

Agenda Date: December 18, 2003  
Item Number: **D2**

**Docket: UT-031915**

Company Name: CenturyTel of Washington, Inc.

Staff: Dave Dittmore, Telecommunications Engineer  
Glenn Blackmon, Assistant Director – Telecommunications

**Recommendation:**

Deny the request for temporary suspension of wireline to wireless number portability obligations.

**Background:**

On November 21, 2003, CenturyTel of Washington, Inc., (CenturyTel) requested a 90-day suspension of its obligation, effective November 24, 2003, to provide local number portability in King, Pierce, and Clark counties.

In Docket UT-031535, CenturyTel on September 24, 2003, requested an indefinite suspension of its obligation to provide local number portability in all areas of the state where it provides local exchange service. CenturyTel withdrew this petition on October 28, 2003, after Staff recommended that the WUTC deny the request for suspension.

**Discussion:**

The Federal Communications Commission has required local number portability (LNP) for local exchange companies operating in areas where there is competition. The FCC has generally defined this competitive area to be the 100 largest metropolitan areas. The ability to port telephone numbers, i.e., to change providers without changing telephone numbers, is well established as fundamental to the success of competition for local exchange service. Congress established a duty on all LECs, whether incumbent or competitive, to provide number portability to the extent technically feasible. *47 U.S.C. 251(b)(2)*.

The FCC exempted wireless companies from LNP requirements for several years, but effective November 24, 2003 wireless companies within the top 100 metropolitan areas are now required to offer number portability. Customers can move their telephone numbers from one wireless provider to another, from wireless service to a wireline service provider, and from wireline service to a wireless service provider. On November 10, 2003, the FCC issued an order addressing various issues related to the porting of wireline numbers to wireless carriers and, for both wireless and wireline companies operating outside the top 100 metropolitan areas, extended the deadline for LNP implementation to May 24, 2004.<sup>1</sup>

The top 100 metropolitan areas in Washington include Snohomish, King, Pierce, and Clark counties. Outside of these areas, companies are not yet required to offer number portability, but

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<sup>1</sup>Federal Communications Commission, *Memorandum Opinion and Order*, CC Docket No. 95-116. The FCC established the November 24, 2003 deadline in July 2002.

the larger wireline and wireless companies have generally begun offering it wherever they provide service.

Federal law permits small telephone companies to request suspension or modification of the LNP obligations, including both the November 24 deadline for top 100 metropolitan areas and the May 24 deadline for other areas.

### Description of the Petition for Temporary Suspension

CenturyTel seeks a temporary suspension using its status as a small local telephone company. Sec. 251(f)(2) allows state commissions to suspend the number portability requirement for any company with fewer than two percent of the nation's subscriber lines.<sup>2</sup> CenturyTel seeks suspension of the obligation in fifteen wire centers: Ames Lake, Arletta, Ashford, Carnation, Falls City, Gig Harbor, Lakebay/Fox Island, North Bend, North Vashon, Orting, Packwood, Snoqualmie Pass, South Prairie, Vashon, and Yacolt.

CenturyTel asserts that it is technically infeasible for it to comply with the FCC's *Memorandum Opinion and Order* in CC Docket No. 95-116, which was issued on November 10, 2003. CenturyTel asserts that the following steps are required before LNP can be implemented in these wire centers: activating and testing software, possible reinforcement of data links, possible reinforcement of interoffice transport and increased staffing to reinforce the service order process.

CenturyTel also claims that the FCC's order ignores and contradicts provisions of the Communications Act of 1996 that limit the number portability obligation. According to CenturyTel, the FCC made a sudden and abrupt reversal of its interpretation of the law, which was both erroneous and issued without warning or appropriate notice or legal process. According to CenturyTel, the FCC "compounded its error" by "giving a mere 14 days ... to comply with its newfound interpretation of LNP requirements." *Petition at para. 8.*

CenturyTel asserts that this is precisely the "type of technical infeasibility" envisioned when Congress included Section 252(f)(2) in the law.<sup>3</sup>

The petition asks that the WUTC extend the deadline to provide LNP for 90 days. CenturyTel does not, within this petition, contest its eventual obligation to provide LNP in the fifteen wire centers involved but requests delay to put the required processes in place.

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<sup>2</sup> CenturyTel's petition does not provide specific access line information. According to its earlier petition in Docket UT-031535, CenturyTel has 2.4 million lines, which is about 1.3 percent of the nation's access lines.

<sup>3</sup> CenturyTel attached to its petition a petition that it filed with the FCC seeking a stay of the November 24 LNP requirements pending judicial review of the FCC order. CenturyTel filed the FCC petition on November 18, and the FCC had denied the petition by the time that CenturyTel filed its petition in this proceeding. On November 21, CenturyTel filed an emergency motion for stay of the FCC order in the U.S. Court of Appeals, D.C. Circuit (Cause No. 03-1414).

### Legal Standard

The WUTC's authority to consider a suspension comes from Sec. 251(f)(2) of the Telecommunications Act of 1996, which is included as Attachment A to this memo. In summary, the law provides that the WUTC consider the technical feasibility and economic burdens that would be imposed on a small company and/or its users if it is required to implement number portability.

### Analysis

Staff believes that the CenturyTel petition does not provide an adequate reason to suspend its obligations to comply with the FCC's number portability requirements. CenturyTel claims that its obligation to implement LNP did not exist until November 10. If that were accurate, Staff would agree that the November 24 deadline was technically infeasible. However, CenturyTel was obligated to implement number portability long before November 10. Under the federal rules adopted in 1996 (47 CFR 52.23), CenturyTel was obligated to implement LNP within six months after it received a *bona fide* request from another carrier. It received such a request<sup>4</sup> six months before the Nov. 24 implementation date. (Sprint originated a letter to Century on May 16, 2003). Indeed, as noted earlier, CenturyTel filed another suspension request in September, only to withdraw it in October. Staff believes that CenturyTel had sufficient time to implement its LNP obligations by November 24.

Staff also believes that the WUTC should not grant a suspension based on CenturyTel's claims that the FCC violated the law in its November 10 order. CenturyTel has sought review of this order in federal court, and it would be inappropriate as well as pointless for the WUTC to engage in a legal review of its fellow regulator's decision.

### Conclusion

Staff believes that CenturyTel did not act in a timely manner in this situation and could have met the November 24 deadline. CenturyTel's obligation existed long before the FCC's order was issued on November 10, so the claim that LNP implementation requires more than 14 days ultimately is irrelevant. Staff therefore recommends that the WUTC deny CenturyTel's petition.

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<sup>4</sup> CenturyTel asserted in its earlier petition that the requests were not *bona fide*.

Attachment A  
**Sec. 251(f)(2), Telecommunications Act of 1996**

(2) 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 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.

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.