

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

In the matter of)
Telephone Number Portability) CC Docket No. 95-116
NOW Licenses, LLC Request for Temporary)
Partial Waiver of Section 52.31 of the)
Commission's Rules Pertaining to the Porting In)
of Numbers)

Order

Adopted: May 14, 2004

Released: May 17, 2004

By the Deputy Chief, Spectrum and Competition Policy Division:

I. INTRODUCTION

1. In this Order, we grant a petition by NOW Licenses, LLC (NOW) for a temporary, partial waiver of the local number portability (LNP) obligations imposed on commercial mobile radio service (CMRS) carriers by section 52.31 of the Commission's rules. Specifically, we grant NOW's request for an extension of time to meet requests to port in numbers until seven months from the date of the Commission's decision on its spectrum license re-assignment application, which extends the deadline to November 30, 2004. NOW will continue to be subject to an obligation to port numbers out during this period. The extension we grant will provide NOW and Dobson Cellular Systems, Inc. (Dobson) with time to implement an agreement pursuant to which Dobson will acquire NOW's assets and licenses and replace NOW's current switch with a more advanced and fully LNP-capable version, while continuing to port out numbers. As a consequence, the extension will help to ensure that LNP is implemented in an efficient manner that promotes competition and, on balance, enhances consumer benefit.

II. BACKGROUND

2. Number portability refers to the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers when switching from one telecommunications carrier to another. Under section 52.31 of the Commission's rules, covered CMRS carriers operating in the 100 largest Metropolitan Statistical Areas (MSAs) are required to provide number portability on November 24, 2003, at any switch where the CMRS carrier received a porting request from another carrier on or before February 24, 2003. Where the first porting request for a switch is received after February 24, 2003, CMRS carriers in the top 100 MSAs must be capable of porting within 30 to 180 days

1 In the Matter of Telephone Number Portability, CC Docket 95-116, NOW Licenses, LLC Request for Temporary Partial Waiver (filed January 8, 2004) (LNP Waiver Petition).

2 NOW's petition requests a waiver of the LNP rules "to the extent those rules require carriers to be capable of porting-in numbers." LNP Waiver Petition at 2.

3 47 C.F.R. § 52.21(l).

4 47 C.F.R § 52.31(a). CMRS carriers operating outside the top 100 MSAs must become LNP-capable upon request by May 24, 2004, or within six months of a request.

after receiving the first request or after November 24, 2003, whichever is later.⁵ NOW, a small CMRS carrier in Michigan, operates partially within one of the top 100 MSAs and does not dispute that it is subject to the November 24, 2003 deadline.⁶ Although it has not received any requests to port out its numbers, NOW asserts that it has, at some point, received three requests to port in numbers.⁷

3. To make its single Nortel switch LNP-capable by the November deadline, NOW first planned to upgrade its switch software from GSM10 to GSM13 based on information from Nortel indicating that the upgrade would be sufficient to achieve compliance.⁸ When NOW attempted to implement its plan, however, Nortel indicated that it was no longer offering the GSM13 upgrade.⁹ NOW therefore turned to an alternative solution, paying \$400,000 for the installation of software patches and upgrades, which were fully installed in early November, 2003.¹⁰ During subsequent tests between November 12 and November 22, NOW determined that the upgraded switch could successfully complete requests to port out NOW's numbers to other carriers within a day.¹¹ It found, however, that the switch was still unable to port in numbers from other carriers.¹² NOW again contacted Nortel for alternatives, and was informed that, to be fully compliant, it would have to upgrade its switch software to GSM15, rather than GSM13, at an additional cost of over \$1,000,000.¹³

4. On January 8, 2004, NOW filed the pending LNP Waiver Petition.¹⁴ In its petition, NOW noted that it had recently entered into an Asset Purchase Agreement with Dobson Cellular Systems, Inc. (Dobson), under which, subject to Commission consent, NOW would assign its spectrum licenses and sell much of its network assets to Dobson.¹⁵ To accomplish the license assignment, NOW and Dobson had filed an application (Application) with the Commission seeking consent to assign NOW's sixteen licenses to Dobson.¹⁶ In its LNP Waiver Petition, NOW indicated that, if the Application were approved and after execution of the Asset Purchase Agreement, Dobson would install a more advanced and fully LNP-compliant switch to replace NOW's current switch.¹⁷ NOW argued that there would be little point to making expensive upgrades to a switch that would soon be replaced.¹⁸ Alternatively, NOW asserted, if the Application were not approved, NOW would require additional time to implement the necessary

⁵ 47 C.F.R. § 52.31(a)(1)(iv).

⁶ LNP Waiver Petition at 1-2. Because NOW uses only one switch, which provides service both inside and outside of one of the top 100 MSAs, the Commission need not distinguish between those switches that are subject to the November 24, 2003 deadline and those switches that are not.

⁷ LNP Waiver Petition at 10 n.11. The record does not establish whether these requests were received by February 24, 2003, or not. We need not determine which is the case, because NOW would need a deadline extension in either case.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 3-4.

¹¹ *Id.* at 4.

¹² *Id.*

¹³ *Id.* at 5-6.

¹⁴ *See generally* LNP Waiver Petition.

¹⁵ LNP Waiver Petition at 5.

¹⁶ Application of NOW Licenses, LLC and Dobson Cellular Systems, Inc. for Assignment of Authorization, ULS File No. 0001555982 (filed Dec. 23, 2003) ("Application").

¹⁷ LNP Waiver Petition at 5.

¹⁸ *Id.*

upgrades itself.¹⁹ Accordingly, NOW requested that the deadline for porting in numbers be extended to seven months from the date on which the Commission resolved NOW's license assignment application.²⁰

5. On April 30, 2004, the Wireless Telecommunications Bureau issued a Public Notice stating that the Application requesting Commission consent to assign NOW's licenses to Dobson was approved subject to certain conditions not relevant here.²¹ The Bureau also noted that NOW and Dobson had requested that NOW's outstanding waiver petitions, including the instant LNP Waiver Petition, be resolved contemporaneously with the decision on the Application.²² The Bureau declined to resolve any of the pending petitions, however, instead deferring action to a later time.²³ In this Order, we turn to NOW's LNP Waiver Petition.

III. DISCUSSION

6. The Commission may waive its rules upon a showing of good cause.²⁴ Good cause is shown when the relief requested would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.²⁵ Under these standards, we find that NOW has demonstrated good cause for the limited LNP waiver requested.

7. We conclude that a temporary extension of time to achieve porting in capability will not undermine the objectives of LNP. The goal of wireless number portability is to increase competition within the CMRS marketplace and inter-modally, thereby enhancing incentives for all carriers to provide innovative service offerings, higher quality services, and lower prices.²⁶ Because NOW has fully implemented the ability to port out numbers, customers will still be able to port their numbers from NOW to another wireless or wireline carrier during the interim period until NOW is able to port numbers in. Given the ability of NOW's customers to port out to other CMRS and wireline carriers and the resulting increase in competition for NOW's customers, consumers are already receiving much of the benefit of wireless LNP.

8. We also find that NOW has presented special circumstances that justify the requested partial waiver. First, the record demonstrates that NOW has attempted in good faith to meet its regulatory

¹⁹ *Id.* at 6.

²⁰ *Id.*

²¹ See Public Notice, "Wireless Telecommunications Bureau Grants Consent to Assign Personal Communications Services Licenses," DA 04-1241 (rel. April 30, 2004) (Public Notice).

²² *Id.* at n.3.

²³ *Id.* In addition to filing the LNP Waiver Request, NOW had also filed a request for a temporary waiver of the Text Telephone ("TTY") rules, and a petition for an extension of time to comply with the Assistance Capability Requirements of Section 103 of the Communications Assistance for Law Enforcement Act ("CALEA"). See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Supplement to Request of NOW Licenses, LLC for a Temporary Waiver of Section 20.18(c) of the Commission's Rules (filed Dec. 23, 2003) (requesting extension of TTY deadline); NOW Licenses, LLC, Further Supplement to Petition for Extension of Time to Comply with the Assistance Capability Requirements of Section 103 of CALEA (filed Feb. 12, 2004) (requesting extension of time to comply with CALEA obligations). These requests remain pending.

²⁴ 47 C.F.R. § 1.3.

²⁵ See *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

²⁶ *Verizon Wireless Order*, 17 FCC Rcd at 14981, para. 21.

requirements, taking substantial steps reasonably calculated to provide full porting capability by the November 24, 2003 deadline. In addition to the efforts to upgrade and test its switch noted above, NOW also entered into an agreement with another company to assist in the processing of porting requests, and entered into porting agreements with Sprint and Verizon Wireless to facilitate the porting of numbers to and from these carriers.²⁷ Because of these efforts, NOW has achieved the ability to port out numbers by the regulatory deadline, and has only been unsuccessful in the porting in of numbers. NOW's substantial, good faith efforts, its success at timely providing porting out capability, and the difficulty of achieving immediate porting in capability are circumstances that warrant some relief.

9. Moreover, given the approval, as stated above, of NOW's assignment Application, we anticipate that the Asset Purchase Agreement will soon be fully executed and that Dobson will therefore implement its plan to replace NOW's switch with a more advanced and fully LNP-compliant switch within seven months. As NOW's current switch will most likely soon be discarded and full LNP achieved by a new switch, any further upgrades to the existing switch will provide little benefit to consumers to justify the substantial cost, particularly given that the cost is incurred only to achieve porting in capability. We find that the above circumstances, taken together, justify a deviation from the general rule and demonstrate that the requested relief is in the public interest. We therefore grant NOW's LNP Waiver Petition, and extend the deadline for full LNP compliance to November 30, 2004.²⁸

IV. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED, pursuant to the authority granted in Sections 4(i), 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 251 and 332, and sections 0.131, 0.331, and 1.3 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, 1.3, that the Request of NOW Licenses, LLC for Temporary Partial Waiver of Section 52.31 of the Commission's Rules Pertaining to the Porting In of Numbers is GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey S. Steinberg
Deputy Chief, Spectrum and Competition Policy Division
Wireless Telecommunications Bureau

²⁷ LNP Waiver Petition at 3.

²⁸ See Public Notice. This waiver will continue to apply to NOW's current network assets whether or not the asset purchase agreement is executed.