

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF the Petitions of)	UTILITY DIVISION
Ronan Telephone Company and)	
Hot Springs Telephone Company)	
For Suspension of the Federal Communications)	DOCKET NO. D2004.3.39
Commission Requirement to Implement)	
Wireline/Wireless Number Portability)	
Pursuant to 47 U.S.C. § 251(f)(2))	ORDER NO. 65581

FINAL ORDER

I. Background and Introduction

1. On March 10, 2004 Ronan Telephone Company (Ronan) and Hot Springs Telephone Company (Hot Springs) filed a joint petition pursuant to 47 U.S.C. §251(f)(2) and §69-3-834 MCA requesting the suspension of obligations under 47 U.S.C. §251(b)(2) to provide local number portability (LNP) to requesting Commercial Mobile Radio Service (CMRS) providers. Also on March 10, 2004 Ronan and Hot Springs filed a joint Motion for Interim Suspension of LNP Pending Completion of Docket, in which they requested issuance of an immediate interim suspension of LNP obligations pending a Final Order.¹

2. On March 11, 2004 the Montana Telecommunications Association (MTA) and the Montana Independent Telecommunications Systems (MITS) filed a joint petition for immediate suspension of their members' LNP obligations, pending further Commission action.²

3. On March 15, 2004 MITS filed on behalf of its member companies a petition for suspension of LNP obligations pending resolution of the technical and economic issues associated with implementation of LNP.³ On March 11, 2004 MTA filed a petition on behalf

¹ These filings were made together and were assigned PSC Docket No. D2004.3.35.

² The MTA and MITS joint petition was assigned PSC Docket No. D2004.3.37.

³ The MITS member carriers are Central Montana Communications, Inc., Interbel Telephone Cooperative, Nemont Telephone Cooperative, Inc., Northern Telephone Cooperative, Project Telephone Company, Inc., Triangle Cooperative Association, Inc., and Valley Telecommunications, Inc. The MITS petition for long term suspension was assigned PSC Docket No. D2004.3.44.

of its members for a suspension of LNP obligations until such time as significant questions regarding implementation can be resolved.⁴

4. On April 14, 2004 the Montana Public Service Commission (PSC or Commission) entered an Order granting the requests for immediate interim suspension as to Ronan, Hot Springs, and the member carriers of MITS and MTA, pending resolution of the long term suspensions that had been filed.⁵ The petitions for long term suspension were consolidated for procedural purposes.⁶

5. Notice was given, intervenors appeared in the docket,⁷ testimony was filed, discovery took place, and a hearing in this matter was properly noticed. The hearing in this matter was held on Wednesday, September 8, 2004.⁸

6. On September 3, 2004 the Commission issued a Notice of Commission action excusing the MITS and MTA companies from participation in the hearing pursuant to stipulations being filed and acted upon between those companies and Western Wireless Corporation (WWC or Western).⁹ At the hearing the Commission approved stipulations between WWC and the following companies: Northern, Nemont, Project, Triangle, Blackfoot, 3 -Rivers, Range, Southern, Lincoln, and Interbel. Those companies were dismissed from the docket and the docket was closed as to those companies. In those approved stipulations the above companies agreed to provide wireline to wireless number portability based on the conditions and dates established in the stipulations.¹⁰

7. The hearing proceeded with respect to Ronan and Hot Springs. Testimony was offered and post hearing briefs were submitted by Ronan, Hot Springs and Western Wireless.

II. Summary of the Testimony

8. Jay Preston, President and Chief Operating Officer of Ronan and a consultant to Hot Springs, filed testimony on behalf of Ronan and Hot Springs. Preston testified that it

⁴ The MTA member carriers are 3-Rivers Communications, Blackfoot Telephone Cooperative, CenturyTel of Montana, Frontier, Lincoln Telephone Company, Range Telephone Cooperative, and Southern Montana Telephone Company. The MTA petition was assigned PSC Docket No. D2004.3.39.

⁵ Order No. 6553 in PSC Docket No. D2004.3.37.

⁶ Dockets D2004.3.35 and D2004.3.37 were closed, and D2004.3.44 was made a part of D2004.3.39. The only remaining open docket was D2004.3.39. See, Notice of Commission Action issued April 9, 2004 in D2004.3.39.

⁷ The intervenors in the proceeding were the Montana Consumer Counsel (MCC) and Western Wireless Corporation (WW).

⁸ Prior to the hearing, CenturyTel and Frontier were dismissed from the docket on their own motions, based upon representations that both carriers had implemented their LNP obligations.

⁹ NCS issued September 3, 2004 in D2004.3.39.

¹⁰ See Orders 6558a through 6558i in PSC Docket No. D2004.3.39.

would be detrimental and burdensome for Ronan and Hot Springs to implement LNP at this time, and technically infeasible to provide LNP as required by the Federal Communications Commission (FCC) in CC Docket No. 95-115, *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, Released November 10, 2003. Preston requested a one year suspension for Ronan and Hot Springs.

9. Preston argued that LNP should be limited to retention of telephone numbers “at the same location . . . without impairment of quality, reliability, or convenience.”¹¹ He interpreted “Intermodal” LNP as the process whereby users of different modes of telecommunications service (wireless versus wireline) can switch their service between modes and retain the same number.

10. Preston argued that because of cost, technical infeasibility, adverse impacts, economic burdens, and inequitable competitive impacts, Ronan and Hot Springs are requesting the suspension of LNP requirements. Preston also testified that Ronan and Hot Springs have never received a request from a local end user customer to port a telephone number to a wireless provider. Preston argued that WWC has not submitted a request for LNP to either Ronan or Hot Springs.

11. Preston testified that in his opinion there is effectively no wireless coverage in Hot Springs. In his opinion, it is occasionally possible for a cell phone to receive a marginally usable signal in a very few selected places but it is not reliable enough to be a usable service for effective local communications.

12. Regarding costs, Preston testified that Ronan and Hot Springs utilize Siemens switching systems. Siemens has quoted the cost for software upgrades for Ronan to be between \$69,568 to \$150,000, and for Hot Springs \$32,000. Preston testified that other costs that would be incurred are: installation; shipping; testing; potential right to use fees; data dip charges for every local call attempt; contract costs; translations; billing and plant office expenses; staff time and training; OSS costs; 911 routing change costs; and ongoing maintenance.

13. Preston argued that it is not technically feasible for Ronan and Hot Springs to route ported calls to wireless carriers because Ronan and Hot Springs have no direct connections with the wireless carriers. Therefore, to route calls outside their exchanges they

¹¹ 47 U.S.C. §153(30).

must incur either toll or transport charges. Since the charges for ported calls must remain the same Preston argues that it is impossible to comply with the FCC requirements. While it might be technically feasible in theory, in practice there are many problems regarding confusion over dialing patterns (using a 7 or 1+10 digit call), whether the switch software works, and who pays for the transport of the call over third party networks.

14. Preston testified Ronan did not make any claim that IXC trunks cannot carry traffic in both directions.¹² Siemens has now given Ronan an oral indication that local traffic can be routed to an IXC trunk group after a data dip, but has provided no written confirmation.

15. Finally, Preston testified that Ronan purchases signaling services from Qwest and must pay \$0.004053 per query.

III. Discussion

16. Carriers are obligated to implement number portability based on the following statutory provision:

47 U.S.C. §251(b) OBLIGATIONS OF ALL LOCAL EXCHANGE CARRIERS.

Each local exchange carrier has the following duties:

(2) NUMBER PORTABILITY. The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.¹³

17. The Federal Communications Commission (FCC) prescribed the requirements pursuant to which a carrier must implement number portability in CC Docket No. 95-115, *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, Released November 10, 2003.

18. 47 U.S.C. §251(f)(2) of the Act allows a state commission to suspend the requirements that a carrier implement number portability. In making such a decision, the state commission must adhere to the following standards:

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 may petition a State commission for a suspension or modification of the application for a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State

¹² Western Wireless Wilson Testimony Page 5.

¹³ Also, §69-3-834 MCA.

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 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 technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.¹⁴

19. The PSC has previously interpreted the standards of 47 U.S.C. §251(f)(2), in PSC Docket No. D99.4.111, Order No. 6174c. In that Order, the PSC held that:

[E]ach of these elements, §251(f)(2)(i), (ii) and (iii), imposes on a petitioner a requirement of presenting evidence to support a plausible prediction of the future. We cannot read the verb “to avoid,” as used in these sections, as other than a reference to a future occurrence. [A carrier] is entitled to a suspension if it can make a convincing showing that interconnection and competition will cause certain harms. We have said that making such a case is difficult, but it cannot be impossible, or else §251(f)(2) is meaningless; a conclusion we are generally not entitled to reach.

Further, we cannot interpret §251(f)(2) to require that a successful petitioner must present evidence of actual harm. It may be that evidence of actual harm from competition or interconnection could result in certain remedies being imposed by this Commission. But such remedies, in our view, would have to be based on other sections of the law, not §251(f)(2).

Finally, even if a petitioner successfully carries the burden of one of the elements under §251(f)(2)(A), it still needs to demonstrate that an exemption “is consistent with the public interest, convenience, and necessity.” §251(f)(2)(B). Thus, even if a petitioner meets its burden under §251(f)(2)(A), a state commission may nonetheless deny exemption if it finds such is not in the public interest. (Emphasis in original.)¹⁵

The Commission finds the analysis and application of the requirements of §251(f)(2) in D99.4.111 Order No. 6174c instructive in the decision here.

20. Number portability is defined as follows:

47 U.S.C. §153(30) NUMBER PORTABILITY:

The term “number portability” means the ability of users of telecommunication services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

21. There are four possible types of number portability.

¹⁴ The state statute tracks the federal statute with respect to these standards. See, §69-3-834, MCA.

¹⁵ PSC Docket No. D99.4.111, Order No. 6174c, page 17.

a. Wireline to Wireline Number Portability (Intramodal)

This type of number portability is limited to carriers with facilities or numbering resources in the same rate center. For example, in Montana, Qwest would not be required to port a Great Falls number to a CLEC customer in Helena, but it is required to port a Great Falls' number to a Great Falls' CLEC. The FCC mandated that local exchange carriers (LECs) deploy wireline to wireline long term number portability (LNP) in the 100 largest U.S. Metropolitan Statistical Areas (MSAs) by Dec. 31, 1998. Thereafter, in the areas outside of the 100 largest MSAs, LECs must make LNP available within six months after a specific request by another telecommunications carrier.

b. Wireless to Wireless Number Portability (WLNP)

The FCC issued Order No. FCC 03-237 on October 7, 2003 offering guidance to the industry on the implementation of WLNP. Starting November 24, 2003, wireless local number portability (WLNP) has been available in the top 100 Metropolitan Statistical Areas (MSAs). That is, within the largest 100 MSAs, customers have been able to port their numbers between wireless carriers. Wireless carriers serving areas outside the 100 largest MSAs were to be capable of porting by May 24, 2004, or six months after they first receive a request to port, whichever is later. WLNP is not at issue in this proceeding.

c. Wireline to Wireless Number Portability (Intermodal)

FCC Order FCC 03-284 was issued on November 10, 2003 and provided guidance to the industry on the implementation of wireline to wireless number porting (intermodal porting). The order required wireline carriers to deploy wireline to wireless number portability by November 24, 2003 in the nations 100 largest MSAs. Wireline carriers operating outside the 100 largest MSAs were given until May 24, 2004 to be capable of porting wireline numbers to wireless carriers. Unlike wireline to wireline number porting, there are several unique aspects to the intermodal porting requirements. First, wireline carriers must be capable of porting numbers to wireless carriers whose "coverage area" overlaps at least a portion of the rate center in which the wireline number is assigned. This is required even when the wireless carrier does not have a point of interconnection or numbering resources in the porting-out rate center. Secondly, the FCC requires calls to and from the ported number to maintain

the same price rating after the port. Finally, the FCC clarified that wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting between the carriers. As was the case with the wireline to wireline porting requirements, wireline carriers porting to wireless carriers may recover the costs of implementation over a five year period from their end user customers.

d. Wireless to Wireline Number Portability

There are no current requirements for wireless carriers to port numbers to wireline carriers. In FCC Order No. FCC 03-284 ¶22 the FCC stated “With respect to wireless to wireline porting, however, because of the limitations on wireline carriers networks ability to port-in numbers from distant rate centers, we will hold neither the wireline nor the wireless carriers liable for failing to port under these conditions. Rather, we seek comments on this issue in the Further Notice below.”

22. To grant a suspension, the Montana PSC must find that one of the three criteria under 47 U.S.C. §251(f)(2)(A) is satisfied, and if so, that (B) is also satisfied. §251(f)(2)(A)(i) addresses whether there is a significant economic impact on users of telecommunications services generally. §251(f)(2)(A)(ii) concerns the imposition of a requirement that is unduly economically burdensome. §251(f)(2)(A)(iii) addresses whether a requirement is technically infeasible. If a carrier seeking a suspension satisfies one of these three criteria, then the carrier must also satisfy the public interest test in §251(f)(2)(B). If a carrier fails to demonstrate that any of the three criteria in §251(f)(2)(A) are satisfied, it has failed to show that suspension of its obligation of LNP should be granted and the public interest criteria does not need to be reached.

IV. Commission Decision: Ronan Telephone Company

23. To support the contention that implementation of wireline to wireless LNP would have both an adverse impact on telecommunications users and also that it would impose an undue economic burden, Ronan submitted a cost matrix which estimated the monthly per access line LNP surcharge to Ronan customers would be \$13.48. The FCC allows for cost recovery of LNP costs over a five year period through a monthly surcharge assessment on customers. This recovery is optional and at the discretion of the carrier

implementing LNP. Following are the costs provided by Ronan Telephone Company in calculating their estimated monthly LNP surcharge per access line of \$13.48.¹⁶

<u>RONAN ESTIMATE</u>	<u>Software</u>	<u>Translations</u>	<u>Data Dips</u>	<u>Maintenance</u>	<u>Transport</u>	<u>Total</u>
Total Non-Recurring	\$51,600	\$2,500	\$3,120	\$10,000	\$5,000	\$72,220
Monthly Non-Recurring (60 Month Amortization)	\$860	\$42	\$52	\$167	\$83	\$1,203
<u>Recurring/Monthly</u>	<u>\$0</u>	<u>\$313</u>	<u>\$593</u>	<u>\$1,200</u>	<u>\$50,625</u>	<u>\$52,731</u>
Total Monthly Cost						
Recurring + Non-Recurring	\$860	\$355	\$645	\$1,367	\$50,708	\$53,934
Total Monthly Cost =		\$53,934				
Total Access Lines =		4,000				
Monthly LNP Access Line Surcharge =		<u>\$13.48</u>				

24. The PSC finds that two adjustments to the estimate presented by Ronan are necessary based on the evidence that was taken in this matter. The adjustments are set forth as follows:

Adjustment #1: Non-Recurring Software Costs.

25. Under cross examination at the hearing in this matter, Jay Preston, witness for Ronan, offered testimony regarding the non-recurring software cost of \$51,600.¹⁷ WWC pointed out to Preston during cross examination that the \$51,600 is composed of two different costs. The first cost is \$31,080 for LNP while the second cost is \$20,520 for number pooling. When Preston was asked if the number pooling portion of the software is eliminated would that not lower the Software Non-Recurring cost from \$51,600 to \$31,000, he replied "I suppose it would."¹⁸ In addition, Ronan submitted information to the PSC on September 27, 2004 that the correct number in the cost calculation should be \$31,080. Consequently, the PSC finds that the correct cost for LNP for Non-recurring Software Costs is \$31,080, based on Ronan's own evidence as testified to at hearing and Ronan's evidence that was submitted to the PSC. The PSC therefore adjusts this cost to reflect the \$31,080 cost.

Adjustment #2: Transport Costs

26. At hearing, Preston was cross examined by WWC regarding the transport cost of \$50,625 per month that was included in the calculation of the estimated \$13.48 per line

¹⁶ Ronan LNP Cost Matrix Sept. 3, 2004.

¹⁷ Sept. 8, 2004 D2004.3.39 Hearing Transcript, pages 130-133.

¹⁸ Sept. 8, 2004 D2004.3.39 Hearing Transcript, page 130, line 12.

monthly LNP surcharge.¹⁹ Preston explained the monthly cost was derived by assuming 3% of Ronan's customers would choose to port their numbers to wireless carriers each year. The 3% of the local traffic associated with those numbers would be required to be transported to the wireless carrier by Ronan's wholesale toll provider at a rate of \$.09 per minute.

27. The PSC finds that this estimate completely ignores two alternative ways of routing the local traffic to the number ported to the wireless carrier. The first of these methods would require a transit provider such as Qwest to carry the ported traffic to the wireless carrier rather than carrying the traffic using the Ronan IXC wholesale provider. Qwest's transit rate is approximately 1/45th of the \$.09 per minute used in the Ronan estimate. Preston was asked at hearing about using a transit carrier such as Qwest, and he responded that "I do not believe that the use of the transit carrier serves the rural community."²⁰ The PSC finds that this response is not a justifiable reason for incurring a \$.09 per minute cost when a lower rate is available. Preston's belief about the use of transit carriers aside, there is an alternative viable method to carry traffic that would allow Ronan to implement LNP while incurring a much smaller cost than that estimated by Ronan. Ronan does not dispute that it has an alternative method available that would relieve it of much of the transport costs it has estimated; it merely posits the belief that using such a transport method does not serve the rural community. The PSC finds that Ronan's testimony in this regard fails to satisfy the requirements of §251(f)(2)(A).

28. The second method by which traffic could be transported requires the wireline carrier to have a direct connection with the wireless carrier. Preston testified, when questioned about the \$.09 per minute rate: "Those are the rates available to me today. I don't know of any way to get a lower rate without a direct interconnection."²¹ A direct connection is usually established through an interconnection agreement. Preston, under cross examination by WWC, was asked: "If Ronan or Hot Springs were willing to enter into interconnection agreements, wouldn't that transport cost either disappear altogether or be substantially reduced?" Preston responded "Yes."²² In response to additional questioning regarding the costs of direct connection as compared to having an IXC carry the ported traffic, Preston testified: "For instance, Western Wireless has a cell tower just outside the town of

¹⁹ Sept. 8, 2004 D2004.3.39 Hearing Transcript, pages 134-136.

²⁰ Sept. 8, 2004 D2004.3.39 Hearing Transcript, page 142, lines 22-25.

²¹ Sept. 8, 2004 D2004.3.39 Hearing Transcript, page 134, lines 20-22.

²² Sept. 8, 2004 D2004.3.39 Hearing Transcript, page 136, lines 13-16.

Ronan, and they requested that we put a cable to that tower for the purpose of direct local interconnection, which we did, and that cable still sits there unused. So the cost of a direct local interconnection at that point is very, very small, very similar to the cost of direct local interconnection, the facilities costs for the interconnection with Blackfoot.”²³

29. The PSC finds that transport costs are by far the largest driver of Ronan’s estimated LNP monthly surcharge of \$13.48. The PSC finds that these costs would be virtually eliminated if Ronan would enter into an interconnection agreement with WWC (or any other wireless carrier) to establish a direct connection.

30. Ronan’s position regarding interconnection agreements was the topic of cross examination at hearing. Preston testified initially at hearing that it was a fair assessment of his testimony that “wireless carriers are responsible for the failure to have interconnection agreements in place.”²⁴ Preston testified that Ronan and Hot Springs had attempted to negotiate an interconnection agreement with WWC when WWC approached them five or six years ago. However, he stated after the first interaction he never heard from them again and he thought it was a waste of time to approach them.²⁵

31. It is Ronan’s position that §251(f)(1) of the Act relieves it, as a rural company, from the obligation to negotiate interconnection agreements. Preston testified that Ronan had been approached during the initial LNP period by Verizon to negotiate an interconnection agreement and Ronan declined to negotiate. Preston stated that Ronan’s current position is they are not going to negotiate and thereby, in their opinion, jeopardize their rural exemption under 47 U.S.C. §251(f).²⁶ Preston testified that Ronan has made a business decision not to enter into interconnection negotiations at this time.²⁷

32. In the post hearing briefs, WWC argued that while petitioners concede that the bulk of their speculative transport costs are attributable to the lack of a direct interconnection with wireless carriers, those costs would be eliminated if Ronan were willing to enter into interconnection agreements.²⁸ WWC concludes that according to Ronan’s own argument, the bulk of transport costs that might be incurred in implementing LNP are directly attributable to Ronan’s “business decision” to refuse interconnections rather than to implement LNP. WWC

²³ Sept. 8, 2004 D2004.3.39 Hearing Transcript, pages 143-144.

²⁴ Sept. 8, 2004 D2004.3.39 Hearing Transcript, page 125, lines 5-9.

²⁵ Sept. 8, 2004 D2004.3.39 Hearing Transcript, page 125, lines 10-24.

²⁶ Sept. 8, 2004 D2004.3.39 Hearing Transcript, page 126.

²⁷ Sept. 8, 2004 D2004.3.39 Hearing Transcript, page 127.

²⁸ WWC Post Hearing Response Brief, page 8, citing Transcript p. 136 lines 13-17.

argues that Ronan has the means to eliminate these costs, and cannot claim that its refusal to do so creates an undue burden. The PSC finds WWC's argument persuasive. Ronan cannot avoid implementation of the requirements of LNP simply by claiming that it is not required to enter into interconnection agreements. Ronan has the ability to relieve itself from the burden of transport costs that might be incurred by implementing LNP, and chooses not to do so. In making this choice, Ronan claims that the costs it will incur are burdensome. The PSC finds this argument unpersuasive. Where Ronan has the power to alleviate the transport costs that are reflected in LNP implementation, and chooses not to exercise that power, it cannot claim that the transport costs prevent it from meeting its statutory obligations. Ronan chooses to incur the transport costs of LNP, based on a business decision, when it has options to avoid those costs. The PSC finds that this argument fails to satisfy the requirements set forth in 47 U.S.C. §251(f)(2)(A).

33. Further, regarding interconnection agreements, FCC Order FCC 03-284 issued on November 10, 2003 provided guidance to the industry on the implementation of wireline to wireless number porting (intermodal porting). While the FCC clarified that wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting between the carriers, under Montana law Ronan has the specific right to request that wireless carriers terminating traffic to Ronan enter into an Interconnection Agreement. §69-3-815(5), MCA. If the wireless carrier refuses to interconnect, Ronan has the right to file a complaint with the PSC and several types of relief are available. §69-3-815(6). Therefore, the PSC finds that Ronan has the ability under state law to bring wireless carriers to the table and negotiate an interconnection agreement. Consequently, Ronan cannot claim that interconnection agreements are not available to it as a method to alleviate the transport costs that might be incurred in implementing LNP. As set forth above, any avoidance of interconnection agreements as a method to alleviate transport costs has been solely on the part of Ronan, and the PSC finds that this is an unacceptable attempt to dodge the requirements of LNP implementation. The PSC finds that Ronan has the ability to enter interconnection agreements under state law and thereby relieve itself of the costs of transport associated with LNP implementation. Consequently, the criteria of §251(f)(2)(A) are not satisfied with respect to the transport costs. The PSC finds that Ronan has not submitted evidence to support a plausible prediction that LNP will result in undue economic harm or have a significant adverse impact on telecommunications users generally.

34. With respect to Ronan's claim that §251(f) of the Act exempts it from the duty to negotiate interconnection agreements, the PSC finds that this claim does not entitle Ronan to avoid its obligations to implement LNP. In the first instance, the PSC does not find Ronan's interpretation of its rural exemption persuasive. However, even if Ronan is correct with regard to the extent of the rural exemption afforded by §251(f) (which the PSC does not concede), there are at least two ways in which a requesting carrier could interconnect with Ronan in spite of its alleged exemption from negotiating interconnection agreements. Firstly, the carrier requesting interconnection could submit a request to the PSC pursuant to §69-3-834 and 47 U.S.C. §251(f)(1)(B), according to which the PSC might terminate a rural carrier's exemption. Secondly, Ronan has itself acknowledged that it has the obligation to interconnect with other carriers.²⁹ Ronan has expended tremendous amounts of time and resources attempting to avoid its obligations under the Act by defending its claim that the rural exemption of §251(f) permits it to avoid negotiating interconnection with other carriers. While the merits of Ronan's claim are debatable, the reality is that Ronan is obligated to interconnect and has itself so acknowledged.³⁰ As set forth above, the PSC finds that there are at least two ways in which Ronan might be forced to interconnect. Consequently, the PSC finds that the transport costs as estimated by Ronan are not persuasive as they do not account for the ability Ronan has to alleviate those costs through interconnection agreements.

35. In its Oct. 12, 2004 response brief, WWC argues "Thus, while Petitioners acknowledge that direct interconnections eliminate the bulk of their estimated costs associated with LNP and eliminate their technical infeasibility arguments, they strenuously defend their right to refuse to negotiate interconnections agreements. In light of Petitioners' refusal to negotiate with other carriers for such interconnection, their arguments are at best circular, and at worst disingenuous."³¹ The PSC finds WWC arguments persuasive on this matter. It is clear both Ronan and WWC agree a direct local interconnection arrangement could be established between Ronan and a wireless carrier. This could be accomplished either through

²⁹ See PSC Order No. 6225g in PSC Docket No. D2000.1.14, paragraph 4, in which the PSC concluded that "Ronan nevertheless had a duty to establish reciprocal compensation arrangements for carriers requesting such an arrangement. Ronan conceded it had such an obligation." *Id.*, citing 47 U.S.C. § 251 (b)(5), § 69-3-834(2)(b), MCA, Commission Order Nos. 6219a and 6219b, Conclusions of Law, paragraph 5; Ronan Motion to Dismiss, Docket Nos. D99.4.112 and D99.4.113, p.4, fn. 3, December 22, 1999.

³⁰ In addition to the above admissions by Ronan, in its Oct. 20, 2004 Reply Brief Ronan states "Contrary to the implications of WWC's argument, the lack of "negotiations" does not preclude direct local interconnection. Section 251(b)(5) allows local interconnection by any means which establishes "reciprocal compensation arrangements." Ronan Oct. 20, 2004 Reply Brief, pages 13-14

³¹ WWC Oct. 12, 2004 Response Brief, Pages 4-5.

negotiation or, as Ronan has stated “by any means which establishes reciprocal compensation arrangements.” Both parties agree that such a direct connection would virtually eliminate transport costs.

36. Therefore, because Ronan has the ability to obtain direct interconnection with WWC, the PSC finds that it is appropriate to adjust the LNP monthly surcharge estimate provided by Ronan to reduce the transport costs to zero. While there might be some small cost for direct interconnection, no estimates have been provided, and Preston testified that the costs would be “very, very small.” Assuming implementation of a direct interconnection, following is the PSC estimate of the Ronan monthly LNP surcharge. The PSC estimate is \$0.72 per month, rather than the \$13.48 per month estimated by Ronan.

<u>PSC ESTIMATE</u>	<u>Software</u>	<u>Translations</u>	<u>Data Dips</u>	<u>Maintenance</u>	<u>Transport</u>	<u>Total</u>
Total Non-Recurring	\$31,080	\$2,500	\$3,120	\$10,000	\$0	\$46,700
Monthly Non-Recurring (60 Month Amortization)	\$518	\$42	\$52	\$167	\$0	\$779
<u>Recurring/Monthly</u>	<u>\$0</u>	<u>\$313</u>	<u>\$593</u>	<u>\$1,200</u>	<u>\$0</u>	<u>\$2,106</u>
Total Monthly Cost						
Recurring + Non-Recurring	<u>\$518</u>	<u>\$355</u>	<u>\$645</u>	<u>\$1,367</u>	<u>\$0</u>	<u>\$2,885</u>
Total Monthly Cost =		\$2,885				
Total Access Lines =		4,000				
<u>Monthly LNP Access Line Surcharge =</u>		<u>\$0.72</u>				

37. Alternatively, even if Ronan chose not to directly interconnect with WWC and utilized Qwest as a transit carrier to route traffic to the wireless carrier, since the Qwest transit rate is approximately \$.002 per minute versus the \$.09 per minute utilized in the Ronan estimate, under the Qwest transit assumption the estimated monthly Ronan LNP surcharge would still only be approximately \$1.00.³²

38. Under either of the above estimates, the PSC finds that Ronan has failed to meet any of the three criteria set forth in 47 U.S.C. §251(f)(2)(A). In order to carry its burden and to obtain a suspension of the LNP requirement, Ronan must demonstrate that one of the three criteria of §251(f)(2)(A) is satisfied. It has failed to do so. The PSC finds that a monthly LNP surcharge of \$0.72 to \$1.00 per access line does not impose a significant adverse impact on users of telecommunications services. Therefore, Ronan has failed to meet the criteria set forth in §251(f)(A)(i). The PSC finds that one time LNP costs of under \$50,000, which will be recovered by Ronan from its customers, do not impose a requirement

³² The PSC assesses this information according to its authority to do so pursuant to §2-4-612(7), MCA.

on Ronan that is unduly economically burdensome. Therefore, Ronan has failed to meet the criteria set forth in §251(f)(2)(A)(ii). Finally, regarding the third criteria, Ronan conceded that interconnection agreements resolve the technical infeasibility issue. When asked at hearing whether “an interconnection agreement and direct connection solve the technical feasibility issue” Preston answered “Yes.”³³ Therefore the PSC finds that Ronan has failed to satisfy the criteria of §251(f)(2)(A)(iii). Both WWC and Ronan agree that a direct local interconnection eliminates the technical infeasibility concerns. Therefore, Ronan has not met its burden of showing that it is technically infeasible to implement LNP.

39. Having found that Ronan has failed to meet its burden of satisfying any of the three requirements under § 251(f)(2)(A), the PSC cannot suspend Ronan’s LNP obligations. Therefore, the PSC need not reach the determination of whether the public interest element of §251(f)(2)(B) is satisfied. The statute requires Ronan to demonstrate it meets at least one of the three criteria in §251(f)(2)(A) and the public interest test in §251(f)(2)(B) is met. Since Ronan has failed to meet any one of the §251(f)(2)(A) criteria, the PSC need not address whether the public interest test of §251(f)(2)(B) has been met.

40. Consequently, the PSC finds that Ronan is required to be capable of wireline to wireless number portability as of January 1, 2006. The PSC notes that while Ronan has not met its burden to obtain a suspension of the LNP requirements, under this Order Ronan will have a longer duration of time to become LNP capable than it requested. The PSC sets this date as the deadline for Ronan to implement LNP as it is the latest date by which LNP implementation for any of the rural carriers in Montana is required to be in place.

V. Commission Decision: Hot Springs Telephone Company

41. Hot Springs submitted testimony that it does not have any effective cellular service. On behalf of Hot Springs Preston testified that “The closest cell phone tower to the town of Hot Springs is 18 miles away and is behind two ranges of mountains, both of which are over 7,000 feet in elevation above sea level, which effectively blocks effective cell phone service to the community from this site. I am aware of three other cell phone towers inside a 40 mile radius of the community, but all are blocked by mountains. Consequently, while it is occasionally possible for a cell phone to receive a marginally usable signal in a very few

³³ Sept. 8, 2004 D2004.3.39 Hearing Transcript, page 125, lines 1-5.

selected places in the Little Bitterroot valley, it is not reliable enough to be a useable service for effective local communications.”³⁴

42. No party to this docket has contested the testimony of Hot Springs that there is no cell phone coverage by any cellular provider in the Hot Springs exchange.

43. Hot Springs argues in both its Sept. 28, 2004 Post Hearing Opening Brief³⁵ and its Oct. 20, 2004 Reply Brief³⁶ that wireline to wireless LNP requirements only apply when cellular service is available in the serving area of the wireline carrier. The FCC found that “porting from a wireline carrier to a wireless is required where the requesting wireless carrier’s “coverage area” overlaps the geographic locations in which the customer’s wireline number is provisioned.”³⁷

44. The PSC finds Hot Springs’ analysis persuasive. The FCC only requires wireline to wireless porting where the coverage area overlaps the area being served by the wireline company. If there is no wireless coverage in the Hot Springs area, porting is not required. The PSC grants Hot Springs a suspension of the LNP requirements, until such time as cellular coverage may become available in Hot Springs’ territory. Hot Springs shall file a status report one year from the date of this Order and every six months thereafter informing the PSC as to the availability of cellular coverage in Hot Springs. Once cellular coverage becomes available in Hot Springs, it may apply to the PSC for an additional suspension under §251(f)(2) of the Act.

VI. Conclusions of Law

1. Ronan and Hot Springs are local exchange carriers with fewer than 2 percent of the Nation’s subscriber lines installed in the aggregate nationwide. 47 U.S.C. §251(f)(2); §69-3-834(5)(A), MCA.

2. Ronan and Hot Springs may petition the Montana Public Service Commission for suspension of their obligations to implement the requirements of 47 U.S.C. §251(b). 47 U.S.C. §251(f)(2); §69-3-834(5)(a), MCA.

3. When considering a petition filed pursuant to 47 U.S.C. §251(f)(2) and §69-3-834(5), MCA, the Montana Public Service Commission is bound by the standards set forth in

³⁴ Pre-filed testimony of Jay Wilson Preston, Page 5, lines 11-21.

³⁵ Hot Springs Sept. 28, 2004 Post Hearing Opening Brief, pages 4-5.

³⁶ Hot Springs Oct. 20, 2004 Reply Brief, page 3.

³⁷ FCC 03-284, ¶ 1.

47 U.S.C. §251(f)(2), §69-3-834(5), MCA, and earlier Orders of the Commission specifically PSC Order No. 6174c in Docket No. D99.4.111.

4. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

5. Ronan has failed to demonstrate on the record that it should be exempt from the requirements of 47 U.S.C. §251(b)(2) because it has failed to demonstrate that an exemption is necessary to avoid a significant impact on telecommunications users generally; that it is necessary to avoid imposing a requirement that is unduly economically burdensome; or that it is necessary to avoid imposing a requirement that is technically infeasible. 47 U.S.C. §251(f)(2)(A).

6. Hot Springs has not provided evidence to satisfy the criteria of 47 U.S.C. §251(f)(2); however, it has produced uncontroverted evidence that cellular coverage is not available in its service territory, and it therefore falls within the exceptions to LNP implementation obligations recognized by the FCC. Therefore Hot Springs is not obligated to comply with the requirement to implement LNP at this time, subject to a status report being filed one year from the date of this Order followed by subsequent six month reporting requirements as to the status of cellular coverage in Hot Springs territory.

VII. Order

THEREFORE, based upon the foregoing, it is ORDERED:

1. Ronan Telephone Company's petition to suspend the obligations to implement LNP is denied. Ronan shall implement LNP as of January 1, 2006.

2. Hot Springs Telephone Company's petition to suspend the obligations to implement LNP is granted. Hot Springs shall file a status report as to cellular coverage in its service territory one year from the date of this Order and every six months thereafter.

DONE AND DATED this 4th day of November 2004, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

THOMAS J. SCHNEIDER, Vice Chairman

MATT BRAINARD, Commissioner

GREG JERGSON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Judy Scheier
Assistant Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.