

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6951

Petition of STE/NE Acquisition Corp., d/b/a)
Northland Telephone Company of Vermont,)
d/b/a FairPoint New England, to modify the)
requirement to institute local number portability)
pursuant to Section 251(f) of the)
Telecommunications Act of 1996.)

Order entered: 8/31/2004

PRESENT: Gregg Faber, Hearing Officer

APPEARANCES: Dixie Henry, Esq.
for Vermont Department of Public Service

Cassandra C. LaRae-Perez, Esq.
Primmer & Piper, P.C.
for STE/NE Acquisition Corp., d/b/a Northland Telephone
Company of Vermont, d/b/a FairPoint New England

I. INTRODUCTION

In this Proposal for Decision, I recommend that the Board modify the Federal Communications Commission's ("FCC") local number portability ("LNP") requirements for STE/NE Acquisition Corp., d/b/a Northland Telephone Company of Vermont, d/b/a FairPoint New England ("Northland" or the "Company"), and establish May 24, 2005, as the date by which the Company is obligated to implement local number portability, regardless of whether or when the Company receives a bona fide request. Approval of this modification within the provisions of § 251(f)(2) of the Telecommunications Act of 1996 is appropriate because implementation of LNP within an undetermined time frame would be economically burdensome for the Company and because such modification is otherwise in the public interest.

II. PROCEDURAL HISTORY

A. Federal Background

By its Order dated November 10, 2003 (the "Intermodal Order"), the Federal Communications Commission ("FCC") ordered that local exchange carriers must "port numbers to wireless carriers where the requesting wireless carrier's coverage area overlaps the geographic location of the rate center in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port."¹

Pursuant to the Intermodal Order, the FCC required wireline carriers outside the nation's 100 largest Metropolitan Statistical Areas ("MSAs") to implement LNP by May 24, 2004, or within six months of receiving a bona fide request, whichever is later.²

B. Northland's Petition for Modification of its LNP Obligation

On May 4, 2004, the Company filed a petition requesting the Board to extend the deadline for the Company's implementation of LNP to May 24, 2005. The Company requested an expedited consideration of its petition.

I conducted a Prehearing Conference on May 24, 2004, at which the parties requested additional time to explore the issues prior to submitting a schedule to resolve the proceedings. On June 11, 2004, I issued a Procedural Order that set out the schedule for this Docket as mutually agreed between the parties.

On June 3, 2004, Northland filed an amended petition (the "Amended Petition"), modifying its initial LNP extension request from a deadline of May 24, 2005, to the later of May 24, 2005, or six months from receiving a bona fide request for LNP from another carrier.

On June 24, 2004, the parties notified the Board that they had reached an oral agreement resolving all contested issues between the parties. The Docket was subsequently suspended, and on July 9, 2004, the parties filed a Stipulation, in which the parties agreed that Northland would

1. *In re Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, ¶ 22 (2003).

2. See Intermodal Order at ¶ 29; 47 C.F.R. § 52.23(c). See also Federal Communications Commission, Wireless Telecommunications Bureau and Wireline Competition Bureau Remind Carriers Outside the 100 Largest MSAs of the Upcoming May 24, 2004 Local Number Portability Implementation Deadline, DA 04-1340, Press Release (May 13, 2004).

implement LNP by May 24, 2005, regardless of whether or when Northland received a bona fide request.

On July 14, 2004, I conducted a technical hearing. Lawrence Lackey, Director for Telecommunications for the Department of Public Service, appeared and testified in support of the Stipulation. Northland did not present any witnesses.

III. FINDINGS OF FACT, CONCLUSIONS OF LAW & DISCUSSION

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

Findings of Fact

1. Northland is an incumbent local exchange carrier serving approximately 6200 access lines in and around Alburg, Cabot, Groton, Isle LaMotte, Marshfield, Montgomery, Peacham, and West Newbury, Vermont. Amended Petition at ¶ 1.

2. Northland is an affiliate of FairPoint Communications, Inc. ("FairPoint Communications"), a holding company with approximately twenty operating companies across the nation. Tr. 7/14/04 at 10 (Lackey).

3. FairPoint Communications is in the process of implementing LNP in each of its operating companies, including Northland, and it would ease the burden, in terms of financial and human resources, on Northland if the obligation to implement LNP in Vermont is delayed until calendar year 2005. Tr. 7/14/04 at 10 (Lackey).

4. As of the date of the Company's Amended Petition, Northland had not received any bona fide requests from any carrier requesting porting. Amended Petition at ¶ 7.

5. The initial costs to Northland for LNP implementation will be approximately \$100,000 for software and ancillary services. Amended Petition at ¶ 4.

6. There is no large or immediate demand for LNP by other carriers in Northland's service territory. Tr. 7/14/05 at 11 (Lackey).

7. There is currently little wireless telecommunications service being offered in Northland's service territory. *Id.*

8. The public interest, necessity and convenience are served by the value of establishing a date certain by which Northland will implement LNP, as provided in the Stipulation. *Id.* at 12 .

9. Northland is currently required to implement LNP by May 24, 2004, or within six months of receiving a bona fide request. Amended Petition at ¶ 2.

10. Without a waiver of the LNP deadline, the Company would be required to implement LNP within six months of a bona fide request. *Id.* at 13.³

11. Therefore, while the Company requested a 12-month extension of the initial May 24, 2004, deadline to May 24, 2005, the extension is, in practice, only an extension of a few months. *Id.*

12. The delay in implementation of LNP for, at most, a few months, as allowed by the Stipulation, is reasonable in light of the overall resource requirement on Northland to implement LNP. *Id.* at 10.

Conclusions of Law and Discussion

Section 251(f)(2) of the 1996 Telecommunications Act allows a local exchange carrier with fewer than 2% of the nation's subscriber lines to petition a state commission for modification of certain interconnection requirements including the LNP requirements. This section provides that the state commission shall grant the 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 service 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."⁴

I conclude that modifying the date by which Northland must implement LNP is necessary to avoid imposing a requirement that is unduly economically burdensome for Northland and that the extension is consistent with the public interest, convenience, and necessity.

The brief modification of Northland's LNP obligation will ease the economic burden on Northland and its customers. In addition, this short delay will have, at most, a minimal impact upon wireless carriers seeking to use LNP in Northland's service territory. Granting the

3. For example, if, absent a waiver, Northland was to receive a bona fide request for LNP in August of 2004, the Company would be required to implement LNP by February of 2005.

4. Telecommunications Act of 1996, codified at 47 U.S.C. § 251(f)(2).

Company's request for modification of its LNP requirement and establishing a date certain for Northland's implementation of LNP is in the public interest.

Therefore, I recommend that the Board approve the stipulation between Northland and the Department. In so doing, I recommend that the Board modify Northland's obligation to implement LNP and require Northland to implement LNP no later than May 24, 2005, regardless of whether and when the Company receives a bona fide request.

Service of this Proposal for Decision in accordance with 3 V.S.A. § 811 has been waived by all the parties.

Dated at Montpelier, Vermont, this 31st day of August, 2004.

s/Gregg Faber
Gregg Faber
Hearing Officer

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendations of the Hearing Officer are adopted, and the Stipulation between Northland and the DPS is approved.
2. Northland shall implement LNP no later than May 24, 2005, regardless of whether or when the Company receives a bona fide request.

Dated at Montpelier, Vermont, this 31st day of August, 2004.

<u>s/Michael H. Dworkin</u>)	PUBLIC SERVICE BOARD OF VERMONT
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<u>s/David C. Coen</u>)	
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<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: August 31, 2004

ATTEST: s/Susan M. Hudson
Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.