

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
WALDRON TELEPHONE COMPANY for temporary)	
suspension of wireline to wireless number portability)	Case No. U-13956
obligations pursuant to § 251(f)(2) of the federal)	
Telecommunications Act of 1996, as amended.)	
_____)	

In the matter of the application of)	
OGDEN TELEPHONE COMPANY for temporary)	
suspension of wireline to wireless number portability)	Case No. U-13958
obligations pursuant to § 251(f)(2) of the federal)	
Telecommunications Act of 1996, as amended.)	
_____)	

At the February 12, 2004 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER

On November 21, 2003, Waldron Telephone Company (Waldron) and on November 24, 2003, Ogden Telephone Company (Ogden), (collectively, the petitioners), filed petitions requesting that the Commission temporarily suspend their wireline-to-wireless local number portability (LNP) obligations for one year and eighteen months, respectively, pursuant to Section 251(f)(2) of the federal Telecommunications Act of 1996 (FTA), 47 USC 251(f)(2).

Federal Communications Commission (FCC) rules require that telecommunications carriers in the top 100 Metropolitan Statistical Areas provide LNP by November 24, 2003, unless a state

commission granted a suspension of the LNP requirements under Section 251(f)(2) of the FTA, which provides:

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) of this section 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 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.

47 USC 251(f)(2).

Each petitioner qualifies as a “rural telephone company” as defined in 47 USC 153(37) and both are local exchange carriers with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide (Two Percent Carriers). The petitioners request a temporary suspension of their LNP obligations under Section 251(f)(2), because both (1) are replacing in the near future their current switches that are not capable of intermodal portability, and (2) say they are confused because of the many questions regarding implementation of intermodal portability that the FCC has yet to resolve.

Waldron has not received any bona fide requests from any wireless carriers to implement intermodal portability, nor has it received any requests from its own customers to port a wireline number to a wireless carrier. Further, Waldron is currently using a Nortel DMS-10 switch, which is not capable of intermodal porting.¹ However, Waldron plans to replace (within the next

¹ Waldron estimates it would cost at least \$8,000 to make the DMS-10 switch capable of intermodal porting.

12 months) its DMS-10 switch with a CSX 2100 softswitch, which is capable of intermodal porting. Waldron is currently field-testing the softswitch with some of its customers. Therefore, Waldron concludes that any expenditure to upgrade the DMS-10 switch would be unduly economically burdensome and would not be well spent on a switch that it intends to replace soon.

Similarly, Ogden says that it currently uses a Siemens DCO switch, incapable of intermodal porting, which it plans to retire in a year.² Ogden is currently working on the engineering specifications necessary for the replacement softswitch, and projects that the process of constructing, installing, and testing the new softswitch could take as much as, if not more than, a year. Likewise, Ogden says, spending money to update a switch it is about to replace would be unduly economically burdensome.

Alternatively, both petitioners argue that their LNP obligations are technically infeasible, 47 USC 251(b)(2), and that suspension of the portability obligations would avoid a significant adverse economic impact on users of telecommunications services generally, 47 USC 251 (f)(2)(A)(i). The petitioners complain that they have a limited customer base over which to spread the implementation costs for LNP. Finally, the petitioners conclude that suspension of their portability requirements would serve the public interest, convenience, and necessity. 47 USC 251(f)(2)(A)(i).

Since the petitioners filed their requests, the FCC has issued an order³ in which it authorized a limited waiver of the LNP requirements until May 24, 2004 for Two Percent Carriers that have not received a request for local number porting from either a wireline carrier prior to May 24, 2003, or a wireless carrier that has a point of interconnection or numbering resources in the rate center

² Ogden estimates it will cost approximately \$25,000 to replace the DCO switch with a new, next generation switch capable of intermodal porting.

³ See, In the matter of Telephone Number Portability, CC Docket No. 95-116 (rel'd January 16, 2004).

where the customer's wireline number is provisioned. However, the FCC was clear that Two Percent Carriers not meeting these qualifications must comply with LNP requirements. Therefore, to the extent that the petitioners are Two Percent Carriers who have not received a request for LNP prior to May 24, 2003 or requests from their own customers to port any wireline numbers to a wireless carrier, the LNP obligations are temporarily suspended until May 24, 2004.

However, the petitioners have requested that the Commission suspend their LNP obligations until November 21, 2004 or May 24, 2005. The Commission is not persuaded that it should suspend their LNP obligations beyond the FCC deadline. Neither petitioner has shown that it is technically infeasible for it to meet its portability obligations. To the contrary, they have indicated that calls can be routed through interexchange carriers. Further, neither petitioner has shown a significant adverse economic impact beyond stating that it would cost either \$8,000 or \$25,000 to meet its portability obligations by the deadline. Finally, neither petitioner has demonstrated that it will incur any costs that are different from, or more burdensome than, the costs of similarly situated providers of basic local exchange service. The Commission is unconvinced that the burdens will disproportionately affect the petitioners as compared with other carriers. Indeed, the petitioners have been on notice since 1996 to prepare for implementation of LNP and replacement of new switches should have been completed prior to the implementation date.

Therefore, the Commission cannot find that it is consistent with the public interest, convenience, and necessity to temporarily suspend Waldron and Ogden's LNP obligations beyond November 24, 2003 or May 24, 2004, if they qualify for the FCC's limited waiver. Any deferment of the FCC's number portability requirements beyond that time would be anti-competitive and anti-consumer. The Commission concludes that an extension of the porting deadline until November 2004 or May 2005 would not serve the public interest because it unnecessarily delays

the LNP benefits to the public. A further delay of LNP obligations would unnecessarily harm competition and consumers, whereas portability will promote competition by allowing consumers to move to carriers that would better serve their needs without having to give up their telephone numbers. Thus, the Commission finds that the public interest would be served by LNP implementation consistent with FCC requirements.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.

b. Waldron and Ogden's petitions to temporarily suspend their LNP requirements beyond the FCC deadline are not consistent with the public interest, convenience, and necessity, and should be denied.

THEREFORE, IT IS ORDERED that the petitions of Waldron Telephone Company and Ogden Telephone Company for temporary suspension of wireline to wireless local number portability obligations, pursuant to Section 251(f)(2) of the federal Telecommunications Act of 1966, are denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chair

(S E A L)

/s/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of February 12, 2004.

/s/ Mary Jo Kunkle
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Suggested Minute:

“Adopt and issue order dated February 12, 2004 denying the petitions of Waldron Telephone Company and Ogden Telephone Company for temporary suspension of wireline to wireless local number portability obligations, pursuant to Section 251(f)(2) of the federal Telecommunications Act of 1966, as set forth in the order.”