local exchange competition in the relatively near future. Therefore, the Board will also require that the petitioners include in their filing a simple table indicating, for each company and for each community served by that company, whether the communities are currently served by a cable television company that has its own cable network and is independent of the incumbent local exchange carrier. The table should also show whether a competitive local exchange carrier has overbuilt the incumbent's facilities in each community.

Finally, the Board is mindful that § 251(f)(2) provides in relevant part that the commission shall grant petitions "for such duration as" the commission determines that such suspension or modification is necessary. It is possible that this language could be interpreted to mean that the Board cannot grant open-ended suspensions in this docket, that is, that each extension that is granted must have a specified term. Currently, many of the petitioners have requested a suspension "until such time as there is a balanced policy result consistent with the public interest." Again, without prejudging the issue, it is not clear that this language is sufficiently definite to satisfy

the statutory requirement. Therefore, the Board will require that each company seeking a suspension or modification provide a statement indicating a projected date for implementation of IMNP, if a suspension or modification is granted, or specifying an event the occurrence of which would cause the company to implement IMNP. Without limiting the possible responses to this requirement, examples of responses might include a statement that the company is scheduled to replace or upgrade its switch within a specified time frame, at which time IMNP will be implemented, or a statement that the company will implement IMNP upon six months' notice from a wireless carrier that a customer in the company's service territory has asked to transfer his wireline number to wireless service. The Board is not, at this time, finding that either one of these responses is sufficient, but it appears they may be more effective than the general public interest standard that has been offered.

The Board has scheduled two days for the hearing in this matter and has very few options for extending the hearing within the available time limits. Accordingly, the Board will ask that the parties plan their hearing activities to use the time efficiently, by focusing on the statutory standards and the relevant issues. In that connection, the Board will offer its current, tentative conclusions regarding one potential issue, the costs that the petitioners have included in their cost recovery calculations.

It appears that local exchange carriers are intended to recover the incremental costs associated with implementation of IMNP (and local number

portability in general) under federal law and through a tariff filed with the FCC, pursuant to 47 C.F.R. § 52.33. It is not clear that the Board has jurisdiction to review the costs projected to be included in those tariffs, and sound policy argues that the Board should base its decisions in these dockets on the estimated costs provided by the petitioners, so long as those estimates are in the range of reasonableness. Otherwise, the Board might review a company's costs and make a determination of the proposed costs are not reasonable, then decide (based on the resulting reduced cost per customer) that a suspension is not justified. If the FCC subsequently allowed the company to recover the originally-estimated cost per customer, then the validity of the Board's decision to deny a suspension might be subject to question and the Board's earlier decision might have to be re-visited. This would be inefficient, to say the least. Accordingly, the Board's present intent is to rely on the company estimates of the per-customer surcharge that would be implemented under Federal law, at least in general.

This is not to say that every estimate will be accepted without question. The record already contains 26 estimates that establish a range that the petitioners have indicated is reasonably representative of all of the petitioners. Thus, if one or more petitioners file per-customer cost estimates that are significantly higher than the estimates filed to date, the Board may have to evaluate the estimate and the supporting data.

The Board will also require that the intervenors in this docket file additional information that is likely to be necessary, or at least helpful, to the Board's decision making process in these dockets. In the Iowa Telecom docket, the Board required that the wireless carriers provide certain information regarding their actual coverage areas and how they overlap with Iowa Telecom's exchanges. Similar information is likely to be relevant in this matter. However, the Board is aware that the sheer number of companies and exchanges involved in this docket may make it more difficult to assemble the detailed information discussed in the Iowa Telecom docket for filing in this case in a timely manner. Therefore, the Board will require that the wireless intervenors file a statement identifying the petitioners' exchanges in which the wireless intervenors (a) actually have coverage and (b) actually provide service. Again, the Board will require that this information be filed on or before July 30, 2004; if the complete list cannot be filed by that date, the wireless intervenors should file as much of the information as they are able to assemble by that time, along with a proposed schedule for submitting the rest of the information.

Finally, the Board will schedule a prehearing conference for Tuesday, August 3, 2004, beginning at 10 a.m. in Conference Room 3 at the Board's offices. The purpose of the conference will be to discuss procedural issues, hearing procedures, possible stipulations to narrow the issues, and any other relevant matters. The conference will be chaired by Board staff. The Board members will not be in attendance. The conference will be open to the public, but will not be

recorded, and statements made at the conference will not become part of the Board's decision-making record merely by virtue of being made at the conference.

IT IS THEREFORE ORDERED:

1. On or before July 30, 2004, all parties to these consolidated dockets shall file the information described in this order.

2. A prehearing conference is scheduled for August 3, 2004, commencing at 10 a.m. in the Board's Conference Room 3, 350 Maple Street, Des Moines, Iowa. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

UTILITIES BOARD

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

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