RCVD HB

TC04-047

DOCKET NO. TC04-047

In the Matter of IN THE MATTER OF THE PETITION OF BROOKINGS MUNICIPAL UTILITIES D/B/A SWIFTEL COMMUNICATIONS FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. § 251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
3/11 04	Filed and Docketed;
3/18 04	Weekly Filing;
3/30 04	Petition to Intervene by WWC License LLC
3/31 04	Petition to Intervene (SDTA);
4/19 04	Order Granting Interim Suspension Pending Final Decision and Order Granting Intervention;
5/4 04	Order For and Notice of Procedural Schedule and Hearing and of Intent to take Judicial Notice;
5/14 04	Direct Testimony of Steven E. Watkins;
5/17 04	Direct Pre-Filed Testimony of John De Witte;
5/17 04	Direct Pre-Filed Testimony of W. James Adkins;
6/1 04	Testimony of Don Williams on Behalf of WWC License L.L.C.;
6/11 04	Intervenor's Motion to Compel Discovery or, in the Alternative to Strike Petitioners' Pre-Filed Testimony Regarding Costs;
6/11 04	Brief in Support of Intervenor's Motion to Compel Discovery or, in the Alternative to Strike Petitioners' Pre-Filed Testimony Regarding Costs;
6/14 04	Rebuttal Testimony of Steven E. Watkins;
6/15 04	Rebuttal Testimony of W. James Adkins on Behalf of Brookings;
6/15 04	Pre-Filed Rebuttal Testimony of John De Witte;
6/16 04	Supplemental Order For and Notice of Hearing;
6/18 04	Order For and Notice of Hearing on Motion to Compel;
6/18 04	Petitioners Response in Opposition to Intervenors Motion to Compel Discovery or in the Alternative to Strike Petitioners Pre-Filed Testimony Regarding Costs;
6/18 04	Certificate of Admission (Paul A. Lewis, Intern);
6/22 04	Orders (Admitting Benjamin H. Dickens, Jr. and Mary J. Sisak);
7/7 04	LNP Transcripts in Docket TC04-025;
7/13 04	Order Establishing Briefing and Decision Schedule;
8/5 04	Post-Hearing Brief of Petitioners and SDTA;

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8/20/04	Staff's Brief;
8/23/04	WWC's Post-Hearing Brief;
8/27/04	Reply Brief of Petitioners and SDTA;
9/4/04	Order Temporarily Suspending Local Number Portability Obligations;
9/10/04	Transcript of Oral Argument held 8/31/04;
9/30/04	Final Decision and Order; Notice of Entry;
9/30/04	Docket Closed.
10/29/04	Petition for Reconsideration by WWC;
10/29/04	WWC's Brief in Support of Petition to Reconsider Final Decision and Order;
11/22/04	Opposition to the Petition to Reconsider Final Decision and Order;
11/22/04	Brief of Petitioners in Support of Opposition to the Petition for Reconsideration by WWC;
12/30/04	Order Denying Petition for Reconsideration;
1/3/05	Amended Final Decision and Order; Notice of Entry;
1/3/05	Docket Closed.

TC04-047

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March 10, 2004

RECEIVED
MAR 11 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Ms. Pam Bonrud, Executive Director
S.D. Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

RE: IN THE MATTER OF THE APPLICATION OF BROOKINGS MUNICIPAL UTILITIES, D/B/A SWIFTEL COMMUNICATIONS FOR SUSPENSION OR MODIFICATION OF SECTION 251(b)(2) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED

Dear Pam:

Enclosed you will find an original and ten copies of a Petition in the above matter.

I would appreciate it if you would let me know a rough idea as to when a hearing might be held on the Petition.

Thank you very much.

Sincerely,

GLOVER, HELSPER & RASMUSSEN, P.C.

RICHARD J. HELSPER

RJH:srl
Enclosures
cc: Jim Adkins

TC 04-047

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Brookings Municipal Utilities d/b/a Swiftel Communications for Suspension or Modification of Section 251(b)(2) of the Communications Act of 1934, as amended	)))))))	Docket No. _____

RECEIVED
MAR 11 2004
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

I. INTRODUCTION

Pursuant to Section 251(f)(2) of the Telecommunications Act of 1996 ("the Act"), 47 U.S.C. § 251(f)(2) and Section 49-31-80 of the South Dakota Codified Laws (SDCL), Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel) hereby respectfully petitions the South Dakota Public Utilities Commission (Commission) for a suspension or modification of the number portability requirement in Section 251(b)(2) of the Communications Act of 1934, as amended (the Act). Swiftel also requests an immediate suspension of Section 251(b)(2) pending this Commission's consideration of the suspension request until six (6) months following the Commission's decision.

Section 251(b)(2) states that all local exchange carriers (LECs) have "[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[1] The Federal Communications Commission (FCC) established rules to implement local number portability (LNP) by wireline carriers.[2] Pursuant to those rules, portability between wireline carriers was limited to the LEC rate center. In a Memorandum Opinion and Order and Further Notice

[1] 47 U.S.C. §251(b)(2).
[2] 47 C.F.R. §52.23-52.29 and 52.32-52.33.

of Proposed Rulemaking released on November 10, 2003,[3] the FCC clarified the LECs' obligations to provide LNP to wireless carriers and found that LECs must implement LNP to allow porting to wireless carriers even when the wireless carrier does not have a point of interconnection or telephone numbers in the LEC's affected rate center. The FCC did not require porting from a wireless carrier to a wireline carrier, however, when there is a "mismatch" in rate centers. Rather, the FCC instituted a rulemaking to examine how such porting can be accomplished.

II. SECTION 20:10:32:39 REQUIREMENTS

The following information is provided in accordance with Section 20:10:32:39 of the Commission's rules.

(1) The applicant is Brookings Municipal Utilities d/b/a Swiftel Communications, 525 Western Avenue, Brookings, SD 57006, (605) 692-6211. The designated contacts are:

Craig Osvog
Executive Vice President and General Manager
Brookings Municipal Utilities d/b/a Swiftel Communications
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(605)692-6325

Richard J. Helsper
Glover Helsper & Rasmussen, P.C.
100 22nd Avenue, Suite 200
Brookings, South Dakota 57006
(605) 692-7775

and

Benjamin H. Dickens, Jr.
Mary J. Sisak

[3] Telephone Number Portability, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, FCC 03-284 (rel. November 10, 2003) (Order or FNPRM).

Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, NW, Suite 300
Washington, DC 20037
(202) 659-0830

(2) As of 2003, Swiftel had an average of 14,057 subscriber lines nationwide.

(3) Swiftel seeks to suspend the local number portability obligations in 47 U.S.C. §251(b)(2) of the Act.

(4) Swiftel requests suspension of the LNP requirement until there is evidence of demand for LNP and the per line cost of LNP is reduced. At a minimum, Swiftel requests suspension until six (6) months following the FCC's full and final disposition of the issues associated with the routing of calls between wireline and wireless providers in the *Sprint Petition*[4] and the porting interval and wireless to wireline porting in its pending FNPRM, at which time Swiftel may need to seek further Section 251(f)(2) relief based upon the economic impact of these decisions.

Swiftel also requests immediate temporary suspension of the 251(b)(2) requirement pending this Commission's consideration of this request until six (6) months following this Commission's final decision.

(5) Swiftel requests that the suspension of Section 251(b)(2) be effective no later than May 24, 2004. Swiftel requests that the temporary suspension of Section 251(b)(2) be effective immediately and in any event, no later than March 15, 2004.

(6) The information supporting this petition is contained on pages 4 through 14 of this Petition.

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[4] *In the Matter of Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of traffic by ILECs*, CC-Docket 01-92, Petition of Sprint, May 9, 2002 (*Sprint Petition*).

(7) Swiftel requests that the Commission grant a temporary stay or suspension of the local number portability requirements in Section 251(b)(2) of the Act.

III. BACKGROUND

In support of this petition for suspension or modification of Section 251(b)(2) of the Act, Swiftel respectfully submits that:

1. Swiftel is a South Dakota municipal corporation with its principal office located at 525 Western Avenue, Brookings, South Dakota 57006. Swiftel is engaged in the provision of general telecommunications services in the State of South Dakota subject to, for purposes of this petition, the jurisdiction of this Commission. Swiftel currently provides basic local exchange service in one (1) exchange and, in 2003, had an average of 14,057 access lines in service. A list of Swiftel's switches for which a suspension of LNP is requested is attached as Exhibit 1.[5]

2. Swiftel received a request for LNP dated November 18, 2003 from Western Wireless Corporation (Western Wireless). Western Wireless requested LNP in Swiftel's host switch and one of its remote switches. Pursuant to the FCC's rules, Swiftel must implement LNP in these switches, absent a grant of this suspension petition, by May 24, 2004. Swiftel also received a request for LNP from Verizon Wireless dated January 23, 2004 requesting LNP in Swiftel's host switch and two of its remote switches. Although Verizon Wireless requests LNP by May 24, 2004, Swiftel believes that pursuant to the FCC's rules, LNP must be provided by July 23, 2004. Swiftel also received a request from Nextel; however, the request specifies switches that are not Swiftel's. None of

[5] Swiftel has one host switch and three associated remote switches. All of Swiftel's switches serve the same Telcordia LERG Rate Center.

these wireless carriers have a point of interconnection or maintain telephone numbers in Swiftel's rate centers.

3. Swiftel is a rural telephone company as defined in 47 U.S.C. § 153(37). Swiftel provides telephone exchange service, including exchange access, to fewer than 50,000 access lines (47 U.S.C §153(37)(B)), and it serves a study area of fewer than 100,000 access lines. (47 U.S.C. §153(37)(C).

4. Section 251(f)(2) of the Act allows a rural telephone company with fewer than two percent (2%) of the subscriber lines installed in the aggregate nationwide, (as of December 2002, approximately 188 million local telephone lines)[6] to petition a state commission for a suspension or modification of the application of a requirement provided by 47 U.S.C. § 251(b) and (c). With an average of 14,507 access lines, Swiftel is a 2% carrier entitled to request suspension or modification of the LNP requirements pursuant to Section 251(f)(2).

5. According to 47 U.S.C. § 251(f)(2) and SDCL §49-31-80, the Commission shall grant a petition for suspension or modification to the extent that, and for such duration as, the 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.

[6] *See* "Federal Communications Commission Releases Study on Telephone Trends", FCC News Release (rel. Aug. 7, 2003).

6. Section 251(f)(2) of the Act requires the Commission to act on this application within 180 days after receipt. Pending such action, the Commission "may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers." 47 U.S.C. § 251(f)(2) and SDCL 49-31-80.

IV. ARGUMENT

A. LNP Would Impose a Significant Adverse Economic Impact on Users of Telecommunications Services

1. The known cost of LNP is excessive

7. Swiftel requests suspension of the LNP requirement in Section 251(b)(2) of the Act because, as shown in Exhibit 2, implementation of LNP would impose a significant adverse economic impact on users of telecommunications services generally. Exhibit 2 shows the estimated known costs to implement LNP at this time. Pursuant to the FCC's rules, certain direct costs of LNP can be recovered from end users through a monthly surcharge over a five-year period. [7] All remaining costs must be recovered, if at all, through the carrier's general rates and charges. It should be noted that although some of the listed costs are fairly firm, such as the DSM-100 software and Service Order Administration cost, other costs, such as port test and verification costs, are dependent on unknown factors, for example, the number of customers who ultimately port their number.

8. Swiftel estimates that in order to implement LNP it will have recurring and non-recurring costs as set forth in Exhibit 2 attached hereto and incorporated herein by reference. Based on the projected implementation cost estimates for switch upgrades, switch translations modifications, testing activities, LNP Service Order Administration

[7] 47.C.F.R. § 52.33.

(SOA) database subscriptions, billing and customer care modifications, LNP training, and regulatory activities, Swiftel estimates that the total impact of LNP implementation will result in a minimum investment non-recurring of approximately $306,600 and a projected monthly recurring investment of approximately $8,585. When expressed as "per line" costs (based on Swiftel's 2003 average number of access lines at 14,057) the estimated costs for implementing LNP will result in a minimum non-recurring investment of approximately $21.81 per line and a projected recurring investment of approximately $0.61 per line.

2. The cost of transport would further increase LNP costs.

9. Exhibit 2 also contains estimates for the recurring and non-recurring cost of transport, which essentially is the cost of installing direct connections to the four wireless carriers operating in Swiftel's territory (Verizon, Western Wireless, Sprint PCS, and Nextel). In its Order, the FCC acknowledged that LNP raised certain routing issues for rural carriers where no direct connection exists. The FCC, however, found that these issues did not need to be resolved in the LNP proceeding. Rather, the FCC indicated that they would be addressed in a pending Petition for Declaratory Ruling filed by Sprint Corporation.[8]

10. This creates a difficult dilemma with respect to LNP and the "public interest." Simply stated, installing direct connections will add significantly to the cost of LNP. However, without direct connections, wireline subscribers who call a number that has been ported to a wireless carrier will incur a toll charge for that call, even though such calls previously were rated as local. This will occur primarily because the wireless

[8] *In the Matter of Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of traffic by ILECs*, CC-Docket 01-92, Petition of Sprint, May 9, 2002 (*Sprint Petition*).

carriers' points of interconnection (except for Sprint PCS)[9] are outside of Swiftel's service territory. Therefore, calls to these carriers are routed to the subscriber's preferred interexchange carrier.[10]

11. Based on the existing network configuration for the wireless carriers, a dedicated facility is required from each Swiftel switch to each wireless carrier to resolve the transport and routing issues caused by the implementation of LNP when the wireless carrier does not have a point of interconnection or numbers in the LEC's rate centers. Thus, Exhibit 2 also shows the estimated recurring and non-recurring cost of providing transport from Swiftel's switches to each of the wireless carriers, which essentially is the cost of installing direct connections to the wireless carriers.

12. Swiftel believes that the construction of transport facilities is not cost-justified based on the potential traffic between Swiftel and each wireless carrier and the potential for ported subscribers. If the facilities were cost-justified, the wireless carriers most likely would have implemented direct connections with Swiftel as they have in the more urban areas of the country. Based on the projected traffic levels, it appears that the direct facilities between Swiftel and the wireless carriers required for LNP would be highly under-utilized and very inefficient. It should be noted that Western Wireless has filed a petition at the FCC arguing that rate-of-return regulation should be eliminated for rural

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[9] Sprint PCS' switch is co-located at Swiftel's switch and calls between the two are routed over a local interconnection arrangement.

[10] The only calls to wireless carriers that do not have a direct connection and are not routed to an interexchange carrier are those involving extended area service (EAS) arrangements. For example, Verizon Wireless and Western Wireless have directory numbers 605-695 and 605-690 respectively, in the Brookings Rural rate center of Interstate Telecommunications Cooperative, Inc. (ITC), which Swiftel customers can include in an optional EAS service. Swiftel customers that select this EAS option can call Verizon Wireless and Western Wireless numbers as local calls. Calls to these numbers are routed through the EAS trunk maintained with ITC.

carriers like Swiftel, in part, because they are inefficient.[11] It would be ironic if Swiftel is forced to prop-up Western Wireless and other wireless carriers by subsidizing facilities that these carriers have refused to pay for themselves.

13. The transport issue must be resolved to determine the full cost of LNP and the full adverse economic impact on users of telecommunications in terms of unexpected toll charges. As stated, the FCC has indicated that it will address this issue when it considers the routing of calls between wireline and wireless carriers in the *Sprint Petition* proceeding. Therefore, at a minimum, Swiftel should not be required to provide LNP until six months after the FCC releases its decision on the *Sprint Petition*. This would allow Swiftel to assess the cost impact of LNP in light of the FCC's decision and either implement LNP or petition this Commission for a further suspension or modification of the LNP requirement.

3. Additional Unknown Costs of LNP Could Increase the Burden

14. The implementation costs in Exhibit 2 could increase significantly depending on the resolution of a number of additional issues at the FCC. For example, the FCC is examining whether the current four-day porting interval for wireline carriers should be shortened, perhaps to match the wireless porting interval of 2.5 hours. A shorter porting interval will significantly increase the cost of LNP because more systems would have to be automated and more personnel would have to be hired to take and implement porting requests.

15. The LNP costs in Exhibit 2 also do not include the cost of implementing wireless to wireline porting, which is under consideration by the FCC. In this regard, the

[11] See, Western Wireless Corporation *Petition for Rulemaking to Eliminate Rate-of-Return Regulation of Incumbent Local Exchange Carriers*, RM 10822, at 18 and 20, filed October 30, 2003.

FCC has asked for comment on whether wireline carriers should be required to absorb the cost of providing a customer with a ported wireless number with the same local calling area as the customer received from the wireless carrier and whether LECs should be required to provide LNP through foreign exchange (FX) and virtual FX service.[12] These proposals also would increase the cost of LNP, however, it is not clear to what extent.

B. LNP Would Be Unduly Economically Burdensome

16. As shown, LNP implementation would result in the assessment of a new LNP surcharge on end users and could increase local rates. These actions would make Swiftel's service offering less competitive with the services provided by wireless carriers. Wireless carriers already enjoy a number of competitive advantages over wireline carriers. For example, because of their FCC licensed service areas, wireless carriers have larger local calling areas, larger service territories and more potential customers to absorb the cost of LNP. By increasing the cost of service, LNP would make wireline services even less competitive with wireless services.

17. In addition, if the total cost of LNP is assigned to Swiftel's subscribers through a surcharge and local rate increases, some segment of Swiftel's subscribers may discontinue Swiftel's service or decrease the number of lines to which they subscribe. The resulting reduction in line count would increase further the per-subscriber cost of LNP, which, in turn, could lead to more rate increases followed by additional losses in lines.

18. Moreover, pursuant to the FCC's Order, although wireline carriers have been ordered to port numbers to wireless carriers when the wireless carrier has no point of

[12] It is not clear what "virtual FX" service would entail as the FCC did not define it and Swiftel offers no such service.

interconnection or numbers in the LEC's rate centers, the FCC does not require wireless carriers to port numbers under the same circumstances to wireline carriers, even where the wireline carrier may choose to accept such ports. Thus, the current porting requirement is a one-way requirement – Swiftel can lose customers through porting to the wireless carriers, but it cannot gain customers from them.

19. It also is unduly economically burdensome to require Swiftel to implement LNP when a number of implementation issues are not resolved. It would be more efficient and less costly to implement LNP only once, after the LNP parameters are more certain, rather than require carriers to implement LNP when important issues are unresolved (such as whether a trunk connection will be required) or could be changed (such as whether the porting interval will be reduced).

20. Wireline to wireless porting under current routing protocols also will impose an unduly economically burdensome requirement by making the network less efficient and by confusing consumers which could result in reduced calling. Currently, Swiftel does not carry local traffic to points of interconnection beyond its service territory. Therefore, as discussed herein, calls to Western Wireless, Verizon Wireless and Nextel, whose points of interconnection are outside of Swiftel's service territory, are routed to an interexchange carrier (except in the case of an EAS arrangement) and the calling party incurs a toll charge. If a direct trunk is not established, and a Swiftel telephone number is ported to a wireless carrier, calls to the ported number also will be routed to an interexchange carrier and the calling customer will incur a toll charge, even though before porting the call would be rated as a local call.

21. The local exchange network also will be less efficient as a result of porting because end users who continue to dial a ported number on a seven-digit basis will likely receive a message that the call cannot be completed as dialed, or a message instructing the party to redial using 1+ the area code. Thus, callers would have to dial twice, with the resulting network use, to place one call.

C. Suspension of the Requirement to Implement LNP Is Consistent With The Public Interest, Convenience, and Necessity.

22. The standard of public interest, convenience, and necessity consists of an evaluation of the benefit that consumers will receive from LNP compared to the costs of its implementation and use. Central to this evaluation is the level of demand that exists for LNP in Swiftel's service area.

23. Swiftel believes that the current demand for LNP is very small or non-existent. As of the date of this filing, no Swiftel customer has ever made an inquiry to Swiftel regarding LNP or a request for LNP. Nationwide, to date, the demand for wireless porting has been far less than expected and most ports have been from one wireless carrier to another.[13] Wireline to wireless porting appears to be a small fraction of wireless porting in general.[14] Accordingly, there appears to be little, if any, demand for wireline to wireless LNP and absent such demand, no public benefit will be derived from LNP.

24. Even if some level of LNP demand develops in the future, the costs that would be incurred by Swiftel to implement and maintain LNP, which ultimately would be borne

[13] See, BellSouth Deliberate on VoIP; LNP Demand Called 'Anemic', *Telecommunications Reports*, Volume 70, No. 2, p. 35-36 (Jan. 15, 2004). The article quotes Ronald Dykes, BellSouth's chief financial officer, as saying "We put a lot of resources into that effort [LNP], in retrospect perhaps even more than might have been needed given the anemic outcome of number porting."

by ratepayers, would not be justified to provide the benefit of number portability to a few end users. Swiftel should not expend its available resources on an investment that has so few, if any, benefits. Such resources are much better spent on the development of broadband or other network improvements that hold real advantages for all of Swiftel's subscribers and South Dakota as a whole. If Swiftel is forced to implement LNP, existing capital investments for broadband implementation will be diverted from this deployment to implement LNP.

25. Moreover, the rating and routing issue associated with wireline to wireless portability as currently ordered by the FCC, and the resulting customer confusion, is contrary to the public interest. The uncertainty surrounding the rating and routing issues and other questions are likely to cause significant customer confusion, resulting in increased costs for addressing customer service inquiries which adds to the overall cost impact of LNP implementation.

26. In addition, if Swiftel must implement LNP, all carriers with EAS arrangements with Swiftel and their customers will be impacted because the other carrier will have to LNP dip all EAS calls. This would increase the cost of EAS between Swiftel and the other carrier and could result in a loss of EAS options to the customer or an increase in the cost of optional EAS service.

27. Accordingly, grant of the requested suspension is consistent with the public interest, convenience and necessity.

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[14] For example, the FCC reports that less than 10% of all wireless LNP complaints involve wireline to wireless porting. Wireless Portability Complaints: 5852 Consumer Complaints Since Porting Began on Nov. 24, FCC News Release, Feb. 26, 2004.

V. IMMEDIATE TEMPORARY SUSPENSION REQUESTED

28. Pursuant to section 251(f)(2) and SDCL 49-31-80, Swiftel requests immediate temporary suspension of the 251(b)(2) requirement pending this Commission's consideration of this suspension request until six (6) months following the Commission's final decision. An immediate temporary suspension is necessary so that Swiftel does not have to continue incurring LNP implementation costs until after the Commission acts on the petition. Without immediate suspension pending this proceeding, Swiftel must start ordering switch upgrades and other LNP arrangements in March 2004, in order to meet a May 24, 2004 implementation date.

VI. CONCLUSION

29. As demonstrated, Swiftel has met the criteria set forth in 47 U.S.C. § 251(f)(2)(A) and the suspension requested in this proceeding is consistent with the public interest, convenience and necessity requirement set forth in 47 U.S.C. § 251(f)(2)(B). Accordingly, the Commission must grant the petition for suspension or modification.

30. Swiftel requests suspension of the LNP requirement until there is evidence of demand for LNP and the per line cost of LNP is reduced. At a minimum, suspension should be granted until six (6) months following the FCC's full and final disposition of the issues associated with the porting interval and wireless to wireline porting in the FNPRM and the routing of calls between wireline and wireless providers in the *Sprint Petition*, at which time Swiftel may need to seek further Section 251(f)(2) relief based upon the economic impact of these decisions.

31. Swiftel also requests immediate temporary suspension of the 251(b)(2) requirement pending this Commission's consideration of this request until six (6) months following this Commission's final decision. Immediate temporary suspension is necessary so that Swiftel does not have to continue incurring LNP implementation costs until after the Commission acts on the petition.

WHEREFORE, Swiftel respectfully requests the Commission to:

(A) Issue an interim order that suspends any obligation that may exist for Swiftel to provide LNP until six (6) months after entry of a final order herein;

(B) Issue a final order that grants a permanent suspension of Swiftel's obligation to implement LNP until the conditions are met as described herein; and

(C) Grant Swiftel such other and further relief that may be proper.

Dated: March 10, 2004.

BROOKINGS MUNICIPAL UTILITIES
D/B/A SWIFTEL COMMUNICATIONS

By: _____

Richard J. Helsper
Glover, Helsper & Rasmussen, P.C.
100 22nd Avenue, Suite 200
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Its Attorney

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Of Counsel

EXHIBIT 1

BKNGSDXC69G
BKNGSDXNRS1
BKNGSDXSRS2
BKNGSDXERS3

EXHIBIT 2

BROOKINGS MUNICIPAL UTILITIES (D.B.A SWIFTEL COMMUNICATIONS, INC.)

ESTIMATED COSTS TO IMPLEMENT LOCAL NUMBER PORTABILITY

	Non-Recurring	Monthly Recurring	
Switch-Related Investment Costs:			
LNP Hardware Requirements	$ -		
LNP Software Features	$ 187,000		
Additional Software Features	$ -		
Additional Vendor Fees	$ -		
Translations	$ 25,000		Initial LNP Basic Translations Costs
Technical Implementation and Testing	$ 20,000		
Subtotal	**$ 232,000**		
NPAC-Related Costs:			
Service Order Administration	$ 2,000	$ 2,625	
LNP Queries	$ 1,000	$ 2,500	
Connection Costs w/LNP Database	$ 600	$ -	
Subtotals	**$ 3,600**	**$ 5,125**	
Technical/Administrative Costs:			
Testing/Verification of Each Ported Dial Number	$ -	$ 200	Testing/Verification of Ported Dial Number(s)
Translations	$ -	$ 80	Translations Costs - Ported Numbers
Administrative	$ 10,000	$ 100	
Regulatory	$ 25,000	$ -	
Customer Care	$ 10,000	$ 80	
Marketing/Informational Flyer	$ 20,000	$ 3,000	
Billing/Customer Care Software Upgrades	$ 6,000	$ -	
Subtotals	**$ 71,000**	**$ 3,460**	
Transport-Related Costs:			
Wireless Carriers Point of Interconnection (POI)	$ 20,000	$ 2,800	
Mobile Telephone Switching Office POI Connection	$ 500	$ 200	Transiting Carrier MTSO POI Connection
Dip (Minimum)	$ 500	$ 100	Transiting Carrier Dip Charges (Minimum)
Subtotals	**$ 21,000**	**$ 3,100**	

Total Estimated Costs Associated with LNP Implementation	**$ 327,600**	**$ 11,685**
Current Access Lines	**14,057**	**14,057**
Total Estimated Costs Per Access Line (Rounded)	**$ 24**	**$ 1**

South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of March 11, 2004 through March 17, 2004

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this report. Phone: 605-773-3201

TELECOMMUNICATIONS

TC04-047 In the Matter of the Petition of Brookings Municipal Utilities d/b/a Swiftel Communications for Suspension or Modification of 47 U.S.C. Section 251(b)(2) of the Communications Act of 1934 as Amended.

On March 11, 2004, Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel) filed a petition seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. According to Swiftel, it has received requests to deploy LNP from Verizon Wireless and Western Wireless. Swiftel states that it is a small telephone company that serves less than two percent of the nation's subscriber lines installed in the aggregate nationwide, therefore under Section 251(f)(2) Swiftel may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. Swiftel "requests the Commission to (1) issue an interim order that suspends any obligation that may exist for Swiftel to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for Swiftel's obligation to implement LNP until conditions are met as described herein; and (3) grant Swiftel such other and further relief that may be proper."

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Filed: 03/11/04
Intervention Deadline: 04/02/04

TC04-048 In the Matter of the Petition of Beresford Municipal Telephone Company for Suspension or Modification of 47 U.S.C. Section 251(b)(2) of the Communications Act of 1934 as Amended.

On March 11, 2004, Beresford Municipal Telephone Company (Beresford) filed a petition seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. According to Beresford, it has received requests to deploy LNP from Cellco Partnership d/b/a Verizon Wireless and Western Wireless Corporation d/b/a CellularOne. Beresford states that it is a small telephone company that serves less than two percent of the nation's subscriber lines installed in the aggregate nationwide, therefore under Section 251(f)(2) Beresford may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. Beresford "requests the Commission to (1) issue an interim order that suspends any obligation that may exist for Beresford to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for Beresford's obligation to implement LNP until conditions are met as described herein; and (3) grant Beresford such other and further relief that may be proper."

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Filed: 03/11/04
Intervention Deadline: 04/02/04

TC04-049 In the Matter of the Petition of McCook Cooperative Telephone Company for Suspension or Modification of 47 U.S.C. Section 251(b)(2) of the Communications Act of 1934 as Amended.

On March 11, 2004, McCook Cooperative Telephone Company (McCook) filed a petition seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. According to McCook, it has received requests to deploy LNP from Cellco Partnership d/b/a Verizon Wireless and Western Wireless Corporation d/b/a CellularOne. McCook states that it is a small telephone company that serves less than two percent of the nation's subscriber lines installed in the aggregate nationwide, therefore under Section 251(f)(2) McCook may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. McCook "requests the Commission to (1) issue an interim order that suspends any obligation that may exist for McCook to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for McCook's obligation to implement LNP until conditions are met as described herein; and (3) grant McCook such other and further relief that may be proper."

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Filed: 03/11/04
Intervention Deadline: 04/02/04

TC04-050 In the Matter of the Petition of Valley Telecommunications Cooperative Association, Inc. for Suspension or Modification of 47 U.S.C. Section 251(b)(2) of the Communications Act of 1934 as Amended.

On March 11, 2004, Valley Telecommunications Cooperative Association, Inc. (Valley) filed a petition seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. According to Valley, it has received requests to deploy LNP from Western Wireless Corporation d/b/a CellularOne. Valley states that it is a small telephone company that serves less than two percent of the nation's subscriber lines installed in the aggregate nationwide, therefore under Section 251(f)(2) Valley may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. Valley "requests the Commission to (1) issue an interim order that suspends any obligation that may exist for Valley to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for Valley's obligation to implement LNP until conditions are met as described herein; and (3) grant Valley such other and further relief that may be proper."

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Filed: 03/11/04
Intervention Deadline: 04/02/04

TC04-051 In the Matter of the Petition of Faith Municipal Telephone Company for Suspension or Modification of 47 U.S.C. Section 251(b)(2) of the Communications Act of 1934 Amended.

On March 12, 2004, City of Faith Telephone Company (Faith) filed a petition seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. According to Faith, it has received requests to deploy LNP from Cellco Partnership d/b/a Verizon Wireless. Faith states that it is a small telephone company that serves less than two percent of the nation's subscriber lines installed in the aggregate nationwide, therefore under Section 251(f)(2) Faith may petition the Commission

for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. Faith "requests the Commission to (1) issue an interim order that suspends any obligation that may exist for Faith to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for Faith's obligation to implement LNP until conditions are met as described herein; and (3) grant Faith such other and further relief that may be proper."

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Filed: 03/12/04
Intervention Deadline: 04/02/04

TC04-052 - In the Matter of the Petition of Midstate Communications, Inc. for Suspension or Modification of 47 U.S.C. Section 251(b)(2) of the Communications Act of 1934 Amended.

On March 12, 2004, Midstate Communications, Inc. (Midstate) filed a petition seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. According to Midstate, it has received requests to deploy LNP from Cellco Partnership d/b/a Verizon Wireless and Western Wireless Corporation d/b/a CellularOne. Midstate states that it is a small telephone company that serves less than two percent of the nation's subscriber lines installed in the aggregate nationwide, therefore under Section 251(f)(2) Midstate may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. Midstate "requests the Commission to (1) issue an interim order that suspends any obligation that may exist for Midstate to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for Midstate's obligation to implement LNP until conditions are met as described herein; and (3) grant Midstate such other and further relief that may be proper."

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Filed: 03/12/04
Intervention Deadline: 04/02/04

TC04-053 In the Matter of the Petition of Western Telephone Company for Suspension or Modification of 47 U.S.C. Section 251(b)(2) of the Communications Act of 1934 Amended. (KC/HB)

On March 12, 2004, Western Telephone Company (Western) filed a petition seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. According to Western, it has received requests to deploy LNP from Cellco Partnership d/b/a Verizon Wireless. Western states that it is a small telephone company that serves less than two percent of the nation's subscriber lines installed in the aggregate nationwide, therefore under Section 251(f)(2) Western may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. Western "requests the Commission to (1) issue an interim order that suspends any obligation that may exist for Western to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for Western's obligation to implement LNP until conditions are met as described herein; and (3) grant Western such other and further relief that may be proper."

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Filed: 03/12/04
Intervention Deadline: 04/02/04

TC04-054 **In the Matter of the Petition of Interstate Telecommunications Cooperative, Inc. for Suspension or Modification of 47 U.S.C. Section 251(b)(2) of the Communications Act of 1934 Amended.**

On March 15, 2004, Interstate Telecommunications Cooperative (ITC) filed a petition seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. According to ITC, it has received requests to deploy LNP from Midcontinent Communications and Western Wireless Corporation d/b/a CellularOne. ITC states that it is a small telephone company that serves less than two percent of the nation's subscriber lines installed in the aggregate nationwide, therefore under Section 251(f)(2) ITC may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. ITC "requests the Commission to (1) issue an interim order that suspends any obligation that may exist for ITC to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for ITC's obligation to implement LNP until conditions are met as described herein; and (3) grant ITC such other and further relief that may be proper."

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Filed: 03/15/04
Intervention Deadline: 04/02/04

TC04-055 **In the Matter of the Petition of Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc. for Suspension or Modification of 47 U.S.C. Section 251(b)(2) of the Communications Act of 1934 as Amended.**

On March 15, 2004, Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc. (Petitioner) filed a petition seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. According to Petitioner, it has received requests to deploy LNP from Cellco Partnership d/b/a Verizon Wireless, Western Wireless Corporation d/b/a CellularOne and Midwest Wireless Holdings L.L.C. d/b/a Midwest Wireless. Petitioner states that it is a small telephone company that serves less than two percent of the nation's subscriber lines installed in the aggregate nationwide, therefore under Section 251(f)(2) Petitioner may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. Petitioner "requests the Commission to (1) issue an interim order that suspends any obligation that may exist for Petitioner to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for Petitioner's obligation to implement LNP until conditions are met as described herein; and (3) grant Petitioner such other and further relief that may be proper."

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Filed: 03/15/04
Intervention Deadline: 04/02/04

TC04-056 **In the Matter of the Petition of RC Communications, Inc. and Roberts County Telephone Cooperative Association for Suspension or Modification of 47 U.S.C. Section 251(b)(2) of the Communications Act of 1934 as Amended.**

On March 15, 2004, RC Communications, Inc. and Roberts County Telephone Cooperative Assn. (Petitioner) filed a petition seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. According to Petitioner, it has received requests to deploy LNP from Cellco Partnership d/b/a Verizon Wireless and Western Wireless Corporation d/b/a CellularOne. Petitioner states

that it is a small telephone company that serves less than two percent of the nation's subscriber lines installed in the aggregate nationwide, therefore under Section 251(f)(2) Petitioner may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. Petitioner "requests the Commission to (1) issue an interim order that suspends any obligation that may exist for Petitioner to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for Petitioner's obligation to implement LNP until conditions are met as described herein; and (3) grant Petitioner such other and further relief that may be proper."

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Filed: 03/15/04
Intervention Deadline: 04/02/04

TC04-057 In the Matter of the Filing by Brookings Municipal Utilities d/b/a Swiftel Communications for Approval of its Revised Service Territory as a Result of Annexation.

As a result of a recent annexation to the City of Brookings, the Commission received a filing from the City of Brookings Telephone d/b/a Swiftel Communications for approval to include property recently annexed in its exclusive franchise territory. The service territory change includes the West 1600 feet of the South Half of the North West Quarter Section 1, T109N, R50W; the South Half of the South East Quarter of Section 18, T110N, R50W except the platted areas thereof and except the East 720 feet thereof all in Brookings County, South Dakota.

Staff Analyst: Michele Farris
Staff Attorney: Karen Cremer
Date Filed: 03/16/04
Intervention Deadline: 04/02/04

TC04-058 In the Matter of the Filing for Approval of Statement of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services and Resale of Telecommunications Services between Qwest Corporation and ACN Communication Services, Inc. (Fourth Revision).

On March 17, 2004, the Commission received a Filing for Approval of Statement of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services and Resale of Telecommunications Services between Qwest Corporation (Qwest) and ACN Communication Services, Inc. (Fourth Revision) (ACN). According to the parties, the Agreement is a negotiated agreement which sets forth the terms, conditions and prices under which Qwest will provide services for resale to ACN for the provision of local exchange services. Any party wishing to comment on the Agreement may do so by filing written comments with the Commission and the parties to the agreement no later than April 6, 2004. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Rolayne Ailts Wiest
Date Filed: 03/17/04
Initial Comments Due: 04/06/04

TC04-059 In the Matter of the Filing for Approval of Agreement for Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services and Resale of Telecommunications Services between Qwest Corporation and IDT America, Corp.

On March 17, 2004, the Commission received a Filing for Approval of Agreement for Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services and Resale of Telecommunications Services between Qwest Corporation (Qwest) and IDT America, Corp (IDT). According to the parties, the Agreement is a negotiated agreement which sets forth the terms, conditions and prices under which Qwest will provide services for resale to IDT for the provision of local exchange services. Any party wishing to comment on the Agreement may do so by filing written comments with the Commission and the parties to the agreement no later than April 6, 2004. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Rolayne Ailts Wiest
Date Filed: 03/17/04
Initial Comments Due: 04/06/04

TC04-060 **In the Matter of the Petition of Venture Communications Cooperative for Suspension or Modification of 47 U.S.C. Section 251(b)(2) of the Communications Act of 1934 as Amended.**

On March 17, 2004, Venture Communications Cooperative, Inc. (Venture) filed a petition seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. According to Venture, it has received requests to deploy LNP from Verizon Wireless and Western Wireless. Venture states that it is a small telephone company that serves less than two percent of the nation's subscriber lines installed in the aggregate nationwide, therefore under Section 251(f)(2) Venture may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. Venture "requests the Commission to (1) issue an interim order that suspends any obligation that may exist for Venture to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for Venture's obligation to implement LNP until conditions are met as described herein; and (3) grant Venture such other and further relief that may be proper."

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Filed: 03/17/04
Intervention Deadline: 04/02/04

TC04-061 **In the Matter of the Petition of West River Cooperative Telephone Company for Suspension or Modification of 47 U.S.C. Section 251(b)(2) of the Communications Act of 1934 as Amended.**

On March 17, 2004, West River Cooperative Telephone Company (West River) filed a petition seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. According to West River, it has received requests to deploy LNP from Verizon Wireless. West River states that it is a small telephone company that serves less than two percent of the nation's subscriber lines installed in the aggregate nationwide, therefore under Section 251(f)(2) West River may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. West River "requests the Commission to (1) issue an interim order that suspends any obligation that may exist for West River to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for West River's obligation to implement LNP until conditions are met as described herein; and (3) grant West River such other and further relief that may be proper."

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Filed: 03/17/04

Intervention Deadline: 04/02/04

TC04-062 In the Matter of the Petition of Stockholm-Strandburg Telephone Company for Suspension or Modification of 47 U.S.C. Section 251(b)(2) of the Communications Act of 1934 as Amended.

On March 17, 2004, Stockholm-Strandburg Telephone Company (Stockholm-Strandburg) filed a petition seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. According to Stockholm-Strandburg, it has received requests to deploy LNP from Western Wireless Corp. Stockholm-Strandburg states that it is a small telephone company that serves less than two percent of the nation's subscriber lines installed in the aggregate nationwide, therefore under Section 251(f)(2) Stockholm-Strandburg may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. Stockholm-Strandburg "requests the Commission to (1) issue an interim order that suspends any obligation that may exist for Stockholm-Strandburg to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for Stockholm-Strandburg's obligation to implement LNP until conditions are met as described herein; and (3) grant Stockholm-Strandburg such other and further relief that may be proper."

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Filed: 03/17/04
Intervention Deadline: 04/02/04

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GUNDERSON, PALMER, GOODSELL & NELSON, LLP

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Writer's Email Address:
tjw@gpgnlaw.com

March 29, 2004

BY UPS NEXT DAY AIR

RECEIVED
MAR 30 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Ms. Pam Bonrud
Executive Director
South Dakota Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501

Re: Our File No. 040176
WWC License LLC – Local Number Portability

Dear Ms. Bonrud:

Enclosed for filing please find the original and ten copies of the following Petitions to Intervene for Western Wireless:

1. TC04-047 Brookings Municipal Utilities d/b/a Swiftel Communications.
2. TC04-048 Beresford Municipal Telephone Company;
3. TC04-049 McCook Cooperative Telephone Company;
4. TC04-050 Valley Telecommunications Cooperative Association, Inc.;
5. TC04-051 City of Faith Telephone Company;
6. TC04-052 Midstate Communications, Inc.;
7. TC04-053 Western Telephone Company;
8. TC04-054 Interstate Telecommunications Cooperative, Inc.;
9. TC04-055 Alliance Communications Inc. and Splitrock Properties'
10. TC04-056 RC Communications, Inc., and Roberts County Telephone Cooperative Association;
11. TC04-060 Venture Communications Cooperative;
12. TC04-061 West River Cooperative Telephone Company;
13. TC04-062 Stockholm-Strandburg Telephone Company.

If you have any questions, please call me.

Sincerely,

Talbot J. Wieczorek

TJW:drp

Enclosures

c w/encs: Clients

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Petition of Brookings Municipal Utilities d/b/a Swiftel Communications for Suspension or Modification of 47 U.S.C. Section 251 (b)(2) of the Communication Act of 1934 as Amended	Docket No. TC 04-047 **PETITION TO INTERVENE BY WWC LICENSE LLC**

RECEIVED
MAR 3 0 2004
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Pursuant to ARSD 20:10:01:15.02, WWC License LLC, doing business as CellularOne, (hereinafter "Western Wireless"), petitions to intervene in Docket TC 04-047 for the following reasons:

1. Western Wireless is a cellular service provider in areas served by Brookings Municipal Utilities, d/b/a Swiftel Communications (hereinafter "Swiftel"), who has requested suspension on its local number portability obligations at issue in this proceeding. Western Wireless sent Swiftel a bonafide request ("BFR") to implement local number portability on November 18, 2003. Rural consumers are increasingly choosing wireless service for their telecommunications needs and may choose to port their wireline number to Western Wireless upon the implementation of number portability as mandated by the Federal Communications Commission. Western Wireless has direct and personal interest in this proceeding and therefore its Petition for Intervention should be granted.

2. Local number portability by Swiftel is feasible and appropriate and no suspension of providing LNP should be allowed.

3. To suspend the obligations of Swiftel to deploy local number portability would be against public interest.

4. Western Wireless also contests Swiftel's request for immediate suspension of local number portability requirements and requests that the Commission, at a minimum, establish an expedited procedural schedule that would determine the factual and legal support for a decision on the merits of Swiftel's request for local number portability suspension.

5. Western Wireless is entitled to be granted intervention in this docket pursuant to ARSD 20:10:01:15.05 as the outcome of this proceeding will have an impact on Western Wireless and will affect Western Wireless, because Western Wireless has requested Swiftel deploy local number portability.

WHEREFORE, Western Wireless respectfully requests:

1. That its Petition to Intervene be granted;

2. That Swiftel's request for immediate suspension be denied; and

3. That Swiftel's request to suspend deploying LNP be denied.

Dated this 29th day of March 2004.

GUNDERSON, PALMER, GOODSELL
& NELSON, LLP

By _____
Talbot J. Wieczorek
Attorneys for WWC License LLC
440 Mt. Rushmore Road, Fourth Floor
P.O. Box 8045
Rapid City SD 57709-8045
(605) 342-1078
Fax: (605) 342-0480

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of March 2004, I sent by first-class mail, postage prepaid, a true and correct copy of Petition to Intervene by WWC License LLC to:

Mr. Richard J. Helsper
Glover, Helsper & Rasmussen, P.C.
100 22nd Avenue, Suite 200
Brookings, SD 57006

Mr. Benjamin H. Dickens, Jr. and
Ms. Mary J. Sisak
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street NW, Suite 300
Washington, DC 20037

Mr. Richard Coit
South Dakota Independent Telephone Coalition, Inc.
P.O. Box 57
Pierre, SD 57501-0057

GUNDERSON, PALMER, GOODSELL
& NELSON, LLP

By _____
Talbot J. Wieczorek
P.O. Box 8045
Rapid City, SD 57709-8045

SDTA
Rural roots, global connections

South Dakota Telecommunications Association
PO Box 57 ■ 320 East Capitol Avenue ■ Pierre, SD 57501
605/224-7629 ■ Fax 605/224-1637 ■ sdtaonline.com

April 1, 2004

RECEIVED
MAR 31 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Ms. Pamela Bonrud, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
State Capitol Building
Pierre, SD 57501

RE: Docket TC04-047, Swiftel Communications Petition for
Suspension or Modification of Local Number Portability Obligations

Dear Ms. Bonrud:

Attached for filing with the Commission in the above referenced docket are the original and ten (10) copies of a Petition to Intervene of the South Dakota Telecommunications Association.

You will also find attached to the Petition a certificate of service verifying service of this document, by mail, on counsel for Swiftel Communications.

Thank you for your assistance in filing and distributing these documents.

Sincerely,

Richard D. Coit
Executive Director and General Counsel
SDTA

RECEIVED
MAR 3 1 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF BROOKINGS MUNICIPAL UTILITIES D/B/A SWIFTEL COMMUNICATIONS FOR SUSPENSION OR MODIFICATION OF § 251(b)(2) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED	))))))	**DOCKET TC04-047** **PETITION TO INTERVENE**

SDTA Petition for Intervention

The South Dakota Telecommunications Association ("SDTA") hereby petitions the Commission for intervention in the above captioned proceeding pursuant to SDCL 1-26-17.1 and ARSD §§ 20:10:01:15.02, 20:10:01:15.03 and 20:10:01:15.05. In support hereof, SDTA states as follows:

1. On or about March 11, 2004, Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel) filed with this Commission pursuant to 47 U.S.C. § 251(f)(2) and SDCL § 49-31-80 a petition seeking a suspension or modification of the requirement to implement the "Local Number Portability ("LNP")" obligations established by the FCC under 47 U.S.C. §251(b)(2).

2. As noted in Swiftel's petition filed with the Commission, Swiftel is a rural telephone company as defined in 47 U.S.C. § 153(37) and currently provides basic local exchange services to 14,057 subscriber lines nationwide. Pursuant to 47 U.S.C. § 251(f)(2), any rural local exchange carrier serving fewer than two percent (2%) of the Nation's subscriber line installed in the aggregate nationwide may petition the State Commission for a suspension or modification of any of the interconnection obligations set forth in 47 U.S.C. §§ 251(b) and/or 251(c). According to the provisions of 47 U.S.C. 251(f)(2) and SDCL 49-31-80, this Commission shall grant a

petition of suspension or modification 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.

3. Pursuant to the above, the Commission must grant a petition for suspension or modification if the Commission finds that any of the three criteria set forth in sub-part (A) of this statutory section is established and further finds that the suspension or modification is consistent with the public interest, convenience and necessity.

4. SDTA is an incorporated organization representing the interests of numerous cooperative, independent and municipal telephone companies operating throughout the State of South Dakota. It's membership includes not only Swiftel, but also many other rural telephone companies operating in the State that have also recently received requests for LNP implementation from other telecommunications carriers.

6. SDTA seeks intervention in this proceeding based on the direct interests of Swiftel, as the petitioning party in this proceeding, and also based on the likelihood that determinations made by the Commission in this matter will impact other similar proceedings initiated by other SDTA member companies. Accordingly, SDTA has an interest in this proceeding and seeks intervention herein.

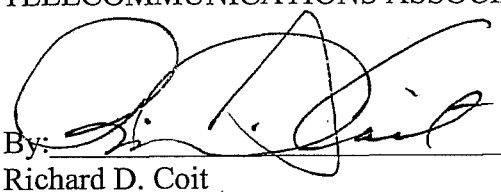
7. SDTA supports the Swiftel request for suspension or modification of the federal LNP requirements for all those reasons set forth in their petition filed in this matter, and strongly urges the Commission to grant the relief requested.

8. Based on all of the foregoing, SDTA seeks intervening party status in this proceeding.

Dated this 1st day of April, 2004.

Respectfully submitted:

THE SOUTH DAKOTA
TELECOMMUNICATIONS ASSOCIATION



By: _____
Richard D. Coit
Executive Director and General Counsel

CERTIFICATE OF SERVICE

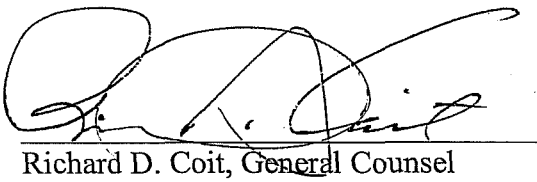
I hereby certify that an original and ten (10) copies of the foregoing document were hand-delivered on April 1, 2004 to:

Pam Bonrud
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Copies were sent by First Class mail via the U.S. Postal Service to:

Darla Rogers
Riter Rogers Wattier & Brown
PO Box 280
Pierre, SD 57501-0280

Dated this 1st day of April, 2004.



Richard D. Coit, General Counsel
South Dakota Telecommunications Association
PO Box 57 – 320 East Capitol Avenue
Pierre, SD 57501-0057

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF BROOKINGS MUNICIPAL UTILITIES D/B/A SWIFTEL COMMUNICATIONS FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. § 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	))))))	ORDER GRANTING INTERIM SUSPENSION PENDING FINAL DECISION AND ORDER GRANTING INTERVENTION TC04-047

On March 11, 2004, Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel) filed a petition seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. According to Swiftel, it has received requests to deploy LNP from Verizon Wireless and Western Wireless Corporation. Swiftel states that it is a small telephone company that serves less than two percent of the nation's subscriber lines installed in the aggregate nationwide, therefore under Section 251(f)(2) Swiftel may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. Swiftel "requests the Commission to (1) issue an interim order that suspends any obligation that may exist for Swiftel to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for Swiftel's obligation to implement LNP until conditions are met as described herein; and (3) grant Swiftel such other and further relief that may be proper."

On March 18, 2004, the Commission electronically transmitted notice of the filing and the intervention deadline of April 2, 2004, to interested individuals and entities. WWC License LLC d/b/a CellularOne (Western Wireless) filed to intervene on March 30, 2004, and the South Dakota Telecommunications Association (SDTA) filed to intervene on March 31, 2004.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31 and ARSD 20:10:01:15.05.

At a regularly scheduled meeting of April 6, 2004, the Commission heard arguments from Swiftel, Western Wireless and SDTA regarding Swiftel's request for an order granting interim suspension. Pursuant to 47 U.S.C. Section 251(f)(2) of the Telecommunications Act of 1996 and SDCL 49-31-80, the Commission voted to grant the request for an interim suspension order pending final decision. The Commission found that the Petitions to Intervene were timely filed and demonstrated good cause to grant intervention. It is therefore

ORDERED, that the request for an interim suspension order pending final decision is hereby granted; and it is further

ORDERED, that the Petitions to Intervene of Western Wireless and SDTA are hereby granted.

Dated at Pierre, South Dakota, this 19th day of April, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 4/20/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF BROOKINGS MUNICIPAL UTILITIES D/B/A SWIFTEL COMMUNICATIONS FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. § 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	))))))	ORDER FOR AND NOTICE OF PROCEDURAL SCHEDULE AND HEARING AND OF INTENT TO TAKE JUDICIAL NOTICE TC04-047

On March 11, 2004, Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel or Petitioner) filed a petition pursuant to 47 U.S.C. Section 251(f)(2) and SDCL 49-31-80 seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. The petition requests the Commission to (1) issue a final order that grants a permanent suspension for Swiftel's obligation to implement LNP until conditions are met as described in the petition; and (2) grant Swiftel such other and further relief that may be proper. On April 19, 2004, the Commission issued an order granting intervention to WWC License LLC d/b/a CellularOne and the South Dakota Telecommunications Association and granting Swiftel's request for interim suspension of its obligation to implement LNP pending final decision pursuant to 47 U.S.C. Section 251(f)(2) of the Telecommunications Act of 1996 and SDCL 49-31-80.

The Commission has jurisdiction in this matter pursuant to SDCL 49-31-80, Section 251(f)(2) of the Telecommunications Act of 1996, 47 U.S.C. Section 251(f)(2), and ARSD 20:10:32:39.

Procedural Schedule

The due dates for pre-filing of testimony are as follows (all dates 2004):

May 14	Petitioner's direct testimony and exhibits
May 28	Intervenors' and Staff's reply testimony and exhibits
June 14	Petitioner's rebuttal testimony and exhibits

The schedule for discovery is as follows (all dates 2004):

April 28	General interrogatories, document requests and other general discovery requests by all parties
May 11	Responses to general discovery requests by all parties
May 18	Supplemental discovery requests by intervenors and Staff following Petitioner's pre-filed testimony
May 24	Petitioner's responses to supplemental discovery requests
June 3	Supplemental discovery requests by Petitioner following intervenors' and Staff's pre-filed testimony

June 10 Intervenors' and Staff's responses to Petitioner's supplemental discovery requests

Judicial Notice

The Commission hereby gives notice pursuant to SDCL 1-26-19(3) that it intends to take judicial notice of the fact that Petitioner is a local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide. Any party objecting to this taking of judicial notice shall serve notice of such objection on the Commission and the parties prior to the hearing.

Notice of Hearing

A hearing will be held beginning at 10:00 A.M. on June 21, 2004, and continuing at 9:00 A.M. on June 22 - 25 and on June 28 - July 2, 2004, in the Second Floor Conference Room of the Soldiers and Sailors War Memorial Building (across Capitol Avenue from the Capitol Building), Pierre, South Dakota, on this matter and the other pending dockets in which the petitioners have requested suspensions of LNP requirements. To the extent that the issues and the witnesses and documentary evidence are materially identical in more than one LNP suspension docket, the parties are encouraged to present such common evidence in a consolidated manner that will minimize repetition and opposing parties are encouraged to reasonably stipulate to such consolidated presentation of evidence. The hearing will commence on June 21, with consideration of Midcontinent Communications' Motion to Compel, Docket No. TC03-192. Following the hearing on this related docket, the remaining dockets will be heard in docket number order except to the extent that the parties otherwise agree or the Commission shall otherwise order, either prior to or during the hearing. Petition of Santel Communications Cooperative, Inc., Docket No. TC04-038, will be heard on July 1, 2004.

As provided in SDCL 49-31-80 and 47 U.S.C. Section 251(f)(2), the issues at the hearing will be:

(i) whether and the extent to which the suspension of LNP requirements requested by Petitioner

(a) is necessary:

(1) To avoid a significant adverse economic impact on users of telecommunications services generally;

(2) To avoid imposing a requirement that is unduly economically burdensome; or

(3) To avoid imposing a requirement that is technically infeasible; and

(b) is consistent with the public interest, convenience, and necessity;

(ii) if a suspension is found to be justified, what the duration of the suspension should be; and

(iii) whether any other relief should be granted.

The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights will be forfeited if not exercised at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, the Final Decision may be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision. As a result of the hearing, the Commission may either grant or deny the request of Petitioner to suspend the requirement of 47 U.S.C Section 251(b)(2) that it provide local number portability to requesting carriers and, if so, for what duration and subject to what conditions. The Commission's Final Decision may be appealed to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that the parties shall comply with the procedural schedule and discovery schedule set forth above; and it is

FURTHER ORDERED, that a hearing shall be held at the time and place specified above on the issue of whether Petitioner's request to suspend its local number portability obligations under 47 U.S.C Section 251(b)(2) should be granted and, if so, for what duration and whether other relief should be granted.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 4th day of May, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 5/5/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner

SDTA
Rural roots, global connections

South Dakota Telecommunications Association
PO Box 57 ■ 320 East Capitol Avenue ■ Pierre, SD 57501
605/224-7629 ■ Fax 605/224-1637 ■ sdtaonline.com

RECEIVED
MAY 14 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

May 14, 2004

Ms. Pamela Bonrud, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
State Capitol Building
Pierre, SD 57501

RE: Petitions for Suspension and/or Modification of LNP, Dockets TC04-025, 038, 044, 045, 046, 047, 048, 049, 050, 051, 052, 053, 054, 055, 056, 060, 061, 062, 077, 084, and TC04-085.

Dear Ms. Bonrud:

Enclosed you will find for filing in the above referenced Dockets, the prefiled Direct Testimony of witness Steven E. Watkins. This testimony is filed on behalf of SDTA and also is filed on behalf of each of the below listed rural local exchange carriers, as part of their prefiled testimony.

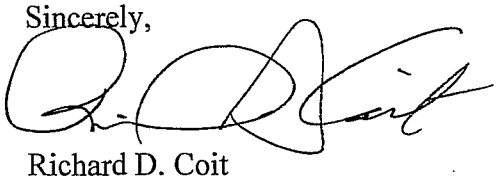
TC04-025 –	Kennebec Telephone Company
TC04-038 –	Santel Communications Cooperative
TC04-044 –	Sioux Valley Telephone Company
TC04-045 –	Golden West Telecommunications Cooperative
	Vivian Telephone Company
	Kadoka Telephone Company
TC04-046 -	Armour Independent Telephone Company
	Bridgewater-Canistota Independent Telephone Company
	Union Telephone Company
TC04-047 -	Brookings Municipal Utilities d/b/a Swiftel Communications
TC04-048 -	Beresford Municipal Telephone Company
TC04-049 -	McCook Cooperative Telephone Company
TC04-050 -	Valley Telecommunications Cooperative Association, Inc.
TC04-051 -	City of Faith Telephone Company
TC04-052 -	Midstate Communications Inc.
TC04-053 -	Western Telephone Company
TC04-054 -	Interstate Telecommunications Cooperative
TC04-055 -	Alliance Communications Cooperative, Inc.
	Splitrock Properties, Inc.

TC04-056 -	RC Communications, Inc.
	Roberts County Telephone Cooperative Association
TC04-060 -	Venture Communications Cooperative
TC04-061 -	West River Cooperative Telephone Company
TC04-062 -	Stockholm-Strandburg Telephone Company
TC04-077 -	James Valley Cooperative Telephone Company
TC04-084 -	Tri-County Telcom, Inc.
TC04-085 -	Cheyenne River Sioux Tribe Telephone Authority

You will also find enclosed a certificate of service verifying service of this document, by USPS, on counsel for the other intervening parties.

Thank you for your assistance in filing and distributing these documents.

Sincerely,



Richard D. Coit
Executive Director and General Counsel
SDTA

CERTIFICATE OF SERVICE

I hereby certify that an original and ten (10) copies of the foregoing Direct Testimony of Steven E. Watkins was were hand-delivered to the South Dakota PUC on May 14, 2004, directed to the attention of:

Pam Bonrud
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

A copy was sent by U.S.P.S. First Class Mail to:

Talbot Wieczorek
Gunderson Palmer Goodsell Nelson
440 Mount Rushmore Road
Rapid City, SD 57701

David Gerdes
May, Adam, Gerdes & Thompson
P.O. Box 160
Pierre, SD 57501

Dated this 14th day of May, 2004.

Richard D. Coit, General Counsel
South Dakota Telecommunications Association
PO Box 57 – 320 East Capitol Avenue
Pierre, SD 57501-0057

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

RECEIVED
MAY 14 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITIONS	)	
FOR SUSPENSION OR MODIFICATION	)	DOCKETS:
OF § 251(b)(2) OF THE COMMUNICATIONS	)	
COMMUNICATIONS ACT OF 1934	)	
AS AMENDED	)	

TC04-025 – Kennebec Telephone Company
TC04-038 – Santel Communications Cooperative
TC04-044 – Sioux Valley Telephone Company
TC04-045 – Golden West Telecommunications Cooperative
Vivian Telephone Company
Kadoka Telephone Company
TC04-046 - Armour Independent Telephone Company
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TC04-053 - Western Telephone Company
TC04-054 - Interstate Telecommunications Cooperative
TC04-055 - Alliance Communications Cooperative, Inc.
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TC04-084 - Tri-County Telcom, Inc.
TC04-085 - Cheyenne River Sioux Tribe Telephone Authority

DIRECT TESTIMONY OF

STEVEN E. WATKINS

Submitted on behalf of above Rural Local Exchange Carriers and the South Dakota Telecommunications Association (May 14, 2004)

I. INTRODUCTION

Q1: Please state your name, business address and telephone number.

A: My name is Steven E. Watkins. My business address is 2120 L Street, N.W., Suite 520, Washington, D.C., 20037. My business phone number is (202) 296-9054.

Q2: What is your current position?

A: I am Special Telecommunications Management Consultant to the Washington, D. C. law firm of Kraskin, Moorman & Cosson, LLC, which provides legal and consulting services to telecommunications companies.

Q3: What are your duties and responsibilities at Kraskin, Moorman & Cosson, LLC?

A: I provide telecommunications management consulting services and regulatory assistance to smaller local exchange carriers ("LECs") and other smaller firms providing telecommunications and related services in more rural areas. My work involves assisting client LECs and related entities in their analysis of regulatory requirements and industry matters requiring specialty expertise; negotiating, arranging and administering connecting carrier arrangements; and more recently assisting clients in complying with the rules and regulations arising from the passage of the Telecommunications Act of 1996 (the "Act"). On behalf of over one hundred and fifty (150) other smaller independent local exchange carriers, I am involved in regulatory proceedings in several other states examining a large number of issues with respect to the manner in which the Act should be implemented in those states. Prior to joining Kraskin, Moorman & Cosson, I was the senior policy analyst for the National Telephone Cooperative Association ("NTCA"), a trade association whose membership consists of approximately 500 small and rural telephone

companies. While with NTCA, I was responsible for evaluating the then proposed Telecommunications Act, the implementation of the Act by the Federal Communications Commission ("FCC") and was largely involved in the association's efforts with respect to the advocacy of provisions addressing the issues specifically related to rural companies and their customers.

Q4: Have you prepared and attached further information regarding your background and experience?

A: Yes, this information is included in Attachment A following my testimony.

Q5: What is Local Number Portability?

A: Local Number Portability ("LNP") is defined in Section 153 of the Act as:

> The term "number portability" means the ability of users of telecommunications 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.

This type of number portability is referred to as "Service Provider Portability."

Q6: What is meant by intermodal porting?

A: The term is meant to signify LNP where the number is ported from its prior use by a wireline telephone company in the provision of "plain old telephone service" ("POTS") at a fixed location within a specific geographic area to use by a mobile customer of a wireless carrier in the provision of mobile service, and vice versa.

Q7: What is meant by intramodal porting?

A: This term means LNP where a number is ported from wireline carrier to another, or where a number is ported from one wireless carrier to another, but not when a number is ported between two different types of carriers; *i.e.* wireline or wireless.

Q8: Is number porting a "function" or a "service?"

A: It relates to a functional capability of a carrier. It is the capability of a carrier to identify the carrier that is providing service to an end user with a specific number. When calls are placed to numbers that may have been ported (*i.e.*, the numbers may be used by more than one service provider to provide service to end users), number portability is the function of querying a database to determine the identity of the carrier that is serving the end user using the specific number in question. Once the identity of the carrier is determined using number portability hardware and software, a carrier must also determine how a call may and will be switched, routed, and completed. Therefore, number portability involves multiple functions – the identification of which carrier is serving the end user being called and the completion of the call.

II. PURPOSE OF THIS TESTIMONY

Q9: On whose behalf are you testifying?

A: I am testifying on behalf of the rural local exchange carriers that are the petitioning parties in dockets captioned above (to be referred to as the "Petitioners") and the South Dakota Telecommunications Association.

Q10: What is the purpose of your testimony?

A: My testimony addresses whether grant of the Petitions filed by the Petitioners seeking suspension of LNP requirements pursuant to Section 251(f)(2) of the

Communications Act of 1934, as amended ("Act") is in the public interest and consistent with the criteria regarding economic burdens and feasibility.

Consistent with 47 U.S.C. § 251(f)(2)(A)(I), grant of the petitions is necessary to avoid a significant adverse economic impact on the end users of the Petitioners. As will be demonstrated, the cost to implement LNP in the rural exchanges of the Petitioners is significant and would lead to explicit surcharges and other potential rate increases to the rural users beyond that which would be balanced with any benefit to be derived by the small number, if any, of users that may actually seek to port their wireline service telephone numbers. Accordingly, suspension of the LNP requirements would avoid these burdens consistent with the public interest, convenience, and necessity. *See* 47 U.S.C. § 251(f)(2)(B).

Consistent with 47 U.S.C. §§ 251(f)(2)(A)(ii) and (iii) of the Act, grant of the suspensions is also necessary to avoid the imposition of undue economic burdens and technically infeasible requirements on the petitioners. My testimony provides background information that sets forth the sequence of events and unresolved issues at the FCC regarding LNP. Given the specific network and operational characteristics of the Petitioners, the LNP requirement, if not suspended, would subject the Petitioners to adverse economic conditions, unnecessary economic burdens and harm, and potentially technically infeasible requirements. Accordingly, suspension of the LNP requirements would be consistent with the public interest, convenience, and necessity in that it would avoid unnecessary attempts to deploy LNP under conditions that would subject the Petitioners to undue economic burdens and uncertain and infeasible requirements. *See* 47 U.S.C. § 251(f)(2)(B).

Therefore, the interests of all parties, including the Petitioners, their customers, and policymakers, would be better served by the grant of the suspension requests until such time as there is a balanced policy result consistent with the public interest. Under current conditions, there would be no such policy balance between the substantial costs that would be imposed on the public and the potential benefits of LNP in the rural areas of South Dakota. Suspension of the LNP requirements is also consistent with sound public policy because it would assure that the public interest would be examined properly only after all of the relevant implementation issues have been resolved.

III. RELIEF REQUESTED

Q11: What relief is appropriate for the Petitioners?

A: The Commission should extend the current interim suspension of the LNP requirements for the Petitioners until the conditions confronting the Petitioners, as explained in this Testimony, have changed such that the per-line cost of LNP is more reasonable compared to whatever demand, if any, may exist. These factors should be reviewed in light of the criteria set forth in Section 251(b)(2) of the Act.

In any event, any consideration under the criteria of Section 251(b)(2) cannot occur until after the issues pending before the Courts and the FCC related to the apparent directives contained in the FCC's November 10, 2003 Order on LNP (*"Nov. 10 Order"*) are fully resolved, including any further and final disposition of the remaining rulemaking issues and the resolution of the routing issues that the FCC explicitly has left to be resolved later.

Regardless of any future consideration, the Petitioners would need sufficient time

after the issues are resolved and circumstances may have changed to acquire and install the necessary hardware and software and to implement the necessary administrative processes and business relationships that would be necessary to commence LNP.

This relief would avoid the potential waste of resources in an attempt to implement what are currently a confusing, incomplete and inconsistent set of apparent requirements that cannot be implemented in any rational manner given the status of the Petitioners' and the wireless carriers' networks. Without suspension, the Petitioners would find themselves in the untenable position of attempting to implement some uncertain service and porting method that may require them to incur costs that may go unrecovered and may subject their subscribers to much higher basic rates. Moreover, as explained in this testimony, without suspension, customers may receive bills for calls that they do not expect; some calls may not be completed to their final destination; and there will be ensuing customer confusion.

IV. BALANCING COSTS AND POTENTIAL BENEFITS WITH THE PUBLIC INTEREST

Q12: What should the "public interest" determination entail?

A: The determination of the "public interest" should involve an evaluation of the costs of LNP implementation and operation compared to the benefits that LNP implementation would present for consumers.

A. THE COSTS OF LNP ARE SUBSTANTIAL.

Q13: Are the costs of LNP significant?

A: Yes. There are significant costs associated with implementing LNP including the cost of upgrading switches, accessing the various LNP databases, modifying company processes and training company employees.

Q14: Who would bear the cost of implementing LNP if the Petitioners were required to do so?

A: The subscribers of the Petitioners will bear the costs of LNP either through an FCC allowed LNP surcharge or through general increases in basic rates. Petitioners may also be forced to bear some of the cost of implementing LNP to the extent that such cost may not be recovered from subscribers or other carriers.

Q15: But, did not the FCC establish a cost recovery mechanism for the Petitioners?

A: Yes, but that does not address the surcharge and cost recovery burden that would be placed on the rural users and does not address whether that result would be consistent with the public interest. These charges would be assessed to all of the Petitioners' end

users regardless of whether any of these end users desire to port numbers to wireless carriers. The testimony and data provided in this proceeding regarding costs and the resulting rate implications supports the conclusion that the subscribers of the rural Petitioners would be shouldering significant rate increases to recover these costs, regardless of whether any or just a few customers actually port their numbers. This cost recovery burden would not be balanced with any possible public interest objective given the lack of demand for LNP and the surcharges that would be imposed to recover the substantial costs of LNP implementation.

Q16: Are the surcharges and potential basic rate increases to recover the costs of LNP consistent with cost causer principles?

A: No. There is an extreme irony here. The very few customers that may want to port their wireline number from Petitioners to another carrier's service, such as a wireless carrier's service, will no longer be customers of the Petitioners. The vast majority of Petitioners' end users that remain will shoulder the charges and costs to the benefit of only a handful of users that are no longer customers of the LEC. The vast majority of customers that do not want to port will be forced to foot the bill for the very few that do.

Q17: Will the Petitioners be able to add new customers by porting wireless carriers' customers to the Petitioners' service?

A: For the most part, no. The manner in which the FCC put in place intermodal porting, inconsistent with the reports from the industry workgroup that had been charged with examining the intermodal issues, means that there is an extreme disparity between wireline-to-wireless opportunities to port versus wireless-to-wireline. Therefore, for the most part, Petitioners will be able to lose customers if LNP is implemented, but will not

be able to get others back. The necessary methods and rules to allow wireless-to-wireline porting that would be competitively fair are the subject of a further rulemaking proceeding before the FCC with no apparent resolution of the geographic disparity issues that are at the root of the issues. See *Nov. 10 Order* at para. 41-44. In the meantime, a competitively unfair version of intermodal LNP is in place.

B. THERE IS A LACK OF DEMAND FOR PORTING.

Q18: Will consumers benefit from the implementation of LNP by Petitioners?

A: Central to the evaluation of whether consumers will benefit from the implementation of LNP is the level of demand that exists for LNP in Petitioners' service areas. It is my understanding that the Petitioners have not received any inquiries or requests for LNP. In addition with respect to intermodal portability, in those areas where intermodal LNP has already been implemented, there appears to be very little demand from wireline customers to port their numbers to wireless carriers. Rather, the vast majority of wireless ports appear to be from one wireless carrier to another.

Q19: Does the experience thus far with intermodal LNP have any bearing on the public interest evaluation?

A: Yes. Based on readily available information, the demand for wireline-to-wireless porting for the non-rural, large local exchange carriers has been small. For example, according to a March 30, 2004 Press Release from the FCC, for the period between November 24, 2003 and March 25, 2004, there were 6,640 informal complaints received regarding wireless LNP. The FCC notes that "most of the complaints concern alleged delays in porting numbers from one wireless carrier to another" and that a "much smaller

number of complaints, estimated at just under ten percent of the total, involve alleged delays in porting numbers from wireline carriers to wireless carriers." In any event, the small relative percentage of complaints is likely due to the small number of wireline-to-wireless ports. Neustar reports that 95% of wireless ports have been from one wireless carrier to another and only 5% of wireless ports were between wireline and wireless carriers. *See* Communications Daily, NARUC Notebook, Vol. 24, No. 46, March 9, 2004 at p. 4.

Further, I can also report that the February 9, 2004 online edition of *RCR Wireless News* indicated that there had not been much demand for wireline-to-wireless porting as may have been initially anticipated. The online publication referenced a consumer survey report compiled by CFM Direct that found that very few telecommunications customers have switched their wireline phone numbers to wireless. The article quoted Barry Barnett, executive vice president of CFM Direct, as stating: "Phone portability should have enticed more landline users to switch to wireless, and although the data we have doesn't look at pre-teens, the owners of landline phones are primarily adults. We don't see adults making the shift."

While these anecdotes are representative of the experience in the more urban, top 100 MSAs, I would expect the interest in rural areas to be even less. Wireless service is less ubiquitous in rural areas, and landline users would be more reluctant to abandon dependable wireline service for a wireless service of less certainty. Generally, for obvious reasons, users do not abandon their wireline service, in any event, upon their first use of wireless service in rural areas.

Therefore, as a result of the very limited perceived demand for intermodal LNP

experienced to date, the significant and higher costs for the smaller carriers, let alone the technical and operational hurdles and unresolved issues, requiring the Petitioners to rush to support LNP for intermodal purposes at this point lacks a balanced public interest benefit. The public interest demands a balanced and thoughtful approach here, which the grant of the suspension request will allow.

Q20: Can you explain why there is relatively little demand for intermodal LNP?

A: Yes. In my opinion, the nature of wireless service in the rural areas of states like South Dakota is such that the public does not recognize wireless service as an absolute substitute for wireline service. The quality of service, dependability, and service record of wireline service makes it the reliable source that rural customers want and depend on as their fundamental service. On the other hand, as I expect the Commission is aware from its own experience here in South Dakota, wireless service is not as ubiquitous, lacks predictable capacity and quality of service, has a lower probability of call completion, and suffers from dropped calls. All of these factors mean that rural users who must depend on quality, reliable service due to their remote locations are not going to abandon their wireline service and convert to mobile service for actual use in their rural communities. Their demand for wireless service is more for its mobile capability, and this mobile capability is in addition to their fundamental need for a reliable wireline phone. For these reasons, mobile wireless service is a complementary service, not a replacement.

Therefore, while some customers may try wireless service, decide that it is dependable enough, and subsequently drop their wireline service, they do not do so in a single step, and do not do so with the need to port numbers. In other words, where a

customer drops wireline service, it does so without the need to port a number. More likely, the number of wireline subscribers that will drop wireline service in rural areas and replace it solely with wireless service would be expected to be very small.

My conclusions about lack of demand for wireline-wireless LNP are consistent with the FCC's own analysis and statements. In July 2003, the FCC concluded that even though there continues to be increased interest in wireless service:

> only a small percent of wireless customers use their wireless phones as their only phone, and that relatively few wireless customers have "cut the cord" in the sense of canceling their subscription to wireline telephone service.

Eighth Report, In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, released July 14, 2003, at para. 102.

Moreover, the FCC concluded in August 2003 that:

> . . . despite evidence demonstrating that narrowband local services are widely available through [Commercial Mobile Radio Service or "CMRS"] providers, wireless is not yet a suitable substitute for local circuit switching. In particular, only about three to five percent of CMRS subscribers use their service as a replacement for primary fixed voice wireline service . . . . Lastly, the record demonstrates that wireless CMRS connections in general do not yet equal

traditional landline facilities in their quality and their ability to handle data traffic.

See Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; and Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, and 98-147, FCC 03-36, released August 21, 2003, at para. 445.

Finally, consistent with these FCC findings, a 2004 Policy Bulletin of the Phoenix Center for Advanced Legal & Economic Public Policy Studies entitled "Fixed-Mobile 'Intermodal' Competition in Telecommunications: Fact or Fiction?" also comes to the same conclusions. *See* www.phoenix-center.org/PolicyBulletin/PCPB10Final.doc. While the fundamental discussion in the Policy Bulletin is related to the extent of competition with Bell Operating Companies, the bulletin concludes at p. 1 that wireline and wireless telephone services are not "close enough substitutes to be effective intermodal competitors" and at p. 2 that "even though there may be exceptions, consumers generally do not consider the two services as sufficiently good substitutes . . . ."

For all of these reasons, the complementary nature of wireless service means that very few, if any, wireline customers will want to take the single step, at the same time, of abandoning wireline service, porting their number to wireless, and take a chance that they will depend on wireless service. Accordingly, it is not in the public interest for society, and particularly the rural subscribers of the Petitioners, to incur the cost of implementing LNP and to divert the limited resources of the Petitioners which are already challenged by

their service to sparsely populated areas and relatively lower income customers, for such small, if any, demand and such a speculative and abstract objective.

Q21: Do the benefits of LNP justify the cost in the cases before the Commission?

A: No. Because the facts show that there is little or no demand for LNP, the significant costs of LNP cannot be justified.

V. OTHER UNRESOLVED IMPLEMENTATION ISSUES RELATED TO THE PUBLIC INTEREST EVALUATION.

Q22: Are there additional reasons why LNP is not in the pubic interest?

A: Yes. There are other unresolved issues associated with the ultimate routing of calls to telephone numbers ported to wireless carriers that are relevant to the evaluation here. Moreover, in the *Nov. 10 Order*, the FCC asked for further comment on whether the porting interval should be reduced and on how to implement wireless to wireline LNP. The resolution of these issues is unknown, the manner in which each will be resolved will further affect the Petitioners and their end users and could require Petitioners to incur additional costs in connection with LNP. Accordingly, the resolution of these issues could further impact the LNP cost/benefit analysis.

Q23: Did the FCC's *Nov. 10 Order* on intermodal number portability reconcile the facts of rural LECs with the requirement to provide intermodal LNP when there is no service arrangement with the wireless carrier "in the same location?"

A: No. The FCC's *Nov. 10 Order* is, at best, incomplete in that it fails to address with clarity and completeness the fact that there may be no wireless carrier arrangements

in place "at the same location" (which is the situation confronting most of the Petitioners), the obvious "location portability" aspect of mobile service, or the remaining rate center disparity issues articulated by the industry workgroup discussed below. Many of the FCC's statements in its recent orders on number portability with respect to service locations of wireline LECs, rate center areas, the geographic scope of the operations and service offerings of wireless carriers, and mobile users are inexplicably inconsistent with the facts confronting the Petitioners, previous FCC conclusions, and existing regulation.

A. ROUTING ISSUES

Q24: Do the unresolved and uncertain aspects of the intermodal number portability requirements cause real world implementation consequences for the Petitioners?

A: Yes. The *Nov. 10 Order* does not automatically create service arrangements between the Petitioners and the wireless carriers. The *Nov. 10 Order* does not clearly answer questions about the manner in which calls to ported numbers of mobile users will be treated from a service definition basis, how such calls will be transported to locations beyond the LECs' service territories, and over what facilities these calls will be routed.

Q25: What are the so-called "routing" issues?

A: Foremost, the wireless carrier to which the number may be ported may not have any existing service arrangements with the wireline LEC in the specific geographic area where the wireline LEC provides service using that number (*i.e.*, in the geographic area that constitutes "the same location"). Accordingly, even if the carriers knew that the number had been ported to a wireless or wireline carrier providing service in another location, there would not be any trunking arrangement in place (other than handing off

the calls to interexchange carriers) to complete the call. No LEC, including the Petitioners, has network arrangements for the delivery of local exchange service calls to, and the exchange of telecommunications with, carriers that operate at distant locations beyond the LEC's actual service area in which local exchange service calls originate, and there is no requirement for LECs to establish such extraordinary arrangements. LECs have no obligation to provide at the request of a wireless carrier, at additional cost and expense to the LEC, some extraordinary form of local exchange service calling beyond that which the LEC provides for any other local exchange service call.

Q26: Would you provide an explanation of some of the uncertain aspects of the FCC's *Nov. 10 Order* with respect to so-called "routing" issues?

A: The *Nov. 10 Order* neglects to address specific operational and network characteristics of the smaller LECs such as the Petitioners. In this regard, I note the statement of the FCC in a subsequent November 20, 2003 Order on number portability denying a petition challenging the decision:

> . . . [P]etitioners assert that there is no established method for routing and billing calls ported outside of the local exchange. We note that today, in the absence of wireline-to-wireless LNP, calls are routed outside of local exchanges and routed and billed correctly.

What the FCC fails to understand in this statement is that calls routed outside of the Petitioners' local exchanges are routed to interexchange carriers (IXCs). Therefore, they are routed and billed correctly as interexchange calls. The Petitioners do not have any

obligation to provision local exchange carrier services that involve transport responsibility or network functions beyond their own networks or beyond their incumbent LEC service areas. Consequently, if the FCC means to presume that calls outside of the local exchanges are routed and billed correctly *as local calls*, the FCC's statement contained in the second sentence is simply not correct.

Furthermore, it is well settled that LECs' interconnection obligations only pertain to their own networks, not to other carriers' networks or to networks in areas beyond their own LEC service areas. While the FCC has generally acknowledged a limitation on a Bell company to route calls no further than to a LATA boundary, the FCC's *Nov. 10 Order* apparently failed also to recognize that the Petitioners are physically and technically limited to transporting traffic to points of interconnection on their existing network that are no further than their existing service territory boundaries. It is my understanding that some companies may have extended their access facilities outside their local networks to provide centralized access services, but these circumstances are exceptional and, in any event, the LECs are compensated for their provision of access services to other carriers. For the Petitioners, telecommunications services provided to end users that involve transport responsibility to interconnection points with other carriers' networks at points beyond a Petitioner's limited service area and network generally are provided by IXCs, not by the Petitioner LECs. The involvement of the Petitioners in such calls is limited to the provision of network functions within their own networks. As such, for calls destined to points "outside of the local exchange," the IXC chosen by the end user is responsible for the transport and network functions for the transmission of the call beyond the Petitioner's network. Accordingly, calls destined to

interconnection points beyond the local exchange and service area of a Petitioner are both "routed" and "rated" by the customer's chosen IXC.

The wireline LEC that may originate calls to a number that has been ported to a wireless carrier cannot unilaterally provision local calling to this number where there are no arrangements established with the wireless carrier. Just as the introduction of an EAS route involves the establishment of interconnection and network and business arrangements between two carriers, the ability to exchange local exchange service calls with a wireless carrier also necessitates interconnection and the establishment of the necessary terms and conditions under which traffic may be exchanged. Interconnection occurs as the result of a request and the mutual development of terms and conditions between the carriers for such interconnection. Just as the establishment of an EAS route does not occur in the absence of negotiation and agreement regarding the network arrangements and the exchange of traffic, interconnection with a wireless carrier is not a spontaneous event. The mere deployment of a NPA-NXX, the association of a rate center point with a specific NPA-NXX, and/or the porting of a wireline telephone number to a wireless carrier does not automatically establish interconnection or any expectation that calls can or will be originated as a "local exchange service" call or that calls can be completed on such basis.

Q27: Do the Petitioners typically have in place direct interconnection arrangements or other service arrangements with all potential wireless carriers that could port numbers?

A: No. This is in contrast to Bell companies which typically do have some form of interconnection and physical trunking arrangements in place with most, if not all, of the

wireless carriers that will seek number portability. Quite possibly that would explain some of the incorrect assumptions which are the apparent basis for some of the FCC's statements in its *Nov. 10 Order*. These assumptions are apparently the result of assuming that the experience and operations of the Petitioners are comparable to that of Bell companies.

Q28: What will be the consequences when a wireline number is ported to a wireless carrier that has no direct interconnection arrangement or other service arrangement in place with the wireline LEC?

A: The unresolved issues and the fact that no service arrangement may exist with the wireless carrier means that there will be carrier and customer confusion. Where there is no service arrangement between a Petitioner and the wireless carrier to which a number may have been ported, there will be no trunk over which the LEC could direct local exchange service calls to the wireless carrier if that is the service that the LEC seeks to provide to its wireline customers. The Petitioners have only one available option for the completion of such calls. In such instances, the caller attempting to place a call would receive a message with the instructions that the call cannot be completed as dialed and must be completed using an interexchange carrier by dialing 1 plus the 10-digit number. If the customer dials the ported number in this manner, the LEC would hand such call off to the interexchange carrier chosen by the originating user, the service is provided by the interexchange carrier, the routing of the call would be determined by the interexchange carrier, and the end user would be assessed a toll charge by that interexchange carrier.

Q29: Did the FCC say anything else concerning the routing of calls to wireless carriers in the Nov. 10 Order?

A: Yes. The FCC stated that the routing of calls between wireline and wireless carriers did not need to be resolved in the LNP docket and, instead, it would be addressed in the context of a Declaratory Ruling request filed by Sprint still pending before the FCC.

> . . . We make no determination, however, with respect to the routing of ported numbers . . . . [T]he rating and routing issues raised by the rural wireline carriers have been raised in the context of non-ported numbers and are before the [FCC] in other proceedings. Therefore, without prejudging the outcome of any other proceeding, we decline to address these issues at this time as they relate to intermodal LNP.

Nov. 10 Order, para. 40, footnotes omitted.

B. OTHER UNRESOLVED AND UNEXPLAINED ISSUES

Q30: Why is it necessary to discuss the background and sequence of events leading to the FCC's *Nov. 10 Order*?

A: As I will explain below, the apparent directives in the FCC's *Nov. 10 Order* have not been logically explained, are not consistent with the FCC's own conclusions and procedural approach, and leave implementation issues unresolved for the Petitioners. The conclusions to be drawn from the FCC's *Nov. 10 Order* are still not clear.

1. BACKGROUND: NUMBER PORTABILITY CONCEPTS

Q31: Are there other "types" of number portability other than Service Provider Portability that you discussed earlier in this testimony?

A: Conceptually, yes. The FCC has defined a type of number portability called "Location Number Portability." As explained earlier in this Testimony, Service Provider Portability is the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers when switching from one local service provider to another. In contrast, Location Number Portability is the ability of a telecommunications service user to retain her or his same telephone number when moving from one physical location to another.

Q32: Is Location Number Portability part of the definition of the Act?

A: As reflected above, the Act defines "number portability" as the ability for customers to retain, at the same location, their existing numbers when switching carriers. The definition contained in the Act is consistent with only the Service Provider Number Portability definition that the FCC has adopted.

Q33: Has the FCC adopted requirements for Location Portability?

A: No. Location Number Portability involves geographic and other implementation issues that go beyond those associated with Service Provider Number Portability. With location portability, there is no longer a relationship between the NPA-NXX of the telephone number and the geographic area in which an end user obtains service using that telephone number. Because carriers' services are based on specific geographic areas and because carriers currently provision service and switch calls based on NPA-NXXs, the "porting" of a number within a particular NPA-NXX to a different geographic area means

that carriers are unable, with current technology, to determine the proper service treatment of calls.

2. SERVICE "AT THE SAME LOCATION" ISSUES

Q34: Can you provide an example of the inability to determine the service treatment of calls?

A: Yes. For example, under current technical capabilities, a carrier would not know whether a call to a location ported number is to a location that is included within the local calling area services offered by the LEC to its end users (such as the local exchange and Extended Area Service ("EAS") arrangements) or whether the call is to a distant location that would be an interexchange call subject to provision by the end user's preferred interexchange carrier ("IXC"). In the former example, if the call would be between two end users physically located within the local calling area, the call is treated as a local exchange service call. In the latter example of a toll call originated in one of the Petitioners' service areas, the call is subject to equal access treatment (*i.e.*, the call is routed to the end user's presubscribed long distance carrier) and is subject to the terms of either intrastate or interstate access tariffs, and the rate for the call is determined by the end user's chosen IXC. However, because of the real-world, real-time incapability to know the locations of the two end users involved in the call, implementing any form of Location Number Portability would wreak havoc on the telephone companies and the end users they serve unless and until some new and costly network capability could be developed to determine the location of end users on a real-time basis. Absent this real-time capability, end users would not be able to know what charges they are incurring and

the LECs would not know how to recover their costs related to the call. It is for all of these reasons the FCC has not required that LECs implement Location Number Portability at this time.

Q35: Did the FCC conclude that porting numbers from wireline carriers to wireless carriers for use on a mobile basis across the country constitutes location portability?

A: No. But the FCC did not explain the illogical consequences of that apparent conclusion, and those aspects of its orders are the reason why the entire industry has been left to "scratch its head" with regard to the meaning to attach to the FCC's statements. The FCC simply stated its conclusion that porting numbers to a wireless carrier which allows the wireless carrier to provide service on a mobile basis to customers that move across the country does not mean that the service is provided beyond "the same location" and therefore does not, in the FCC's view, constitute location portability. However, the FCC failed to explain rationally how the porting of a telephone number for use by a mobile wireless service user constitutes retention of its use "at the same location." In any event, the statement about location portability cannot be reconciled with the facts, and the FCC did not provide the necessary guidance as to how to reconcile this illogical statement with the current network realities. When a number is ported for mobile wireless carrier use, not only will a wireless carrier use that number to provide service to a mobile user "moving from one physical location to another" -- the exact definition that the FCC prescribed for the concept of location portability -- but more problematic is that, for the Petitioners, the number could be ported to a wireless carrier that does not have any service presence or any interconnection arrangement in the local exchange area associated with the NPA-NXX number prior to its being ported.

As is obvious, the FCC's unsubstantiated statement is contrary, without sufficient explanation, to the plain language of the Act, and leaves open the unreasonable possibilities that (1) a number may be ported to a wireless carrier that has no presence, whatsoever, in the area that constitutes "at the same location;" (2) the wireless carrier can now port that number for use at many different locations, perhaps across the entire nation, well beyond the "same service location;" and (3) the wireline LECs operating in "the same location" have no arrangement, whatsoever, with the wireless carrier to which the number has been ported in that "same location." Accordingly, the FCC's orders completely neglect, without sufficient explanation, these circumstances and facts that render the concept "at the same location" meaningless and the conclusions in the *Nov. 10 Order* illogical.

Q36: Are there any issues that arise as a result of wireless carriers using the ported number on a mobile basis?

A: Yes. Despite the simple and unexplained statement by the FCC to the contrary, a telephone number currently used by a wireline end user at a fixed location that is subsequently ported to a wireless carrier to be used on a mobile basis automatically involves the use of that telephone number when moving from one physical location to another (unless the wireless user intends to fix the location of her or his wireless phone). The mobile user may not only use the number when moving from one location to another within the original exchange area, but likely will use the number in a much wider geographic area including, for most wireless carriers, the ability to place and receive calls at locations throughout the entire country. Furthermore, the wireless user may subsequently take his or her wireless phone and move to another state and use that

telephone number on a full time basis in that other state. As such, the porting of telephone numbers from wireline use to wireless mobile use automatically presents both location portability and service provider portability issues. In the reverse, a mobile user with a telephone number associated with a rate center area in another state (or at some distance away from the wireline LEC but within the same state) can nevertheless use his or her mobile phone in the wireline LEC's local rate center area, but the LEC cannot port that number from the wireless carrier to the wireline LEC's use. This is the disparate competitive situation that the FCC's illogical requirements present which is also the reason why the industry group charged with studying and making recommendations about intermodal porting has never recommended that it be adopted specifically because of this geographic disparity issue.

3. THERE HAS BEEN NO RECOMMENDATION FOR INTERMODAL LNP.

Q37: Prior to the FCC's *Nov. 10 Order*, were the obligations of the Petitioners clear with respect to intermodal porting of a number to a wireless carrier?

A: No. The rulemaking process that the FCC put in place to resolve the issues associated with the disparity in geographic service areas between wireline and wireless carriers that arise under intermodal porting is still open and the issues are still unresolved. There had been no recommendation or proposal as to how to resolve all of the geographic disparity issues associated with intermodal porting.

Q38: What is the rulemaking process that the FCC announced that it would use to examine and adopt rules for wireline-wireless number portability?

A: The FCC recognized in its July 2, 1996 number portability decision that there are complex definition and implementation issues with respect to wireline-wireless number portability as compared to wireline-wireline number portability. These complex issues arose because of the fundamental geographic differences between mobile wireless service areas and wireline service areas. Accordingly, the FCC did not adopt requirements for wireless-wireline number portability at the same time as it adopted the initial rules for wireline-wireline number portability. Instead, in its August 18, 1997 decision, the FCC decided that it would assign the more difficult wireless-wireline issues to an expert industry workgroup (the North American Numbering Council or "NANC") with the intent that the workgroup would study these issues, develop consensus on solutions, and then make "recommendations" to the FCC as to how to resolve the outstanding issues. The FCC's process, then, involves the development of recommendations by the NANC, followed by FCC notice of such recommendations, and the allowance of sufficient time and opportunity for the industry to study the recommendations and comment prior to any such recommendations becoming a regulatory rule.

Q39: Did the FCC alter this process in its *Nov. 10 Order*?

A: No.

Q40: Has there been a recommendation from the industry expert workgroup regarding porting between wireless carriers and wireline carriers?

A: No, and that is at the heart of the problem here. There has been no explicit recommendation from the industry workgroup that states the manner in which the geographic disparity issues arising from intermodal porting would be solved. There have been reports which attempt to explain the unresolved geographic disparity issues related

to porting between wireless and wireline carriers. For example, the NANC reported in both 1999 and 2000, the last two reports that I am aware of on these issues, that the industry could not reach consensus on a resolution of the rate center area disparity issues, and no recommendation on intermodal porting was offered. Nowhere can one find an explicit and complete recommendation as to how the industry group proposed to solve all of the disparate geographic, definition, and operational issues necessary to implement wireline-wireless number portability consistent with the statutory requirements.

To add further confusion and uncertainty to this process, the geographic disparity issues were originally related to Location Number Portability, not Service Provider Number Portability. Based on my review of the reports, it appears that early in their deliberations the industry workgroup concluded that if and when Location Number Portability is implemented, the location porting of a number must nevertheless be limited to service within the same rate center. This condition of confining portability to the same rate center area was relevant solely to Location Number Portability, not Service Provider Number Portability. However, the rate center area disparity issue has been inexplicably confused, and the condition of confinement of portability to the same rate center area somehow, over time and without clear explanation, apparently became part of the Service Provider Number Portability considerations, despite the fact that this form of portability is already defined by statute to be "at the same location."

Q41: Based on your understanding of the NANC recommendations made to date, is there one that you can point to that resolves the issues that you have identified regarding intermodal porting?

A: No. Regardless of the confusing course, one cannot find a clear recommendation

from the NANC as to how to reconcile these outstanding intermodal porting issues (whether for location or service provider portability), much less any document or proposals that constitutes a clear proposal for comment. The facts are: (1) the disparity in the geographic aspects of wireline and wireless service still remain; (2) when a number is ported to a mobile user, the wireless carrier that is the new service provider may not have any intercarrier network interconnection or service arrangements in place in the original rate center area; (3) the mobile user will most certainly use that number when moving from one location to another; and (4) in all likelihood, the mobile user will use that telephone number in a different rate center than the rate center with which it was originally associated. "At the same location" has been rendered meaningless without proper explanation.

Q42: What conclusions can you draw as a result of this sequence of events?

A: The Petitioners had no reason to expect that intermodal number portability, inconsistent with the general understanding of the statute, existing regulation, and the status of industry workgroup efforts, was yet required.

Q43: What has been the response of the LEC industry to the FCC's action?

A: It is not surprising that the industry has responded with Court action challenging the *Nov. 10 Order.*

Q44: What is the status of these proceedings?

A: All of these matters await substantive action.

Q45: Why are all of these uncertainties relevant to the instant requests for suspension?

A: Because the uncertainties raise the distinct specter that the Petitioners will be making human and economic investments and expending real work resources all in an

effort to make a good faith effort to implement LNP when their requirements are unclear. Magnifying this problem, my understanding is that no, or very few, wireline customers of the Petitioners have requested to port a number for wireless use. The real world concern is that these costs could be incurred and would be reflected in end user rates without any real purpose or potential benefit that would be afforded to customers._Moreover, after these issues are resolved, Petitioners may find that they would be required to modify their previous implementation activity at additional cost.

The requested relief would preclude the potential waste of resources in an attempt to implement what are currently a confusing, incomplete and inconsistent set of apparent requirements. As such, the requested relief is fully consistent with the public interest and would recognize the infeasibility of the Petitioners moving forward with efforts based on unknown and ambiguous FCC directives. The requested action would also avoid the significant adverse economic impact on the Petitioners' end users and undue economic burden that will result from an attempt to comply under these uncertain conditions.

Without suspension, the Petitioners would find themselves in the untenable position of attempting to implement some way in which numbers would be ported to wireless carriers. However, in such case, as explained in this testimony, some calls may not be completed to their final destination, there will be ensuing customer confusion, customers may receive bills for calls that they do not expect, and the Petitioners will incur costs that may go unrecovered.

4. LACK OF ANY LOGICAL APPLICATION OF THE "RATE CENTER AREA" CONCEPT TO MOBILE USERS.

Q46: Do you agree that it appears that much of the discussion and apparent directives of the FCC depend on so-called rate center areas?

A: Yes.

Q47: What is a rate center area?

A: A rate center area is a specific geographic area. Telephone number codes (NPA-NXXs) are assigned and associated with rate center areas with the assumption that these numbers will be used to provide service exclusively within that rate center area (except in the case of wireless carrier mobile users). However, the fact that wireless carriers may not use the NPA-NXX to provide mobile service to the end user in the same rate center area with which the NPA-NXX is associated for wireline service (and similarly a wireless carrier may use a specific NPA-NXX associated with one specific rate center area to provide mobile service in a different wireline rate center area) is at the crux of the geographical rate center area disparity issue between wireless carriers and wireline carriers that has not been resolved.

Within a rate center area, there is a designated rate center point (vertical and horizontal coordinates) that carriers may use to calculate airline miles between any two rate center points. The rate center point is a geographic point that is intended to be the representative point for the entire rate center area for purposes of mileage calculation.

The concept of "rate center areas" was developed originally for purposes of calculating charges for interexchange services where the rates were based on mileage. Almost no calling services today depend on mileage. Some carriers' billing and service

administrative processes depend on industry databases (the "Local Exchange Routing Guide" or "LERG") that associate NPA-NXX telephone numbers with specific rate center areas. However, many small LECs have no need for such reliance and do not necessarily utilize such database tools because they provision their own local exchange carrier services on an individual case basis, based on specific geographic areas included within their local calling area and the establishment of unique physical trunking between those geographic areas.

To add to the confusion, the FCC has attempted to extend the use of the word "rate" (with respect to a call) beyond its original meaning, apparently now to mean the determination by a LEC of whether a call is within the definition of what the LEC offers and provides as local exchange service, or whether the call is not. The determination of whether a call, when dialed, is a local exchange service call or an interexchange service call is simply a service definition determination, not rating. As explained in this testimony, the determination of whether a call is a local exchange service call or an interexchange service call is based on the location of the calling and called parties. Under the traditional use of the word, the Petitioners do not generally "rate" local exchange service calls, at all. These calls are part of an unlimited service for which no "rating" is necessary or applied. Rating was originally a concept relevant only to interexchange services, and the rate center points (V&H) were used to determine the "rate" for the call. But interexchange services are no longer rated based on mileage, the only "rating" that takes place for interexchange service calls is in the determination of whether the interexchange service call is intrastate or interstate in nature, based on the V&H coordinates of the called and calling parties, and the duration of the call.

Q48: Are LECs required to rely on rate center information of other carriers contained in industry databases in their provisioning of intrastate local exchange carrier services?

A: No. I am aware of no federal regulatory requirement which requires LECs, including the Petitioners, to utilize LERG data that associates a specific NPA-NXX with a specific rate center area as the sole means to determine the scope of local exchange services to be offered to their own customers. Of particular note, as explained below, even the FCC has concluded that this information is generally meaningless with respect to mobile wireless service. The industry's NPA-NXX assignment guidelines, endorsed by the FCC, which include the administrative processes for the association of a rate center area with an NPA-NXX code, also recognize that not all carriers utilize this information for the definition and billing of services. Many small LECs do not depend solely, nor are they required to do so, on the unsupervised information that other carriers submit for inclusion in the industry database as the means to provision their local exchange services. These LECs may, however, refer to this information as a tool to identify other carriers and their apparent operations.

In summary, I am unaware of any federal regulatory requirement that carriers must determine the jurisdiction of a call, or must provision specific local exchange carrier services, based on rate center points that other carriers associate with NPA-NXXs. In fact, the FCC has concluded previously that the telephone number does not determine the jurisdiction of a call when the calling and called parties' locations do not relate to the geographic area associated with the NPA-NXX. The FCC has used the example of callers in the multi-state area surrounding the District of Columbia to illustrate this fact.

Because wireless carrier mobile users often cross state lines and are mobile, a cellular customer with a telephone number associated with Richmond, Virginia may travel to Baltimore, Maryland. A call between the mobile user in Baltimore and, for example, a wireline end user in Alexandria, Virginia might appear to be an intrastate call "placed from a Virginia telephone number to another Virginia telephone number, but would in fact be interstate . . . ." 11 FCC Rcd 5020, 5073, *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers*, CC Docket Nos. 95-185 and 94-54, (1996) at para. 112, underlining added. Similarly, while a call between a wireline end user in Richmond to the mobile user in Baltimore might also appear to be an intrastate call because the call is placed from a Virginia telephone number to another number that also appears to be associated with Virginia, but this call would also in fact be an interstate call. When one end of the call is in Maryland and the other is in Virginia, the call is interstate. The telephone numbers assigned to the users do not determine the jurisdiction.

Q49: Does the concept of a rate center area and its association with an NPA-NXX make sense with respect to telephone numbers assigned to mobile users of wireless carriers?

A: No. It is nonsensical to associate a specific geographic area to a user that, by definition, is expected to be, and most likely will be, mobile across large areas, including potentially across the entire nation. The telephone number does not determine the location of the mobile user. For jurisdictional determinations, the actual physical location of the mobile user determines whether a call is intrastate or interstate. For

interconnection purposes, *i.e.* to determine whether a call is within a Major Trading Area ("MTA") or between two MTAs (*i.e.*, intraMTA or interMTA), the location of the cell site serving the mobile user at the beginning of the call is used as the surrogate for the actual geographic service location of the mobile user, not the telephone number. I am not aware of any FCC regulation that requires that the location of a mobile user be based on the telephone number or NPA-NXX used by that mobile user.

Q50: Do others share your views about the lack of any geographic relationship between rate center areas and mobile users?

A: Yes. My views are exactly consistent with the FCC's conclusions. In its October 7, 2003 number portability order related to wireless-wireless porting, the FCC concluded (at para. 22) that "[b]ecause wireless service is *spectrum-based and mobile in nature, wireless carriers do not utilize or depend on the wireline rate center structure to provide service*: wireless licensing and service areas are typically much larger than wireline rate center boundaries, and wireless carriers typically charge their subscribers based on minutes of use rather than location or distance." (emphasis added). The FCC's conclusion confirms that the specific geographic areas known as rate center areas for wireline LECs have no relevance to the services offered to, or provided to, the typical mobile user of the large wireless carriers.

Q51: You discuss intermodal LNP at great lengths. Does that mean that there are no obstacles or burdens associated with intramodal LNP?

A: No. For most small and rural LECs, it is intermodal porting brought on by the FCC's *Nov. 10 Order* that has precipitated the need for the suspension request by the Petitioners. However, implementing LNP for intramodal porting would present similar

cost burdens and potential imbalance between benefits and costs with similar public interest implications. Furthermore, there are still those unresolved issues yet to be decided such as the porting interval that would impact implementation of intramodal porting the same as for intermodal porting.

V. CONCLUSION

Q52: What conclusions do you draw from your discussion of LNP?

A: Even if the unexplained and uncertain issues discussed in this Testimony were to be resolved properly, the costs of implementing LNP in the rural Petitioners' exchanges would unjustly burden the rural customers with higher rates to support a capability that would benefit only a few, if any, customers that may want to port their number. Further, with respect to wireless LNP, the evidence is that there would be little, if any, demand by rural customers to abandon wireline service and completely substitute wireless service. The costs to deploy number portability are significant and would burden unnecessarily the customers of the Petitioners without any clear or balanced public interest benefit. Given these circumstances, the Petitioners should not be forced to incur substantial costs, to redirect their limited resources into otherwise unnecessary or misguided efforts in an attempt to comply with a confusing and incomplete set of apparent requirements, and burden their rural users with rate increases for only speculative, if any, benefits. Such a result would not be consistent with the public interest.

With respect to the incomplete and unexplained aspects of the FCC's *Nov. 10 Order*, the Petitioners are placed in an untenable position – although carriers are required to implement LNP if there is a request, the implementation requirements are incomplete

and subject to change and. Further, with respect to intermodal LNP, the implementation requirements (a) have not been properly established or logically explained; (b) are based on assumptions that are inconsistent with the experience and operations of the Petitioners; and/or (c) are inconsistent with the facts and existing regulations. Accordingly, these shortcomings make the fulfillment of intermodal LNP infeasible and unduly economically burdensome under uncertain terms. The Petitioners continue to have concerns about the routing and completion of calls to intermodal ported numbers, the resulting confusion on the part of customers about how to complete calls and the charges for such calls, and the ensuing customer dissatisfaction with the Petitioners, as well as with federal and state regulators, created by this state of uncertainty. Any attempt to implement LNP under these circumstances would result in the imposition of undue economic burdens on the Petitioners and their customers -- a result not consistent with the pubic interest.

The interests of all of the parties -- the Petitioners, their customers, and the Commission -- will be better served by the grant of a suspension until such time as the demand for LNP and the costs are balanced consistent with a rational public interest determination and the apparent requirements can be satisfied in an orderly and thoughtful manner. If the Petitioners are required to implement counter-productive, uncertain, or infeasible requirements, customers will ultimately bear the harm in the form of greater costs and a redirection of carriers' resources away from more valuable and worthy efforts. The implementation and network issues associated with number portability in the rural areas served by the Petitioners are real and should be addressed in the interest of the overall public, not just with respect to the interests of a very few customers and wireless carriers that may want wireline-wireless number portability at the otherwise greater

expense to the vast majority of users. Grant of the suspension would serve an overall and balanced consideration of the public interest.

For the reasons set forth in this testimony, implementation of LNP pursuant to the FCC's apparent directives would result in economic harm in the form of unnecessary resource burdens on the Petitioners and their customers in the form of higher costs and rates, undue economic burdens for the small LECs potentially affected by the uncertain directives, and an apparent requirement for service provision that is not technically feasible under current conditions. Each one of these conclusions provides a more than sufficient basis for suspension of the LNP requirements consistent with the relief requested by the Petitioners. Suspension of the LNP requirements will avoid the adverse economic impacts set forth in Section 251(f)(2)(A) of the Act, will avoid technically infeasible requirements, and would be consistent with the Section 251(f)(2)(B) public interest, convenience, and necessity criteria.

These conclusions provide a more than sufficient basis for suspension of the requirements under the conditions and time frames requested by the Petitioners.

Q53: Does this end your testimony?

A: Yes.

SUMMARY OF WORK EXPERIENCE AND EDUCATION

Steven E. Watkins

May 2004

My entire 28-year career has been devoted to service to smaller, independent telecommunications firms that primarily serve the small-town and rural areas of the United States.

I have been a consultant with the firm of Kraskin, Lesse & Cosson, LLC since June, 1996. The firm concentrates its practice in providing professional services to small telecommunications carriers. My work at Kraskin, Lesse & Cosson, LLC, has involved assisting smaller, rural, independent local exchange carriers ("LECs") and competitive local exchange carriers ("CLECs") in their analysis of a number of regulatory and industry issues, many of which have arisen with the passage of the Telecommunications Act of 1996. I am involved in regulatory proceedings in several states and before the Federal Communications Commission on behalf of small LECs. These proceedings are examining the manner in which the Act should be implemented. My involvement specifically focuses on those provisions most affecting smaller LECs.

I have over the last seven years instructed smaller, independent LECs and CLECs on the specific details of the implementation of the Act including universal service mechanisms, interconnection requirements, and cost recovery. On behalf of clients in several states, I have analyzed draft interconnection agreements and conducted interconnection negotiations and arbitrations pursuant to the 1996 Act.

For 12 years prior to joining Kraskin, Lesse & Cosson, LLC, I held the position of Senior Industry Specialist with the Legal and Industry Division of the National Telephone Cooperative Association ("NTCA") in Washington, D.C. In my position at NTCA, I represented several hundred small and rural local exchange carrier member companies on a wide array of regulatory, economic, and operational issues. My work involved research, analysis, formulation of policy, and expert advice to member companies on industry issues affecting small and rural telephone companies.

My association work involved extensive evaluation of regulatory policy, analysis of the effects of policy on smaller LECs and their rural customers, preparation of formal written pleadings in response to FCC rulemakings and other proceedings, weekly contributions to association publications, representation of the membership on a large number of industry committees and task forces, and liaison with other telecom associations, regulators, other government agencies, and other industry members. I also attended, participated in and presented seminars and workshops to the membership and other industry groups too numerous to list here.

For those not familiar with NTCA, it is a national trade association of approximately 500 small, locally-owned and operated rural telecommunications

providers dedicated to improving the quality of life in rural communities through advanced telecommunications. The Association advocates the interests of the membership before legislative, regulatory, judicial, and other organizations and industry bodies.

Prior to my work at NTCA, I worked for over eight years with the consulting firm of John Staurulakis, Inc., located in Seabrook, Maryland. I reached a senior level position supervising a cost separations group providing an array of management and analytical services to over 150 small local exchange carrier clients. The firm was primarily involved in the preparation of jurisdictional cost studies, access rate development, access and exchange tariffs, traffic analysis, property records, regulatory research and educational seminars.

For over ten years during my career, I served on the National Exchange Carrier Association's ("NECA") Industry Task Force charged with reviewing and making recommendations regarding the interstate average schedule cost settlements system. For about as many years, I also served in a similar role on NECA's Universal Service Fund ("USF") industry task force.

I graduated from Western Maryland College in 1974 with a Bachelor of Arts degree in physics. As previously stated, I have also attended industry seminars too numerous to list on a myriad of industry subjects over the years.

During my career representing small telecommunications firms, I estimate that I have prepared formal written pleadings for submission to the Federal Communications Commission on behalf of NTCA member and Kraskin, Lesse & Cosson client LECs in over two hundred proceedings. I have also contributed written comments in many state proceedings on behalf of Kraskin, Lesse & Cosson client LECs. I have provided testimony in proceedings before the Georgia, Pennsylvania, Indiana, Kentucky, Missouri, Nebraska, Minnesota, Montana, Tennessee, Kansas, South Carolina, New Mexico, West Virginia, and Louisiana public service commissions. Finally, I have testified before the Federal-State Joint Board examining jurisdictional separations changes.

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May 14, 2004

RECEIVED
MAY 17 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Ms. Pamela Bonrud
Executive Director
SD Public Utilities Commission
500 East Capitol Ave.
Pierre, South Dakota 57501

Re: Docket Number TC04-047 (Swiftel Communications)

Dear Pam:

Enclosed herein are the original and ten copies of the PRE-FILED TESTIMONY OF JOHN DE WITTE and the PRE-FILED TESTIMONY OF W. JAMES ADKINS which are filed on behalf of Brookings Municipal Utilities d/b/a Swiftel Communications.

Sincerely yours,

Darla Pollman Rogers

Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

CC: John De Witte
CC: Talbot Wieczorek
CC: Craig Osvog

RECEIVED
MAY 17 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF BROOKINGS MUNICIPAL UTILITIES d/b/a SWIFTEL COMMUNICATIONS FOR SUSPENSION OR MODIFICATION OF § 251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	Docket No. TC04-047

DIRECT PRE-FILED TESTIMONY OF

JOHN DE WITTE

May 14, 2004

DIRECT PRE-FILED TESTIMONY OF
JOHN DE WITTE

Q: What is your name and address?

A: My name is John M. De Witte. My business address is 1801 N. Main Street, Mitchell, South Dakota 57301.

Q: By whom are you employed and in what capacity?

A: I am the Vice President of Engineering of Vantage Point Solutions, Inc. (VPS). VPS is a telecommunications engineering and consulting firm in Mitchell, South Dakota with a full-time staff of 52 employees. Our client base of VPS is made up of rural independent Local Exchange Carriers (LECs). I focus on assisting the small LECs with nearly all technical and financial aspects of their operations. My direct staff of 13 and I have provided engineering, financial, and regulatory services to many of the South Dakota LECs, as well as LECs in several other states.

Q: What is your educational and business background?

A: I received a Bachelors of Science in Computer Engineering (1982) from Iowa State University (Ames, IA) and a Masters of Business Administration (1992) from Kennesaw Sate College (Kennesaw, GA). I am a Registered Professional Engineer in South Dakota and 10 other states.

I have been active in the telecommunications industry since 1983. Previous to VPS, I worked for Martin Group, Inc., based in Mitchell, South Dakota. At Martin Group, I was Assistant Director of Engineering of the Telecom Consulting and Engineering Business Unit, providing engineering and consulting services to rural telecommunications providers throughout the nation. Prior to this, I worked in a variety of engineering, marketing, and management positions at Nortel Networks,

Inc., a telecommunications equipment manufacturer in Raleigh, NC and Atlanta, GA. I am a regular speaker at many state, regional, and national telephone company organization events, including the National Telephone Cooperative Association (NTCA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO). In this capacity, I often advise telephone company managers and board members regarding a variety of technical and financial issues.

Q: On whose behalf are you testifying in this proceeding?

A: My direct pre-filed testimony is submitted on behalf of the City of Brookings Municipal Telephone Department d/b/a Swiftel Communications.

Q: What is the purpose of your testimony?

A: I will provide testimony on technical and cost issues of implementing LNP that is pertinent to this hearing.

Q: Are you familiar with current telephone network technologies, including switching equipment, transmission equipment, and outside plant architectures?

A: I have provided engineering and consulting services to more than 100 rural LECs across the United States. I am familiar with nearly all of the technologies and architectures of a rural LEC network, including transport equipment, switching equipment, digital loop carrier equipment, broadband networks, along with copper and fiber outside plant cable. I have engineered both landline networks and wireless networks for my clients.

Q: Do you understand the various methods and requirements that are required to support Intramodal (wireline to wireline or wireless to wireless) and Intermodal (wireline to wireless) Local Number Portability?

A: Yes I do.

Q: With the number of variants for LNP, which implementation of LNP is the focus of your testimony?

A: In general, the methodologies, rules, and implementation processes for wireline Intramodal LNP are clearly defined, have been in place for several years, and are widely deployed. The methodologies, rules, and implementation processes for Intermodal (wireline to wireless) LNP and wireless Intramodal have only been in place since November 2003. Intermodal LNP relating to wireline to wireless ports will be the focus of my direct testimony.

Q: What unique challenges are presented to a rural Independent Local Exchange Carrier (ILEC) with the implementation requirements of Intermodal LNP?

A: There are several technical and economic issues facing rural ILECs as they evaluate the implementation of Intermodal LNP. These challenges for the small rural LECs concern the interconnection of wireless and wireline networks for the purposes of implementing Intermodal LNP. The Petitioner does not have an existing direct point of connection to any of the CMRS carriers that have sent a Bona Fide Request (BFR) to the Petitioner for Intermodal LNP. If there are no direct points of connection with these wireless carriers, only conventional, switched toll routes remain; but no translating, routing, rating or cost recovery rules are in place. Some of the questions that need to be addressed include: (1) where and how should the

Petitioner interconnect with the wireless carriers, (2) is the point of interconnection within the LATA, and (3) how will the Petitioner be able to maintain the original rate center designation and rating when the number is ported to a point of interconnection that is located outside the original rate center, when the wireless service area and the Petitioner's service area vary greatly. These issues are unique in rural areas, such as the Petitioner's service area, where few, if any interconnection arrangements exist and there are fewer subscribers in comparison to metropolitan areas over which to spread the costs of Intermodal LNP. The uncertainty surrounding these and other questions are likely to cause significant customer confusion, complaints to the Petitioner and the SDPUC, and the resulting perception of degraded customer service on the part of the Petitioner's members. Swiftel Communications has not received a LNP request from a wireline competitive local exchange carrier (CLEC); therefore Swiftel Communications has not previously implemented LNP. As a result, numerous upgrades in software and operational procedures will be required in order to meet the Intermodal LNP requirements, which will benefit only those few subscribers that choose to leave Swiftel, while encumbering the entire remaining subscribers with the burden of funding the porting benefit. In addition, current implementation rules do not provide the necessary competitive playing field to allow wireless subscribers to port to Swiftel's wireline services.

Q: What are the anticipated costs of implementing Intermodal LNP?

A: The anticipated costs of implementing Intermodal LNP can be categorized into four (4) basic areas: 1) Switching related costs, 2) Number Portability Administration

Center (NPAC) related costs, 3) Administrative/Technical costs and 4) Transport Costs. The LNP Petition filed on behalf of Swiftel included an Exhibit detailing the estimated implementation costs for intermodal LNP. This Exhibit is attached as Exhibit [1]. Each of the cost elements in these categories will be identified in the following paragraphs.

Switching Related Costs

The cost elements in this category include switching generic software upgrades, LNP software features, prerequisite software features to support the LNP features, any requisite switch hardware to support the operation of the LNP software, switch vendor installation costs, vendor software activation fees, and maintenance expenses attributable to LNP. As part of the cost estimates provided with the Swiftel Waiver Petition, the cost estimates for this category are detailed as follows:

LNP Hardware Requirements

Swiftel Communications utilizes a Nortel Networks (Nortel) DMS-100 as its wireline switching platform. Swiftel has verified with Nortel that the existing DMS-100 configuration does not require any hardware additions to support the activation of LNP software. Therefore, Swiftel did not claim any non-recurring or recurring cost estimates for LNP hardware as part of its estimated costs.

LNP Software Features

According to Nortel, the Swiftel DMS-100 currently has the generic software load that will support LNP. The LNP software features have not been activated in Swiftel's DMS-100. Based on information provided to Swiftel from Nortel, the non-recurring cost estimate for the LNP software features is $187,000. Nortel does

not charge a recurring Right-To-Use (RTU) fee for these features. Based on the information provided by Nortel, Swiftel claimed $187,000 for LNP software features and did not claim any recurring cost estimates for LNP software as part of its estimated costs.

Additional Software Features

Swiftel has verified with Nortel that the existing DMS-100 configuration does not require any pre-requisite software additions to support the activation of LNP software. Therefore, Swiftel did not claim any non-recurring or recurring cost estimates for additional LNP software as part of its estimated costs.

Additional Vendor Fees

Swiftel has verified with Nortel that the activation fees associated with the activation of the LNP Software Features are included with the planning pricing provided with the LNP Software Features. Therefore, Swiftel did not claim any non-recurring or recurring cost estimates for Additional Vendor Fees as part of its estimated costs.

Initial LNP Translations

There are several activities that are required to initially set up and test the basic translations for LNP. The non-recurring initial translations cost estimates were based on the anticipated fees to data-fill and test basic LNP functionality in the Petitioner's switching system. This testing includes coordination of testing with the SOA provider, coordination of testing with any transiting carriers, verification of proper LNP dip activities, verification of billing system interaction, and other translations activities. This cost estimate is approximately $25,000. In order to

allow time for coordination of testing with other entities, it is assumed that the initial translations testing will require approximately four (4) man-weeks of translations activities by a 3rd party technical consultant at a loaded hourly rate of $100 per hour. The remaining portion of this cost estimate includes travel, living and other miscellaneous expenses.

Technical Implementation and Testing

There are several activities that are required to initially set up and test the basic translations for each CMRS carrier requesting Intermodal LNP. The non-recurring technical implementation and testing cost estimates were based on the anticipated fees to data-fill and test specific Intermodal LNP functionality in the Petitioner's switching system. The non-recurring technical implementation and testing cost estimates were based on performing number porting tests individually associated with each CMRS to ensure that the ported number route correctly flows through the Petitioner's network. As the FCC has not required a formal Interconnection Agreement, it is assumed that the Petitioner will be responsible for performing these tests in order to ensure proper call routing. This cost estimate was based on $5,000 for each CMRS Carrier. The cost estimate is based on 40 hours of testing at $100 per hour by a 3rd party resource including travel and living expenses.

NPAC Related Costs

The cost elements in this category include Service Order Administration (SOA) costs, LNP Query costs, and connection costs with the LNP database. As part of the cost estimates provided with the Swiftel Waiver Petition, the cost estimates for this category are detailed as follows:

Service Order Administration

As part of the LNP implementation process, the Petitioner must select a provider to administer updates to the Number Portability Administration Center (NPAC) LNP database. In anticipation of reduced porting intervals in the future, the Petitioner has elected to include the costs for an automated SOA system. The SOA cost estimates were based a compilation of SOA services price lists from several firms providing automated SOA services. These cost estimates represent the anticipated start-up costs and recurring costs levied by the SOA provider to utilize its automated services to update the LNP databases. The sample pricing scenarios were obtained under Non Disclosure Agreement (NDA) from several SOA services providers. As the Petitioner has not entered into any contracts with these or any SOA entities, firm pricing cannot be provided. As an estimate, the non-recurring SOA costs were assumed to be $2,000 with the recurring SOA costs assumed to be $2,625. Should the Petitioner enter into a contract with an automated SOA provider, these cost estimates can be revised.

LNP Query Charges

With the implementation of LNP, the Petitioner will incur charges for each LNP query launched for its subscribers. The LNP query cost estimates were based on a compilation of SOA services price lists from several firms providing automated SOA services. The sample pricing scenarios were obtained under NDA from several SOA Services providers. As the Petitioner has not entered into any contracts with these or any SOA entities, firm pricing cannot be provided. The non-recurring LNP Query cost estimate represents the anticipated start-up costs levied

by the SOA provider to utilize its services to dip its database. This initial set-up charge is assumed to be $1,000. The recurring LNP Query cost estimates were based on the assumption that each of the Petitioner's access lines would generate seven (7) to eight (8) call attempts per day; each of the call attempts would generate an LNP query. The query charge is assumed to range between $0.001 and $0.0005 per query. Based on these assumptions, the recurring LNP Query charge was assumed to be $2,500. Should the Petitioner enter into a contract with an automated SOA provider, these cost estimates can be revised.

Connection Costs w/LNP Database

With the implementation of LNP, the Petitioner will incur set-up charges levied by the SOA provider to enter its NECA Operating Company Number (OCN) and Point codes for each switch launching LNP queries to the SOA's LNP database. The non-recurring connection costs with LNP database estimate was based on a compilation of SOA services price lists from several firms providing automated SOA services. The sample pricing scenarios were obtained under NDA. As the Petitioner has not entered into any contracts with these or any SOA entities, firm pricing cannot be provided. The cost estimate for this element was estimated at $600 assuming a maximum of four (4) point codes at $150 per point code. Should the Petitioner enter into a contract with an automated SOA provider, this cost estimate can be revised.

Technical and Administrative Costs

The cost elements in this category include testing and verification of each ported DN, translations for each ported DN, administrative cost estimates, regulatory cost

estimates, customer care cost estimates, and marketing cost estimates. As part of the cost estimates provided with the Swiftel Waiver Petition, the cost estimates for this category are detailed as follows:

Testing and Verification of Each Ported Dial Number

This cost estimate addresses the anticipated activities to test each "ported out" directory number (DN) to verify the proper routing of the DN. The recurring Testing/Verification cost estimates were based on 1.25 hours per port at the Petitioner's loaded technical labor costs of $40 per hour.

Per Port Translations

This cost estimate addresses the anticipated translations activities to "port out" each DN. The recurring translations cost estimate was based on the Petitioner's loaded technical labor costs of $20 per port. The loaded dollar rate is based on Swiftel's estimated loaded dollar rate of $40 per hour.

Administrative Costs

The implementation of LNP will require Swiftel to implement new administrative policies and procedures. The non-recurring administrative cost estimates were based on providing LNP process training for the Petitioner's administrative personnel. The training is assumed to be provided by the entity providing automated SOA services. The Petitioner has not selected a SOA provider at this time. The non-recurring costs estimates are based on a one-week onsite customer service representative training class, including the instructor's travel and living expenses. This cost is assumed to be $10,000. The recurring administrative cost estimate addresses the anticipated administrative activities required with entry of

the ported number into the SOA system. The recurring administrative cost estimates were based on the Petitioner's loaded administrative labor costs of $25 per port. The loaded dollar rate is based on Swiftel's estimated loaded dollar rate of $40 per hour.

Regulatory Costs

This cost element is associated with the Petitioner's Legal Fees and Regulatory Consulting fees. The legal fees are associated with the Petitioner's attorneys. The anticipated fees are associated with reviewing the legal aspects of LNP filings and LNP implementation. The regulatory consulting fees are typically associated with the updates required to various National databases (NECA Tariff 4, Telcordia LERG, etc.) and the possible assistance with the completion of the NECA End User Charge worksheets. This cost is estimated at 150 hours at an average rate of $150 per hour and includes $2,500 in travel, living, and miscellaneous expenses. Based on the legal activities required to implement LNP, the Petitioner may revise this figure at a later date.

Customer Care Costs

The implementation of LNP will require Swiftel to implement new customer care policies and procedures. The non-recurring customer care cost estimates were based on providing LNP customer care training for the Petitioner's administrative personnel. The training is assumed to be provided by the entity providing the Petitioner's billing platform services. The Petitioner has not developed the Customer Care and Billing processes for LNP at this time. The costs estimates are based on a one-week onsite Operational Support Services (OSS) training class. The

recurring customer care cost estimates were based on the loaded administrative labor costs of $20 per port. The loaded dollar rate is based on Swiftel's estimated loaded dollar rate of $40 per hour. This cost estimate addresses the anticipated administrative activities required with updating the Petitioner's customer care and billing system and to track the "ported out" DNs.

Marketing and Informational Flyer Cost Estimates

The implementation of LNP will likely generate subscriber confusion from the addition of an End User Charge for the implementation of LNP. The Petitioner plans to develop an informational flyer to help educate the subscriber base by explaining LNP and the reasons for the proposed LNP End User Charge appearing on the subscribers' monthly local service bill. The non-recurring marketing and informational flyer cost estimates were based on the costs required to develop an informational flyer and billing insert explaining LNP and any end-user fees that may apply. The total non-recurring estimated costs in this category were expressed as a "per access line cost" and were estimated at $1.50 per subscriber. This cost estimate includes the development of the explanatory LNP text, the graphic design artwork, and first run printing costs. The recurring marketing and informational flyer cost estimates were based on $2.50 per subscriber for volume print costs, handling, and mailing the periodic flyer/bill insert. This recurring marketing/informational flyer cost estimate was amortized over 12 months to arrive at an estimated monthly fee for the Cost Exhibit.

Billing/Customer Care Software Updates

The Petitioner's billing and customer care system will require software upgrades to support LNP. The non-recurring billing and customer care software upgrade cost estimates represents the anticipated costs to upgrade the Petitioner's billing system to accommodate LNP functionality. This upgrade was estimated as an allocated cost of the Petitioner's annual billing system upgrade

Transport-Related Cost Estimates

The cost elements in this category include the estimated costs of transport to connect the Petitioner's exchange with the CMRS carriers, anticipated cost estimates for transiting CMRS connections, and anticipated cost estimates for pass-through N-1 Tandem LNP queries. As part of the cost estimates provided with the Swiftel Waiver Petition, the cost estimates for this category are detailed as follows:

Transport Cost Estimates

The Petitioner will require direct Type 2B DS1 transport facilities from the Petitioner's exchange to each CMRS provider's Point of Interconnection (POI) for those CMRS carriers requesting intermodal LNP. The Petitioner does not possess POI information for each CMRS carrier. The non-recurring wireless carriers POI cost estimates represent the costs associated with providing a Type 2B DS1 span to each CMRS provider. As stated in the Petition, the Petitioner assumes interconnection will be required with four (4) CMRS carriers. The Petitioner estimates that the non-recurring transport costs for each CMRS will be approximately $5,000. This cost estimate includes the switch DS1 interface hardware and supporting equipment required to place a DS1 span into service. The

recurring wireless carriers POI cost estimates were based on monthly transport lease cost estimates. As stated in the Petition, the Petitioner assumes interconnection will be required with four (4) CMRS carriers. One of the carriers is Sprint PCS. The recurring transport costs for Sprint PCS will be approximately $400 per month. The recurring transport costs for the other CMRS carriers are estimated at $800 per month. These cost estimates were based on oral estimates from SDN Communications assuming a POI in Brookings, SD for Sprint PCS and a POI in Sioux Falls, SD for the other CMRS carriers. These recurring transport cost estimates may be revised once POI information is provided by the CMRS carriers and firm pricing can be provided by a transport provider (such as SDN Communications or Qwest).

Mobile Telephone Switching Office (MTSO) POI Connection Cost Estimates

The Petitioner does not possess POI information for the CMRS carriers that have provided a Bona Fide Request (BFR) to the Petitioner for intermodal LNP. The possibility exists that a transiting carrier (such as Qwest or SDN Communications) may establish Type 2B DS1 connections with one or more of the CMRS carriers. The MTSO POI connection cost estimates represent the anticipated costs for the Petitioner's share of this connection, if required. The non-recurring MTSO POI connection cost estimates were based on an estimate of the start-up costs to utilize a transiting carrier for CMRS MTSO connections, if required. The recurring MTSO POI connection cost estimates were based on the Petitioner's anticipated share of monthly lease for the transiting carrier MTSO POI connection cost estimates. If the CMRS carriers elect to directly connect with the Petitioner (without a transiting

carrier) on a direct Type 2B DS1 connection to the CMRS' Mobile Switching Telephone Office (MTSO), these cost estimates will likely be not applicable.

Transiting Non-Recurring Dip (Minimum) Cost Estimates

This cost estimate was based on the assumption that the transiting carrier may need to perform some LNP queries when the Petitioner's N-1 carrier fails to do so. The transiting non-recurring dip cost estimate describes the anticipated costs of the non-recurring set-up charges to enable the Petitioner to receive dip charges from a transiting carrier, such as SDN Communications. The initial setup charges are likely to be passed on to Petitioner. The transiting carrier recurring dip cost estimates describe the anticipated costs of the minimum dip charges from a transiting carrier. These charges are likely to be passed on to Petitioner. If the CMRS carriers elect to directly connect with the Petitioner (without a transiting carrier) on a direct Type 2B DS1 connection to the CMRS' Mobile Switching Telephone Office (MTSO), these cost estimates will likely be not applicable.

Q: It appears that one of the larger estimated costs projected for the implementation of Intermodal LNP relates to transport costs. What considerations concerning compensation for transport costs are applicable to the implementation of Intermodal LNP?

A: With regard to the direct Type 2B connections to the wireless carriers described in the preceding cost estimates, these cost estimates are identified as required connections to allow Intermodal LNP to function correctly within the Petitioner's existing billing and customer care systems.

Q: If no direct Type 2B DS1 facilities are available for interconnection with the CMRS carriers, what happens for Swiftel?

A: Without direct Type 2B facilities, the ported calls will be routed based on the Local Routing Number (LRN) delivered with the LNP query. The LRN will contain the NPA-NXX of the wireless carrier. Based on this NPA-NXX, these calls will be routed as toll calls over Swiftel's existing toll routes to Swiftel's Access Tandem (SDN Communications).

Q: In your opinion, are the proposed Type 2B DS1 facilities to each CMRS carrier cost justified?

A: Without actual traffic data, it is impossible to determine the feasibility of a particular facility. However, based on the anticipated traffic levels generated by the projected intermodal LNP ports, it appears that the construction of these facilities is not cost-justified. If the facilities were feasible, it is likely that the wireless carriers would have implemented them already as they have in other areas. Based on the projected traffic levels, it appears that the direct facilities between Petitioner and the wireless carriers required for LNP would be highly under-utilized and very inefficient.

Q: It appears that some of the anticipated cost estimates are based on the quantity of anticipated numbers that would be ported to a CMRS carrier. How was the number of ports determined?

A: The quantity of projected ports is a function of the competitive environment in the proposed service area, the number of CMRS carriers, and other statistical data. The data that is currently available concerning porting activity for CMRS carriers

on a wide-scale basis is limited. It is my understanding that no Petitioner customer has ever made an inquiry to Petitioner regarding LNP or a request for LNP. With respect to wireless LNP nationwide, to date, the demand for wireless porting has been far less than expected and most ports have been from one wireless carrier to another. Wireline to wireless porting appears to be a small fraction of wireless porting in general.[1] According to NeuStar, 95% of wireless ports have been from one wireless carrier to another and only 5% of wireless ports were between wireline and wireless carriers.[2] With the rural nature of the Petitioner's service area and the competitive environment with respect to coverage of the Petitioner's existing service area by the existing wireless carriers, I believe that the percentage would be even smaller than in other more urban parts of the nation. For purposes of the cost exhibit, approximately four (4) intermodal ports per month were estimated,[3] which is well under five (5) percent of Petitioner's access lines. Accordingly, there appears to be little, if any, demand for LNP and, absent such demand, no public benefit will be derived from LNP. Even if some level of LNP demand develops in the future, the total implementation costs that would be incurred by Petitioner to implement and maintain LNP would require re-evaluation based on the customer demand, quantity of ports, and the revised estimated costs for the required LNP infrastructure elements.

[1] *See* "Survey Finds Little Impact From LNP", *RCR Wireless News*, February 9, 2004 ed., reporting that according to a consumer survey report from CFM Direct, very few telecommunications customers have switched their wireline phone numbers to wireless.
[2] *See* NARUC Notebook, *Communications Daily*, Vol. 24, No. 46, p. 4 (March 9, 2004)
[3] While actual industry figures are not available, most wireless carriers are currently experiencing a porting rate of between three percent (3%) and six percent (6%). Of these ports, it is estimated that between one percent (1%) and three percent (3%) are intermodal.

Q: Will any of the Petitioner's estimated costs change if the number of estimated ports is changed?

A: Yes. There are several of the estimated recurring costs that are driven by the number of ports. These cost elements include the recurring translations costs, the recurring testing and verification of each ported number, the recurring administrative cost estimates, and the recurring customer care costs. If the projected number of ports increases, these costs will increase. If the number of projected ports decreases, these costs will decrease.

Q: The current porting interval is currently four (4) days. If the porting interval were shortened to two (2) days or less, what effect, if any, would this shortened interval have on the estimated costs?

A: The current industry experience with Intermodal porting is has not been without implementation issues. Significant problems meeting the current four (4) day porting interval have been reported. Assuming that the implementation issues are refined to the point where a shorter porting interval can be supported, the Petitioner has included the known cost elements to support a shorter porting interval. The Petitioner has assumed the use of an automated SOA system as part of their anticipated LNP implementation costs. An automated SOA system will allow the Petitioner to accommodate an electronic request and acknowledgement for the ported numbers. Therefore, the Petitioner does not anticipate any increases in its SOA related non-recurring or recurring cost estimates. It is possible that additional recurring costs in the areas of translations, technical implementation, testing, verification, customer care, and administrative would occur if the porting interval

were to be reduced to require that porting activities occur outside of the standard business day (expedited requests, nights, weekends, and holidays). If porting is required during these times, additional loaded labor rates will be incurred. If the porting requirements are confined to the standard business day, the Petitioner does not anticipate any additional recurring LNP costs. However, it is possible that unforeseen requirements could require additional charges.

Q: Are there any other potential costs that could impact Swiftel with the implementation of Intermodal LNP?

A: If Swiftel must implement intermodal LNP, all carriers with EAS arrangements with Swiftel and their customers will be impacted because the other carrier will have to LNP dip all EAS calls. This would increase the cost of EAS between Swiftel and the other carrier and could result in a loss of EAS options to the customer or an increase in the cost of optional EAS service.

Q: Some telecommunications industry analysts have suggested that Foreign Exchange Service (FX) could be used to provide connections to accommodate intermodal LNP. Is this a reasonable alternative?

A: There have been industry discussions of using an FX service for Intermodal LNP interconnection. An FX service is a line appearance that is extended from the "home" exchange to a "foreign" exchange using dedicated point-to-point facilities. The FX service is engineered on a per line basis. It is not a common trunk that can be used by a carrier for routing purposes. With an FX service, the LEC has customers and facilities in one rate center and provides service to customers in another rate center using the same "home" number block. To do this, facilities are

extended from the LEC rate center to the foreign rate center where the customer resides. It is important to note that the customer pays for the use of these facilities. The LEC is compensated for their facilities and lost toll revenue through these customer charges. It is unknown exactly how an ILEC would implement an FX service to accommodate Intermodal LNP. The exact connectivity, rate elements, and network configuration for the proposed Intermodal LNP FX service appear to be undefined. As such, any discussion of using FX as a viable transport alternative for Intermodal LNP transport is purely speculation.

Q: You have addressed several estimated costs for Intermodal LNP. How would these cost estimates change if Petitioner must implement only Intramodal (wireline to wireline) LNP?

A: All cost elements would stay the same but amount of the cost estimates could change. It is my understanding that both wireline providers would be in the same rate center. Accordingly, the primary change in the estimated costs would be in the area of transport costs. The petitioner estimates that these costs would likely be significantly reduced. Intramodal LNP has clearly defined processes for the exchange of traffic between the respective wireline carriers competing in a clearly defined rate center. In the intramodal LNP cases with which I am familiar the carriers have entered into an Interconnection Agreement. The Intramodal Interconnection Agreement addresses the methods and compensation that will be used to establish interconnection and exchange traffic between the wireline carriers. The compensation for the traffic volumes is typically in the form of reciprocal compensation. In addition, the recurring costs for testing of each ported number

would likely be reduced since the dialing plans and routing between the carriers will likely not change on a regular basis. The reduction of these costs is dependent upon the volume of ports. The remaining costs will likely be unchanged.

Q: What would be the timeframe required for the Petitioner to fully implement, test and place Intermodal LNP into commercial service, if required to do so?

A: Please refer to the LNP Implementation Timeline, attached hereto as Exhibit [2]. The Timeline details the individual, inter-dependent tasks necessary to fully implement Intermodal LNP. They are arrayed in a self-explanatory fashion, showing the anticipated duration of each task and its relationship to other tasks. The overall duration that results for the Timeline supports that approximately six (6) months would be required to fully prepare for, implement, test and place Intermodal LNP into commercial service, as stated in the Swiftel Waiver Petition. As with any planning horizon, this timeline does not take into account holidays or other unforeseen delays due to Force Majure.

Q: Does this conclude your direct testimony?

A: Yes. I also reserve the opportunity to revise or modify this pre-filed direct testimony at or before the hearing if I receive additional information pertaining to the issues I presented herein.

Exhibit 1

BROOKINGS MUNICIPAL UTILITIES (D.B.A SWIFTEL COMMUNICATIONS, INC.)

ESTIMATED COSTS TO IMPLEMENT LOCAL NUMBER PORTABILITY

	Non-Recurring	Monthly Recurring	
Switch-Related Investment Costs:			
LNP Hardware Requirements	$ -		
LNP Software Features	$ 187,000		
Additional Software Features	$ -		
Additional Vendor Fees	$ -		
Translations	$ 25,000		Initial LNP Basic Translations Costs
Technical Implementation and Testing	$ 20,000		
Subtotal	**$ 232,000**		
NPAC-Related Costs:			
Service Order Administration	$ 2,000	$ 2,625	
LNP Queries	$ 1,000	$ 2,500	
Connection Costs w/LNP Database	$ 600	$ -	
Subtotals	**$ 3,600**	**$ 5,125**	
Technical/Administrative Costs:			
Testing/Verification of Each Ported Dial Number	$ -	$ 200	Testing/Verification of Ported Dial Number(s)
Translations	$ -	$ 80	Translations Costs - Ported Numbers
Administrative	$ 10,000	$ 100	
Regulatory	$ 25,000	$ -	
Customer Care	$ 10,000	$ 80	
Marketing/Informational Flyer	$ 20,000	$ 3,000	
Billing/Customer Care Software Upgrades	$ 6,000	$ -	
Subtotals	**$ 71,000**	**$ 3,460**	
Transport-Related Costs:			
Wireless Carriers Point of Interconnection (POI)	$ 20,000	$ 2,800	
Mobile Telephone Switching Office POI Connection	$ 500	$ 200	Transiting Carrier MTSO POI Connection
Dip (Minimum)	$ 500	$ 100	Transiting Carrier Dip Charges (Minimum)
Subtotals	**$ 21,000**	**$ 3,100**	

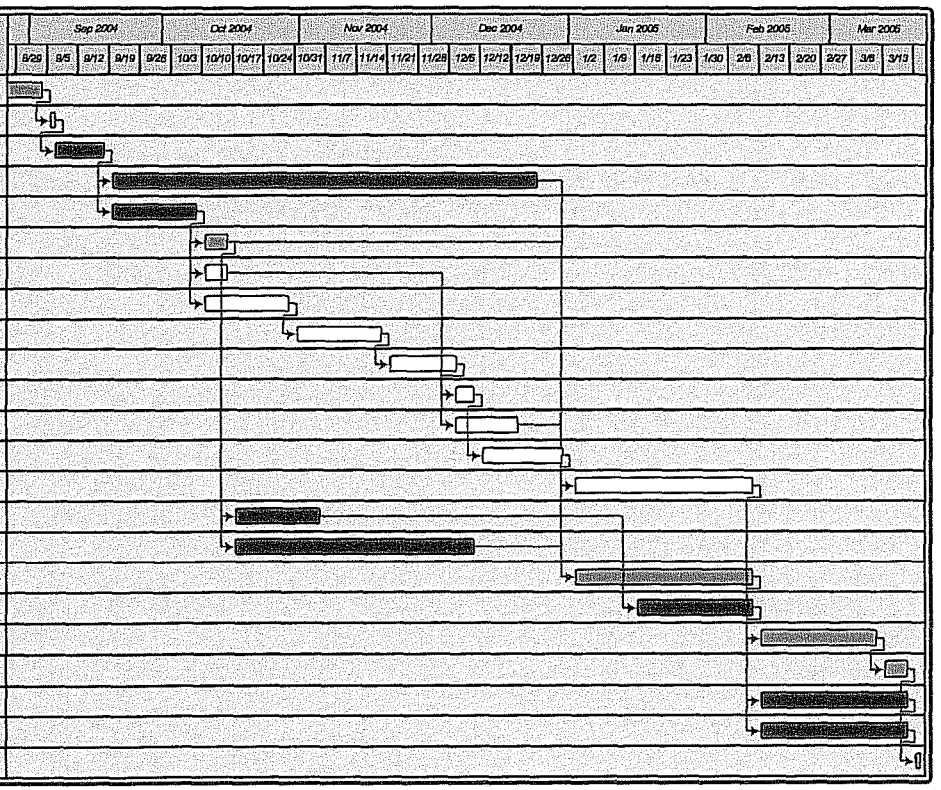
Total Estimated Costs Associated with LNP Implementation	**$ 327,600**	**$ 11,685**
Current Access Lines	**14,057**	**14,057**
Total Estimated Costs Per Access Line (Rounded)	**$ 24**	**$ 1**

Exhibit 2

Exhibit 2

LNP Implementation Timeline

ID	Task Name	Responsibility	Start	Finish
1	Switch Generic Upgrade (Assumed done or not required)	ILEC / Switch Vendor	1/2/2004	9/3/2004
2	Project Kickoff	VPS / ILEC	9/6/2004	9/8/2004
3	Project Critical Path Planning & Approval	VPS / ILEC	9/7/2004	9/17/2004
4	Facilities / Transiting Negotiations for CMRS POI Transport	ILEC / CMRS / Transiting Carriers	9/20/2004	12/24/2004
5	Project Actual WLNP Costs; Board Approval	VPS / ILEC	9/20/2004	10/8/2004
6	LNP Software Activation	VPS / ILEC	10/11/2004	10/15/2004
7	NPAC Non-Disclosure	ILEC	10/11/2004	10/15/2004
8	Generate LNP SOA + Training RFB	VPS / ILEC	10/11/2004	10/29/2004
9	LNP SOA Vendor RFP Responses	SOA Providers	11/1/2004	11/19/2004
10	Select LNP SOA Provider; Finalize & Sign Contract	ILEC	11/22/2004	12/6/2004
11	Complete SOA Vendor LNP Services Questionnaire	VPS / ILEC	12/7/2004	12/10/2004
12	Request Industry Codes	VPS / ILEC	12/7/2004	12/20/2004
13	Install SOA	VPS / SOA Provider	12/13/2004	12/30/2004
14	SOA Training Window	ILEC / SOA Provider	1/3/2005	2/11/2005
15	Billing System Software Upgrade	ILEC / Billing Vendor	10/18/2004	11/5/2004
16	Create LNP Interaction Procedures	VPS / ILEC / SOA Provider	10/18/2004	12/10/2004
17	Initial Software Translations	VPS	1/3/2005	2/11/2005
18	Billing System Test Call Log & Punchlist Resolution	VPS / ILEC / Billing Vendor	1/17/2005	2/11/2005
19	Switch Translations Per Carrier	VPS	2/14/2005	3/11/2005
20	Final Switch Translations and Testing Per Port	ILEC / SOA Provider / VPS	3/14/2005	3/18/2005
21	Prepare Marketing Information for Subscribers	VPS / ILEC	2/14/2005	3/18/2005
22	Billing System Training Window	ILEC / Billing Vendor	2/14/2005	3/18/2005
23	LNP Available for Commercial Service	FCC / SDPUC	3/21/2005	3/21/2005



Switching-Related | NPAC-Related | Administrative/Technical | Transport-Related

Revised May 13, 2004

Vantage Point

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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF BROOKINGS MUNICIPAL UTILITIES d/b/a SWIFTEL COMMUNICATIONS FOR SUSPENSION OR MODIFICATION OF § 251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	Docket No. TC04-047

DIRECT PRE-FILED TESTIMONY OF

W. JAMES ADKINS

May 14, 2004

DIRECT PRE-FILED TESTIMONY OF
W. JAMES ADKINS

Q: What is your name and address?

A: My name is W. James Adkins. My business address is 415 4th Street, Brookings, South Dakota 57006. My business telephone number is 605-692-6211.

Q: By whom are you employed and in what capacity?

A: I am the Technical and Network Operations Manager of Brookings Municipal Utilities d/b/a Swiftel Communications. Swiftel Communications is a municipal independent local exchange carrier that provides local exchange, exchange access and other telecommunications services to 14,150 access lines, including an average of 435 "lifeline" access lines within its South Dakota service area, which includes the exchange of City of Brookings.

Q: Does your company have any direct points of interconnection with any wireless carrier and/or does your company provide any blocks of numbers for your company's rate centers to any wireless carrier?

A: Our company has direct interconnection between our wireless business which is branded as Sprint PCS and our wireline switch. We do not provide any blocks of numbers from our company's wireline rate center to any wireless carrier.

Q: How do the local calling areas of your exchanges compare with those of the wireless carriers operating in your area?

A: We are a small company with only one exchange. Our service area is defined by the City limits of the City of Brookings, where we have physical cable plant. However, the wireless carriers serve areas by the reach of a radio frequency transmission from a tower site. Their wireless local calling area is much larger than our ex-

change boundaries. The boundary of our wireline rate center and the local calling areas of wireless carriers serving in our area vary greatly.

Q: Does your company provide any Extended Area Service (EAS) plans to its subscribers or to a connecting carrier's subscribers?

A: Swiftel Communications provides the following EAS:

--Brookings City to the Interstate Telecommunications Cooperative Inc. exchanges of Brookings Rural and Sinai.

--Brookings City to the Qwest exchange of Volga/Bruce

Q: What is the current method of routing calls from your subscriber's landline phones to wireless phone numbers?

A: There are two methods of routing wireline calls to wireless, dependent upon whether the wireless number is within our EAS calling area or not.

As an example, when a Swiftel wireline customer calls a wireless number that is local to our calling area, the call is routed over interconnection trunks, if a local Sprint PCS call, or over EAS if a local Verizon or Western Wireless call.

If the wireless number is not within our EAS calling area, when a subscriber located in Brookings uses his/her landline phone to call a wireless phone number, the call is routed from the subscriber's landline phone to the Swiftel Communications central office switch, where it is determined to be a non-local call and is therefore switched to a toll trunk group. The toll trunk carries the call to SDN Communication's (SDN) Centralized Equal Access (CEA) tandem, which is located in Sioux Falls, to be routed to the appropriate Point of Interconnection (POI) of the wireless carrier.

Q: What is the number of wireless carriers authorized to serve in your company's service area?

A: To my knowledge, eleven (11) Cellular, PCS and SMR wireless carriers are authorized to serve City of Brookings d/b/a/ Swiftel Communication's service area, but only three (3) carriers are currently active in the market (Verizon Wireless, Western Wireless and Sprint PCS.). Additionally, we believe that Nextel is poised to provide service to our service area as well and, as such, we have included Nextel in our analysis.

Q: Have any subscribers requested local number portability (LNP) from your company?

A: To my knowledge, not a single Swiftel Communications subscriber has requested local number portability.

Q: Since the passage of the 1996 Telecom Act have any wireline carriers ever requested LNP from your compay?

A: No.

Q: Have any wireless carriers submitted bona fide requests for LNP and if so when?

A. Yes. Western Wireless submitted a BFR on November 18, 2003, for Swiftel's host switch and one remote. Verizon submitted a BFR on January 23, 2004, for Swiftel's Host switch and two remotes.

Q: Are there any existing capital investments for broadband that will be diverted if your company must deploy LNP?

A: Yes. DSL and broadband services are of utmost importance to our customers. Of all our new services, our customers are most interested in broadband. We are upgrading our networks to provide broadband services. Any amount of capital investment that is diverted to the implementation of LNP will reduce needed capital from broadband investments. Swiftel Communications is a small company and has limited resources to fund network investments. We would prefer to serve the real demands of our customers rather than provide a service that has been mandated by the FCC that our customers are not requesting.

Q: What will the impact be on Swiftel Communications and its customers if it is required to provide wireless LNP?

A: Swiftel Communications is a small municipal telephone company serving only the City of Brookings. Therefore, if LNP is required, the cost of implementing LNP will hit Swiftel and its customers hard. We have few economies of scale in implementing LNP. Exhibit 1 to our Petition shows a $24 impact per access line. This is for a service that not a single customer has requested to date. There is little, if any, demand for LNP in our service area. With little demand there is a substantial burden to pay for the service. Further, the vast majority of our customers will have to pay for those few, if any, that may decide to port their numbers. It's a very poor bargain for the majority of our customers.

Q: In your experience as the Operations Manager have you seen increases or additions to the itemized fees on your customer's telephone bills?

A. Yes. Customers have expressed concern over the rate increases on their bills in recent years. Our customers look at the total amount due and do not differentiate be-

tween Swiftel charges and other fees. For many of our residential customers, the extra charges make up about 45% of their local telephone bill.

Q: What do you expect your customer's reaction to be to any new LNP fees on their bills?

A. The vast majority of our customers will gain no benefit from LNP service. I expect customers will not be very understanding of the LNP charges and will voice their protests. It will be difficult for us to provide an explanation of the LNP charges that our customers will find acceptable. Our Utility Board, which is comprised of citizens of Brookings and customers of Swiftel Communications, has been very supportive of our efforts to obtain a Suspension of the LNP rules.

Q: Do you expect that the costs of implementing LNP could create the necessity of a rate increase for Swiftel Communications?

A. Depending on what costs are recoverable in any LNP end user fees, if the remainder is significant, Swiftel Communications will not be able to absorb them and may have to implement a dial tone rate increase to recover any deployment costs.

Q: Do you have any concluding comments?

A Since there are so many unknowns regarding LNP implementation in rural exchanges, it makes sense to wait until these unknown issues are resolved, the cost is reduced, and customer demand develops. In operating our small telephone exchange, we have learned that in the acquisition of new telecommunications features and functions, there is often substantial cost savings to be realized by not deploying during early phases of introduction. We have found that vendors, once the major sales have been made, will approach small telephone companies with discounts and

incentives to purchase a given feature or functionality. Similarly, when new telecommunication processes are introduced, we have found that it is much more cost effective, as well as less disruptive to our customers, if those processes are tested and deployed in larger markets first, then when proven in, migrated to small markets such as ours. With LNP, there are so many unanswered questions it clearly makes sense to save our resources until these questions are answered. Doing so will save our customers significant dollars and help us provide services they actually want, such as broadband.

Q: Do you believe that LNP is in the Public Interest?

A: No!

Q: Does this conclude your direct testimony?

A: Yes. I also reserve the opportunity to revise or modify this pre-filed direct testimony at or before the hearing if I receive additional information pertaining to the issues I presented herein.

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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF BROOKINGS MUNICIPAL UTILITIES d/b/a SWIFTEL COMMUNICATIONS FOR SUSPENSION OR MODIFICATION OF § 251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	Docket No. TC04-060

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the **DIRECT PRE-FILED TESTIMONY OF JOHN DE WITTE** and the **DIRECT PRE-FILED TESTIMONY OF W. JAMES ADKINS** upon the persons herein next designated, on the date below shown, by depositing a copy thereof in the United States mail at Pierre, South Dakota, postage prepaid, in an envelope addressed to each said addressee, to-wit:

Richard D. Coit
richcoit@sdtaonline.com
Director of Industry Affairs
South Dakota Telecommunications Association
P. O. Box 57
Pierre, South Dakota 57501

Talbot J. Wieczorek
Gunderson, Palmer, Goodsell & Nelson, LLP
P. O. Box 8045
Rapid City, South Dakota 57709-8045

Dated this fourteenth day of May, 2004.

Darla Pollman Rogers

Darla Pollman Rogers
Riter, Rogers, Wattier & Brown
P. O. Box 280
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May 28, 2004

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Pamela Bonrud
Executive Director
SD Public Utilities Commission
500 E Capitol Avenue
Pierre SD 57501

RE: In the Matter of Local Number Portability Obligations Docket No. TC 04-025; TC04-038; TC04-044 through TC04-056; TC04-060 through TC04-062; TC04-077; TC04-084 and TC04-085

Dear Ms. Bonrud:

Enclosed for filing please find the original and ten copies of Direct Testimony of Ron Williams with exhibits. Please note that Williams' Direct – Exhibit 5, both pages A and B, is marked "confidential" and has been placed in a sealed envelope marked "Confidential." Exhibit 5 contains confidential information provided by the Petitioners during discovery and should be treated as confidential information pursuant to ARSD 20:10:01:41.

If you have any questions, please call me.

Sincerely,

Talbot J. Wieczorek

TJW:klw
Enclosures
c: Western Wireless, Inc.
Richard Coit
Darla Pollman Rogers
Jeff Larson
David Gerdes
Richard Helsper
Ben Dickens
James Cremer

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITIONS FOR SUSPENSION OR MODIFICATION OF §251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	Dockets:	TC04-025 TC04-038 TC04-044 TC04-045 TC04-046 TC04-047 TC04-048 TC04-049 TC04-050 TC04-051 TC04-052 TC04-053 TC04-054 TC04-055 TC04-056 TC04-060 TC04-061 TC04-062 TC04-077 TC04-084 TC04-085

TESTIMONY

OF

RON WILLIAMS

ON BEHALF OF WWC LICENSE L.L.C.
(WESTERN WIRELESS)

May 28, 2004

I. QUALIFICATIONS AND PURPOSE OF TESTIMONY

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Ron Williams. My business address is 3650 131st Avenue South East, Bellevue, Washington 98006.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed as Director – InterCarrier Relations by Western Wireless Corporation. My duties and responsibilities include developing effective and economic interconnection and operational relationships with other telecommunications carriers, including the establishment of local number portability ("LNP") arrangements and interconnection agreements. I work with other departments within Western Wireless to assess company interconnection and LNP needs and interface with carriers to ensure arrangements are in place to meet the operational objectives of the company.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A. I have a BA in Accounting and a BA in Economics from University of Washington. I also have a MBA from Seattle University.

Q. FOR WHOM ARE YOU TESTIFYING IN THIS PROCEEDING?

A. I am testifying on behalf of WWC License L.L.C. ("Western Wireless"), which provides commercial mobile radio services ("CMRS") in the state of South Dakota.

Q. WHAT IS YOUR PROFESSIONAL EXPERIENCE IN THE FIELD OF TELECOMMUNICATIONS?

A. I have ten years experience working for GTE (now Verizon), including six years in telephone operations and business development, and four years in cellular operations. I also have two years experience in start-up CLEC operations with FairPoint Communications. Since August 1999, I have worked for Western Wireless, first as

the Director of CLEC operations and, more recently, in my current position in Industry Relations and as a project lead for implementation of LNP and interconnection with other carriers.

Q. HAVE YOU TESTIFIED BEFORE ON BEHALF OF WESTERN WIRELESS?

A. Yes, I have testified as the Company's witness in interconnection arbitration proceedings in Oklahoma and Utah. I have prefiled testimony in a South Dakota arbitration that was settled prior to hearings. And, recently, I have testified in LNP suspension matters in New Mexico and Missouri.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to challenge the Petitioners' request for suspension or modification of federally mandated number portability obligations. My testimony will address the following issues:

- **What are the obligations of Petitioners' to implement LNP and what are the standards for granting relief?**
- **Are there any real operational or technical roadblocks to Petitioners' implementation of number portability as required by FCC rules?**
- **Is there any evidence of undue economic burden associated with Petitioners' implementation of local number portability?**
- **What is the economic impact of delaying Petitioners' implementation of number portability?**
- **Do Petitioners' make a valid claim that LNP in their service area is not in the public interest?**

My testimony addresses the standards that should apply in resolving these Petitions and presents the positions of Western Wireless on the issues identified above. For each of the issues, I will identify the applicable standard, establish the facts relevant

to a determination, and recommend to the South Dakota Public Utilities Commission ("Commission") an appropriate resolution.

Q. DO YOU HAVE ANY BACKGROUND OR FAMILIARITY WITH WESTERN WIRELESS' SYSTEM IN SOUTH DAKOTA AND ANY FAMILIARITY WITH THE PETITIONERS" SYSTEMS IN THE STATE?

A. Yes. I have been actively involved in negotiation of interconnection agreements with most, if not all, of the Petitioners in this case on behalf of Western Wireless.

Q. IS THERE A JURISDICTION ISSUE REGARDING WAIVERS TO LNP IMPLEMENTATION?

A. I cannot give a legal opinion, but I do believe there is an issue as to whether jurisdiction for LNP implementation waivers is in the FCC or state commissions. It is my understanding that the FCC's intermodal porting order requires rural ILECs to file any requests for waiver or extension with the FCC, not individual state commissions. The FCC asserted jurisdiction over all issues related to CMRS number portability by citing its authority under Sections 1, 2, 4(i) and 332 of the Communications Act.[1] I know that many rural ILECs applied to the FCC for a waiver, and the waiver was granted in January this year. I am attaching the FCC order on rural intermodal LNP implementation as Exhibit Williams' Direct -1. The instant case before the South Dakota Commission raises the same issues that have been addressed by the FCC under its jurisdiction.

Q. HAS THE FCC RECENTLY DECIDED ANY OTHER RURAL LNP IMPLEMENTATION WAIVER OR SUSPENSION REQUESTS?

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[1] *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, ¶ 155 (1996); *see also* Mem. Op. and Order and Further Notice of Proposed Rulemaking, ¶ 8, CC Docket No. 95-116, FCC 03-284 (rel. Nov. 10, 2003) ("*Intermodal Porting Order*")

A. Yes. Within the last couple of weeks the FCC issued two orders denying LNP implementation suspensions for rural wireless and rural wireline carriers. In an order released May 10, 2004 the FCC denied waiver and extension requests for three rural wireless carriers who had claimed they did not receive sufficient notice to implement and their rural status constituted special circumstances.[2] Similarly, on May 13, 2004 the FCC denied a waiver petition for temporary suspension made by North-Eastern Pennsylvania Telephone Company (NEP); a rural LEC with eight exchanges.[3] NEP is planning to implement LNP in conjunction with a switch replacement and argued that "it did not anticipate that intermodal porting would be an "imminent" requirement until the Commission's Intermodal LNP Order released in November 2003." NEP also stated that service feature issues arose during implementation planning that would mean that NEP would not meet the May 24, 2004 deadline for LNP implementation. In denying NEP request, the FCC responded:

> "We are not persuaded by NEP's claims that special circumstances exist warranting a waiver of the May 24, 2004 porting deadline in order to accommodate NEP's switch delivery and deployment schedule, and provide additional time to resolve any service feature issues. We find that NEP has not presented "extraordinary circumstances beyond its control in order to obtain an extension of time." NEP has not shown that

[2] In the Matter of Numbering Resource Optimization and Telephone Number Portability, Petitions of Advantage Cellular Systems, Inc., Corr Wireless Communications, LLC, and Plateau Telecommunications, Inc. for Limited Waiver and Extension of Porting and Pooling Obligations, CC Docket No. 99-200, 95-116, FCC 04-1291 (released May 10, 2004).

[3] Exhibit Williams' Direct -2: In the Matter of Telephone Number Portability, Petitions of The North-Eastern Pennsylvania Telephone Company for Temporary Waiver of its Porting Obligations, CC Docket No. 95-116, FCC 04-1312 (released May 13, 2004).

> challenges it may face are different from those faced by similarly situated carriers who are able to comply. Generalized references to limited resources and implementation problems do not constitute substantial, credible evidence justifying an exemption from the porting requirements. NEP has known since 1996 that it would need to support LNP within six months of a request from a competing carrier. Although wireless LNP was delayed, all carriers have been on notice since July 2002 that wireless and intermodal LNP would become available beginning in November 2003. Thus, NEP has had sufficient time to follow through with these mandates and prepare for LNP."[4]

In this situation, which is very similar to the instant petitions, the FCC decision delivered a clear and consistent message: The standards are very high for obtaining a waiver of LNP obligations, the onus is on individual carriers to do all in their power to meet the obligations, and difficulties which are similar to those faced by other carriers do not constitute special circumstances worthy of any suspension. LNP is an FCC mandate and it is clear the FCC expects enforcement of its implementation.

II. WHAT IS THE OBLIGATION OF PETITIONERS TO IMPLEMENT LNP AND WHAT ARE THE STANDARDS FOR GRANTING RELIEF?

Q. **ARE PETITIONERS UNDER AN AFFIRMATIVE OBLIGATION TO IMPLEMENT LNP?**

A. Yes. All LECs have known since 1996 that they would be required to provide LNP. Section 251(b)(3) of the Communications Act of 1934, as amended ("Act"), requires all LECs to provide LNP.[5] In its rules implementing the LNP requirements of the Act, the FCC recognized that the public interest would be served by requiring carriers

[4] See supra ¶10

[5] 47 U.S.C. § 251(b)(3).

to implement LNP in all areas, but conditioned the requirement to implement LNP in rural areas on a carrier receiving a bona fide request ("BFR") from another carrier.[6]

Q. DID WESTERN WIRELESS SEND A BFR TO ANY OF THE PETITIONERS REQUESTING THE IMPLEMENTATION OF LNP?

A. Yes. In November 2003 Western Wireless sent all but three of the Petitioners, Western, Splitrock Properties and Tri-County, a BFR to implement LNP.[7] Western Wireless' lawful request to implement LNP provided these carriers with more than 6 months notice to deploy Local Number Portability. These telcos waited 4 months to seek a suspension of their LNP obligations, hopeful that this tactic would result in delay of their legal obligations.

Q. WHAT IS THE STANDARD FOR GRANTING THE PETITIONERS' REQUEST FOR A SUSPENSION OF THEIR LNP OBLIGATIONS?

A. Congress established a very high standard to be met for a LEC to obtain a suspension of its LNP obligations. Section 251(f)(2) of the Act permits state commissions to suspend a carrier's LNP obligations only:

> to the extent that, and for such duration as, the State commission determines that such suspension or modification —
> (A) is necessary: (i) to avoid 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 is technically infeasible; and
> (B) is consistent with the public interest, convenience, and necessity.[8]

[6] 47 C.F.R. § 52.26.

[7] Exhibit Williams' Direct -3

[8] 47 U.S.C. § 251(f)(2).

"Congress intended exemption, suspension, or modification of the section 251 requirements to be the exception rather than the rule.... We believe that Congress did not intend to insulate smaller or rural LECs from competition."[9]

Q. IF CONGRESS DID NOT INTEND TO INSULATE RURAL TELEPHONE COMPANIES FROM COMPETITION, THEN HOW SHOULD THIS COMMISSION DETERMINE WHETHER OR NOT TO SUSPEND THE PETITIONERS' LNP OBLIGATIONS?

A. Each Petitioner bears the burden of demonstrating that it meets the statutory standard for a suspension of its LNP obligations. Although Section 251(f) of the Act provides that rural carriers may obtain a suspension of their LNP obligations, the FCC has concluded that a suspension is only appropriate under unique and compelling circumstances:

> Thus, we believe that, in order to justify continued exemption once a bona fide request has been made, or to justify suspension or modification of the Commission's section 251 requirements, a LEC must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry. State commissions will need to decide on a case-by-case basis whether such a showing has been made.[10]

Q. IN THE ABSENCE OF THE IMPLEMENTATION DELAY ALREADY GRANTED TO RURAL LECs BY THE FCC, WHAT ARE THE PREVAILING GUIDELINES FOR IMPLEMENTATION OF LNP AND HOW DO THEY RELATE TO THE PETITIONERS' SITUATION?

From the exhibits provided with the Petitions, it is apparent that most ILEC networks require only switch software upgrades and table translations to make them LNP capable. The FCC produced guidelines that suggest this type of upgrade can be

[9] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* First Report & Order, 11 F.C.C.R. 15499, 16118 (1996) ("*LNP First Report and Order*").

[10] *LNP First Report and Order* at 16118.

completed within 60 days. Local Number Portability requirements were established for all LECs in Section 251(b)(3) of the Telecom Act in 1996[11]. Specific to the Petitioners in this case, the FCC conditioned the requirement to implement LNP in rural areas on a carrier receiving a BFR from another carrier.[12] While a rural carrier has six months from receipt of a BFR to implement LNP, the FCC guidelines for switch preparation indicate a much shorter time may be necessary:[13]

> After the deadline for deployment of number portability in an MSA in the 100 largest MSAs, according to the deployment schedule set forth in the appendix to this part, a LEC must deploy number portability in that MSA in additional switches upon request within the following time frames:
>
> (A) For remote switches supported by a host switch equipped for portability ("Equipped Remote Switches"), within 30 days;
> (B) For switches that require software but not hardware changes to provide portability ("Hardware Capable Switches"), within 60 days;
> (C) For switches that require hardware changes to provide portability ("Capable Switches Requiring Hardware"), within 180 days;
> (D) For switches not capable of portability that must be replaced ("Non Capable Switches), within 180 days.

The language in the Act is clear: While LNP proceeded by decree for the majority of telephone subscribers, number portability would be triggered by a Bona Fide Request process in the rest of the country. Further, the BFR process established an implementation interval (maximum) of 180 days.

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[11] 47 U.S.C. § 251(b)(3).

[12] 47 C.F.R. § 52.23(c).

[13] 47 C.F.R. § 52.23(b)(2)(iv).

The FCC reiterated this rule with respect to intermodal LNP on November 10, 2003 (Attached as Exhibit Williams' Direct -4):

> "Therefore for wireline carriers operating in areas outside of the 100 largest MSAs, we hereby waive, until May 24, 2004, the requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned."[14]

Then, again, on January 16, 2004 the FCC spelled out the date that the implementation of LNP should occur for the Petitioner in this docket:

> "Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4(i), 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, 332, we GRANT a limited waiver of the wireline-to-wireless porting requirement, until May 24, 2004, for local exchange carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide that operate in the top 100 Metropolitan Statistical Areas and 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 where the customer's wireline number is provisioned."[15]

There is nothing vague or indefinite about the LNP obligations imposed on the Petitioners. This eventuality has been foreseeable for the eight years since the Telecom Act was passed in February 1996. The specific expectations of Western Wireless' porting interest have been known for more than 6 months since eighteen of

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[14] In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No. 95-116, FCC 03-284 at 29 (rel. November 10, 2003). ("*Intermodal Porting Order*")

[15] In the Matter of Telephone Number Portability, Small LEC Petitions for relief of the intermodal porting deadline of November 24, 2004, CC Docket No. 95-116,, FCC 04-12 at 12 (rel. January 16, 2004) (See Exhibit Williams' Direct -1)

them received BFRs from Western Wireless. The FCC released its *Intermodal Porting Order* more than 6 months ago. With all this advance public notice it is inconceivable that the Petitioners would not be prepared to implement LNP. Clearly, the time that has already been provided to these Petitioners should have been sufficient time to meet their obligations.

Q. SHOULD THE FACT THAT MANY SIMILARLY SITUATED LECS ARE NOT SEEKING A DELAY OR SUSPENSION OF LNP IMPLEMENTATION MERIT CONSIDERATION IN THIS PROCEEDING?

A. Yes. The decision by many other independent telcos to prepare for implementation rather than seek a delay or suspension is clear evidence that the implementation of number portability by the May 24, 2004 deadline was achievable. Similarly situated rural LECs with similar switch equipment are implementing LNP. My staff and I have been in contact with many LECs in our serving area to work through questions or concerns in support of their specific implementation efforts.

Q. HAVE OTHER STATE COMMISSIONS RULED ON LEC LNP SUSPENSION REQUESTS?

A. Yes. I am not familiar with all state commissions, but I do understand that the Pennsylvania Commission concluded that "rural residents have as much right to competitive choices as their more numerous urban counterparts" and that as a result, rural LEC suspension Petitioners "must present competent evidence that such relief is necessary under Section 251(f)(2)."[16] In response to requests for suspension of LNP

[16] *Petition of Rural and Small Incumbent Local Exchange Carriers for Commission Action Pursuant to Section 251(f)(2) and 253(b) of the Telecommunications Act of 1996,* Docket Nos. P-00971177 and P-00971188, 1997 Pa. PUC LEXIS 146 at ¶44 (Pennsylvania Public Utility Commission, July 10, 1997).

obligations, several state commissions have rejected rural LEC technical and/or financial arguments in support of their LNP suspension requests.[17] Notably, the Michigan Public Service Commission denied LNP suspension to two small rural LECs stating:

> "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 .... Any deferment of the FCC's number portability requirements beyond that time [May 24, 2004] would be anti-competitive and anti-consumer."[18]

Although the Petitioners have sought relief from number portability requirements through this proceeding, there is no reason why the competitive choice, enabled by number portability, and already available to most people in South Dakota, should be delayed for the Petitioners' customers.

Q. HAVE OTHER STATES DEALT WITH LNP SUSPENSION PETITIONS IN A DIFFERENT MANNER?

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[17] *See, e.g., Petition by the Alliance of North Carolina Independent Telephone Companies for Limited Modification of the Requirement to Provide Number Portability, Order Dismissing Petition Without Prejudice,* Docket No. P-100, Sub 133r (North Carolina Utilities Comm'n, Oct. 7, 2003)(LNP suspension petition dismissed for failure to meet burden of proof); *Iowa Telecommunications Services,* Docket No. SPU-02-18 (SPU-02-19), 2003 Iowa PUC LEXIS 141 (Iowa Utilities Board, April 15, 2003)(LNP suspension petition denied for failure to meet burden of proof); *In the matter of the application of Waldron Telephone Company and Ogden Telephone Company for temporary suspension of wireline to wireless number portability obligations pursuant to §251(f)(2) of the federal Telecommunications Act of 1996, as amended.* Opinion and Order in Case Nos. U-13956 and U-13958). (Michigan Public Service Commission, February 12, 2004.

[18] In the matter of the application of Waldron Telephone Company and Ogden Telephone Company for temporary suspension of wireline to wireless number portability obligations pursuant to 251(j)(2) of the Federal Telecommunications Act of 1996 as amended. (Opinion and Order in Case Nos. U-13956 and U-13958.) (Michigan Public Service Commission, February 12, 2004.)

A. Yes. Texas is a good example. The Texas Commission Staff was actively involved in negotiating with rural telephone companies to shorten or withdraw their suspension requests. The Staff was successful in resolving all ten original petitions[19] but not before they submitted the following testimony in the docket:

> "I recommend the denial of the petitions of Valor and KTC to suspend implementation until March 15, 2005 of the FCC's Intermodal Order ... I have determined that the Companies have failed to provide sufficient information and demonstrate the stated factors pursuant to FTA §251(f)(2) to justify an extension ... The Companies further failed to demonstrate that implementation of intermodal LNP prior to March 15, 2005 would be inconsistent with the public interest, convenience and necessity of Texas customers. I further conclude that the Companies have failed to take steps to comply with the Intermodal Order in a timely manner after receiving bona fide requests (BFR) for intermodal porting. As a consequence I recommend that the Companies be held accountable for non-compliance with FTA § 251(f)(2), if they are not LNP capable by May 24, 2004. Thus, the Companies would be subject to applicable FCC enforcement proceedings and/or state commission enforcement action, if applicable.[20]

III. ARE THERE ANY REAL OPERATIONAL OR TECHNICAL ROADBLOCKS TO THE PETITIONERS' IMPLEMENTATION OF NUMBER PORTABILITY AS REQUIRED BY FCC RULES?

Q. WHAT HAVE THE PETITIONERS' IDENTIFIED AS ROADBLOCKS TO THE IMPLEMENTATION OF NUMBER PORTABILITY?

A. In their Petitions and through discovery responses, the Petitioners have identified only a few technical or feasibility issue in the implementation of local number portability:

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[19] See Texas SOAH Docket No 473-04-3034 PUC Docket 29278 "Petition of Wes-Tex Telephone Cooperative, Inc. et al, for Suspension of Wireless Number Portability Implementation"

[20] Prefiled Direct Testimony of Stephen Mendoza, Telecommunications Division, Public Utility Commission of Texas in the matter of *Petition of Wes-Tex Telephone Cooperative, Inc. et al, for Suspension of Wireless Number Portability Implementation* SOAH Docket No. 473-04-3034, PUC Docket No. 29278, April 30, 2004. p 4 lines 5-21 and P 5 lines 1-8.

- The deadlines imposed for LNP implementation do not provide enough time to implement number portability under the FCC rules.

- Routing local traffic to numbers that have been ported to wireless carriers (which has been mischaracterized as 'location portability') when there is no direct connection between the Petitioner network and the wireless carrier.

- Uncertainty associated with obligations of intermodal LNP

Q. DO THESE REPRESENT REAL BARRIERS TO COMPLETING IMPLEMENTATION OF NUMBER PORTABILITY OBLIGATIONS BY MAY 24, 2004?

A. No. The Petitioners have introduced these challenges, which are faced by all carriers (wireline and wireless, urban and rural) implementing number portability, and have characterized them as impossible to overcome, "technically infeasible", and/or representing "a potential waste of resources …". This is simply not the case.

Q. WHAT ABOUT THE TECHNICALLY INFEASIBLE CLAIM?

A. Other rural telephone companies do not concur in this: In recent testimony concerning an LNP suspension petition in New Mexico, Steven D. Metts, a witness co-sponsored by the New Mexico Exchange Carriers Group made the following responsive statement[21]:

> Q. "Is it your contention that suspension of the FCC requirements is based upon technological incapability for any of your companies?"
>
> A. "No."

Some of the Petitioner's also concur that the implementation of LNP is not infeasible. Beresford Telephone, in response to Western's Discovery Request 9 made this statement when asked about the feasibility of routing calls to ported numbers when

[21] New Mexico Case No. 04-00017-UT, Hearing Transcript Day 1, p 51 lines 10-13, April 6, 2004

there is no direct connection between carriers: "...it is not "technically infeasible" to route such a call".

Q. DOES THE INTERMODAL PORTING OF NUMBERS ORDERED BY THE FCC CONSTITUTE LOCATION PORTABILITY?

A. No, it is not location portability. The intermodal number portability ordered by the FCC enables, for example, a residential LEC customer to substitute wireless service for LEC service at the same location where that customer receives landline service. This constitutes number portability, not location portability. Mr. Watkins' testimony exaggerates the circumstances but, in the end, concedes the FCC has already addressed this in the Intermodal Porting Order.[22]

Q. WHAT ABOUT PETITIONERS' CONCERN REGARDING THE ROUTING OF TRAFFIC TO TELEPHONE NUMBERS THAT HAVE BEEN PORTED TO WIRELESS CARRIERS?

A. The Petitioners imply that routing local traffic originating on their networks and destined for a number ported to a wireless carrier is a difficult and unprecedented requirement. This is not the case. There are economical ways to accomplish this at a small fraction of what the Petitioners claim for "transport" costs.

Q. WHY ARE THE PETITIONERS RAISING A CONCERN REGARDING INTERMODAL PORTING AND THEIR LOCAL ROUTING OBLIGATIONS?

A. Under some circumstances, when there is no physical interconnection between a LEC and a wireless carrier, the LEC will need to route a call to a ported number to the serving tandem. This is no different than the manner in which wireless carriers terminate calls to many LEC exchanges in South Dakota today.

Q. WHAT WOULD HAPPEN IF THIS TYPE OF ROUTING OF LOCAL CALLS DID NOT OCCUR?

[22] Watkins' Direct p24 lines 5-7.

A. A call that was local before a number ported would either not be completed or would be required to be dialed as a toll call after the number was ported. Imagine a scenario where your neighbor had to dial toll to reach your telephone number just because you changed your service provider. It would make no sense.

Q. IS THIS TYPE OF SEPARATE RATING AND ROUTING OF TRAFFIC A NEW PRACTICE?

A. No. This practice is permitted under industry guidelines associated with the assignment of telephone numbers by the North American Numbering Plan Administrator (NANPA)[23]. In fact, Western Wireless has several implementations of this throughout its service area.

Q. ARE THE PEITITIONERS CONCERNS ABOUT THE UNCERTAINTY OF FUTURE FCC RULES ON LNP ANY DIFFERENT THAN THOSE FACED BY OTHER CARRIERS THAT ARE ALREADY IMPLEMENTING LNP?

A. No. While there is some uncertainty in what the FCC will do in the future regarding compensation matters, there is no uncertainty about the rating and routing obligations relative to LNP. All carriers face these same hurdles: The rating of calls to a ported number must remain as they were prior to the number being ported. And, it is the originating carrier's responsibility to properly route traffic to a ported number. The FCC didn't mandate a method to accomplish these obligations because there is not just one way to overcome these hurdles.

[23] The Central Office Code (NXX) Administration Guidelines (COCAG), published by the Alliance for Telecommunications Industry Solutions on behalf of the Industry Number Committee, permit a carrier to receive a rate center number assignment and designate a routing point for calls to those numbers that is outside the rate center to which they are assigned.

IV. IS THERE ANY EVIDENCE OF UNDUE ECONOMIC BURDEN ASSOCIATED WITH PETITIONERS IMPLEMENTATION OF LOCAL NUMBER PORTABILITY?

Q. WHAT IS THE STANDARD FOR ESTABLISHING AN "UNDUE ECONOMIC BURDEN"?

A. Section 251(f)(2) permits the Commission to suspend a LEC's LNP obligation if such action is "necessary to avoid imposing a requirement that is unduly economically burdensome."[24] The Ohio Commission has held that the statutory phrase, "unduly economically burdensome," means economic burdens "beyond the economic burdens typically associated with efficient competitive entry."[25] The facts contained in the Petitions do not meet the standard that would lead one to conclude the economic burden exceeds that 'typically associated with efficient competitive entry.'

Q. HAVE YOU HAD ANY EXPERIENCE IN DEALING WITH THE REAL LIFE COSTS OF LNP IMPLEMENTATION?

A. Yes I have had experience implementing LNP on Western Wireless' own network. This entailed the upgrading of switches, intergrating systems, implementing the LNP with a CLEC and providing for SOA and LNP queries. I worked on these issues from an operational, technical, and cost aspect.

Q. ARE THE LNP COST PROJECTIONS IN THE PETITIONS A REASONABLE APPROXIMATION OF THE COSTS OF IMPLEMENTING LNP FOR THE PETITIONERS?

A. The cost projections provided by the Petitioners grossly overstate the implementation and operational costs of LNP. Both non-recurring 'start-up' and monthly recurring

[24] 47 U.S.C. § 251(f)(2)(A)(ii).

[25] *Western Reserve Petition at* 13.

costs have been over estimated by the Petitioners; in some cases producing costs many times a realistic projection.

Q. PLEASE PROVIDE EXAMPLES OF THE OVERSTATEMENT OF CLAIMED LNP IMPLEMENTATION COSTS.

A. Although cost over-statements occur with most Petitioners in many cost categories, based on evidence provided to date, overstatements of non-recurring LNP implementation costs occur in the category "Other Internal Costs". In this category, the Petitioners have included costs to deal with "porting contracts" and costs related to the development of "Intercarrier Porting Forms". These costs are grossly overstated and, perhaps, should not be included at all: Contracts are not required for porting between carriers and there are standard industry 'porting' forms available to any carrier for a nominal fee. Some Petitioners have included fees for "SOA Non-recurring set up charge" or non-recurring "Service Order Administration" when estimated port volumes provide no justification for an automated SOA interface. Unfortunately, many of the Petitioners have not provided sufficient information in response to interrogatories to address the validity of switch upgrade cost claims at this time. They have instead claimed the cost information is confidential and have refused to provide it even though Western Wireless has executed a "confidentiality agreement."

Q. PLEASE PROVIDE AN EXAMPLE OF THE OVERSTATEMENT OF CLAIMED LNP RECURRING COSTS.

A. Many categories of recurring costs are overstated. These include: "SOA Monthly Charge" estimates that are based on a vendor quote for an automated interface with a high minimum monthly charge, "Other Recurring Costs" that are overstated based on Petitioner's own estimate of port volume, "Switch Maintenance Costs" which are not

justified in relation to LNP, "Business Procedure" and porting process costs for testing, verification, translations, and administrative which appear to be overstated and redundant, and Marketing/Informational Flyer costs which are not justified on a recurring basis.

Q. CAN YOU PROVIDE A SPECIFIC EXAMPLE OF OVERSTATED SOA COSTS?

A. Yes. For example, Beresford Telephone has claimed a non-recurring charge of $1,800 and a monthly recurring charge of $1,200 for Service Order Administration (SOA) functionality. Beresford is claiming a total first year cost of $30,600 for SOA. In response to discovery, Beresford estimated 24 ports per year. Beresford can utilize the Number Portability Administration Center (NPAC) Help Desk to perform the SOA function for these 24 ports for a total of $360. Beresford has overstated first year SOA costs by more than 80 fold. This single cost overstatement results in an almost a dollar ($.85) of claimed LNP cost per line per month. Most of the other Petitioners have similarly forecasted low porting volumes that do not justify an automated SOA interface and high minimum monthly recurring charges.

Q. WHAT ABOUT PETITIONER CLAIMS FOR 'TRANSPORT' COSTS?

A. In every instance that I have reviewed, the Petitioner has identified the most inefficient means of routing traffic to ported numbers as the basis for formulating start-up and recurring costs. The approach taken by the Petitioners produces costs that may be as high as 400 times the cost that an efficient operator would incur to accomplish their routing obligations for similar traffic. For example, West River Cooperative Telephone assumes the installation of more than 30 T1 circuits to route traffic in the first year of LNP implementation. West River also estimated 12

customers will port each year. Assuming these porting customers to have average incoming call characteristics, Western Wireless estimates the cost of routing traffic to these ported numbers to be $1,120 for the year including non-recurring charges. West River estimates these same costs to be more than $467,000.

Q. DO YOU HAVE ANY OTHER COMMENTS ON PROPOSED LNP 'TRANSPORT' COST RECOVERY?

A. Yes. It is unclear that any of the costs included in this line item are recoverable under the FCC's rules pertaining to recovery via a line-item surcharge on local telecommunications customers. I believe the FCC views that it is the originating carrier's responsibility to deliver local traffic for termination and that the costs associated with fulfilling that responsibility are not a number portability cost.

Q. HAVE YOU PREPARED ALTERNATIVE LNP COST ESTIMATES FOR THE PETITIONERS?

A. Yes. Based on my experience with interconnection and with number portability, I have attached Exhibit Williams' Direct 5 which reflects the modifications to Petitioner costs consistent with my testimony.

Q. I NOTE THAT WILLIAMS' DIRECT -5 IS BROKEN INTO TWO PAGES, ONE MARKED AS 5A AND ONE MARKED AS 5B. COULD YOU EXPLAIN THE DIFFERENCES ON THESE TWO PAGES?

A: When the Petitioners in this case provided cost summaries, they did so in two separate formats. To assist in comparing the costs estimated on 5A and 5B with the Petitioner cost submissions, we maintained the two distinct formats and presented the revised estimates.

Q. IN PREPARING WILLIAMS' DIRECT -5, WHAT INFORMATION DID YOU USE?

A. For the most part, I used the same numbers as those being presented by the

Petitioners. However, I have changed certain values to more reasonable and realistic amounts in those areas I have discussed in my testimony. These changes are based on my experience and also some of the other cost information the Petitioners submitted. Any number that I corrected in the cost estimate is highlighted on the exhibit for ease of comparison. In some cases I eliminated a cost. For example, I eliminated the switch maintenance cost because these costs already exist for the switches now being used and the fact that the new switch to be put in will be LNP compatible does not result in additional increase in these costs.

Q. YOU MENTIONED EARLIER IN YOUR TESTIMONY THAT IN EVERY INSTANCE THAT YOU HAVE REVIEWED IN THESE FILINGS THE PETITIONERS HAVE IDENTIFIED THE MOST INEFFICIENT MEANS OF ROUTING TRAFFIC TO PORTED NUMBERS AS A BASIS FOR THEIR LNP COST ESTIMATES. HOW IS IT INEFFICIENT?

A. The routing methods proposed by the Petitioners are inefficient in that they make little or no utilization of existing equipment and shared facilities currently used to exchange calls with other carriers. A more efficient and less costly mechanism for establishing routing for LNP is illustrated in Exhibit Williams' Direct - 6.

Q. WHAT IS YOUR RECOMMENDATION ON PETITIONERS' CLAIMS THAT THE COST OF LNP IMPLEMENTATION IS UNDULY BURDENSOME?

A. The bar has been set very high for granting an exception on the basis of the costs of implementing local number portability. The Petitioner cost exhibits include inflated costs that don't stand-up to scrutiny. The Petitioners have failed to demonstrate their costs are unduly burdensome. Neither have they demonstrated that their costs are any different than other rural wireless and wireline carriers that are or have implemented number portability.

V. WHAT IS THE ECONOMIC IMPACT OF DELAYING PETITIONERS' IMPLEMENTATION OF NUMBER PORTABIITY?

Q. PETITIONERS IMPLY THAT SIGNIFICANT NUMBER PORTABILITY INVESTMENT RISK WILL BE AVOIDED BY DELAYING IMPLEMENTATION. IS THERE MERIT TO THESE ASSERTIONS?

A. No, the implementation cost information provided for the Petitioners indicates that there is little or no investment that would be avoided by delaying implementation of number portability.

Q. EXPLAIN THE EVIDENCE THAT DEMONSTRATES THE LNP INVESTMENT RISK IS LOW?

A. The data presented by the Petitioners lead to the conclusion that granting a delay in implementation of number portability will not have a material impact on the investments required. The nature of the LNP implementation and operational cost provided in the Petitions is predominately related to network investments, basic port process development, and port-driven variable costs. These are not costs that are at risk to any foreseeable change in LNP capability requirements. They do not reflect the potential for reduction at a later time. The transport cost category is so misconstrued and overstated by the Petitioners that it is meaningless. If routing costs were properly identified, they would amount to a small fraction of LNP costs and would not be of material impact.

Q. SO, WILL A DELAY SAVE ANY LNP INVESTMENTS?

A. No. The investments required by Petitioners will not be reduced by delaying their obligation to implement LNP. The risk for each of the Petitioners is no more than the investment risk made by any other carrier who has implemented local number portability. A delay only serves to deny those competitive carriers that have made

LNP investments the opportunity to leverage that investment in Petitioner serving areas.

Q. DO THE PETITIONERS' HAVE LNP ROUTING OBLIGATIONS THAT TRANSCEND ANY SUSPENSION OF INTERMODAL LNP IMPLEMENTATION?

A. Yes they do. In a Notice of Apparent Liability for Forfeiture, released by the Chief, Enforcement Bureau of the FCC, the FCC maintains that:

> Regardless of the status of a carrier's obligations to provide number portability, all carriers have the duty to route calls to ported numbers. In other words, carriers must ensure that their call routing procedures do not result in dropped calls to ported numbers."[26]

Granting any further delay to these Petitioners would seem to exacerbate their problem with respect to routing obligations. Many of the Petitioners provide service in local calling areas that are common to a Qwest rate center (e.g., James Valley's Frederick and Mellett exchanges have a local calling area shared with Qwest's Aberdeen rate center) that will have number portability implemented on or before May 24, 2004. In the event a number is ported in the Aberdeen rate center, the FCC has made it clear that a carrier is still obligated to route calls to ported numbers.

Q. DOES THE FACT THAT THE PETITIONERS ARE NOT IMPLEMENTING LNP LIMIT WIRELESS TO WIRELESS NUMBER PORTABILITY?

A. Yes. Since the beginning of the wireless industry, wireless carriers have used number assigned to them by LECs. These numbers appear in industry routing guides as if they were affiliated with the LEC switch instead of the wireless carrier's switch. In these instances, a wireless customer cannot port their wireless number to another

[26] In the Matter of CenturyTel, Inc., CenturyTel of Washington, Inc., CenturyTel of Cowiche, Inc., and CenturyTel of Inter Island, Inc. Apparent Liability for Forfeiture, DA 04-1304, Released May 13, 2004, ¶ 4.

wireless provider unless the LEC is LNP compliant and participates in the port. In South Dakota, there are at least five thousand Western Wireless numbers that would fall into this category and other wireless carriers in South Dakota would also likely have as many numbers that would fall subject to this problem.

VI. DO PETITIONERS MAKE A VALID CLAIM THAT LNP IS NOT IN THE PUBLIC INTEREST IN THEIR SERVICE AREAS?

Q. DO THE PETITIONERS' CLAIMS OF LACK OF DEMAND FOR NUMBER PORTABILITY RING TRUE?

A. No. The fact is, number portability has proven to be an enabler of competition wherever it has been implemented. That is the case here in South Dakota. Qwest has experienced a substantial loss of customers to competitors since the advent of number portability. There is, however, a difference in what the FCC has ordered to happen on May 24, 2004. Instead of just adding more competitors to South Dakota's urban markets, intermodal LNP enables wireless carriers to compete effectively for customers in areas that have not previously been exposed to competition.

Q. HAS THE FCC MADE ANY RECENT COMMENTS WITH RESPECT TO THE PUBLIC INTEREST AND THE IMPLEMENTATION OF LNP IN RURAL AREAS?

A. Yes. On May 6, 2004, K. Dane Snowden, Chief of the Consumer & Governmental Affairs Bureau, issued a letter to the President of NARUC. The letter asked NARUC to encourage state commissions to ensure that waivers are only granted "where carriers demonstrate undue economic burden or technological infeasibility and, in reference to the waiver obligations of Section 251(f) of the Act:

> "strictly apply that statutory standard so that rights of consumers are protected. I encourage the State commissions to ensure that carriers seeking waivers demonstrate that they are on a path to

compliance so that customers of these carriers will not be forever denied the rights their fellow consumers enjoy."[27]

Q. IS THERE ANY REASON WHY THE COMPETITIVE CHOICE, ENABLED BY NUMBER PORTABILITY, AND ALREADY AVAILABLE TO MOST SOUTH DAKOTANS, SHOULD BE DELAYED FOR THE CUSTOMERS OF THESE PETITIONERS?

A. No.

Q. ARE THERE ANY INDUSTRY PROJECTIONS FOR THE POTENTIAL OF SUBSTITUTION OF WIRELINE SERVICE BY WIRELESS?

A. Yes, many industry watchers are projecting that intermodal number portability will open the door to increased competition and accelerated substitution of wireless for wireline services. Here are some excerpts of a Cato Industry report summarizing the impact of wireless substitution[28]: "Wired Magazine recently reported that roughly 3% of homes have dropped their landlines and 8% are expected to follow suit in the next five years." "A more recent study by PriMetrica, Inc. suggested that roughly half of U.S. households would be willing to dump wireline for cellular ...". "And now comes the number portability decision, which adds more fuel to the VoIP and wireless substitution fire. I think it will certainly increase the move toward substituting wireless for wire-line phones' notes Rebecca Arbogast, an analyst with Legg Mason." Finally, common sense tells us that demand for a service greatly increases once the service becomes available.

Q. HAS WESTERN WIRELESS MADE THE INVESTMENTS NECESSARY TO PROVIDE LNP IN SOUTH DAKOTA?

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[27] Attached is Exhibit Williams' Direct - 7, a copy of the correspondence from the Bureau Chief of the FCC Consumer & Governmental Affairs Bureau to the President of NARUC.

[28] "Number Portability Adds to Wireline Telecom Sector's Perfect Storm," Adam Thierer, Director of Telecommunication Studies, Cato Institute, Issue 66, November 20, 2003.

A. Yes. We have upgraded our network, implemented new processes, systems, and hired supporting resources to implement LNP in South Dakota. In other words, we have absorbed the costs of implementing LNP under our FCC obligations. Further, we believe it is unfair that carriers who we compete with, that are similarly obligated, would be exempted from their obligations and thereby limit our ability to recoup the LNP investments we have made by restricting our opportunity to leverage those investments in a competitive marketplace.

Q. HAVE THE PETITIONERS MET THE PUBLIC INTEREST STANDARD FOR GRANT OF A SUSPENSION OF LNP OBLIGATIONS?

A. No. The public interest would not be served by suspending these Petitioners' LNP obligations. Section 251(f)(2) of the Act requires the Commission to determine that suspension of a carrier's LNP obligations would be "consistent with the public interest, convenience, and necessity."[29] The provision of LNP by LECs is a critical component of a competitive local telephone market. Rural consumers are increasingly choosing wireless service for their telecommunications needs and may choose to port their wireline number to Western Wireless upon the implementation of number portability as mandated by the Federal Communications Commission. The FCC has observed that the inability of customers to retain their telephone numbers when changing local service providers hampers the development of local competition:

> Section 251(b)(2) removes a significant barrier to completion by ensuring that consumers can change carriers without forfeiting their existing telephone numbers.[30]

[29] 47 U.S.C. § 251(f)(2)(B).

[30] Third LNP Order, 13 FCC Rcd 11701, 11702-04 ¶¶ 3-4 (1998)

The fact is, number portability has proven to be an enabler of competition wherever it has been implemented. The bona fide request process for local number portability has led to an opportunity for increased competition in rural South Dakota markets on May 24, 2004, (i.e., the ability of a wireless carrier to compete for service in areas that have not previously been exposed to competition). The implementation of LNP is intended to serve the important public interests of improved choice and competition for consumers.

Q. IS THE PETITIONERS' THREAT OF "CUSTOMER CONFUSION"[31] AMONG TELEPHONE USERS A REALISTIC CONCERN?

A. Only if the Petitioners' are not required to meet their routing obligations as an originator of local telecommunications traffic. The Petitioners' threat of misrouting calls to ported numbers as toll calls is in clear violation of the FCC's rules:

> "a wireless carrier porting-in a wireline number is required to maintain the number's original rate center designation following the port. As a result, calls to the ported number will continue to be rated in the same fashion as they were prior to the port."[32]

This is consistent with the Telecom Act's definition of LNP:

> "The ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers ***without***

[31] See, for example, Petitioner TC04-045 by Golden West Telecommunications Cooperative, et al, ¶ 20: "The current technical issues with wireline-to-wireless LNP implementation will lead to customer confusion ... The switch will search for a trunk over which to route the call. If a direct trunk group has not been established ... the party placing the call will likely receive a message that the call cannot be complete as dialed or a message instructing the party to redial using 1+ the area code. Confusion among telephone users will occur ..." And See Steven E. Watkins Direct Testimony, p 7 lls 10-13.

[32] Intermodal Porting Order at ¶ 27.

impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[33] [Emphasis added]

Q. ARE THE PETITIONERS' CLAIMS CONSISTENT WITH FCC POLICY?

A. No. The Petitioners claim they need additional guidance prior to implementing LNP. Additional guidance is not necessary. Granting the Petitioners' delay is at odds with FCC policy and the interests of rural consumers who, like their urban counterparts, have the expectation of legal right under the Communications Act to port their numbers to new carriers should they so desire. Tactics to further delay intermodal LNP will be a disservice to consumers in each of the Petitioners' own service areas.

Q. IS THERE EVIDENCE THAT THE PETITIONERS ARE NOT ACTING IN GOOD FAITH WITH RESPECT TO FCC OBLIGATIONS TO IMPLEMENT LOCAL NUMBER PORTABILITY?

A. Yes. It is clear from the Petitioners' response to discovery that few are moving forward with LNP implementation. All the Petitioners have 'considered' some of the ramifications of LNP and most have 'reviewed' and 'discussed', but very few have actually implemented any element of LNP. The fact that most of the Petitioners have not prepared their network for the implementation of competition through LNP or their business processes and, apparently, have not budgeted for LNP implementation in 2004 (even though they received bona fide requests for implementation in 2003) does not constitute undue economic burden. Neglect of, disregard for, or mis-management relative to FCC rules should not be used as basis for granting any delay or suspension of number portability obligations.

Q. WHAT STANCE HAS THE FCC STAFF TAKEN WITH RESPECT TO PETITIONERS' POSITIONS?

[33] 47 U.S.C. § 153(30)

A. Speaking at a forum on LNP issues, Wireless Bureau Assistant Chief David Firth said that the volume of actual number porting would not be the measure of success, but giving customers the option to port was most important. He indicated that carriers outside of the 100 largest MSA's should be testing and preparing for the May 24, 2004 LNP deadline. Responding to questions, Mr. Firth indicated that rating and routing issues between carriers are not porting issues and are therefore not a valid reason for refusing to port.[34]

VII. CONCLUSION

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

Petitioners have not provided evidence or otherwise demonstrated that there is any technical constraint to the implementation of local number portability by May 24, 2004. Petitioners have not met the standard that would lead one to conclude the economic burden exceeds that "typically associated with efficient competitive entry." Nor have Petitioners demonstrated that the implementation of number portability would conflict with the public interest and the competitive choice guidelines set by the FCC and this Commission.

The Commission should reject Petitioner arguments for delayed implementation, deny the suspensions, and force the Petitioners to face the consequences of their LNP preparations or lack thereof.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, it does.

[34] See Attachment Williams' Direct -8, Washington Watch, NECA, March 18, 2004.

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

In the Matter of the Petitions of Local Number Portability Obligations	Docket No. TC 04-025; TC04-038; TC04-044 through TC04-056; TC04-060 through TC04-062; TC04-077; TC04-084 and TC04-085

CERTIFICATE OF SERVICE

The undersigned certifies that on the 19 day of May, 2004, I served a true and correct copy of WWC's Direct Testimony of Ron Williams by email and Next Day Delivery, postage paid to:

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Western Telephone Company
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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	

ORDER

Adopted: January 13, 2004 **Released: January 16, 2004**

By the Commission:

I. INTRODUCTION

1. In this order, we grant a limited waiver of the wireline-to-wireless porting requirement for certain local exchange carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide (Two Percent Carriers)[1] that operate in the top 100 Metropolitan Statistical Areas (MSAs).[2] Specifically, we grant Two Percent Carriers that meet the conditions described in this order a waiver until May 24, 2004, to comply with the wireline-to-wireless porting requirement. The waiver applies to all Two Percent Carriers operating within the top 100 MSAs that had 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 where the customer's wireline number is provisioned (Covered Carriers). To the extent that a Two Percent Carrier operating within the top 100 MSAs does not meet these qualifications, it must comply with the requirements for wireline-to-wireless porting to date.

II. BACKGROUND

2. *Intermodal Portability.* Section 251(b) of the Communications Act of 1934, as amended (the Act) requires local exchange carriers (LECs) to provide local number portability (LNP), to the extent technically feasible, in accordance with requirements prescribed by the Commission.[3] Although the Act excludes Commercial Mobile Radio Service (CMRS) providers from the definition of local exchange carrier, and therefore from the section 251(b) obligation to provide number portability, the Commission has extended number portability requirements to CMRS providers.[4] The Commission determined that

[1] *See* 47 U.S.C. § 251(f)(2).

[2] The Commission received several petitions from small LECs operating in the top 100 MSAs for relief of the intermodal porting deadline of November 24, 2003. *See* Appendix A.

[3] 47 U.S.C. § 251(b)(2). Under the Act and the Commission's rules, local number portability is defined as "the ability of users of telecommunications 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." 47 U.S.C. § 153(30); 47 C.F.R. §52.21(k).

[4] Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8431, paras. 152-53 (1996) (*First Report and Order*). The Commission indicated that it had independent authority under sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, to require CMRS carriers to provide number portability. *Id.* at para. 153. *See* 47 U.S.C. §§ 1, 2, 4(i), and 332.

implementation of wireless LNP, which would enable wireless subscribers to keep their phone numbers when changing carriers, would enhance competition between wireless carriers as well as promote competition between wireless and wireline carriers.[5]

3. After extending the wireless LNP deadline on several occasions, the Commission established November 24, 2003 as the date in which wireless carriers in the top 100 MSAs must be capable of wireless-to-wireless and wireless-to-wireline porting and wireline carriers must be capable of wireline-to-wireless porting. On November 10, 2003, we released a Memorandum Opinion and Order and Further Notice of Proposed Rule Making (*Intermodal Order*) further clarifying certain aspects of intermodal porting.[6] In the order, we recognized that many wireline carriers operating outside of the top 100 MSAs may require some additional time to prepare for implementation of intermodal portability.[7] Therefore, we waived, until May 24, 2004, the requirement that wireline carriers operating outside the top 100 MSAs port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned.[8]

4. *Petitions.* As the November 24, 2003 deadline approached, we received a number of petitions for waiver of the intermodal porting requirement (Waiver Petitions) from small LECs operating in the top 100 MSAs (Petitioners).[9] Nearly all of the Petitioners describe themselves as small telephone companies and assert that they are more similarly situated to LECs operating outside the top 100 MSAs than the large carriers operating within the top 100 MSAs.[10] In support of this claim, many of the Petitioners note that the intermodal porting requests that they received from CMRS providers were their first requests for any type of porting.[11] Because they had not previously received requests from other wireline carriers to make their systems LNP-capable, the Petitioners argue that they were at a technological disadvantage compared to most, if not all, of the larger LECs in their MSAs, which had already upgraded their systems to provide wireline-to-wireline porting. Therefore, the Petitioners request additional time to comply with the intermodal porting requirements, many requesting the same period given to LECs operating outside the top 100 MSAs.[12]

5. On November 21, 2003, the Independent Telephone and Telecommunications Alliance, the National Telecommunications Cooperation Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies (Joint Petitioners) filed an Emergency Joint Petition for Stay and Clarification (Joint Petition) requesting that the Commission stay application of the

[5] *First Report and Order* at 8434-36, paras. 157-160.

[6] Telephone Number Portability, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 03-284 (rel. Nov. 10, 2003) (*Intermodal Order*).

[7] *Intermodal Order* at para. 29.

[8] *Id.*

[9] *See* Appendix A. Sprint Corporation (Sprint) filed oppositions to five of these petitions and comments in support of one of the petitions. *See* Appendix B. Additionally, Northeast Florida and Valley filed reply comments to Sprint's oppositions to their petitions. *Id.*

[10] *See, e.g.*, Northeast Florida Petition at 3; Yadkin Valley Petition at 2; OTELCO Petition at 2; MoKan Petition at 3.

[11] *See, e.g.*, MoKan Petition at 4; Northeast Florida at 4; United Petition at 2-3; Blountsville Petition at 3-4.

[12] A number of the Petitioners also claim that it was unclear, until the November 10, 2003 *Intermodal Order*, whether they would have had to act on the requests from CMRS providers that do not have points of interconnection or numbering resources in the rate centers where the customers' wireline numbers are provisioned. These Petitioners state that, because the clarification occurred only two weeks before the November 24 deadline, it would be technologically and operationally impossible to become intermodal porting capable by November 24, even with the carriers taking reasonable efforts and acting in good faith.

Intermodal Order with respect to Two Percent Carriers until the Commission reconsiders and/or clarifies certain aspects of that decision.[13] Specifically, the Joint Petitioners assert that it is technically infeasible for Two Percent Carriers to comply with the November 24, 2003 deadline,[14] and that the interests of all the parties involved in the port request, including the consumer, will benefit from additional time for Two Percent Carriers to face the operational and network hurdles that must be overcome to achieve a smooth transition.[15] Moreover, the Joint Petitioners argue that Two Percent Carriers need additional time to become capable of wireline-to-wireless porting because many of them had never been requested to support wireline-to-wireline porting and were uncertain of their intermodal porting obligations until the release of the *Intermodal Order* two weeks before the November 24, 2003.[16]

6. *Waiver Standard.* The Commission may, on its own motion, waive its rules when good cause is demonstrated.[17] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[18] In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[19] Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.[20] Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.[21]

III. DISCUSSION

7. We find that good cause exists to grant a waiver of the wireline-to-wireless porting requirement for Covered Carriers until May 24, 2004. Special circumstances exist for Covered Carriers because of the technological and operational limitations they face in implementing the necessary modifications to provide wireline-to-wireless porting. We also find that this additional time is consistent with the public interest. Therefore, we grant the Waiver Petitions and the Joint Petition, in part, to the extent consistent with this order, and otherwise deny them.

8. *Special Circumstances.* We find that special circumstances warrant a limited deviation from the November 24, 2003 deadline for Covered Carriers. Specifically, we recognize that the Covered Carriers' networks have technological limitations that cannot be resolved immediately to comply with the wireline-to-wireless porting requirement. The Joint Petitioners and most of the Petitioners assert that, unlike the large carriers serving within the Top 100 MSAs, a number of Two Percent Carriers in those markets had not received requests from other wireline carriers for wireline-to-wireline porting prior to

[13] Emergency Joint Petition for Stay and Clarification filed by the Independent Telephone and Telecommunications Alliance, the National Telecommunications Cooperation Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies, filed on November 21, 2003 (Joint Petition) at 22. *See* Appendix A. Sprint and Nextel Communications, Inc. opposed the Joint Petition. *See* Appendix B

[14] Joint Petition at 4, 7, 12.

[15] *Id.* at 4.

[16] *Id.* at 7-11.

[17] 47 C.F.R. § 1.3; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

[18] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

[19] *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

[20] *WAIT Radio*, 418 F.2d at 1157.

[21] *Id.* at 1159.

May 24, 2003.[22] As a result, in order to offer intermodal portability to their subscribers, these smaller carriers must acquire the hardware and software necessary to provide porting, make the necessary network upgrades, and ensure that their upgraded networks work reliably and accurately.[23] Some of the Petitioners also assert that Two Percent Carriers often lack the experience and technical experience with number porting to quickly implement the necessary upgrades to their systems to ensure accurate porting.[24] Accordingly, we conclude that special circumstances exist to grant Two Percent Carriers who have not previously upgraded their systems to support LNP a limited amount of additional time to overcome the technological obstacles they face to successfully meet a request for wireline-to-wireless porting.[25] Such relief is also consistent with the relief we granted, in the *Intermodal Order*, to similarly situated wireline carriers operating outside the top 100 MSAs.[26]

9. *Public Interest.* We likewise find that the additional time is in the public interest for Covered Carriers to become capable of providing wireline-to-wireless porting. While we continue to deem rapid implementation of number portability to be in the public interest, we also believe it to be just as important that carriers implement and test the necessary system modifications to ensure reliability, accuracy, and efficiency in the porting process.[27] As we found with the waiver granted to wireline carriers outside the top 100 MSAs, a transition period for Covered Carriers will help ensure a smooth transition and provide Covered Carriers sufficient time to make necessary modifications to their systems.[28]

10. We also agree with the Petitioners that consumers will not likely be adversely impacted by the grant of an additional six months to these carriers. According to the Petitioners, many Two Percent Carriers had not received requests or even inquiries from their customers concerning their ability to port their wireline numbers,[29] and some carriers have devised temporary solutions to allow at least some of their customers to port their wireline numbers if they so desire.[30] Therefore, we anticipate that few customers will be adversely impacted by this limited waiver.

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[22] *See, e.g.*, MoKan Petition at 4; OTELCO Petition at 4, 8; Northeast Petition at 4; Blountsville Petition at 4, 9; Warwick Valley Petition at 4, 9; United Petition at 2-3, 7; YCOM Petition at 3, 8; Rio Virgin Petition at 3, 7; Egyptian Petition at 3, 8; Cascade Utilities Petition at 3, 7-8; and Laurel Highland Petition at 3, 7-8. *See also* Joint Petition at 7.

[23] *See, e.g.*, Full Service Petition at 2. We note, however, that additional time is not necessary for Two Percent Carriers inside the top 100 MSAs that received a request to port a subscriber's number to another wireline carrier before May 24, 2003. These carriers would already have had to become LNP capable as of November 24, 2003, and therefore, would only need to make accommodations to provide wireline-to-wireless porting. Likewise, carriers would not need additional time for switches that are already LNP capable.

[24] *See, e.g.*, MoKan Petition at 5; Northeast Florida at 5.

[25] *See, e.g.*, MoKan Petition at 5; Northeast Florida at 5. In response to Sprint's oppositions, we note that Two Percent Carriers that were LNP capable as of November 24, 2003, or otherwise received a request from a wireless carrier that has a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned, must continue to comply with the current requirements for wireline-to-wireless porting.

[26] *Intermodal Order* at para. 29.

[27] Joint Petition at 4, 18. *See also* MoKan Petition at 7 ("Without appropriate testing, there will be delays and errors in porting numbers, which is not in the best interest of the consumer or either carrier involved with the port.").

[28] *Intermodal Order* at para. 29.

[29] *See, e.g.*, MoKan Petition at 6, Northeast Florida at 6.

[30] *See, e.g.*, Full Service Petition at 3 (moving some of its customers from the outdated switch to UNE-P service which allows for number portability until a new switch that supports number portability is installed).

11. We disagree with Sprint's claim that such a waiver would relieve Covered Carriers of their obligations to provide wireline-to-wireless porting.[31] Rather the relief granted in this Order merely gives Covered Carriers additional time to overcome the technological and operations hurdles that large carriers in the top 100 MSAs did not face. Moreover, the waiver will not adversely impact rural customers because of its limited nature.

IV. ORDERING CLAUSE

12. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4(i), 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, 332, we GRANT a limited waiver of the wireline-to-wireless porting requirement, until May 24, 2004, for local exchange carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide that operate in the top 100 Metropolitan Statistical Areas and 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 where the customer's wireline number is provisioned.

13. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1, 4(i), 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, 332, that the petitions listed in Appendix A to this Order ARE GRANTED IN PART AND DENIED IN PART, to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[31] *See, e.g.*, Sprint Opposition to Bentleyville Petition at 1; Sprint Opposition to Valley Petition at 1-2; and Sprint Opposition to YCOM Petition at 1. *See also, generally*, Sprint Opposition to Northeast Florida Petition; Sprint Opposition to Warwick Valley Petition; and Sprint Opposition to Joint Petition.

APPENDIX A

PETITIONERS

Filed September 24, 2003
North Central Telephone Cooperative, Inc. (North Central) (supplemented petition on December 8, 2003)

Filed November 20, 2003
Yadkin Valley Telephone Membership Corporation (Yadkin Valley)

Filed November 21, 2003
Armstrong Telephone Company (Armstrong)
Bentleyville Telephone Company (Bentleyville) (**)
Blountsville Telephone Co. (Blountsville)
Cascade Utilities, Inc. (Cascade Utilities)
Champaign Telephone Company (Champaign) (supplemented petition on December 19, 2003)
Chouteau Telephone Company (Chouteau)
East Ascension Telephone Company, LLC (East Ascension)
Egyptian Telephone Cooperative Association (Egyptian)
Ellensburg Telephone Company (Ellensberg)
Empire Telephone Corp. (Empire)
E.N.M.R. Telephone Cooperative (ENMR)
Independent Telephone and Telecommunications Alliance, the National Telecommunications Cooperation Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies (Joint Petitioners)
Laurel Highland Telephone Company (Laurel Highland)
Mariana and Scenery Hill Telephone Company (Mariana)
Middleburg Telephone Company (Middleburg)
MoKan Dial Telephone Company (MoKan)
Northeast Florida Telephone Company (Northeast Florida)
Orwell Telephone Company (Orwell)
OTELCO Telephone, LLC (OTELCO)
Pymatuning Telephone Company (Pymatuning)
Rio Virgin Telephone Co., Inc. (Rio Virgin)
State Telephone Co., Inc. (State)
Taconic Telephone Corp. (Taconic)
Tohono O'odham Utility Authority (Tohono)
United Telephone Company (United)
Valley Telephone Cooperative, Inc. (Valley)
Warwick Valley Telephone Company (Warwick Valley)
YCOM Networks, Inc. (YCOM)

Filed November 24, 2003
Eastern Slope Rural Telephone Association (Eastern Slope)
Peoples Telecommunications, LLC (Peoples)
Southern Kansas Telephone Company (Southern Kansas)
Wheat State Telephone, Inc. (Wheat State)

APPENDIX A

PETITIONERS (CON'T)

Filed November 25, 2003
Full Service Computing Corp. (Full Service)

Filed December 11, 2003
Green Hills Telephone Corporation (Green Hills)

** The Bentleyville Petition has been withdrawn pursuant to the petitioner's request. *See* Telephone Number Portability, CC Docket No. 95-116, *Order*, DA 04-0069 (rel. Jan. 15, 2004).

APPENDIX B

OPPOSITIONS, COMMENTS, AND REPLY COMMENTS

Comments

Sprint Corporation (Sprint) filed comments in support of Yadkin Valley Petition (November 26, 2003).

Oppositions

Sprint filed oppositions to the following petitions:
- Bentleyville Petition (December 8, 2003)(**);
- Joint Petition (December 10, 2003);
- Northeast Florida Petition (December 3, 2003);
- Valley Petition (December 8, 2003);
- Warwick Valley Petition (December 16, 2003); and
- YCOM Petition (December 10, 2003).

Nextel Communications, Inc. filed an ex parte opposing the Joint Petition (December 23, 2003).

Reply Comments

Northeast Florida filed reply comments to Sprint's opposition (December 10, 2003).
Valley filed reply comments to Sprint's opposition (December 18, 2003).

** The Bentleyville Petition has been withdrawn pursuant to the petitioner's request. *See* Telephone Number Portability, CC Docket No. 95-116, *Order*, DA 04-0069 (rel. Jan. 15, 2004).

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

In the Matter of	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Petition of The North-Eastern Pennsylvania	)	
Telephone Company for Temporary Waiver of its	)	
Porting Obligations	)	
	)	
	)	

ORDER

Adopted: May 12, 2004 **Released: May 13, 2004**

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny the petition filed by The North-Eastern Pennsylvania Telephone Company (NEP) seeking an extension of the May 24, 2004 deadline for implementing local number portability (LNP or porting).[1] We find that NEP has not demonstrated that special circumstances warrant a waiver or that such an extension is in the public interest. We will not, however, enforce NEP's LNP obligations until sixty days after the release of this Order to provide NEP with an opportunity to make arrangements to come into compliance with its LNP obligations.

II. BACKGROUND

2. *Local Number Portability*. Section 251(b) of the Communications Act of 1934, as amended, (Act)[2] mandates local exchange carriers (LECs) to provide LNP in accordance with the requirements outlined by the Commission.[3] The Commission, in the *Number Portability First Report and Order*, established the parameters for LNP and required commercial mobile radio service (CMRS or wireless)

[1] *See* Petition of The North-Eastern Pennsylvania Telephone Company Petition for Waiver of Section 52.23(b) of the Commission's Rules, filed March 23, 2004 (NEP Petition). The NEP petition was placed on public notice on March 26, 2004. *See Wireline Competition Bureau Seeks Comment on the Petition of The North-Eastern Pennsylvania Telephone Company for Temporary Waiver of the Commission's Number Portability Requirements*, Public Notice, CC Docket No. 95-116, DA 04-798 (rel. March 26, 2004). Comments were filed by Cellular Telecommunications & Internet Association (CTIA), Dobson Communications Corporation (Dobson), Nextel Communications, Inc. (Nextel) and Verizon Wireless (Verizon), and reply comments were filed by National Telecommunications Cooperative Association (NTCA), NEP, and T-Mobile USA, Inc. (T-Mobile).

[2] 47 U.S.C. §§ 151-174.

[3] 47 U.S.C. §251(b).

providers to become LNP-capable pursuant to sections 1, 2, 4(i), and 332 of the Act.[4] In doing so, the Commission concluded that the public interest is served by making LNP available across different technologies and thereby promoting competition between CMRS service providers and wireline carriers.[5] Initially, CMRS providers were required to become LNP-capable by June 30, 1999.[6] The Commission subsequently extended this deadline, and required CMRS carriers operating in the top 100 Metropolitan Statistical Areas (MSAs) to provide number portability upon request by another carrier by November 24, 2003.[7] CMRS carriers operating outside the top 100 MSAs must become LNP-capable within six months of a request or by May 24, 2003, whichever is later.[8] On November 10, 2003, the Commission concluded that, as of November 24, 2003, LECs 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.[9] The Commission, however, granted wireline carriers operating in areas outside of the 100 largest MSAs, in certain circumstances, a waiver until May 24, 2004 of the requirement to port numbers to wireless carriers.[10] The Commission later granted certain LECs with fewer than two percent of the nation's subscriber lines in the aggregate nationwide (Two Percent Carriers) that operate in the top 100 MSAs a limited waiver of the wireline-to-wireless porting requirement.[11]

3. *NEP's Request for Waiver.* NEP is a rural incumbent LEC providing service in Northeast Pennsylvania.[12] NEP represents that it decided, in 2001, to upgrade its switch network and sought

[4] *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8431-42 (1996) (*Number Portability First Report and Order*).

[5] *See id.* at 8432, ¶ 153.

[6] *Id.* at 8440, ¶ 166.

[7] *See Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability*, Memorandum Opinion and Order, 17 FCC Rcd 14972 (2002) (*Verizon Wireless LNP Forbearance Order*); *Cellular Telecommunications & Internet Association v. FCC*, No. 02-1264 (D.C. Cir. June 6, 2003) (Dismissing in part and denying in part CTIA's appeal of the Commission's decision in the *Verizon Wireless LNP Forbearance Order*). CMRS carriers were required to be LNP-capable by November 24, 2003 if requests from other carriers were received by February 24, 2003. *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14985-86. The *Verizon Wireless LNP Forbearance Order* also lays out the history of the CMRS carriers' LNP deadline extensions. *See also, Western Wireless Limited, Conditional Petition for Waiver of Local Number Portability and Thousands-Block Number Pooling Obligations*, CC Docket Nos. 95-116 and 99-200, Order, 18 FCC Rcd 24692 (Wireline Comp. Bur. 2003) (*Western Wireless Order).*

[8] *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14986.

[9] *See 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, 23706-07 (2003) (*Intermodal LNP Order).*

[10] *Id.*

[11] *Telephone Number Portability*, Order, 19 FCC Rcd 875 (2004).

[12] NEP's existing switch network consists of eight exchanges. These exchanges include the Union Dale, Harford, New Milford, Jackson, Thompson, Pleasant Mount, Clifford, and Forest City exchanges. *See* NEP Petition at 2, 5.

informal quotes from various switch equipment manufacturers at that time.[13] NEP subsequently concluded that it would be more efficient and economical to replace its existing switches with software based switch ("soft switch") technology.[14] Accordingly, in March 2003, NEP sought formal quotes and proposals from several switch manufacturers for soft switches.[15] In September 2003, NEP contracted with Taqua, Inc. (Taqua) to purchase eight soft switches to be installed on a phased-in basis, beginning on May 1, 2004 and ending on December 31, 2005.[16] However, according to NEP, certain service feature implementation issues need to be resolved before the first switch can be put into service.[17] NEP requests a waiver to provide additional time to accommodate the deployment schedule for its eight exchanges and to resolve the implementation issues.[18]

4. NEP contends good cause exists for granting an extension of the May 24, 2004 porting implementation deadline.[19] Specifically, NEP maintains that it has been planning and implementing network upgrades since 2001 to address expected network capability requirements.[20] NEP argues that it did not anticipate that intermodal porting[21] would be an "imminent requirement" until the Commission's *Intermodal LNP Order* released in November 2003.[22] Upon release of the order, NEP contends that it immediately reviewed its number portability plans with Taqua.[23] NEP maintains that, while working with Taqua to resolve certain service feature issues, it became apparent to NEP that it will be unable to meet the May 24, 2004 implementation deadline for all of its switches.[24] Further, NEP states that it will provide the Commission with quarterly progress reports and updates to the deployment schedule, including solutions that will allow NEP to advance its deployment schedule and number portability.[25]

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[13] *Id.* at 2.

[14] *Id.*

[15] *Id.* at 3.

[16] *Id.* at 3, 5.

[17] *Id.* at 3.

[18] *See id.* at 5. NEP's projected switch in-service date for its eight exchanges is as follows: (1) Union Dale - May 1, 2004; Harford - June 30, 2004; New Milford - September 30, 2004; Jackson - December 31, 2004; Thompson - March 31, 2005; Pleasant Mount - June 30, 2005; Clifford - September 30, 2005; and Forest City - December 31, 2005. *Id.* NEP notes, however, that this deployment schedule is dependent on Taqua's resolution of service feature problems and the successful deployment of LNP. *Id.*

[19] *Id.* at 1; NEP Reply Comments at 1-2.

[20] NEP Petition at 2-3.

[21] Intermodal porting is porting between wireline and wireless service providers.

[22] *Id.* at 4.

[23] *Id.*

[24] *Id.* at 5.

[25] *Id.* at 6.

5. CTIA, Dobson, Nextel, Verizon, and T-Mobile oppose granting NEP's waiver.[26] They argue that NEP has not demonstrated through substantial, credible evidence that special circumstances justify a waiver of the Commission's LNP rules.[27] They also contend that the public interest would not be served if such waiver is granted.[28] Specifically, they argue that grant of NEP's waiver would undermine the Commission's goal of promoting competition and cause customer confusion.[29]

6. One commenter, NTCA, supports NEP's petition.[30] NTCA maintains that, because NEP is moving toward full compliance with its LNP obligations, the Commission should provide NEP with a temporary waiver.[31] NTCA contends that large carriers, such as Nextel and Verizon, fail to take into account the financial, technical, and staffing realities of small LECs.[32] According to NTCA, it would have been financially irresponsible for NEP to upgrade its equipment prior to having a firm obligation to do so.[33]

7. *Waiver Standard.* The Commission's rules may be waived when good cause is demonstrated.[34] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[35] In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[36] Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.[37] Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.[38]

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[26] *See* CTIA Comments at 1-2; Dobson Comments at 1-2; Nextel Comments at 1-3; Verizon Comments at 1-3; T-Mobile Reply Comments at 1-2.

[27] *See* CTIA Comments at 2-3; Dobson Comments at 3-8; Nextel Comments at 3-6; Verizon Comments at 3-4; T-Mobile Reply Comments at 2-4.

[28] See CTIA Comments at 3; Dobson Comments at 8; Nextel Comments at 7-8; Verizon Comments at 5-7; T-Mobile Comments at 4-5.

[29] *Id.*

[30] *See* NTCA Reply Comments.

[31] *See id.* at 1.

[32] *Id.* at 3.

[33] *Id.* at 2-3.

[34] 47 C.F.R. § 1.3; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

[35] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

[36] *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

[37] *WAIT Radio*, 418 F.2d at 1157.

[38] *Id.* at 1159.

8. In seeking an extension of the LNP deployment deadline, a carrier must provide substantial, credible evidence to support its contention that it is unable to comply with the deployment schedule.[39] A request for an extension of a deadline must be filed with the Commission at least sixty days in advance of the deadline.[40]

III. DISCUSSION

9. We find that NEP has not demonstrated good cause to justify waiving the May 24, 2004 porting deadline. In particular, we agree with those commenters who argue that NEP has not shown through substantial, credible evidence that special circumstances warrant an extension of the porting deadline until December 31, 2005 and that postponing porting as requested will serve the public interest.[41] We decline, however, to enforce NEP's LNP obligations for sixty days following the release of this Order.

10. *Special Circumstances.* We are not persuaded by NEP's claims that special circumstances exist warranting a waiver of the May 24, 2004 porting deadline in order to accommodate NEP's switch delivery and deployment schedule, and provide additional time to resolve any service feature issues. We find that NEP has not presented "extraordinary circumstances beyond its control in order to obtain an extension of time."[42] Rather, NEP consciously made a business decision to upgrade its switches on a certain schedule.[43] NEP has not shown that challenges it may face are different from those faced by similarly situated carriers who are able to comply.[44] Generalized references to limited resources and implementation problems do not constitute substantial, credible evidence justifying an exemption from the porting requirements. NEP has known since 1996 that it would need to support LNP within six months of a request from a competing carrier.[45] Although wireless LNP was delayed, all carriers have been on notice since July 2002 that wireless and intermodal LNP would become available beginning in November 2003.[46] Thus, NEP has had sufficient time to follow through with these mandates and prepare for LNP.[47]

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[39] 47 C.F.R. § 52.23(e); *see also* 47 C.F.R. § 52.31(d).

[40] *Id.*

[41] *See* CTIA Comments at 2-3; Dobson Comments at 3-8; Nextel Comments at 3-6; Verizon Comments at 3-4; T-Mobile Reply Comments at 2-4.

[42] *Number Portability First Report and Order*, 11 FCC Rcd at 8397, ¶ 85.

[43] *See supra* ¶ 3.

[44] *See Western Wireless Order*, 18 FCC Rcd at 24696, ¶ 10 (in denying a waiver request to extend the thousands-block number pooling and LNP deadlines, the Bureau found that "Western ha[d] not demonstrated that it will sustain costs that are different from, or burdensome than, the costs of similarly situated Tier II wireless carriers").

[45] *See Number Portability First Report and Order*, 11 FCC Rcd 8352; *Telephone Number Portability*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7273-75, ¶¶ 60-66 (1997) (*Number Portability Reconsideration Order*).

[46] *See Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd 14972.

[47] *See Western Wireless Order*, 18 FCC Rcd at 24697-98, ¶ 13.
(continued....)

11. *Public Interest.* We also conclude that an extension of the porting deadline until December 31, 2005 would not serve the public interest because it would unduly delay the benefits of number portability to the public and could cause customer confusion. Portability has promoted, and will continue to promote, competition, especially in underserved areas, by allowing consumers to move to carriers that better serve consumers' needs without having to make the difficult choice to give up their numbers.[48] Thus, we find that the public interest would be served by implementing porting as soon as possible.

12. Furthermore, NEP should have considered the porting requirements, set out by the Commission long ago, when it contracted with vendors to install necessary upgrades. Accordingly, we conclude that granting NEP's request to extend the porting deadline would be inconsistent with the Commission's policy to promote competition, consumer choice, and efficient number use. We therefore deny NEP's request for a waiver of the May 24, 2004 porting implementation deadline.

13. Although we are not persuaded that a waiver of the porting requirements until December 31, 2005 is justified, we decline to enforce NEP's LNP obligations for sixty days following the release of this Order.[49] We find that some limited time to allow NEP to make the necessary preparations to implement LNP is reasonable to ensure compliance with our rules.[50] Non-enforcement for sixty days will also help to avoid any network disruptions, maximize trouble-free operation of LNP, and ensure that customers' requests for services will not be delayed due to carriers' difficulty in obtaining numbering resources.[51]

(Continued from previous page)

[48] *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14984, ¶ 28.

[49] *See Western Wireless Order*, 18 FCC Rcd 24692 (in denying Western's petition for waiver to extend the thousands-block number pooling (pooling) and LNP deadlines, the Bureau found that a sixty-day non-enforcement period would provide Western the time needed to properly implement and commence LNP and pooling).

[50] *Id.* at 24698, ¶ 16.

[51] *Id.*

IV. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4(i), 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, 332, and the authority delegated under sections 0.91, 0.291, 1.3, 52.9(b), and 52.23(e) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 52.9(b), 52.23(e), the petition filed by The North-Eastern Pennsylvania Telephone Company is DENIED to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey
Deputy Chief, Wireline Competition Bureau

Exhibit Williams Direct - 3 BFR Summary - South Dakota

Telco Name	OCN	Date BFR Sent to Telco	Date Response Sent From Telco	Respondents Name	Date Operation Agreement Sent to Telco
Valley Telecom Cooperative Association, Inc.	1685	11/18/2003	12/1/2003	Steve Oleson	12/19/2003
Santel Communications Cooperative, Inc.	1676	11/18/2003	12/2/2003	Darla Pollman Rogers	12/19/2003
Stockhom-Strandburg Telephone Co.	1679	11/18/2003	12/3/2003	Darla Pollman Rogers	12/19/2003
Cheyenne River Sioux Tribe Telephone Authority	1647	11/18/2003	12/16/2003	J.D. Williams	12/10/2003
Vivian Telephone dba Golden West Telecom.	1686	11/18/2003	11/19/2003	George Strandell	12/19/2003
Bridgewater-Canistota Ind. Tel. Co. - Golden West	0158	11/18/2003	11/19/2003	George Strandell	12/19/2003
Armour Independent Telephone Co. - Golden West	1640	11/18/2003	11/19/2003	George Strandell	12/19/2003
Sioux Valley Telephone Company - Golden West	1677	11/18/2003	11/19/2003	George Strandell	12/19/2003
Midstate Communications, Inc.	1670	11/18/2003	12/12/2003	Peggy Reinesch	12/10/2003
McCook Cooperative Telephone Co.	1669	11/18/2003	12/2/2003	Darla Pollman Rogers	12/19/2003
City of Faith Municipal Telephone Company	1653	11/18/2003	N/A	N/A	12/10/2003
West River Telephone Cooperative Company	1689	11/18/2003	11/24/2003	Jerry Reisenauer	12/19/2003
Beresford Municipal Telephone Company	1649	11/18/2003	11/21/2003	Wayne Akland	12/19/2003
Alliance Communications	1657	11/18/2003	2/2/2004	Don Snyders	12/10/2003
James Valley Cooperative Telephone Company	1664	11/18/2003	11/19/2003	George Strandell	12/19/2003
Kadoka Telephone Co. - Golden West	1667	11/18/2003	11/19/2003	George Strandell	12/19/2003
Golden West Telecommunications	1659	11/18/2003	11/19/2003	George Strandell	12/19/2003
Union Telephone Co. - Golden West	1684	11/18/2003	11/19/2003	George Strandell	12/19/2003
Venture Communications Cooperative	1680	11/18/2003	12/2/2003	Darla Pollman Rogers	N/A
Interstate Telecom Coop, Inc.	1651	11/18/2003	11/21/2003	Jerry Heiberger	12/19/2003
RC Communications	1662	11/18/2003	11/21/2003	Pamela Harrington	12/19/2003
Kennebec Telephone Co.	1668	11/18/2003	11/21/2003	Rod Bowar	12/19/2003
Swiftel Communications - Brookings Municipal Util.	1650	11/18/2003	N/A	N/A	12/19/2003
Roberts County Telephone Cooperative Assoc.	1674	11/18/2003	11/21/2003	Pamela Harrington	12/19/2003

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

In the Matter of 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

Adopted: November 7, 2003 **Released: November 10, 2003**

By the Commission: Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein issuing separate statements.

Comment Date: 20 days after publication in the Federal Register.
Reply Comment Date: 30 days after publication in the Federal Register.

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I. INTRODUCTION

1. In this order, we provide guidance to the industry on local number portability (LNP) issues relating to porting between wireless and wireline carriers (intermodal porting). First, in response to a Petition for Declaratory Ruling filed on January 23, 2003, by the Cellular Telecommunications and Internet Association (CTIA), we clarify that nothing in the Commission's rules limits porting between wireline and wireless carriers to require the wireless carrier to have a physical point of interconnection[1] or numbering resources in the rate center where the number is assigned. We find that porting from a wireline carrier to a wireless carrier is required where the requesting wireless carrier's "coverage area" overlaps the geographic location 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. The wireless "coverage area" is the area in which wireless service can be received from the wireless carrier. In addition, in response to a subsequent CTIA petition, we clarify that wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting between the carriers. We also decline to adopt a mandatory porting interval for wireline-to-wireless ports at the present time, but we seek comment on the issue as noted below.

2. In the accompanying Further Notice of Proposed Rulemaking (Further Notice), we seek comment on how to facilitate wireless-to-wireline porting if the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer. In addition, we seek comment on whether we should require carriers to reduce the length of the porting interval for ports between wireless and wireline carriers.

II. BACKGROUND

A. Statutory and Regulatory Background

3. Section 251(b) of the Communications Act of 1934, as amended (the Act) requires local exchange carriers (LECs) to provide local number portability, to the extent technically feasible, in accordance with requirements prescribed by the Commission.[2] Under the Act and the Commission's rules, local number portability is defined as "the ability of users of telecommunications services to retain,

[1] Referred to hereinafter as "point of interconnection."

[2] 47 U.S.C. § 251(b)(2).

at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[3]

4. The Commission released the Local Number Portability *First Report and Order* in 1996, which promulgated rules and deployment schedules for the implementation of number portability.[4] The Commission highlighted the critical policy goals underlying the LNP requirement, indicating that "the ability of end users to retain their telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of telecommunications services they can choose to purchase."[5] The Commission found that "number portability promotes competition between telecommunications service providers by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers."[6]

5. The Commission adopted broad porting requirements, noting that "as a practical matter, [the porting obligation] requires LECs to provide number portability to other telecommunications carriers providing local exchange or exchange access service within the same MSA."[7] In addition, the Commission noted the section 251(b) requires LECs to port numbers to wireless carriers. The Commission stated that "section 251(b) requires local exchange carriers to provide number portability to all telecommunications carriers, and thus to Commercial Mobile Radio Service (CMRS) providers as well as wireline service providers."[8]

6. The Commission adopted rules implementing the LNP requirements. Section 52.21(k) of the rules defines number portability to mean "the ability of users of telecommunications 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."[9] Section 52.23(b)(1) provides that "all local exchange carriers (LECs) must provide a long-term database method for number portability in the 100 largest Metropolitan Statistical Areas (MSAs) by December 31, 1998 ... in switches for which another carrier has made a specific request for the provision of number portability ..."[10] Finally, Section 52.23(b)(2)(i) of the Commission rules provides that "any wireline carrier that is certified ... to provide local exchange service, or any licensed CMRS provider, must be permitted to make a request for the provision of number portability."[11]

7. In 1997, in the Local Number Portability *Second Report and Order*, the Commission adopted recommendations from the North American Numbering Council (NANC) for the implementation of

[3] 47 U.S.C. § 153(30); 47 C.F.R. §52.21(k).

[4] Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (First Report and Order).

[5] *Id.* at 8368, para. 30.

[6] *Id.*

[7] *Id.* at 8393, para. 77.

[8] *Id.* at 8431, para. 152.

[9] 47 C.F.R. § 52.21(k).

[10] 47 C.F.R. § 52.23(b)(1).

[11] 47 C.F.R. § 52.23(b)(2)(i).

wireline-to-wireline number portability. [12] Under the guidelines developed by the NANC, porting between LECs was limited to carriers with facilities or numbering resources in the same rate center to accommodate technical limitations associated with the proper rating of wireline calls. [13] The NANC guidelines made no recommendations regarding limitations on intermodal porting.

8. Although the Act excludes CMRS providers from the definition of local exchange carrier, and therefore from the section 251(b) obligation to provide number portability, the Commission has extended number portability requirements to CMRS providers. [14] In the Local Number Portability *First Report and Order*, the Commission indicated that it had independent authority under sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, to require CMRS carriers to provide number portability. [15] The Commission noted that "sections 2 and 332(c)(1) of the Act give the Commission authority to regulate commercial mobile radio service operators as common carriers ..." [16] Noting that section 1 of the Act requires the Commission to make available to people of the United States, a rapid, efficient, nation-wide and world-wide wire and radio communication service, the Commission stated that its interest in number portability "is bolstered by the potential deployment of different number portability solutions across the country, which would significantly impact the provision of interstate telecommunications services. [17] Section 4(i) of the Act grants the Commission authority to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Communications Act of 1934, as amended] as may be necessary in the execution of its functions. [18] The Commission concluded that "the public interest is served by requiring the provision of number portability by CMRS providers because number portability will promote competition between providers of local telephone services and thereby promote competition between providers of interstate access services." [19]

9. The Commission determined that implementation of wireless LNP, which would enable wireless subscribers to keep their phone numbers when changing carriers, would enhance competition between wireless carriers as well as promote competition between wireless and wireline carriers. [20] The

[12] Telephone Number Portability, CC Docket No. 95-116, *Second Report and Order*, 12 FCC Rcd 12,281 (1997) (*Second Report and Order*). The requirement that LECs port numbers to wireless carriers has not been applied previously due to extensions of the deadline for wireless carriers' implementation of LNP. *See* Telephone Number Portability, Cellular Telecommunications & Industry Association's Petition for Extension of Implementation Deadlines, CC Docket No. 95-116, *Memorandum Opinion and Order*, 13 FCC Rcd 16315 (1998); Telephone Number Portability, Cellular Telecommunications & Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229, *Memorandum Opinion and Order*, 14 FCC Rcd 3092 (1999); and Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184 and CC Docket No. 95-116, *Memorandum Opinion and Order*, 17 FCC Rcd 14972 (2002).

[13] North American Numbering Council Local Number Portability Selection Working Group Final report and Recommendation to the FCC, Appendix D at 6 (rel. April 25, 1997). This report is available at http://www.fcc.gov/wcb/tapd/nanc/lnpastuf.html.

[14] *First Report and Order* at 8431, paras 152-53.

[15] *Id.* at para. 153. *See* 47 U.S.C. §§ 1, 2, 4(i), and 332.

[16] *Id.*

[17] *Id.* at 8432, para. 153.

[18] 47 U.S.C. § 154(i).

[19] *First Report and Order* at 8432, para. 153.

[20] *Id.* at 8434-36, paras. 157-160.

Commission noted that "service provider portability will encourage CMRS-wireline competition, creating incentives for carriers to reduce prices for telecommunications services and to invest in innovative technologies, and enhancing flexibility for users of telecommunications services."[21] Commission rules reflecting the wireless LNP requirement provide that, by the implementation deadline, "all covered CMRS providers must provide a long-term database method for number portability ... in switches for which another carrier has made a request for the provision of LNP."[22]

10. In the Local Number Portability *Second Report and Order*, after adopting NANC guidelines applicable to wireline-to-wireline porting, the Commission directed the NANC to develop standards and procedures necessary to provide for wireless carriers' participation in local number portability.[23] The Commission indicated its expectation that changes to LNP processes would need to be made to accommodate porting to wireless carriers. The Commission noted that "the industry, under the auspices of NANC, will probably need to make modifications to local number portability standards and processes as it gains experience in implementing number portability and obtains additional information about incorporating CMRS providers into a long-term number portability solution and interconnecting CMRS providers with wireline carriers already implementing their number portability obligations."[24] In addition, the Commission noted that the NANC would have to consider issues of particular concern to wireless carriers, including how to account for differences between service area boundaries for wireline versus wireless services.[25]

11. In 1998, the NANC submitted a report on the integration of wireless and wireline number portability from its Local Number Portability Administration (LNPA) Working Group to the Common Carrier Bureau (now known as the Wireline Competition Bureau).[26] The report discussed technical issues associated with wireless-to-wireline porting. The report noted that differences between the local serving areas of wireless and wireline carriers affected the porting capabilities of each type of carrier, making it infeasible for some wireline carriers to port-in numbers from wireless subscribers. The report explained that because wireline service is fixed to a specific location the subscriber's telephone number is limited to use within the rate center within which it is assigned.[27] By contrast, the report noted, because wireless service is mobile and not fixed to a specific location, while the wireless subscriber's number is associated with a specific geographic rate center, the wireless service is not limited to use within that rate center.[28] As a result of these differences, the report indicated that, if a wireless subscriber seeks to port his or her number to a wireline carrier, but the subscriber's NPA-NXX is outside of the wireline rate center where the subscriber is located, the wireline carrier may not be able to receive the ported number.[29] The NANC did not reach consensus on a solution to this issue, and reported that this lack of symmetry, referred to as

[21] *Id.* at 8437, para. 160.

[22] 47 C.F.R. § 52.31(a).

[23] Second Report and Order at 12333, para. 90.

[24] *Id.*

[25] *Id.* at 12334, para. 91.

[26] North American Numbering Council Local Number Portability Administration Working Group Report on Wireless Wireline Integration, May 8, 1998, CC Docket No. 95-116 (filed May 18, 1998) (First Report on Wireless Wireline Integration).

[27] *Id.* at 7.

[28] *Id.*

[29] *Id.*

"rate center disparity," raises questions by some carriers about competitive neutrality.[30] The Common Carrier Bureau sought comment on the NANC report.[31]

12. The NANC submitted a second report on the integration of wireless and wireline number portability to the Commission in 1999,[32] and a third report in 2000,[33] both focusing on porting interval issues. The second report provided an analysis of the wireline porting interval and considered alternatives to reduce the porting interval for ports between wireless and wireline carriers.[34] The report recommended that each potential alternative be thoroughly developed and investigated.[35] The third report again analyzed the elements of the wireline porting interval and examined whether the length of the porting interval for both intermodal ports and wireline-to-wireline ports could be reduced.[36] The NANC determined that the wireline porting interval should not be reduced, but it was unable to reach a consensus on an intermodal porting interval.[37] Accordingly, we seek comment on the appropriate interval for intermodal porting.[38]

B. Outstanding Petitions for Declaratory Ruling

13. On January 23, 2003, CTIA filed a petition requesting that the Commission issue a declaratory ruling that wireline carriers have an obligation to port their customers' telephone numbers to wireless carriers whose service areas overlap the wireline rate center that is associated with the number.[39] In its petition, CTIA claims that some LECs have narrowly construed their LNP obligations with regard to wireless carriers, taking the position that portability is only required where the wireless carrier receiving the number already has a point of presence or numbering resources in the wireline rate center.[40] CTIA urges the Commission to confirm that wireline carriers have an obligation to port to wireless carriers when their respective service areas overlap. CTIA notes that, in several of its decisions, the Commission has found that LNP is necessary to promote competition between the wireless and wireline

[30] Letter from Alan C. Hasselwander, Chairman, NANC to A. Richard Metzger, Jr., Chief. Common Carrier Bureau (filed Apr. 14, 1998).

[31] Common Carrier Bureau Seeks Comment on North American Numbering Council Recommendation Concerning Local Number Portability Administration Wireline and Wireless Integration, CC Docket No. 95-116, *Public Notice*, 13 FCC Rcd 17342 (1998).

[32] North American Numbering Council Local Number Portability Administration Working Group Second Report on Wireless Wireline Integration, June 30, 1999, CC Docket No. 95-116 (filed Nov. 4, 1999) (Second Report on Wireless Wireline Integration).

[33] North American Numbering Council Local Number Portability Administration Working Group Third Report on Wireless Wireline Integration, Sept. 30, 2000, CC Docket no. 95-116 (filed Nov. 29, 2000) (Third Report on Wireless Wireline Integration).

[34] Second Report on Wireless Wireline Integration at section 3.

[35] *Id.* at section 1.1.

[36] Third Report on Wireless Wireline Integration at section 3.

[37] Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau, (filed Nov. 29, 2000).

[38] *See* paras. 45-51, *infra*.

[39] CTIA Petition for Declaratory Ruling, CC Docket No. 95-116 (filed Jan. 23, 2003) (January 23rd Petition).

[40] *Id.* at 3.

industries. CTIA argues that, without Commission action to resolve the deadlock over the rate center disparity issue, the reality of wireline-to-wireless porting will be at risk because many wireline subscribers will be unable to port their numbers to wireless carriers that serve their areas.[41]

14. CTIA also requests that the Commission confirm that a wireline carrier's obligation to port numbers to a wireless carrier can be based on a service-level porting agreement between the carriers, and does not require an interconnection agreement. According to CTIA, number portability requires only that a carrier release a customer's number to another carrier and assign the number to the new carrier in the Number Portability Administration Center (NPAC) database, which is queried solely to identify the carrier that can terminate calls to the customer.[42]

15. The majority of wireless carriers submitting comments support CTIA's request for declaratory ruling. They agree with CTIA that, without Commission action to resolve the rate center issue, the majority of wireline customers will be prevented from porting their number to a wireless carrier.[43] They call for the Commission to reject any proposal that would restrict porting to rate centers where a wireless carrier has already obtained numbers, contending that such a limitation would be inconsistent with the competitive objectives of intermodal LNP and would waste numbering resources.[44]

16. Wireline carriers generally oppose CTIA's petition.[45] Some argue that requiring LECs to port to carriers who do not have a point of interconnection or numbering resources in the same rate center in which the number is assigned would give wireless carriers an unfair competitive advantage over wireline carriers.[46] LECs argue that, in contrast to wireless carriers who have flexibility in establishing their service areas and rates, wireline carriers are governed by state regulations. Under the state regulatory regime, they rate and route local and toll calls based on wireline rate centers. Consequently, LECs contend, wireline service providers do not have the same opportunity that wireless carriers have to offer number portability where the rate center in which the number is assigned does not match the rate center in which the LEC seeks to serve the customer.[47] Others argue that CTIA's petition would amount to a system of location portability rather than service provider portability, causing customer confusion over

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[41] *Id.* at 19.

[42] *Id.* at 3.

[43] AT&T Wireless, Midwest Wireless, Nextel, Sprint, T-Mobile, and US Cellular all filed comments supporting CTIA's January 23rd petition. Comments and Reply Comments filed in response to the CTIA's January 23rd and May 13th petitions are listed in Appendix A.

[44] *See, e.g.*, Sprint Reply Comments on CTIA's January 23rd Petition at 9; T-Mobile Comments on CTIA's January 23rd Petition at 14-15; and Virgin Mobile Reply Comments on CTIA's January 23rd Petition at 4.

[45] Centurytel, Fred Williams & Associates, the Independent Alliance, the Michigan Exchange Carriers Association, NECA and NTCA, the Nebraska Rural Independent Companies, OPASTCO, SBC, TCA, USTA, and Valor Communications all filed comments opposing CTIA's January 23rd petition.

[46] *See, e.g.*, Centurytel Comments on CTIA's January 23rd Petition at 5-6; Fred Williams & Associates Comments on CTIA's January 23rd Petition at 8; SBC Comments on CTIA's January 23rd Petition at 1; Letter from Cronan O'Connell, Vice President-Federal Regulatory, Qwest to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116 (filed Oct. 9, 2003) (Qwest Oct. 9th *Ex Parte*); and Letter from Kathleen B. Levitz, Vice President-Federal Regulatory, BellSouth to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116 (filed Sept. 9, 2003) (BellSouth Sept. 9th *Ex Parte*).

[47] *See, e.g.*, Letter from James C. Smith, Senior Vice President, SBC Telecommunications, Inc. to Michael K. Powell, Chairman, FCC, CC Docket No. 95-116 (filed Aug. 29, 2003) (SBC Aug. 29th *Ex Parte*); and BellSouth Sept. 9th *Ex Parte*.

the rating of calls.[48] Several LECs also argue that the Commission may not permit intermodal porting outside of wireline rate center boundaries without first issuing a Notice of Proposed Rulemaking.[49] Several rural LECs argue that requiring porting between wireline and wireless carriers where the wireless carriers do not have a point of interconnection in the same rate center as the ported number would raise intercarrier compensation issues, as wireline carriers would be required to transport calls to ported numbers through points of interconnection outside of rural LEC serving areas.[50]

17. On May 13, 2003, CTIA filed a second Petition for Declaratory Ruling. In its petition, CTIA argues that, in addition to the rate center issue that was the subject of its January petition, there are additional LNP implementation issues that have not been resolved by industry consensus and therefore must be addressed by the Commission.[51] Specifically, CTIA requests that the Commission rule on the appropriate length of the porting interval, the necessity of interconnection agreements, a dispute between BellSouth and Sprint concerning the ability of carriers to designate different routing and rating points, definition of the largest 100 Metropolitan Statistical Areas (MSAs), the bona fide request requirement, and whether carriers must support nationwide roaming for customers with ported numbers.

18. On October 7, 2003, we released a Memorandum Opinion and Order addressing carrier requests for clarification of wireless-wireless porting issues.[52] In response to CTIA's May 13th petition as well as a Petition for Declaratory Ruling/Application for Review, we concluded that wireless carriers may not impose "business rules" on their customers that purport to restrict carriers' obligations to port numbers upon receipt of a valid request to do so. In addition, we clarified that wireless-to-wireless porting does not require the wireless carrier receiving the number to be directly interconnected with the wireless carrier that gives up the number or to have numbering resources in the rate center associated with the ported number. We clarified that, although wireless carriers may voluntarily negotiate interconnection agreements with one another, such agreements are not required for wireless-to-wireless porting. We confirmed also that, in cases where wireless carriers are unable to reach agreement regarding the terms and conditions of porting, all such carriers must port numbers upon receipt of a valid request from another carrier, with no conditions.

19. We encouraged wireless carriers to complete "simple" ports within the industry-established two and one half hour porting interval and found that no action was necessary regarding the porting of numbers served by Type 1 interconnection because carriers are migrating these numbers to switches served by Type 2 interconnection or are otherwise developing solutions.[53] Finally, we reiterated the requirement that wireless carriers support roaming nationwide for customers with pooled and ported

[48] *See* Centurytel Comments on CTIA's January 23rd Petition at 4-5.

[49] *See, e.g.*, Letter from Gary Lytle, Qwest to Marlene H. Dortch, Secretary, FCC (filed Oct, 17, 2003) (Qwest Oct. 17th *Ex Parte*); and SBC Aug. 29th *Ex Parte*.

[50] NECA and NTCA Comments on CTIA's January 23rd Petition at 6. *See,* In the Matter of Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, Sprint Petition for Declaratory Ruling, CC Docket No. 01-92 (filed July 18, 2002) (Sprint Petition for Declaratory Ruling).

[51] CTIA Petition for Declaratory Ruling, CC Docket No. 95-116 (filed May 13, 2003) (May 13th Petition).

[52] Telephone Number Portability, CC Docket No. 95-116, *Memorandum Opinion and Order*, FCC 03-237, rel. Oct. 7, 2003.

[53] Type 1 numbers reside in an end office of a LEC and are assigned to a Type 1 interconnection group, which connects the wireless carrier's switch and the LEC's end office switch. Type 2 numbers reside in a wireless carrier's switch and are assigned to a Type 2 interconnection group, which connects the wireless carrier's switch and a LEC access tandem switch or end office switch.

numbers, and we addressed outstanding petitions for waiver of the roaming requirement. We indicated our intention to address issues related to intermodal porting in a separate order.[54]

III. ORDER

A. Wireline-to-Wireless Porting

20. *Background.* In its January 23rd Petition, CTIA requests that the Commission clarify that the LNP rules require wireline carriers to port numbers to any wireless carrier whose service area overlaps the wireline carrier's rate center that is associated with the ported number.[55] CTIA claims that, absent such a clarification, a majority of wireline customers will not be able to port their phone number to the wireless carrier of their choice because wireless carriers typically have a point of interconnection or numbering resources in only a fraction of the wireline rate centers in their service areas.[56] Citing prior Commission decisions, CTIA notes that the Commission has cited intermodal competition as a basis for imposing LNP requirements on wireless carriers.[57] CTIA argues that the Commission's objectives with respect to intermodal competition cannot be realized without prompt action.

21. *Discussion.* The Act and the Commission's rules impose broad porting obligations on LECs. Section 251(b) of the Act provides that all local exchange carriers "have the duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[58] The Act defines number portability as "the ability of users of telecommunications 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."[59] In implementing these requirements in the Local Number Portability *First Report and Order*, the Commission determined that LECs were required to provide portability to all other telecommunications carriers, including CMRS service providers, providing local exchange or exchange access service within the same MSA.[60] The Commission's rules reflect these requirements, requiring LECs to offer number portability in switches for which another carrier made a request for number portability and providing that all carriers, including CMRS service providers must be permitted to make requests for number portability.[61]

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[54] Remaining issues from CTIA's January 23rd and May 13th petitions pertaining to intermodal porting are addressed in this order. Additional issues from CTIA's May 13th petition, including the implication of the porting interval for E911, the definition of the 100 largest MSAs, and the bona fide request requirement have been addressed separately. *See* Letter from John B. Muleta, Chief, Wireless telecommunications Bureau, to John T. Scott, III, Vice President and Deputy General Counsel, Verizon Wireless and Michael F. Altschul, Senior Vice President, General Counsel, CTIA, CC Docket No. 95-116, DA 03-2190, dated July 3, 2003. *See also*, Numbering Resource Optimization, *Fourth Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket Nos. 99-200 and 95-116 (rel. June 18, 2003).

[55] January 23rd Petition at 3.

[56] *Id.* at 18.

[57] *Id.* at 12-16.

[58] 47 U.S.C. § 251(b).

[59] 47 U.S.C. § 153(30).

[60] *First Report and Order* at 8393, 8431, paras. 77 and 152.

[61] 47 C.F.R. § 52.23(b)(1), (b)(2)(i).

22. We conclude that, as of November 24, 2003, LECs 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.[62] Permitting intermodal porting in this manner is consistent with the requirement that carriers support their customers' ability to port numbers while remaining at the same location. For purposes of this discussion, the wireless "coverage area" is the area in which wireless service can be received from the wireless carrier. Permitting wireline-to-wireless porting under these conditions will provide customers the option of porting their wireline number to any wireless carrier that offers service at the same location. We also reaffirm that wireless carriers must port numbers to wireline carriers within the number's originating rate center. 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 comment on this issue in the Further Notice below.

23. We make our determinations based on several factors. First, as stated above, under the Act and the Commission's rules, wireline carriers must port numbers to other telecommunications carriers, to the extent that it is technically feasible to do so, in accordance with regulations prescribed by the Commission.[63] There is no persuasive evidence in the record indicating that there are significant technical difficulties that would prevent a wireline carrier from porting a number to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number. Accordingly, the plain text of the Act and the Commission's rules, requiring LECs to provide number portability applies. In fact, several LECs acknowledge that there is no technical obstacle to porting wireline numbers to wireless carriers whose point of interconnection is outside of the rate center of the ported numbers.[64] Moreover, at least two LECs, Verizon and Sprint, have already established agreements with their wireless affiliates that specifically provide for intermodal porting.[65] In addition, BellSouth indicates in its comments that it has no intention of preventing customers from porting their telephone numbers to wireless carriers upon the customers' requests – regardless of whether or not the

[62] We anticipate that a minimal amount of identifying information will be transmitted from the wireless carrier to the LEC when a customer seeks to port. For example, carriers may choose to verify the zip code of the porting-out wireline customer in their validation procedures.

[63] 47 U.S.C. § 251(b)(2), 47 C.F.R. § 52.23.

[64] *See* BellSouth Comments on CTIA's January 23rd Petition at 3; and USTA Comments on CTIA's January 23rd Petition at 7-8.

Several interexchange carriers (IXCs) have brought to the Commission's attention a problem IXCs face in identifying whether a customer has switched carriers. This problem can result in customers receiving erroneous bills from IXCs after they have switched local or interexchange carriers, and could also be a problem when customers port from a wireline carrier to a wireless carrier. While we do not address this issue in the instant order, we have sought comment on carrier petitions regarding this matter. *See* Pleading Cycle Established for Comments on Petition for Declaratory Ruling and/or Rulemaking, filed by Americatel Corporation, and for Comments on Joint Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, filed by AT&T Corp., Sprint Corp., and WorldCom, Inc., CG Docket No. 02-386, *Public Notice*, 17 FCC Rcd 25535 (2002).

[65] "Verizon and Verizon Wireless Reach Barrier-Free Porting Agreement in Advance of November 24 Deadline," Press Release from Verizon Wireless dated Sept. 22, 2003, available at http://news.vzw.com/news/2003/09/pr2003-09-22.html; and "Sprint Wireless Local Number Portability Plans on Track, on Schedule for November Deadline," Press Release from Sprint dated Oct. 1, 2003, available at Sprint.com.

carriers' service areas overlap.[66] Accordingly, BellSouth states, number portability can still occur despite the "rate center disparity" issue. We note that, to the extent that LECs assert an inability to port numbers to wireless carriers under the circumstances described herein, they bear the burden of demonstrating with specific evidence that porting to a wireless carrier without a point of interconnection or numbering resources in the same rate center to which the ported number is assigned is not technically feasible pursuant to our rules.

24. Second, neither the Commission's LNP rules nor any of the LNP orders have required wireless carriers to have points of interconnection or numbering resources in the same rate center as the assigned number for wireline-to-wireless porting. In the Local Number Portability *Second Report and Order*, the Commission adopted NANC recommendations regarding several specific aspects of number portability implementation, including technical and operational standards for the provision of number portability by wireline carriers.[67] In this context, the Commission adopted the NANC recommendations concerning the boundaries applicable to wireline-to-wireline porting. Specifically, the Commission adopted NANC recommendations limiting the scope of ports to wireline carriers based on wireline carriers' inability to receive numbers from foreign rate centers.[68]

25. In this order, we address a different issue, wireline-to-wireless porting. The NANC recommendations that were the subject of the *Second Report and Order* included a boundary for wireline-to-wireline porting, but were silent regarding wireline-to-wireless porting issues. In adopting the NANC recommendations, the Commission specifically recognized that the NANC had not included recommendations regarding wireless carriers' participation in number portability and that modifications to existing standards and procedures would probably need to be made as the industry obtained additional information about incorporating CMRS service providers into a long-term number portability solution and interconnecting CMRS carriers with wireline carriers already implementing number portability.[69] However, while the Commission noted that NANC should consider intermodal porting issues of concern to wireless carriers, it did not impose limits on wireline-to-wireless porting while NANC considered these issues, nor did it give up its inherent authority to interpret the statute and rules with respect to the obligation of wireline carriers to port numbers to wireless carriers. Accordingly, we find that in light of the fact that the Commission has never adopted any limits regarding wireline-to-wireless number portability, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's coverage area overlaps the geographic location of the rate center to which the number is assigned.[70]

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[66] *See* BellSouth Comments on CTIA's January 23rd Petition at 3. In recent ex parte filings, BellSouth argues that the Commission cannot proceed to require intermodal porting until it addresses the issues arising from the differences in network architecture, operational support systems, and regulatory requirements that distinguish wireline carriers from wireless carriers. *See, e.g.*, BellSouth Sept. 9th *Ex Parte*.

[67] *See Second Report and Order*. Subsequent NANC reports address technical issues associated with wireless-to-wireline porting. In the Further Notice, we seek comment on these technical feasibility issues.

[68] North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, Appendix D at 6 (rel. April 25, 1997). This report is available at www.fc.gov/wcb/tapd/nanc/lnpastuf.html.

[69] *Second Report and Order* 12 FCC Rcd at 12333-34.

[70] Similarly, wireless-to-wireline porting is required, as of November 24, 2003, where the requesting carrier's coverage area overlaps the geographic location of the rate center to which the number is assigned

26. We reject the argument advanced by certain wireline carriers,[71] that requiring LECs to port to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number would constitute a new obligation imposed without proper notice. In fact, the requirement that LECs port numbers to wireless carriers is not a new rule. Citing the D.C. Circuit's decision in the *Sprint* case specifying the distinction between clarifications of existing rules and new rulemakings subject to APA procedures, Qwest, for example, argues that the permitting wireline-to-wireless porting in the manner outlined above would change LECs' existing porting obligations.[72] As described earlier, however, section 251(b) of the Act and the Commission's Local Number Portability *First Report and Order* impose broad porting obligations on wireline carriers. Specifically, these authorities require wireline carriers to provide portability to all other telecommunications carriers, including wireless service providers. While the Commission decision in the Local Number Portability *Second Report and Order* limited the scope of wireline carriers' porting obligation with respect to the boundary for wireline-to-wireline porting, the Commission, as noted above, has never established limits with respect to wireline carriers' obligation to port to wireless carriers. The clarifications we make in this order interpret wireline carriers' existing obligation to port numbers to wireless carriers. Therefore, these clarifications comply with the requirements of the Administrative Procedure Act as well as the D.C. Circuit's decision in the *Sprint* case.

27. We also reject the argument made by some LECs that the scope of wireline-to-wireless porting should be limited because wireline carriers may not be able to offer portability to certain wireless subscribers.[73] As discussed above, under the Act and the Commission's rules, wireline carriers must port numbers to other telecommunications carriers, to the extent technically feasible. The fact that there may be technical obstacles that could prevent some other types of porting does not justify denying wireline consumers the benefit of being able to port their wireline numbers to wireless carriers. Each type of service offers its own advantages and disadvantages (e.g., wireless service offers mobility and larger calling areas, but also the potential for dropped calls) and wireline customers will consider these attributes in determining whether or not to port their number. In our view, it would not be appropriate to prevent wireline customers from taking advantage of the mobility or the larger local calling areas associated with wireless service simply because wireline carriers cannot currently accommodate all potential requests from customers with wireless service to port their numbers to a wireline service provider. Evidence from the record shows that limiting wireline-to-wireless porting to rate centers where a wireless carrier has a point of interconnection or numbering resources would deprive the majority of wireline consumers of the ability to port their number to a wireless carrier.[74] With such limited intermodal porting, the competitive benefits we seek to promote through the porting requirements may not be fully achieved. The focus of the porting rules is on promoting competition, rather than protecting individual competitors. To the extent that wireline carriers may have fewer opportunities to win customers through porting, this disparity results from the wireline network architecture and state regulatory requirements, rather than Commission rules.

28. We conclude that porting from a wireline to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number does not, in and of itself, constitute location portability, because the rating of calls to the ported number stays the same. As stated above, a wireless carrier porting-in a wireline number is required to maintain the number's original rate center designation following the port. As a result, calls to the ported number will continue to be rated

[71] *See, e.g.*, Letter from Gary Lytle, Qwest to Marlene H. Dortch, Secretary, FCC (filed Oct, 17, 2003) (Qwest Oct. 17th *Ex Parte*); and SBC Aug. 29 Ex Parte.

[72] Qwest Oct. 17th *Ex Parte* at 11. *See* Sprint Corp. v. FCC, 315 F. 3d 369 (D.C. Cir. 2003).

[73] *See, e.g.*, SBC Aug. 29th *Ex Parte* and BellSouth Sept. 9th *Ex Parte*.

[74] January 23rd Petition at 6.

in the same fashion as they were prior to the port. As to the routing of calls to ported numbers, it should be no different than if the wireless carrier had assigned the customer a new number rated to that rate center.[75]

29. Some wireline carriers contend that they lack the technical capability to support wireline-to-wireless porting in the manner outlined above, and that they need time to make technical modifications to their systems. We emphasize that our holding in this order requires wireline carriers to support wireline-to-wireless porting in accordance with this order by November 24, 2003, unless they can provide specific evidence demonstrating that doing so is not technically feasible pursuant to our rules.[76] We expect carriers that need to make technical modifications to do so forthwith, as the record indicates that major system modifications are not required and that several wireline carriers have already announced their technical readiness to port numbers to wireless carriers without regard to rate centers.[77] We recognize, however, that many wireline carriers outside the top 100 MSAs may require some additional time to prepare for implementation of intermodal portability. In addition we note that wireless carriers outside the top 100 MSAs are not required to provide LNP prior to May 24, 2004, and accordingly are unlikely to seek to port numbers from wireline carriers prior to that date. Therefore for wireline carriers operating in areas outside of the 100 largest MSAs, we hereby waive, until May 24, 2004, the requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned. We find that this transition period will help ensure a smooth transition for carriers operating outside of the 100 largest MSAs and provide them with sufficient time to make necessary modifications to their systems.

30. Carriers inside the 100 largest MSAs (or outside the 100 largest MSAs, after the transition period) may file petitions for waiver of their obligation to port numbers to wireless carriers, if they can provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules.[78] We note that several wireline carriers have already filed requests for waiver.[79] We will

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[75] As noted in paras. 39-40 below, there is a dispute as to which carrier is responsible for transport costs when the routing point for the wireless carrier's switch is located outside the wireline local calling area in which the number is rated. *See* Sprint Petition for Declaratory Ruling. The existence of this dispute over transport costs does not, however, provide a reason to delay or limit the availability of porting from wireline to wireless carriers.

We recognize that the Act limits wireline carriers' ability to route calls outside of Local Access Transport Area (LATA) boundaries. *See* 47 U.S.C. § 272. *See also*, Application by SBC Communications, Inc., Southwestern Bell Telephone, and Southwestern Bell Communications, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, *Memorandum Opinion and Order*, 15 FCC Rcd 18354 (2000). Accordingly, we clarify that our ruling is limited to porting within the LATA where the wireless carrier's point of interconnection is located, and does not require or contemplate porting outside of LATA boundaries.

[76] 47 U.S.C. § 251(b). We anticipate that, as a general matter, enforcement issues regarding both wireless-wireless and wireless-wireline local number portability at this time are likely to be better addressed in the context of Section 208 formal compliant proceedings or related mediations as opposed to FCC-initiated forfeiture proceedings. In this connection, we note that a violation of our number portability rules would constitute an unjust and unreas onable practice under section 201(b) of the Act.

[77] We note that Verizon has already announced its intention to port numb ers without regard to rate centers. *See* "Verizon and Verizon Wireless Reach Barrier-Free Porting Agreement in Advance of November 24 Deadline," Press Release from Verizon Wireless dated Sept. 22, 2003, available at http://news.vzw.com/news/2003/09/pr2003-09-22.html.

[78] 47 C.F.R. § 1.3, 52.25(e). *See also* WAIT Radio v. FCC, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

consider these requests separately, and our decision in this order is without prejudice to any potential disposition of these requests.

B. Interconnection Agreements

31. *Background.* In its January 23rd petition, CTIA requests that the Commission confirm that a wireline carrier's obligation to port numbers to a wireless carrier requires only that a carrier release a customer's number to another carrier and assign the number to the new carrier in the Number Portability Administration Center (NPAC) database, which is queried solely to identify the carrier that can terminate calls to the customer. From a practical perspective, CTIA contends, such porting can be based on a service-level porting agreement between carriers, and does not require direct interconnection or an interconnection agreement. Moreover, CTIA argues, because the Commission imposed number portability requirements on wireless carriers pursuant to its authority under sections 1, 2, 4(i), and 332 of the Act, and outside the scope of sections 251 and 252, number portability between wireline and wireless carriers is governed by a different regime than number portability between wireline carriers and is subject to the Commission's unique jurisdiction over wireless carriers.[80]

32. A number of wireless carriers agree with CTIA, arguing that requiring wireless carriers to establish interconnection agreements with wireline carriers from whom they sought to port numbers would delay LNP implementation.[81] Several wireline carriers, however, assert that interconnection agreements for porting are necessary.[82] SBC, for example, argues that under sections 251 and 252 of the Act, LECs must establish interconnection agreements for porting.[83] SBC contends that interconnection agreements guarantee parties their right to negotiate, provide a means of resolving disputes, and allow public scrutiny of agreements.[84] In addition, some LECs argue that, without interconnection agreements, they have no means to ensure that they will receive adequate compensation for transporting and terminating traffic to wireless carriers.

33. Other LECs, on the other hand, disagree that interconnection agreements are a necessary precondition to intermodal porting. Verizon contends that intermodal porting is not a Section 251 requirement and is therefore not necessary to incorporate wireless-wireline porting into Section 251 agreements.[85] AT&T questions whether either service level agreements or interconnection agreements are necessary, contending that because such little information needs to be exchanged between carriers for porting, less formal arrangements may be sufficient.[86] Sprint argues that interconnection agreements are

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[79] *See e.g.*, Franklin Telephone Company, Inc. Petition for Waiver, CC Docket Nos. 95-116 (filed Sept. 24, 2003); Intercommunity Telephone Company, LLC Petition for Waiver, CC Docket No. 95-116 (filed Sept. 24, 2003); and North Central Telephone Cooperative, Inc. Petition for Waiver, CC Docket No. 95-116 (filed Sept. 24, 2003).

[80] May 13th Petition at 17-18.

[81] *See* Sprint Comments on CTIA's May 13th Petition at 16; T-Mobile Comments on CTIA's May 13th Petition at 8; and Virgin Mobile Comments on CTIA's May 13th Petition at 4-5.

[82] *See* Missouri Independent Telephone Company Group Comments on CTIA's May 13th Petition; National Telecommunications Cooperative Association Comments on CTIA's May 13th Petition; and SBC Comments on CTIA's May 13th Petition.

[83] SBC Comments on CTIA's May 13th Petition at 8.

[84] *Id.*

[85] Sprint Comments on CTIA's May 13th Petition at 18; Verizon Comments on CTIA's May 13th Petition at 10.

[86] AT&T Reply Comments on CTIA's May 13th Petition at 7-8.

not required for LNP because whether or not a customer ports a number from one carrier to another has nothing to do with the interconnection arrangements two carriers use for the exchange of traffic.[87] Several LECs urge the Commission to let carriers determine on their own what type of agreement to use to facilitate porting.[88]

34. *Discussion.* We find that wireless carriers need not enter into section 251 interconnection agreements with wireline carriers solely for the purpose of porting numbers. We note that the intermodal porting obligation is also based on the Commission's authority under sections 1, 2, 4(i) and 332 of the Act. Sprint argues that interconnection agreements are not required to implement every section 251 obligation.[89] Sprint also claims that because porting involves a limited exchange of data (e.g., carriers need only share basic contact and technical information sufficient to allow porting functionality and customer verification to be established), interconnection agreements should not be required here.[90] We agree with Sprint that wireline carriers should be required to port numbers to wireless carriers without necessarily entering into an interconnection agreement because this obligation can be discharged with a minimal exchange of information. We thus find that wireline carriers may not unilaterally require interconnection agreements prior to intermodal porting. Moreover, to avoid any confusion about the applicability of section 252 to any arrangement between wireline and wireless carriers solely for the purpose of porting numbers, we forbear from these requirements as set forth below.

35. To the extent that the *Qwest Declaratory Ruling Order* could be interpreted to require any agreement pertaining solely to wireline-to-wireless porting to be filed as an interconnection agreement with a state commission pursuant to sections 251 and 252 of the Act, we forbear from those requirements. First, we conclude that interconnection agreements are not necessary to prevent unjust or unreasonable charges or practices by wireless carriers with respect to porting. The wireless industry is characterized by a high level of competition between carriers. Although states do not regulate the prices that wireless carriers charge, the prices for wireless service have declined steadily over the last several years.[91] No evidence suggests that requiring interconnection agreements for intermodal porting is necessary for this trend to continue.

36. For similar reasons, we find that interconnection agreements for intermodal porting are not necessary for the protection of consumers.[92] The intermodal LNP requirement is intended to benefit

[87] Letter from Luisa L. Lancetti, Vice President, PCS Regulatory Affairs, Sprint to John Rogovin, General Counsel, FCC (filed Sept. 22, 2003).

[88] *See* Association for Local Telecommunications Services Reply Comments on CTIA's May 13th Petition at 3, BellSouth Comments on CTIA's May 13th Petition at 9; and USTA Reply Comments on CTIA's May 13th Petition at 6.

[89] *See* note 87.

[90] Sprint's profile information exchange process is an example of the type of contact and technical information that would trigger an obligation to port. *See,* Letter from Luisa L. Lancetti, Vice President PCS Regulatory Affairs, Sprint Corp. to John B. Muleta, Chief, Wireless Telecommunications Bureau (filed Sept. 23, 2003); and Letter from Luisa L. Lancetti, Vice President, PCS Regulatory Affairs, Sprint Corp. to John B. Muleta, Chief, Wireless Telecommunications Bureau and William Maher, Chief, Wireline Competition Bureau (filed August 8, 2003).

[91] Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Eighth Report*, FCC 03-150, at 45 (rel. July 14, 2003).

[92] Certain LECs have expressed concern that without interconnection agreements between LECs and CMRS carriers, calls to ported numbers may be dropped, because NPAC queries may not be performed for customers who have ported their numbers from a LEC to a CMRS carrier. *See* Letter from Mary J. Sisak, Counsel for Centurytel, Inc. to Marlene H. Dortch, Secretary, FCC (filed Oct. 23, 2003). We do not find these concerns to be justified,

consumers by promoting competition between the wireless and wireline industries and creating incentives for carriers to provide new service offerings, reduced prices, and higher quality services. Requiring interconnection agreements for the purpose of intermodal porting could undermine the benefits of LNP to consumers by preventing or delaying implementation of intermodal porting. We also do not believe that the state regulatory oversight mechanism provided by Section 251 is necessary to protect consumers in this limited instance.

37. Finally, we conclude that forbearance is consistent with the public interest. Number portability, by itself, does not create new obligations with regard to exchange of traffic between the carriers involved in the port. Instead, porting involves a limited exchange of data between carriers to carry out the port. Sprint, for example, notes that to accomplish porting, carriers need only exchange basic contact information and connectivity details, after which the port can be rapidly accomplished.[93] Given the limited data exchange and the short time period required to port, we conclude that interconnection agreements approved under section 251 are unnecessary. In view of these factors, we conclude that it is appropriate to forbear from requiring interconnection agreements for intermodal porting.

C. The Porting Interval

38. CTIA requests that the Commission require wireline carriers to reduce the length of the porting interval, or the amount of time it takes two carriers to complete the process of porting a number, for ports from wireline to wireless carriers.[94] Currently, the wireline-to-wireline porting interval is four business days.[95] The wireline porting interval was adopted by the NANC in its Architecture and Administrative Plan for Local Number Portability, which was approved by the Commission.[96] Upon subsequent review of the porting interval, the NANC agreed that the four business day porting interval for wireline-to-wireline porting should not be reduced; it did not specify a porting interval for intermodal porting.[97] The current porting interval for wireless-to-wireless ports is two and one half hours.[98] We decline to require wireline carriers to follow a shorter porting interval for intermodal ports at this time. Instead, we will seek comment on this issue in the Further Notice. We note that, while we seek comment on whether to reduce the length of the wireline porting interval, the current four business day porting

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however, because the Commission's rules require carriers to correctly route calls to ported numbers. *See* Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7307-08, paras. 125-126.

[93] Sprint Comments on CTIA's May 13th Petition at 13-14.

[94] May 13th Petition at 7.

[95] Wireline carriers are required to complete the LSR/FOC exchange within 24 hours and complete the port within three business days thereafter. *See* North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, Appendix E (rel. April 25, 1997).

[96] *Second Report and Order*, 12 FCC Rcd 12281 (1997

[97] Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau, (filed Nov. 29, 2000).

[98] *See* North American Numbering Council Local Number Portability Administration Working Group Report on Wireless Wireline Integration, May 8, 1998, CC Docket No. 95-116 (filed May 18, 1998) (First Report on Wireless Wireline Integration); North American Numbering Council Wireless Number Portability Subcommittee Report on Wireless Number Portability Technical, Operational, and Implementation Requirements Phase II, CC Docket No. 95-116 (filed Sept. 26, 2000); ATIS Operations and Billing Forum, Wireless Intercarrier Communications: Interface Specification for Local Number Portability, Version 2, at § 2 p. 6 (Jan. 2003).

interval represents the outer limit of what we would consider to be a reasonable amount of time in which wireline carriers may complete ports. We note also that whatever porting interval affiliated wireline and wireless service providers offer within their corporate family must also be made available to unaffiliated service providers.[99]

D. Impact of Designating Different Routing and Rating Points on LNP

39. CTIA asks the Commission to resolve the intercarrier dispute between BellSouth and Sprint as it affects the rating and routing of calls to ported numbers.[100] CTIA contends that, although the dispute largely concerns matters of intercarrier compensation, to the extent LECs argue that they need not differentiate between rating and routing points for local calls, intermodal porting may not be available to consumers.[101] To ensure that permitting porting beyond wireline rate center boundaries does not cause customer confusion with respect to charges for calls, we clarify that ported numbers must remain rated to their original rate center. We note, however, that the routing will change when a number is ported. Indeed, several wireline carriers have expressed concern about the transport costs associated with routing calls to ported numbers. The National Exchange Carrier Association (NECA) and National Telecommunications Cooperative Association (NTCA), for example, argue in their joint comments, that when wireless carriers establish a point of interconnection outside of a rural LEC's serving area, a disproportionate burden is placed on rural LECs to transport originating calls to the interconnection points.[102] They argue that requiring wireline carriers to port telephone numbers to out-of-service area points of interconnection could create an even bigger burden. Other carriers point out, however, that issues associated with the rating and routing of calls to ported numbers are the same as issues associated with rating and routing of calls to all wireless numbers.[103]

40. We recognize the concerns of these carriers, but find that they are outside the scope of this order. As noted above, our declaratory ruling with respect to wireline-to-wireless porting is limited to ported numbers that remain rated in their original rate centers. We make no determination, however, with respect to the routing of ported numbers, because the requirements of our LNP rules do not vary depending on how calls to the number will be routed after the port occurs. Moreover, as CTIA notes, the rating and routing issues raised by the rural wireline carriers have been raised in the context of non-ported numbers and are before the Commission in other proceedings.[104] Therefore, without prejudging the outcome of any other proceeding, we decline to address these issues at this time as they relate to intermodal LNP.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Wireless-to-Wireline Porting

41. *Background.* As noted above, some LECs argue that allowing wireless carriers to port numbers wherever their coverage area overlaps the rate center in which the number is assigned would

[99] 47 U.S.C. §§ 201(b) and 202(a).

[100] May 13th Petition at 25-26.

[101] *Id.*

[102] NECA and NTCA Comments on CTIA's January 23rd Petition at 6.

[103] BellSouth Comments on CTIA's May 13th Petition at 11-12.

[104] *See, e.g.* In the Matter of Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, Sprint Petition for Declaratory Ruling, CC Docket No. 01-92 (filed July 18, 2002).

give wireless service providers an unfair competitive advantage over wireline carriers.[105] They contend that while this may facilitate widespread wireline-to-wireless porting, wireless-to-wireline porting can only occur in cases where the wireless customer is physically located in the wireline rate center associated with the phone number.[106] If the customer's physical location is outside the rate center associated with the number, porting the number to a wireline telephone at the customer's location could result in calls to and from that number being rated as toll calls. As a result, the LECs assert, they are effectively precluded from offering wireless-to-wireline porting to those wireless subscribers who are not located in the wireline rate center associated with their wireless numbers.[107] Furthermore, the LECs contend that for them to offer wireless-to-wireline porting in this context would require significant and costly operational changes.[108] Qwest, for example, argues that if the Commission were to make the Local Access Transport Area (LATA) or Numbering Plan Area (NPA) the relevant geographic area for porting, LECs would be required to upgrade switches, increase trunking, and rework billing and provisioning systems.[109]

42. *Discussion*. We seek comment on how to facilitate wireless-to-wireline porting where there is a mismatch between the rate center associated with the wireless number and the rate center in which the wireline carrier seeks to serve the customer. Some wireline commenters contend that requiring porting between wireline and wireless carriers where the wireless carrier does not have a point of interconnection or numbering resources in the rate center creates a competitive disparity because wireline carriers would not have the same flexibility to offer porting to wireless customers whose numbers are not associated with the wireline rate center. We seek comment on the technical impediments associated with requiring wireless-to-wireline LNP when the location of the wireline facilities serving the customer requesting the port is not in the rate center where the wireless number is assigned. We seek comment on whether technical impediments exist to such an extent as to make wireless-to-wireline porting under such circumstances technically infeasible. Commenters that contend there are technical implications should specifically describe them, including any upgrades to switches, network facilities, or operational support systems that would be necessary. Commenters should also provide detailed information on the magnitude of the cost of such upgrades along with documentation of the estimated costs. We also seek comment on whether the benefits associated with offering wireless-to-wireline porting would outweigh the costs associated with making any necessary upgrades. We seek comment on the expected demand for wireless-to-wireline porting. We note that wireline customers who decide to port their numbers to wireless carriers are able to port their numbers back to wireline carriers if they choose, because the numbers remain associated with their original rate centers.

43. In addition to technical factors, we seek comment on whether there are regulatory requirements that prevent wireline carriers from porting wireless numbers when the rate center associated with the number and the customer's physical location do not match. Commenters that suggest such obstacles exist and result in a competitive disadvantage should submit proposals to address these impediments, as well as consider the collateral effect on other regulatory objectives as a result of these proposals. We note that wireline carriers are not able to port a number to another wireline carrier if the rate center associated with the number does not match the rate center associated with the customer's

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[105] *See, e.g.*, Centurytel Comments on CTIA's January 23rd Petition at 5-6; Fred Williams & Associates Comments on CTIA's January 23rd Petition at 8; and SBC Comments on CTIA's January 23rd Petition at 1.

[106] *See, e.g.*, Qwest Oct. 9th *Ex Parte*; and Letter from Herschel L. Abbott, Jr., Vice President-Government Affairs, BellSouth to Michael K, Powell, Chairman, FCC (filed Oct. 14, 2003).

[107] *Id.*

[108] *See* Letter from Cronan O'Connell, Vice President-Federal Regulatory, Qwest to Marlene H. Dortch, Secretary, FCC (filed July 24, 2003) at 4-5 (Qwest July 24th *Ex Parte*); and SBC Aug. 29th *Ex Parte*.

[109] *See* Qwest July 24th *Ex Parte* at 4-5.

physical location. We seek comment on whether wireless and wireline numbers should be treated differently in this regard. We also seek comment on whether there are any potential adverse impacts to consumers resulting from wireless-to-wireline porting where the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer.

44. In addition, we seek comment on whether there are other competitive issues that could affect our LNP requirements. For example, to the extent that wireless-to-wireline porting may raise issues regarding the rating of calls to and from the ported number when the rate center of the ported number and the physical location of the customer do not match, we seek comment on the extent to which wireline carriers should absorb the cost of allowing the customer with a number ported from a wireless carrier to maintain the same local calling area that the customer had with the wireless service provider. Alternatively, we seek comment on the extent to which wireline carriers can serve customers with numbers ported from wireless carriers on a Foreign Exchange (FX) or virtual FX basis.[110] A third option is for wireline carriers to seek rate design and rate center changes at the state level to establish larger wireline local calling areas. We seek comment on the procedural, technical, financial, and regulatory implications of each of these approaches. We also seek comment on the viability of each of these approaches and whether there are any alternative approaches to consider.

B. Porting Interval

45. *Background.* Over the past several years, the NANC has studied the wireline porting interval and reviewed options for reducing the length of the interval for simple ports.[111] In the Third Report on Wireless/Wireline Integration, the Local Number Portability Administration Working Group analyzed the elements of the wireline porting interval and investigated how reducing the length of the interval for simple ports would affect carriers' operations.[112] The report noted that reducing the porting interval would require wireline carriers to make significant changes to their operations. First, reducing the porting interval would require wireline carriers to automate and make uniform the Local Service Request (LSR)/Local Service Request Confirmation (LSC) Firm Order Confirmation (FOC) process.[113] In addition, the report indicated that wireline carriers would likely have to eliminate or adjust their batch processing operations. The report noted that a change from batch processing to real time data processing would require in-depth system analysis of all business processes that use batch processing systems.[114] Based on its analysis of these and other challenges, the working group concluded that because most wireline carriers already found their processes and systems challenged to meet the current porting interval it was not feasible to reduce the length of the wireline porting interval for simple ports.[115]

46. Because of the number and complexity of changes that would be required in the porting process for wireline carriers, the NANC was not able to reach consensus on reducing the porting interval

[110] T-Mobile Comments on CTIA's January 23rd Petition at 11.

[111] *See* Second Report on Wireless Wireline Integration; Third Report on Wireless Wireline Integration.

[112] *See* Third Report on Wireless Wireline Integration. Simple ports are defined as those ports that: do not involve unbundled network elements, involve an account for a single line (porting a single line from a multi-line account is not a simple port), do not include complex switch translations (e.g., Centrex or Plexar, ISDN, AIN services, remote call forwarding, multiple services on the loop), may include CLASS features such as Caller ID, and do not include a reseller. All other ports are considered "complex" ports. *Id.* at 6.

[113] *Id.* at 13.

[114] *Id.* at 13-14.

[115] *Id.* at 14.

to accommodate intermodal porting.[116] The wireless industry expressed concern that the wireline four business day porting interval does not fit within its business model.[117] In order to accommodate the wireless business model, the NANC attempted to shorten the porting interval for wireline-to-wireless ports by developing a process that will allow the wireless carrier to activate the port before the wireline carrier activates the disconnect in the Number Portability Administration Center (NPAC). This process results in a situation referred to as a "mixed service" condition, whereby the customer can make calls on both the wireline and wireless phones before the port is completed. The NANC reported that this mixed service condition can result in misdirected callbacks in an emergency situation.[118] That is, for example, if the emergency operator attempts to callback a person that made a call from the wireless phone, the call may be routed to the wireline phone. The NANC consulted with the National Emergency Number Association and concluded that, while the mixed service condition is not desirable, the incidence of such is low and would not impede intermodal porting[119]

47. LECs contend that their current porting interval cannot be reduced readily for intermodal porting, because it is necessary to support the complex systems and procedures of wireline carriers.[120] SBC, for example, explains that the current porting interval not only ensures that the porting out carrier correctly ports a number to the porting in carrier, but also that these carriers accurately update other systems, including E911, billing, and maintenance.[121] Qwest notes that wireline carriers have longer porting intervals due to differences in network and system configurations.[122] Qwest indicates that wireline carriers are often constrained by the provisioning of physical facilities (e.g., loops) to serve customers.[123] Moreover, LECs contend, reducing the length of the current wireline porting interval would require them to make changes to many of their systems and would involve significant expense.[124]

48. Wireless carriers argue that a reduced intermodal porting interval would encourage more consumers to use porting by eliminating confusion about the porting process.[125] They argue that a reduced porting interval is technically achievable and that wireline carriers should be required to make the

[116] Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau (filed Nov. 29, 2000).

[117] Wireline carriers are required to complete the LSR/FOC exchange within 24 hours and complete the port within three business days thereafter. *See* North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, Appendix E (rel. April 25, 1997). *See also* Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau (filed Nov. 29, 2000).

[118] *See* Second Report on Wireless Wireline Integration.

[119] *See* Letter from John R. Hoffman, Chair, NANC to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, dated Nov. 29, 2000.

[120] *See* letter from Kathleen Levitz, Vice President-Federal Regulatory, BellSouth to Marlene H. Dortch, Secretary, FCC, dated Oct. 15, 2003.

[121] SBC Aug. 29th *Ex Parte*.

[122] Qwest Comments on CTIA's May 13th Petition at 7.

[123] *Id.*

[124] *Id.* at 5.

[125] *See, e.g.*, AT&T Wireless Comments on CTIA's May 13th Petition at 3-6; Sprint Comments on CTIA's May 13th Petition at 6-12; and T-Mobile Comments on CTIA's May 13th Petition at 7-9.

necessary changes to their systems. At least one wireless carrier recognizes, however, that significant changes to LEC systems may be required to achieve reduced porting intervals.[126]

49. *Discussion.* Reducing the porting interval could benefit consumers by making it quicker for consumers to port their numbers. To that end, wireless carriers intend to complete intramodal wireless ports within two and one-half hours.[127] There, however, may be technical or practical impediments to requiring wireline carriers to achieve shorter porting intervals for intermodal porting. We seek comment on whether we should reduce the current wireline four business day porting interval for intermodal porting. If so, what porting interval should we adopt? Commenters proposing a shorter porting interval should specify what adjustments should be made to the LNP process flows developed by the NANC.[128] For example, the wireline NANC LNP Process Flows establish that the FOC must be finalized within 24 hours of receiving the port request.[129] Specific time periods are also established for other steps within the porting process that may require adjustment in the event that a shorter porting interval is adopted.

50. We also seek comment on whether adjustments to the NPAC processes, including interfaces and porting triggers, would be required.[130] In addition, we seek comment on the risks, if any, associated with reducing the porting interval for intermodal porting. We seek comment on an appropriate transition period in the event a shorter porting interval is adopted, during which time carriers can modify and test their systems and procedures.

51. We seek input from the NANC on reducing the interval for intermodal porting. The NANC recommendation should include corresponding updates to the NANC LNP process flows and any recommendations on an appropriate transition period. The NANC should provide its recommendations promptly as we intend to review the record and address this issue expeditiously.

V. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

52. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities of the proposals suggested in the *Further Notice*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the *Further Notice*, and must have a separate and distinct heading designating them as responses to the IRFA.

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[126] *See* Sprint Comments on CTIA's May 13th Petition.

[127] *See* First Report on Wireless Wireline Integration; North American Numbering Council Wireless Number Portability Subcommittee Report on Wireless Number Portability Technical, Operational, and Implementation Requirements Phase II, CC Docket No. 95-116 (filed Sept. 26, 2000); and ATIS Operations and Billing Forum, Wireless Intercarrier Communications: Interface Specification for Local Number Portability, Version 2, at § 2 p. 6 (Jan. 2003).

[128] *See* Local Number Portability Selection Working Group Final Report and Recommendation to the FCC (rel. April 25, 1997).

[129] FOC, or Firm Order Confirmation refers to the response the old service provider sends to the new service provider upon receiving the new service provider's request to port a number, setting a due time and date for the port. *See* Local Number Portability Selection Working Group Final Report and Recommendation to the FCC (rel. April 25, 1997).

[130] The NPAC, administered by NeuStar, operates and maintains the centralized databases associated with LNP. Interaction with the NPAC is required for all porting transactions.

B. Paperwork Reduction Analysis

53. This *Further Notice* contains no new or revised information collections.

C. Ex Parte Presentations

54. This is a permit-but-disclose notice and comment rule making proceeding. Members of the public are advised that ex parte presentations are permitted, provided they are disclosed under the Commission's Rules.[131]

D. Comment Dates

55. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before twenty (20) days from the date of publication of this Further Notice in the Federal Register and reply comments thirty (30) days from the date of publication of this Further Notice in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

56. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rule making number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an E-mail to ecfs@fcc.gov, and should including the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

57. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rule making number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rule making number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room TW-A306, 445 12th Street, S.W., Washington, D.C. 20554.

58. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered diskette filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be

[131] *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to: 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, the docket number of this proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554.

59. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202)418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov. This Further Notice can be downloaded in ASCII Text format at: http://www.fcc.gov/wtb.

E. Further Information

60. For further information concerning this Further Notice of Proposed Rulemaking, contact: Jennifer Salhus, Attorney Advisor, Policy Division, Wireless Telecommunications Bureau, at (202) 418-1310 (voice) or (202) 418-1169 (TTY) or Pam Slipakoff, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-1500 (voice) or (202) 418-0484 (TTY).

VI. ORDERING CLAUSES

61. Accordingly, IT IS ORDERED THAT, pursuant to sections 4(i) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i) and 160, the Petitions for Declaratory Ruling filed by CTIA on January 23, 2003, and May 13, 2003, are GRANTED to the extent stated herein.

62. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Parties

A. January 23rd Petition

Comments

ALLTEL
AT&T
AT&T Wireless
BellSouth
California Public Utilities Commission (CA PUC)
CenturyTel, Inc.
Fred Williamson & Associates
Illinois Citizens Utility Board
Independent Alliance
Michigan Exchange Carriers Association
Midwest Wireless
National Exchange Carrier Association and National Telephone Cooperative Association (NECA & NTCA)
Nebraska Rural Independent Companies
New York State Department of Public Service (NY DPS)
Nextel
Ohio Public Utilities Commission (Ohio PUC)
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Rural Telecommunications Group (RTG)
SBC
TCA, Inc
Texas 911 Agencies
T-Mobile
United States Telecom Association (USTA)
United States Cellular (US Cellular)
WorldCom

Reply Comments

AT&T
AT&T Wireless
BellSouth
CA PUC
Cingular Wireless
CTIA
Fred Williamson & Associates
McLeod USA Telecommunications Services
Mid-Missouri Cellular
Bernie Moskal
South Dakota Telecommunications Association
Sprint
T-Mobile
USTA

Valor Telecommunications Enterprises
Virgin Mobile

B. May 13th Petition

Comments

ALLTEL
AT&T
AT&T Wireless
BellSouth
CA PUC
Cincinnati Bell Wireless
Cingular Wireless
City of New York
First Cellular of Southern Illinois
Illinois Citizens Utility Board
Independent Alliance
Missouri Independent Telephone Group
Nebraska Public Service Commission
NENA
Nextel
Ohio PUC
OPASTCO
Qwest
Rural Cellular Association
Rural Iowa Independent Telephone Association
RTG
SBC
Sprint
T-Mobile
Triton PCS
USTA
Verizon
Verizon Wireless
Virgin Mobile
Western Wireless
Wireless Consumers Alliance

Reply Comments

ALLTEL
ALTS
AT&T
AT&T Wireless
Cellular Mobile Systems of St. Cloud, LLC
Cingular Wireless
CTIA
ENMR-Plateau
Illinois Citizens Utility Board

Missouri Independent Telephone Group
NTCA
NTELOS Inc.
T-Mobile
South Dakota Telecommunications Association
Sprint
US Cellular
USTA
Verizon
Verizon Wireless
XIT Cellular

APPENDIX B

Initial Regulatory Flexibility Analysis
Further Notice of Proposed Rulemaking
CC Docket No. 95-116

1. As required by the Regulatory Flexibility Act, as amended (RFA),[132] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice), CC Docket No. 95-116. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, the Further Notice and IRFA (or summaries thereof) will be published in the *Federal Register*.[133]

A. Need for, and Objectives of, the Proposed Rules

2. The Further Notice seeks comment on how to facilitate wireless-to-wireline porting where the rate center associated with the wireless number and the rate center in which the wireline carrier seeks to serve the customer do not match. The Further Notice also seeks comment on whether the Commission should reduce the current four-business day porting interval for intermodal porting.

B. Legal Basis for Proposed Rules

3. The proposed action is authorized under Section 52.23 of the Commission's rules, 47 C.F.R. § 52.23, and in Sections 1, 3, 4(i), 201, 202, 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154(i), 201-202, and 251.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[134] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[135] In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.[136] Under the Small business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established

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[132] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[133] *See* 5 U.S.C. § 603(a)

[134] See 5 U.S.C. § 603(b)(3).

[135] 5 U.S.C. § 601(6).

[136] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

by the Small Business Administration (SBA).[137] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[138] Nationwide, as of 1992, there were approximately 275,801 small organizations.[139]

5. **Incumbent Local Exchange Carriers.** We have included small incumbent local exchange carriers LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[140] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[141] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts. According to the FCC's *Telephone Trends Report* data, 1,337 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services.[142] Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees.[143]

6. **Competitive Local Exchange Carriers.** Neither the Commission nor the SBA has developed a specific small business size standard for providers of competitive local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.[144] According to the FCC's *Telephone Trends Report* data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.[145] Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees.[146]

7. **Wireless Service Providers.** The SBA has developed a size standard for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under

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[137] 15 U.S.C. § 632.

[138] *Id.* § 601(4).

[139] Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[140] 5 U.S.C. § 601(3).

[141] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 5 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[142] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, at Table 5.3, p 5-5 (Aug. 2003) (*Telephone Trends Report*).

[143] *Id.*

[144] 13 C.F.R. § 121.201, NAICS code 513310.

[145] Telephone Trends Report, Table 5.3.

[146] *Id.*

that standard, such a business is small if it has 1,500 or fewer employees.[147] According to the FCC's *Telephone Trends Report* data, 719 companies reported that they were engaged in the provision of wireless telephony.[148] Of these 719 companies, an estimated 294 have 1,500 or fewer employees and 425 have more than 1,500 employees.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.

8. To address concerns regarding wireline carriers' ability to compete for wireless customers through porting, future rules may change wireline porting guidelines. In addition, future rules may require wireline carriers to reduce the length of the current wireline porting interval for ports to wireless carriers. These potential changes may impose new obligations and costs on carriers.[149] Commenters should discuss whether such changes would pose an unreasonable burden on any group of carriers, including small entity carriers.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

9. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[150]

10. The Further Notice reflects the Commission's concern about the implications of its regulatory requirements on small entities. Particularly, the Further Notice seeks comment on the concern that wireline carriers, including small wireline carriers, have expressed that permitting wireless carriers to port numbers wherever their rate center overlaps the rate center in which the number is assigned would give wireless carriers an unfair competitive advantage over wireline carriers. Wireline carriers contend that while permitting porting outside of wireline rate center boundaries may facilitate widespread wireline-to-wireless porting, wireless-to-wireline porting can only occur in cases where the wireless customer is physically located in the wireline rate center associated with the phone number. If the customer's physical location is outside the rate center associated with the number, porting the number to a wireline telephone at the customer's location could result in calls to and from that number being rated as toll calls. As a result, LECs assert, they are effectively precluded from offering wireless-to-wireline porting to those wireless subscribers who are not located in the wireline rate center associated with their wireless numbers.

11. The Further Notice seeks comment on how to facilitate wireless-to-wireline porting when the location of the wireline facilities serving the customer requesting the port is not in the rate center where the wireless number is assigned. The Further Notice seeks comment on whether there are technical or regulatory obstacles that prevent wireline carriers from porting-in wireless numbers when the rate center associated with the number and the customer's physical location do not match. The Further Notice

[147] 13 C.F.R. § 121.201, NAICS code 513322.

[148] Telephone Trends Report, Table 5.3.

[149] *See e.g.*, Further Notice, paras. 41, 48-49.

[150] *See* 5 U.S.C. § 603.

asks commenters that contend that such obstacles exist and result in a competitive disadvantage to submit proposals to mitigate these obstacles.

12. In addition, the Further Notice seeks comment on alternative methods to facilitate wireless-to-wireline porting. To the extent that wireless-to-wireline porting may raise issues regarding the rating of calls to and from the ported number when the rate center of the ported number and the physical location of the customer do not match, the Further Notice seeks comment on the extent to which wireline carriers should absorb the cost of allowing the customers with a number ported from a wireless carrier to maintain the same local calling area that the customer had with the wireless service provider. Alternatively, the Further Notice seeks comment about whether wireline carriers may serve customers with numbers ported from wireless carriers on a Foreign Exchange (FX) or Virtual FX basis. The Further Notice seeks comment on the procedural, technical, and regulatory implications of each of these approaches. These questions provide an excellent opportunity for small entity commenters and others concerned with small entity issues to describe their concerns and propose alternative approaches.

13. The Further Notice also seeks comment about whether the Commission should require wireline carriers to reduce the length of the current wireline porting interval for ports to wireless carriers. The Further Notice analyzes the current wireline porting interval and seeks comment about whether there are technical or practical impediments to requiring wireline carriers to achieve shorter porting intervals for intermodal porting. The Further Notice recognizes that, if a reduced porting interval was adopted, carriers may need additional time to modify and test their systems and procedures. Accordingly, the Further Notice seeks comment on an appropriate transition period in the event a shorter porting interval is adopted.

14. Throughout the Further Notice, the Commission emphasizes in its request for comment, the individual impacts on carriers as well as the critical competition goals at the core of this proceeding. The Commission will consider all of the alternatives contained not only in the Further Notice, but also in the resultant comments, particularly those relating to minimizing the effect on small businesses.

F. Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules

15. None.

SEPARATE STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: *In re Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; CC Docket No. 95-116*

After today it's easier than ever to cut the cord. By firmly endorsing a customer's right to untether themselves from the wireline network – and take their telephone number with them – we act to eliminate impediments to competition between wireless and wireline services. Seamless wireline-to-wireless porting is another landmark on the path to full fledged facilities-based competition.

Our action promises significant consumer benefits for wireline and wireless customers. I have heard the concerns expressed by some wireline providers that wireline network architectures and state-imposed rate centers complicate number portability. This proceeding has undoubtedly focused the Commission's attention on these issues. State regulators have long been champions of local number portability and I appreciate their support. I look forward, however, to working with my colleagues in the states to remove additional barriers to inter-modal local number portability such as the difficulty of some providers to consolidate rate centers to more accurately match wireless carrier service areas.

In the end, the consumer benefits associated with inter-modal LNP convince me that the time for Commission action is now. No doubt there will be some bumps in the road to implementation, but I trust that carriers will use their best efforts to ensure consumers have the highest quality experience possible. I look forward to the Commission's November 24th trigger for this obligation and to working with my colleagues to ensure that full wireline to wireless portability is a reality for all consumers everywhere.

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Telephone Number Portability – CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No. 95-116

This Order removes the final roadblocks to implementing wireline-to-wireless number portability, which is an important step in facilitating intermodal competition. The Commission mandated local number portability (LNP) within and across the wireline and wireless platforms, where technically feasible, with the goal of maximizing consumer choice. As of November 24, 2003, this goal will become a reality: Most consumers who seek to switch wireless providers or to move from a local exchange carrier to a wireless carrier will be able to retain their existing telephone numbers. While I expressed sympathy in the past to arguments that the November 24 deadline was premature, our present focus must be on implementation, and the foregoing Order provides much-needed clarity regarding the parties' obligations.

I recognize that wireline network architecture and state rating requirements will prevent many (if not most) consumers from porting wireless numbers to wireline carriers. Although, in the short term, wireline carriers will have more limited opportunities to benefit from intermodal LNP than wireless carriers will, I was simply not willing to block consumers from taking advantage of the porting opportunities that are technologically feasible today. I am hopeful that existing obstacles to wireless-to-wireline porting will be addressed as expeditiously as possible through technological upgrades and, where necessary, state regulatory changes.

Finally, I am pleased that the Commission is stepping up its consumer outreach efforts on the issues of wireless and intermodal LNP. To this end, I commend the recent proactive efforts of the Wireless Telecommunications Bureau and the Consumer and Government Bureau to educate the public about our LNP rules. I am also pleased with the recent efforts of industry to reach out to consumers so that they understand what number-porting opportunities are available to them. For consumers to benefit from our expanded LNP regime, it is imperative for them to have sufficient information to make the most appropriate choices for themselves.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL J. COPPS

Re: *Telephone Number Portability CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues (CC Docket No. 95-116)*

With today's action, consumers are assured that intermodal telephone number portability will begin, at last, to become a reality later this month. After numerous delays, consumers are on the verge of enjoying the significant new ability to take their current telephone numbers with them when they switch between carriers and technologies. This gives consumers much sought-after flexibility and it provides further competitive stimulus to telephone industry competition. This makes it a win-win situation for consumers and businesses alike.

It was some seven years ago, in the 1996 Act, when Congress recognized that the ability of consumers to retain their phone numbers when switching providers would facilitate the development of competition. Congress instructed us to get this job done and to use "technical feasibility" as our guide in making sure the vision became reality. This we have labored mightily to do. As a result, American consumers will be able to take their digits with them, unimpeded by the hassle, loss of identity and attendant expenses that until now have accompanied switching between service providers and technologies.

The bulk of the problems accompanying the challenge of porting numbers are behind us now. A very limited few remain and these are the subject of the Further Notice of Proposed Rulemaking also approved today. I am confident that these can be handled expeditiously if all interested parties work together. Similarly, any minor implementation problems that develop should be amenable to swift and cooperative corrective actions. It has taken considerable cooperation to bring us to this important point, and I believe consumer support for porting will encourage all parties to reach quick resolution of the few remaining challenges.

Finally, it is difficult to see how we are ever going to have true intermodal competition in the telephone industry apart from initiatives like the one we embark on today. Intermodal competition always receives strong rhetorical support. Today it gets some action, too.

SEPARATE STATEMENT OF COMMISSIONER KEVIN J. MARTIN

Re: *Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116

I am pleased to support this item because it provides important consumer benefits by promoting competition in the wireline telephone market. One of the primary reasons I supported wireless local number portability is the additional competition it is likely to encourage in the wireline market. *See* Press Statement of Commissioner Kevin J. Martin on the Commission's Decision on Verizon's Petition for Permanent Forbearance from Wireless Local Number Portability Rules (July 16, 2002). As I stated last year, the ability to transfer a wireline phone number to a wireless phone is an important part of ensuring that competition with wireline phones continues to grow. I am glad that today the full Commission agrees.

I am disappointed, however, that the Commission was not able to provide this guidance until weeks before the LNP requirement is scheduled to take effect. The Commission has an obligation to minimize the burdens our regulations place on carriers, and I wish we had provided the guidance in this Order considerably sooner.

Finally, I recognize that LNP – although very important for consumers – places real burdens on the carriers, particularly the small and rural carriers. Accordingly, I support the decision to waive our full porting requirements until May 24, 2004, for wireline carriers operating in areas outside of the largest 100 MSAs. I am also pleased that we emphasize that those wireline carriers may file waiver requests if they need additional time.

SEPARATE STATEMENT OF COMMISSIONER JONATHAN S. ADELSTEIN

Re: In re Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; CC Docket No. 95-116

I am pleased to support this Order because it clarifies that our rules and policies provide for enhanced number portability opportunities for American consumers. Specifically, we enable consumers to port their wireline telephone numbers to local wireless service providers. We also affirm that wireless carriers are required to port telephone numbers to wireline carriers but recognize that wireline carriers are only able to receive those numbers from wireless carriers on a limited basis. Finally, we rightly seek comment on how to deal with these limitations and further facilitate wireless-to-wireline porting.

I believe that our decision is consistent with Section 251(b) of the Communications Act, which requires local exchange carriers (LECs) to provide local number portability to the extent technically feasible. However, I do recognize that there may be certain limitations on the ability of the nations' smallest LECs to technically provide local number portability. In this regard, I am extremely pleased we made the decision to waive until May 24, 2004, the requirement of LECs operating in areas outside of the largest 100 MSAs to port numbers to wireless carriers that do not have a point of interconnection or numbering resource in the rate center where the LEC customer's wireline number is provisioned.

I recognize that there may be other compelling circumstances that make it disproportionately difficult for these same LECs to provide full number portability. Consequently, I am pleased we agreed to the language in the item recognizing that those wireline carriers may need to file additional waivers of our LNP requirement.

I remain concerned, however, that today's clarification of our LNP rules and obligations will exacerbate the so-called "rating and routing" problem for wireless calls that are rated local, but are in fact carried outside of wireline rate centers. While I appreciate the language in the Order that clarifies that ported numbers must remain rated to the original rate center, the rating and routing issue continues to remain unresolved for rural wireline carriers as well as neighboring LECs and the wireless carriers whose calls are being carried. I believe that we must redouble our efforts to resolve this critical intercarrier compensation issue as quickly and comprehensively as possible.

Finally, I take very seriously the concerns of those wireline carriers that have argued wireline-to-wireless number portability should be limited pending the resolution of issues associated with full wireless-to-wireline porting. While I do not believe that these concerns outweigh the very significant benefits to American consumers that our clarification provides today, I do want to highlight my keen interest in working both with industry and the Chairman and my fellow Commissioners on solutions to address this inequity. The Commission should constantly strive to level the proverbial playing field, and the situation presented by our LNP rules and policies should not be any different.

CONFIDENTIAL

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Federal Communications Commission
Consumer & Governmental Affairs Bureau
Office of The Bureau Chief

CGB

06 May 2004

Via MAIL and FASCIMILE
The Honorable Stan Wise
Commissioner, Georgia Public Service Commission
President, National Association of Regulatory Utility Commissioners
244 Washington Street, S.W.
Atlanta, GA 30334

Dear Stan:

I want to express my deep appreciation for the efforts of National Association of Regulatory Utility Commissioners (NARUC) and its members in making the initial deployment of wireless number portability such a success. Since November 24, 2003, more than three million consumers have been able to choose a new wireless carrier or switch between a wireless and wireline carrier without having to sacrifice their telephone number. As you know, after May 24, 2004, consumers outside of the top markets will possess the power to make the same choice. In light of the approaching opportunity for *all* American consumers to take their phone numbers with them, I wanted to write you out of concern about certain rural wireline carriers' requests for waivers of their porting obligations that are pending in many states.

When considering requests to waive these important, consumer-friendly obligations, states should remain mindful of the tremendous customer benefits that porting generates. I know that NARUC and the FCC agree that the ability of wireless and wireline consumers to port their numbers remains central to producing competition, choice, lower costs, and increased innovation. These benefits are particularly important in rural areas where competition may be less robust than in more urban markets.

It is with those policies in mind that I hope that you, in your capacity as NARUC's president, will encourage state commissions to hold carriers that seek waivers of their porting obligations to the appropriate standard of review. At this point, I understand that many rural wireline carriers have sought waivers of their obligations, and that, in some cases, waivers have been granted. Of course, states have jurisdiction to waive porting obligations for certain rural telephone companies under Section 251(f) of the Telecommunications Act of 1996, where carriers demonstrate undue economic burden or technological infeasibility. I think we can agree that the State commissions should strictly apply that statutory standard so that the rights of consumers are protected. I encourage the State commissions to ensure that carriers seeking waivers demonstrate that they are on a path to compliance so that customers of these

carriers will not be forever denied the rights their fellow consumers enjoy. If relief were to be granted in the absence of extraordinary circumstances, or for indefinite periods, it would be a setback for rural consumers. It should be noted that some of the same carriers that now seek to have their porting obligations waived have long known that they would, absent a demonstration of undue burden, be required to provide porting to both wireline and wireless carriers.

As we approach the May 24, 2004 deadline for nationwide local number portability deployment, the FCC looks forward to working with NARUC and the State Commissions to make sure that the interests of the American consumer are protected. Because of the publicity regarding the nationwide implementation of wireless and intermodal LNP, consumers in all markets will expect to receive its benefits. Where it is deemed appropriate to grant relief, it is important that consumers be educated so that they can make informed decisions as to their telephone service.

I would be happy to discuss this issue further with you or any of your members in the coming weeks.

Sincerely yours,



K. Dane Snowden
Chief
Consumer & Governmental Affairs Bureau

CC: Commissioner Robert Nelson, Chair, Telecommunications Committee, NARUC
Commissioner Carl Wood, Chair, Consumer Affairs Committee, NARUC
John Muleta, Chief, Wireless Telecommunications Bureau
William Maher, Chief, Wireline Competition Bureau



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Washington Watch

Edited by Deborah Long
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Past Issues

Studies show that as much as 20 % of minutes processed by end office switches is going unbilled. This unbilled "Phantom Traffic" is the focus of a one-day conference April 7, 2004 in Washington, DC. For more information please see the Conference Brochure

NECA FILINGS

NECA TARIFF FCC NO. 5
Transmittal No. 1018
3/17/2004 - NECA filed Transmittal No. 1018, revising its Tariff F.C.C. No. 5 to become effective April 1, 2004. This filing makes additions and miscellaneous changes to the listings of companies in the Title Pages, Optional Rate Plan Availability, DSL Access Services Availability and Federal Universal Service Charge sections.

NECA TARIFF FCC NO. 5
Transmittal No. 1019
3/17/2004 - NECA filed Transmittal No. 1019, revising its Tariff F.C.C. No. 5 to become effective April 1, 2004. This filing adds Commonwealth Telephone Company to the list of companies applying Local Number Portability (LNP) End User Charges.

NECA TARIFF FCC NO. 5
Transmittal No. 1020
3/17/2004 - NECA filed Transmittal No. 1020, revising its Tariff F.C.C. No. 5 to become effective April 1, 2004. This filing modifies NECA's Asynchronous Transfer Mode Cell Relay Access (ATM–CRS) and Digital Subscriber Line Access (DSL) Services. Specifically, this filing: 1) reduces the monthly rates for most existing ATM-CRS Port speeds, 2) introduces a third discount commitment level under the DSL Access Services Discount Pricing Arrangement, 3) introduces a non-chargeable optional function associated with ATM-CRS Ports enabling customers to transport Internet Protocol packets over the Telephone Company's network, and 4) removes the local exchange service copper-only requirement for ADSL and SDSL Access Services.

FCC RELEASES

LNP
Order, CC Docket No. 95-116, DA 04-726
3/17/2004 - The FCC has granted the requests of Cellular Telecommunications and Internet Association, Cingular Wireless, LLC, AT&T Wireless Services, Inc. and ALLTEL Communications, Inc. to withdraw their petition for a rulemaking asking the FCC to rescind the rule requiring commercial mobile radio service (CMRS) providers to provide local number portability.

SECTION 272
Report and Order, CC Docket Nos. 03-228, 96-149, 98-141, 96-149 and 01-337, FCC 04-54
3/17/2004 - The FCC issued a Report and Order removing prohibition against sharing by BOCs and their section 272 affiliates of operating, installation, and maintenance (OI&M) functions. The Commission concluded that it should retain the prohibition against joint ownership by BOCs and their section 272 affiliates of switching and transmission facilities, or the land and buildings on which such facilities are located. The Commission dismissed as moot petitions filed by SBC and BellSouth, pursuant to section 10 of the Act, seeking forbearance from the OI&M sharing prohibition. The Commission also granted SBC's request for modification of the SBC/Ameritech Merger Order conditions related to OI&M services to the extent that these merger conditions are incorporated into the conditions of the SBC Advanced Services Forbearance Order

INDUSTRY FILINGS

USF
Ex Parte, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116 and 98-170
3/16/2004 - Representatives of Microsoft met with Commissioners Adelstein, Abernathy, Copps and Martin and their staff members to explain that policy makers should keep in mind that regulations adopted to suit the PSTN might not translate well into an IP-centric Framework. In terms of Universal Service funding mechanisms, Microsoft believes that either a numbers-based or connections-based approach would be better than today's mechanism, but should be considered only as an interim step.

UNBUNDLED NETWORK ELEMENTS
Ex Parte, CC Docket Nos. 01-338, 96-98 and 98-147
3/17/2004 - In a letter to Commissioner Copps, Earthlink submitted a letter to explain its position on reconsideration of the line sharing unbundled network element rules in light of the D.C. Circuit Court's recent decision in USTA v. FCC. Earthlink states that line splitting is not a functional substitute for line sharing, nor is it a long-term competitive alternative to line sharing.

FEDERAL REGISTER

BIENNIAL REVIEW
Notice, WC Docket No. 02-313, FCC 03-337, FR Doc 04-5657
03/18/04 – The Commission has published a notice in the Federal Register setting the comment dates for its inquiry on whether certain rules should be repealed or modified because they are no longer necessary in the public interest. **Comments are due April 19, 2004. Reply Comments are due May 3, 2004.**

OTHER NEWS

Speaking at a CITA forum on LNP issues, Wireless Bureau Assistant Chief David Firth said that the volume of actual number porting would not be the measure of success, but giving customers the option to port was most important. He indicated that carriers outside of the 100 largest MSA's should be testing and preparing for the May 24, 2004 LNP deadline and that the Commission would not be very sympathetic to last minute waiver requests. He said that the Bureau in its orders has resolved most of the implementation issues. However, if there were still a lack of clarity on certain issues, such as overlapping boundaries, after May 24 the Bureau would consider issuing further guidelines. Responding to questions, he indicated that rating and routing issues between carriers are not porting issues and are therefore not a valid reason for refusing to port. He said that if carriers are experiencing problems with non-compliance by certain carriers, those are enforcement issues and need to be called to the Commission's attention.

The Western Governors Association has sent a letter to Congressional leaders asking them to urge Congress to examine the current Universal Service Fund distribution formula for non-rural carriers, which serve both rural and non-rural areas. The Governors asked Congress to help remedy the imbalance in the distribution of funds. http://www.westgov.org/wga/testim/usf-ltr3-17-04.pdf

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UTILITIES COMMISSION

June 11, 2004

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And Facsimile 1-605-773-3809
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Executive Director
SD Public Utilities Commission
500 E Capitol Avenue
Pierre SD 57501

FAX Received JUN 11 2004

RE: In the Matter of Local Number Portability Obligations Docket No. TC 04-025; TC04-038; TC04-044 through TC04-056; TC04-060 through TC04-062; TC04-077; TC04-084 and TC04-085

Dear Ms. Bonrud:

Enclosed for filing please find the original and ten copies of WWC's Motion to Compel Discovery or in the Alternative to Strike Petitioners' Pre-Filed Testimony Regarding Costs and Brief in Support of Motion to Compel Discovery or in the Alternative to Strike Petitioners' Pre-Filed Testimony Regarding Costs.

If you have any questions, please call me.

Sincerely,

Talbot J. Wieczorek

TJW:klw
Enclosures
c: Western Wireless, Inc.
Richard Coit
Darla Pollman Rogers
Jeff Larson
David Gerdes
Richard Helsper
Ben Dickens
James Cremer

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SOUTH DAKOTA PUBLIC
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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITIONS FOR SUSPENSION OR MODIFICATION OF § 251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	Docket No. TC04-025; TC04-038; TC04-044 through TC04-056; TC04-060 through TC04-062; TC04-077; TC04-084; and TC04-085 **INTERVENOR'S MOTION TO COMPEL DISCOVERY OR IN THE ALTERNATIVE TO STRIKE PETITIONERS' PRE-FILED TESTIMONY REGARDING COSTS**

COMES now Intervenor Western Wireless, LLC, by and through its attorney, Talbot J. Wieczorek of Gunderson, Palmer, Goodsell & Nelson, and hereby moves the Court pursuant to SDCL §§15-6-26(a), 15-6-33 and 15-6-34 for an order compelling Petitioners to provide discovery to First Information Requests of Western Wireless. This motion has been raised for the following reason. Intervenor has requested certain cost information directly related to Petitioners' economic burden assertions. Specifically, Interrogatories numbered 4(a)(i); 4(a)(ii); 5(a)(iv); 5(a)(v); 5(a)(vi); 5(a)(vii); 5(a)(xiv); 5(a)(xv); 5(a)(xvi); 13(g); 16(a); 18; 19; 21; and Request for Production No. 3. All Petitioners asserted confidentiality as the basis for not disclosing the responsive information.

Thereafter, Western Wireless, LLC executed a Confidentiality Agreement covering the information requested. *See* Confidentiality Agreement attached as hereto as Exhibit 1. On May 21, 2004, Western Wireless, LLC provided each of the Petitioners with the Confidentiality Agreement and requested that Petitioners provide the confidential documents previously withheld. *See* correspondence from Intervenor's attorney, Talbot J. Wieczorek dated May 21,

2004, attached hereto as Exhibit 2. Petitioners have not supplemented their responses nor provided the requested information in any subsequently served information requests.

A brief citing Intervenor's arguments and supporting authorities is attached and incorporated herein by this reference.

WHEREFORE, Intervenor requests the Commission order Petitioners to comply with the aforementioned First Information Requests of Intervenor Western Wireless or, in the alternative, the Commission strike all cost testimony submitted by Petitioners regarding their costs.

Dated this 11 day of June, 2004.

GUNDERSON, PALMER, GOODSELL
& NELSON

By: _____
Talbot J. Wieczorek
Attorneys for Plaintiff
P.O. Box 8045
Rapid City, SD 57709-8045

CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of June, 2004, I sent, by email and Next Day Delivery, a true and correct copy of **INTERVENOR'S MOTION TO COMPEL DISCOVERY OR IN THE ALTERNATIVE TO STRIKE PETITIONER'S PRE-FILE TESTIMONY REGARDING COSTS to:**

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Golden West, Vivian Telephone Co and Kadoka
Armour, Bridgewater-Canistota Tele Co and Union Tele Co
Beresford Municipal Telephone Company
McCook Cooperative Telephone Company
Valley Telecommunications Cooperative Association, Inc.
City of Faith Telephone Company
Midstate Communications, Inc.
Western Telephone Company
Interstate Telecommunications Cooperative, Inc.
Alliance Communications Inc. and Splitrock Properties
RC Communications, Inc., and Roberts County Telephone Cooperative Assn.
Venture Communications Cooperative
West River Cooperative Telephone Company
Stockholm-Strandburg Telephone Company
Tri-County Telcom
Cheyenne Sioux Tribe

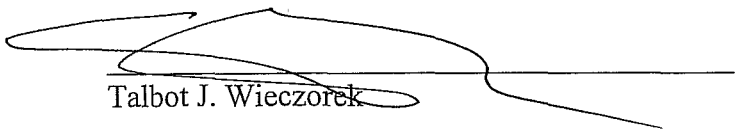
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Talbot J. Wieczorek

CONFIDENTIAL

#2

CONFIDENTIAL

#3

FAX Received JUN 11 2004

RECEIVED

JUN 14 2004

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITIONS FOR SUSPENSION OR MODIFICATION OF § 251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	Docket No. TC04-025; TC04-038; TC04-044 through TC04-056; TC04-060 through TC04-062; TC04-077; TC04-084; and TC04-085 **BRIEF IN SUPPORT OF INTERVENOR'S MOTION TO COMPEL DISCOVERY OR IN THE ALTERNATIVE TO STRIKE PETITIONER'S PRE-FILED TESTIMONY REGARDING COSTS**

Intervenor, WWC Wireless, LLC, by and through its attorney, Talbot J. Wieczorek, of Gunderson, Palmer, Goodsell & Nelson, LLP, hereby submits this brief in support of its Motion to Compel Discovery or In The Alternative To Strike Petitioner's Pre-file Testimony Regarding Costs.

FACTS

On April 29, 2004, Intervenor Western Wireless, LLC, served upon all Petitioners Information Requests. All Petitioners responded to several of the aforementioned requests by asserting that the information requested would not be produced as it was subject to nondisclosure agreements. After receiving Petitioners responses which asserted confidentiality as the basis for not disclosing pertinent information, Western Wireless, LLC executed a Confidentiality Agreement covering the same information. *See* Confidentiality Agreement attached as Exhibit 1.

Upon execution of the agreement, Western Wireless, LLC requested that Petitioners provide the confidential documents that were previously withheld. *See* May 21, 2004 correspondence attached herein as Exhibit 2. Western Wireless, LLC requested immediate

production as this information is necessary to ensure that the proffered testimony addresses all issues. Id. Petitioners have never responded to this May 21 letter. Nor has the information been provided in conjunction with any subsequently served information requests.

To illustrate, the subject requests and respective responses follow.

INTERROGATORIES AND REQUESTS FOR PRODUCTION BASED ON PREVIOUSLY SERVED DISCOVERY REQUESTS

All Petitioners were asked to provide the following and responded as follows:

4. Provide the following information relative to the development of the recurring cost estimate in your petition:
   a. Explain in detail the methodology and inputs used to develop the recurring cost estimate made in your petition.

RESPONSE: Petitioner estimated the monthly recurring costs as follows:

i. Recurring Service Order Administration ("SOA"): Cost estimates were based on a compilation of SOA services price lists from firms providing automated SOA services. **The estimated prices were obtained pursuant to nondisclosure agreements ("NDA") and therefore Petitioner cannot provide the requested information at this time.** Petitioner will see permission from vendors to provide information subject to the confidentiality rules of the Commission. As Petitioner has not entered into any contracts for SOA services, firm pricing cannot be provided.
ii. Recurring LNP Query Costs Per Month: Estimates were based on the assumption that Petitioner would be assessed the monthly minimum for this service based upon the database provider's contract for query service. **The estimated process were obtained pursuant to NDAs, and therefore Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from vendor(s) to provide the requested information subject to the confidentiality rules of the Commission. As Petitioner has not entered into any contracts for SOA services, firm pricing cannot be provided.

5. Provide the following information relative to the development of the non-recurring cost estimate made in your petition:
Explain in detail the methodology and inputs used to develop the non-recurring cost estimate made in your petition.

RESPONSE: Petitioner estimated the non-recurring costs as follows:

(iv) Non-Recurring Service Order Administration Cost Estimates were based on a compilation of SOA services price lists from firms providing automated SOA services. The cost estimate represents the anticipated start-up costs to utilize automated services to update the LNP databases. **The sample pricing scenarios were obtained, by Petitioner's consultant, under NDAs and, therefore, Petitioner cannot provide the requested in formation at this time.** Petitioner will seek permission from the vendors to provide the information subject to the confidentiality rules of the Commission. As the Petitioner has not entered into any contracts for SOA service, firm pricing cannot be provided.

(v) Non-recurring LNP Query Set Up: Non-recurring LNP Query set-up cost estimates were based on a compilation of SOA services price lists from firms providing automated SOA services. The cost estimate includes estimated startup costs levied by the SOA provider to utilize its services and dip its data base. **The estimated prices were obtained pursuant to nondisclosure agreements and therefore Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from vendors to provide the information subject to the confidentiality rules of the Commission. As Petitioner has not entered into any contracts for SOA services, firm pricing cannot be provided.

(vi) SOA Non-recurring Set Up Charge: Costs for set-up charge were included. Non-recurring SOA set up cost estimates were based on a compilation of SOA services price lists from firms providing automated SOA services. The cost estimate includes estimated startup costs levied by the SOA provider to utilize its services and dip its data base. **The estimated prices were obtained pursuant to nondisclosure agreements and therefore Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from vendors to provide the information subject to the confidentiality rules of the Commission. As Petitioner has not entered into any contracts for SOA services, firm pricing cannot be provided.

(vii) Non-Recurring Connection Costs with LNP Database Estimates were based on a compilation of SOA services price lists from several firms providing automated SOA services. **The cost estimate represents the anticipated start-up costs levied by the SOA provider to access their database. Generally, these non-recurring costs are driven by the number of SS7 Point Codes or OCNs. The sample pricing scenarios were obtained under NDA from Syniverse and Verisign. As the Petitioner**

has not entered into any contracts with these or any SOA entities, firm pricing cannot be provided.

(xiv) Non-Recurring Service Order Administration Cost Estimates were based on a compilation of SOA services price lists from firms providing automated SOA services. The cost estimate represents the anticipated start-up costs to utilize automated services to update the LNP databases. **The sample pricing scenarios were obtained under NDAs and, therefore, Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from the vendors to provide the information subject to the confidentiality rules of the Commission. As the Petitioner has not entered into any contracts for SOA service, firm pricing cannot be provided.

(xv) Non-Recurring LNP Query Cost Estimates were based on a compilation of SOA services price lists from firms providing automated SOA services. The cost estimate represents the anticipated start-up costs to utilize SOA services to dip the database. **The estimated prices were obtained pursuant to NDAs and, therefore, Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from the vendors to provide the information subject to the confidentiality rules of the Commission. As the Petitioner has not entered into any contracts for SOA services, firm pricing cannot be provided.

(xvi) Non-recurring Connection Costs with LNP Database Estimates were based on a compilation of SOA services price lists from firms providing automated SOA services. The cost estimate represents the anticipated start-up costs to access the database. Generally, these non-recurring costs are driven by the n umber of SS7 Point Codes or OCNs. **The estimated prices were obtained under NDAs and therefore Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from the vendors to provide the information subject to the confidentiality rules of the Commission. As the Petitioner has not entered into any contracts for SOA service, firm pricing cannot be provided.

13. (g) For the monthly recurring "Service Order Administration" cost, explain the specific nature of the cost including vendor name, fixed and variable cost components, and forecasted transaction volumes.

RESPONSE: The Petitioner has not chosen a Service Order Administrator (SOA) vendor. The Petitioner is considering vendors with automated SOA processes. Typically, SOA charges include startup charges and monthly recurring usage charges with a minimum monthly usage fee. **SOA information was obtained by Petitioner's consultant, pursuant to**

NDAs and, therefore, Petitioner cannot provide the requested information at this time. Petitioner will seek permission from the vendors to provide the information subject to the confidentiality rules of the Commission.

(h) For the monthly recurring "LNP Queries" cost, explain the specific nature of the cost including vendor name, fixed and variable cost, and forecasted transaction volumes.

RESPONSE: The Petitioner has not chosen a Service Order Administrator (SOA) vendor. The Petitioner is considering vendors with automated SOA processes. Typically, SOA charges include a monthly recurring LNP query charge with a minimum monthly charge. The actual monthly recurring fees are driven by LNP query volumes. The Petitioner is assuming all originating local calls will be dipped. The Petitioner is assuming that each access line will originate approximately seven (7) to eight (8) calls per day. At this volume, the Petitioner estimates that the LNP query charges will exceed the minimum monthly amount. **SOA information was obtained, by Petitioner's consultant, pursuant to NDAs and, therefore, Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from the vendors to provide the information subject to the confidentiality rules of the Commission.

16. Regarding Exhibit 1 "Total Estimated LNP Non-recurring and Recurring Costs":

(a) For the "SOA Monthly Charge", identify the specific nature of the cost including vendor name, fixed and variable cost components, and forecasted transaction volume. Also state whether this is the most cost efficient method you are aware of to implement SOA functionality for the volume of ports in your forecast.

RESPONSE:

(a) Petitioner has not chosen a Service Order Administrator (SOA) vendor. Petitioner is considering vendors with automated SOA processes. Typically, SOA charges include startup charges and monthly recurring usage charges with a minimum monthly usage fee. **SOA information was obtained pursuant to NDAs and therefore Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from the vendors to provide the information subject to the confidentiality rules of the Commission. At the time of preparation of Exhibit 1, Petitioner was aware of only these SOA estimates. As Petitioner continues to explore the cost factor, Petitioner has found that there may be less costly methods and is currently exploring them.

18. What is the gross switch investment, accumulated depreciation, and net book value of your existing switches?

RESPONSE:
Response withheld as proprietary and confidential information

19. Identify all capital investments made in your switching equipment in the 2001, 2002, 2003 and to date in 2004.

RESPONSE:
Response withheld as proprietary and confidential information.

21. Explain how funds received for Local Switching Support from the High Cost Fund are used by your company and why they shouldn't be used to offset the cost of local number portability so that your services are "reasonably comparable to those services provided in urban areas. . ."

RESPONSE:
Petitioner objects to this question as calling for information that is not relevant to the current proceedings. Response withheld as proprietary and confidential information.

REQUEST FOR PRODUCTION #3:
Provide any vendor quotes you have obtained for any of the following claimed LNP costs:

Switch Upgrade Costs
LNP Query Costs
LNP Software Features
Technical Implementation and Testing
Marketing/Informational Flyer
Additional Vendor Fees
Billings/Customer Care Software Upgrades
SOA Non-Recurring Setup Charge
SOA Monthly Charge
Translations
Service Order Administration
Additional Software Features
Feature Activation

RESPONSE: **The documents in response to this request were obtained pursuant to NDAs and therefore Petitioner cannot provide them.** Petitioner will seek permission from the vendors to provide the responsive documents subject to the confidentiality rules of the Commission.

ARGUMENT

SDCL § 15-6-26(a) permits a party to seek discovery by written interrogatories under SDCL § 15-6-33, and request for production of documents under SDCL § 15-6-34. SDCL § 15-6-26(b) sets the general scope of discovery. "Unless otherwise limited by order of the court," a party may seek disclosure of, "any matter, not privileged, which is relevant to the subject matter in the pending action," whether admissible or not. Id.

Moreover, the scope of discovery is to be broadly construed. Kaarup v. St. Paul Fire and Marine Ins. Co., 436 N.W.2d 17, 19 (S.D. 1989). "A broad construction of the discovery rules is necessary to satisfy the three distinct purposes of discovery: (1) narrow the issues; (2) obtain evidence for use at trial; (3) secure information that may lead to admissible evidence at trial." Id., *citing* 8 C. Wright and A. Miller, Federal Practice and Procedure, § 2001 (1970).

> . . . the deposition-discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry of "fishing expedition" serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. The deposition-discovery procedure simply advances the stage at which the disclosure can be compelled from the time of trial to the period preceding it, thus reducing the possibility of surprise. But discovery, like all matters of procedure, has ultimate and necessary boundaries.

Kaarup, 436 N.W.2d at 20. Under this broad discovery purview, unless privileged, all relevant matters are discoverable. Id. Intervenor Western Wireless, LLC submits that the information requested both through interrogatories and requests for production of documents is properly subject to discovery.

The information requested is directly relevant to the issues pending before the Commission. Petitioners have requested a suspension or modification of the requirements found under 47 U.S.C. §§ 251(f) and 251(c). South Dakota Codified Law § 49-31-80 grants the

Commission the authority to authorize a suspension or modification of any of the requirements of 47 U.S.C. §§ 251(f) and 251(c). It specifically states,

> Suspension or modification to carrier with small service area. Consistent with 47 U.S.C. § 251(f)(2) as of January 1, 1998, the commission may grant a suspension or modification of any of the interconnection or other requirements set forth in 47 U.S.C. §§ 251(b) and 251(c), as of January 1, 1998, to any local exchange carrier which serves fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide. Any such carrier shall petition the commission for the suspension or modification. The commission shall grant the petition to the extent that, and for such duration as, the commission determines that the requested suspension or modification is consistent with the public interest, convenience, and necessity and is necessary:
>
> (1) To avoid a significant adverse economic impact on users of telecommunications services generally;
> (2) To avoid imposing a requirement that is unduly economically burdensome; or
> (3) To avoid imposing a requirement that is technically infeasible.
>
> The commission may suspend enforcement of the requirement or requirements identified in the petition pending final action on the requested suspension or modification.

The Eighth Circuit Court of Appeals has succinctly stated that the plain meaning of the aforementioned statutes, "...requires the party making the request to prove that the request meets the three prerequisites...." Iowa Utilities Board v. Federal Communications Commission (Iowa II), 219 F.3d 744, 762 (8th Cir. 2000), *reversed in part on other grounds by,* Verizon Communications, Inc. v. Fed'l Communications Comm'n, 535 U.S. 467 (2002).

As a result, Petitioners bear the burden of demonstrating a significant adverse economic impact or undue economic burden. Id. Petitioners have refused to produce the economic information upon which they relied in support of these claims. *See* above Responses to Information Requests. Petitioners' basis for their production denial has since been cured by Intervenor Western Wireless, LLC's execution of the Confidentiality Agreement. *See* Exhibit 1.

Intervenors are entitled to this information under the broad gambit of the discovery rules governing this matter. Kaarup, 436 N.W.2d at 20. Therefore, Intervenors respectfully request the Commission compel Petitioners production of the information requested.

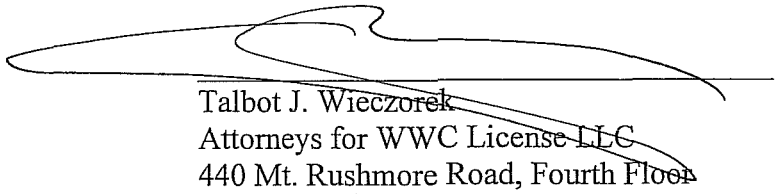
In the alternative, Intervenors request that should Petitioners fail to product information which supports their claims of significant adverse economic impact or undue economic burden, that the Commission strike Petitioners pre-file testimony regarding costs.

Petitioners bear the burden of demonstrating and establishing the economic basis which would justify a suspension or modification. Iowa 2, 219 F.3d at 762. If Petitioners are allowed to assert economic burdens without demonstrating the information that they have relied upon to establish such burdens, Intervenor is left in a position where it is unable to thoroughly evaluate the basis of the Petitioners' assertions. Allowing Petitioners to assert an economic burden without demonstrating any proof of that burden would allow for their unjust ability of presenting financial information with no credible basis. Without affording Intervenor an opportunity to review and cross-examine regarding the basis for the economic burden assertions, renders Intervenor completely unable to refute the ultimate issue in this matter. Therefore, Intervenor requests that should Petitioners fail to produce the information which supports their claims of economic burdens, of any pre-filed testimony be stricken as speculative without support.

In conclusion, Intervenor respectfully requests this Court compel Petitioners' production of the information which would satisfy the aforementioned interrogatories and requests for production. Production of this information is appropriate because it is directly relevant to the ultimate issue in this matter. In the alternative, should Petitioners fail to produce the requested information, then Intervenor respectfully requests that this Court strike any pre-filed testimony regarding economic burdens as unfounded.

Dated this 11 day of June, 2004.

GUNDERSON, PALMER, GOODSELL
& NELSON, LLP



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Attorneys for WWC License LLC
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Fax: 605-342-0480

CERTIFICATE OF SERVICE

The undersigned certifies that on the ____day of June, 2004, I served a true and correct copy of the foregoing **BRIEF IN SUPPORT OF INTERVENOR'S MOTION TO COMPEL DISCOVERY OR IN THE ALTERNATIVE TO STRIKE PETITIONER'S PRE-FILED TESTIMONY REGARDING COSTS** by email and NEXT DAY DELIVERY to:

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Armour, Bridgewater-Canistota Tele Co and Union Tele Co
Beresford Municipal Telephone Company
McCook Cooperative Telephone Company
Valley Telecommunications Cooperative Association, Inc.
City of Faith Telephone Company
Midstate Communications, Inc.
Western Telephone Company
Interstate Telecommunications Cooperative, Inc.
Alliance Communications Inc. and Splitrock Properties
RC Communications, Inc., and Roberts County Telephone Cooperative Assn.
Venture Communications Cooperative
West River Cooperative Telephone Company
Stockholm-Strandburg Telephone Company
Tri-County Telcom
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Talbot J. ~~Wieczorek~~

SDTA
Rural roots, global connections

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RECEIVED
JUN 14 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

June 14, 2004

Ms. Pamela Bonrud, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
State Capitol Building
Pierre, SD 57501

RE: Petitions for Suspension and/or Modification of LNP, Dockets TC04-025, 038, 044, 045, 046, 047, 048, 049, 050, 051, 052, 053, 054, 055, 056, 060, 061, 062, 077, 084, and TC04-085.

Dear Ms. Bonrud:

Enclosed you will find for filing in the above referenced Dockets, the prefiled Rebuttal Testimony of witness Steven E. Watkins. This testimony is filed on behalf of SDTA and also is filed on behalf of each of the below listed rural local exchange carriers, as part of their prefiled testimony.

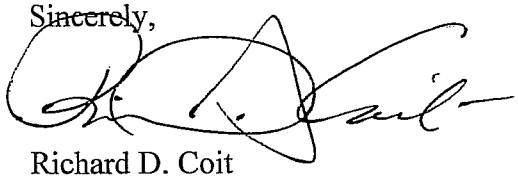
TC04-025 –	Kennebec Telephone Company
TC04-038 –	Santel Communications Cooperative
TC04-044 –	Sioux Valley Telephone Company
TC04-045 –	Golden West Telecommunications Cooperative
	Vivian Telephone Company
	Kadoka Telephone Company
TC04-046 -	Armour Independent Telephone Company
	Bridgewater-Canistota Independent Telephone Company
	Union Telephone Company
TC04-047 -	Brookings Municipal Utilities d/b/a Swiftel Communications
TC04-048 -	Beresford Municipal Telephone Company
TC04-049 -	McCook Cooperative Telephone Company
TC04-050 -	Valley Telecommunications Cooperative Association, Inc.
TC04-051 -	City of Faith Telephone Company
TC04-052 -	Midstate Communications Inc.
TC04-053 -	Western Telephone Company
TC04-054 -	Interstate Telecommunications Cooperative
TC04-055 -	Alliance Communications Cooperative, Inc.
	Splitrock Properties, Inc.

TC04-056 -	RC Communications, Inc.
	Roberts County Telephone Cooperative Association
TC04-060 -	Venture Communications Cooperative
TC04-061 -	West River Cooperative Telephone Company
TC04-062 -	Stockholm-Strandburg Telephone Company
TC04-077 -	James Valley Cooperative Telephone Company
TC04-084 -	Tri-County Telcom, Inc.
TC04-085 -	Cheyenne River Sioux Tribe Telephone Authority

You will also find enclosed a certificate of service verifying service of this document on counsel for the other intervening parties.

Thank you for your assistance in filing and distributing these documents.

Sincerely,



Richard D. Coit
Executive Director and General Counsel
SDTA

CERTIFICATE OF SERVICE

I hereby certify that an original and ten (10) copies of the enclosed document were hand-delivered to the South Dakota PUC on June 14, 2004, directed to the attention of:

Pam Bonrud
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

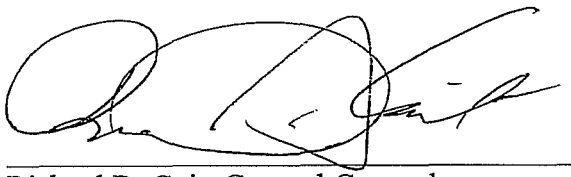
A copy was sent via e-mail and overnight Federal Express to the following individual:

Talbot Wieczorek
Gunderson Palmer Goodsell & Nelson
440 Mount Rushmore Road
Rapid City, SD 57701

A copy was sent via e-mail and US Postal Service First Class mail to the following individual:

David Gerdes
May Adam Gerdes & Thompson
503 S. Pierre Street
Pierre, SD 57501

Dated this 14th day of June, 2004.



Richard D. Coit, General Counsel
South Dakota Telecommunications Association
PO Box 57 – 320 East Capitol Avenue
Pierre, SD 57501-0057

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

RECEIVED
JUN 14 2004
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITIONS FOR SUSPENSION OR MODIFICATION OF § 251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	))))	DOCKETS:

TC04-025 – Kennebec Telephone Company
TC04-038 – Santel Communications Cooperative
TC04-044 – Sioux Valley Telephone Company
TC04-045 – Golden West Telecommunications Cooperative
Vivian Telephone Company
Kadoka Telephone Company
TC04-046 - Armour Independent Telephone Company
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TC04-053 - Western Telephone Company
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TC04-077 - James Valley Cooperative Telephone Company
TC04-084 - Tri-County Telcom, Inc.
TC04-085 - Cheyenne River Sioux Tribe Telephone Authority

REBUTTAL TESTIMONY OF

STEVEN E. WATKINS

Submitted on behalf of above Rural Local Exchange Carriers and
the South Dakota Telecommunications Association

June 14, 2004

Q1: **Please state your name, business address and telephone number.**

A: My name is Steven E. Watkins. My business address is 2120 L Street, N.W., Suite 520, Washington, D.C. 20037. My business telephone number is (202) 296-9054.

Q2: **On whose behalf are you testifying?**

A: I am testifying on behalf of the rural local exchange carriers that are the petitioning parties in dockets captioned above (to be referred to as the "Petitioners") and the South Dakota Telecommunications Association.

Q3: **Have you previously submitted testimony in these proceedings?**

A: Yes. I submitted direct testimony on May 14, 2004 in these dockets (to be referred to as "Watkins Direct").

Q4: **What is the purpose of your Rebuttal Testimony?**

A: The primary purpose of this Rebuttal Testimony is to respond to the Direct Testimony filed by Ron Williams on behalf of Western Wireless.

Q5: **Do you have any initial comments relative to these dockets?**

A: Yes. Only one wireless carrier filed testimony in these proceedings, even though there must be other wireless carriers operating in South Dakota.

Q6: **To what do you attribute this lack of interest in LNP in South Dakota by wireless carriers other than Western Wireless?**

A: The fact that other wireless carriers have decided not to participate in this proceeding and not to submit testimony is consistent with the general observations and conclusions in my Direct Testimony that there are few, if any, wireline end users in rural South Dakota that actually want to abandon, or would abandon, their wireline service and port their wireline number for use solely in connection with wireless service. There is no real demand for

intermodal porting in rural South Dakota and the lack of participation is more evidence of that fact. As such, the other wireless carriers seem to accept and to understand that demand for intermodal LNP would be non-existent or small in rural South Dakota areas, and therefore have apparently concluded that spending their time and resources attempting to force, merely on principle, an unnecessary LNP requirement on rural LECs would lack a business purpose.

Similarly, I would like to add that Western Wireless has also previously concluded in comments filed with the Federal Communications Commission ("FCC") that "LNP is unnecessary to further competition." Reply Comments of Western Wireless filed October 21, 2001, in WT Docket No. 01-184 at pp. 2-5 (a proceeding in which Verizon Wireless was seeking partial forbearance of LNP requirements). Western Wireless noted that, as a provider of conventional cellular and wireless local loop services, "Western is making significant inroads competing against wireline service providers -- without offering LNP." *Id.* Western Wireless went on to state that "there is no evidence to suggest that the inability of CMRS customers to port their numbers is an impediment to changing service providers." *Id.* at p. 5.

Q7: **Do you have any initial comments about Mr. Williams' direct testimony?**

A: **Yes. Mr. Williams' testimony is simply incorrect on several points and, therefore, his discussion would be misleading if accepted without review:**

- Mr. Williams confuses a waiver request before the FCC pursuant to the FCC's local number portability ("LNP") rules in contrast to a suspension proceeding before a state commission pursuant to the broad protections that Congress provided in Section 251(f)(2) of the Act for small telephone companies and their rural customers.

- In reviewing what Mr. Williams considers to be the standards for review pursuant to a Section 251(f)(2) proceeding, Mr. Williams incorrectly references discussion by the FCC that the Courts have rendered inapplicable. The Courts have concluded that the conclusions contained in Mr. Williams' discussion are contrary to the protections Congress set forth in the Act.
- Mr. Williams questions whether there are LNP routing issues, but then presents inconsistent testimony that illustrates the same unresolved issues that I set forth in my direct testimony regarding some new routing arrangement that would have to be established after a number is ported. The FCC's confusing statements cannot be reconciled with the facts that I will explain more fully in this Rebuttal Testimony.
- Mr. Williams discussion of routing issues is, in reality, merely an attempt to impose extraordinary and unfair transport obligations on the rural LECs far beyond those that actually apply. The comments of Western Wireless have more to do with burdening the rural LECs with transport than with any interest in LNP. This may also explain why Western Wireless is the sole wireless carrier participating in this proceeding.

Q8: **Are there any relevant issues that are missing from Mr. Williams Direct Testimony?**

A: Yes. Any discussion of the subject of the adverse economic impact on customers (the first suspension criterion in Section 251(f)(2) of the Act) in South Dakota is glaringly absent from his testimony. While Mr. Williams discusses the economic burden on the Petitioners, he fails to address the adverse economic impact on users of telecommunications services in rural areas of South Dakota. *See* 47 U.S.C. § 251(f)(2)(A)(I) His testimony completely disregards the significant adverse economic impact on users in juxtaposition to the absence of demand or any potential benefit of implementation of LNP in

rural areas of South Dakota.

Q9: **How have you organized the remainder of your Rebuttal Testimony?**

A: For ease of review by the Commission and the parties, the remainder of my Rebuttal Testimony will follow, to the extent that is possible, the order of issues presented in Mr. Williams' testimony.

Q10: **Do you have any comments regarding Mr. Williams' discussion at p. 3 of a "jurisdiction issue regarding waivers to LNP Implementation?"**

A: Mr. Williams' conclusions are incorrect in his response on p. 3 of his Direct Testimony. First, Mr. Williams discusses waiver requests before the Federal Communications Commission, not suspension requests before a state commission. (He then cites Section 332 of the Act to suggest some authority, but Section 332 provides authority for the FCC to establish physical, direct connections with local exchange carriers for wireless carriers, irrelevant to the issues in this proceeding).

With respect to a suspension request, there is no question that this Commission possesses jurisdiction pursuant to Section 251(f)(2) of the Communications Act of 1934, as amended ("Act"). Section 251(f)(2) relates to requests to state commissions for suspension or modification of requirements in Section 251(b) and (c) of the Act, including the LNP requirement. Mr. Williams spends several pages, beginning on p. 6, discussing the criteria in the Act regarding Section 251(f)(2) proceedings.

In contrast, the FCC's narrow waiver request rules are intended only to address situations where there are circumstances beyond the control of a carrier that require some delay in implementation of LNP. Those set of waiver considerations are completely separate and unrelated to the considerations set forth in Section 251(f)(2) of the Act.

Pursuant to Section 251(f)(2), the Petitioners seek a suspension or modification, not an FCC waiver, as is clearly their right under this statutory provision, and such requests are clearly a matter to be filed with and resolved by state commissions, not the FCC. Moreover, the Petitioners have not sought waiver of any Section 251(b)(2) requirement, so the use of this word by Mr. Williams is both incorrect and misleading.

Contrary to Mr. Williams' suggestion that the FCC "asserted jurisdiction," there is no opportunity for the FCC to assert its jurisdiction in a Section 251(f)(2) matter, and the FCC has previously and specifically recognized state commissions' authority to grant suspensions from implementation of LNP. In 1997, the FCC specifically cited, in an LNP order, Section 251(f)(2) and noted that if state commissions exercise their authority to suspend, "eligible LECs will have sufficient time to obtain any appropriate Section 251(f)(2) relief as provided by the statute." *In the Matter of Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236 (1997) ("*Number Portability Reconsideration*") at 7302-03. There has been no reversal of this state commission authority.

Q11: **On pages 4-5 and 10-11 of his Direct Testimony, Mr. Williams notes LNP suspension activity in other states. What comment do you have regarding this activity in other states?**

A: Based upon information published by Neustar (dated May 20, 2004), there is LNP suspension activity in at least 35 states. The status of that activity in each state is different and is based on the facts and circumstances of the carriers in those states and the specific requests of those carriers. In any event, the majority of those states that have pending suspension requests have granted some relief to the rural LECs seeking suspension.

While an exact count is difficult, on May 20, 2004, there appeared to be 28 states in which requests are still pending or some form of the requests had been granted. Nevertheless, it appears that 18 of the 35 states have granted either a specific suspension or an interim suspension while the matter is further studied. Far from Mr. Williams attempted portrayal, the majority of the states have found merit in suspending LNP obligations for the smaller LECs. And for those states that may have denied the requests, it is not surprising that the state commissions in such states may have been misled by the FCC's less than adequate handling of its confusing LNP orders or the consequences of the unresolved issues.

In any event, the activity in other states is based on the specific circumstances of those states. I would urge the Commission and the parties to focus on the policy, facts, public interest, and impact on consumers as it relates to LNP suspension in South Dakota. This Commission is in the best position to review these facts as they relate to the rural users in South Dakota, and the Commission is in the best position to determine the public interest with respect to those users.

Q12: **On page 4 of his testimony, Mr. Williams notes FCC action regarding North-Eastern Pennsylvania Telephone Company ("NEP"). What relevance does this action at the FCC have with respect to a state suspension proceeding?**

A: None. The facts and circumstances of the NEP matter are unrelated to those related to a suspension request or the issues related to the South Dakota Petitioners. As I already explained above, an FCC waiver matter is very much different from one that will review the criteria in the Act under Section 251(f)(2). The NEP matter was a request for temporary waiver before the FCC; NEP is implementing LNP; NEP needed more time as a result of

the failure by its equipment manufacturer to deliver necessary functionalities associated with new soft switch installations. While the FCC did not grant the waiver request, it nevertheless gave NEP additional time to get in order the necessary hardware and software with its equipment manufacturer. In any event, it was not a suspension request pursuant to Section 251(f)(2) of the Act.

Q13: **On page 10 of his direct testimony, Mr. Williams notes a statement by the Pennsylvania Commission. Do you have any comment?**

A: Yes. What Mr. Williams fails to point out is that the Pennsylvania Commission, in the proceedings cited by Mr. Williams, granted suspension of certain Section 251(b) and (c) interconnection requirements for a large number of small LECs in Pennsylvania contrary to that which is implied by the testimony of Mr. Williams.

Q14: **What is your reaction to Mr. Williams' statement at p. 5 that "all LECs have known since 1996 that they would be required to provide LNP"?**

A: Even if this observation were true, it is not relevant to these proceedings because Section 251(f)(2) of the Act gives the Petitioners the right to file suspension petitions and it imposes no time constraints on when such suspension petitions must be filed. In any event, I disagree with the implication. Although the Act contains an LNP provision, there was no LNP requirement until the FCC developed implementation rules (notwithstanding the fact that these rules are still incomplete). Further, for carriers outside of the top 100 MSAs, such as the Petitioners, there was no LNP requirement until the Petitioners received a specific request for LNP. Thus, Petitioners could not know that they might be required to implement LNP until they were asked to do so.

Even once various wireless carriers like Western Wireless requested LNP, it was

not at all clear that the requests complied with the FCC's rules. In fact, it took the FCC eleven months to "clarify" the meaning of its rules after the wireless carriers admitted uncertainty. It is difficult to understand how Western Wireless can argue that the Petitioners should have known in 1996 that they had an obligation to port numbers to wireless carriers when no wireless carrier had made a request for number portability until 2003 and the FCC needed eleven months to "clarify" the obligation that Western Wireless contends is so apparent.

Moreover, a factual review of the record before the FCC demonstrates that no one could have anticipated the FCC would reach the novel conclusions reflected in the *Nov. 10 Order*. Many very difficult issues associated with intermodal porting have been identified and studied by both the FCC and the industry working group selected by the FCC and, even currently, there has been no proposal or recommendation to resolve these intermodal porting issues. Consequently, there could not have been any reasonable expectation that the FCC would disregard the record and its own announced process and order intermodal LNP as described in the *Nov. 10 Order*.

I will address additional aspects of the *Nov. 10 Order* later in this Rebuttal Testimony and explain why the Order represents a significant departure from the FCC's previously announced approach to the establishment of new requirements and how some of the FCC's statements make no sense when compared with the facts. I devote several pages of my Direct Testimony to the background of the sequence of events and/or lack of action that led to the *Nov. 10 Order* and explain why no one could have anticipated the FCC's action. Watkins Direct at pp. 15-35.

Q15: **On pp. 6-7 of his Direct Testimony, Mr. Williams sets forth his view of the standards**

Congress intended for a Section 251(f)(2) proceeding and sets forth the FCC's description of the meaning of "undue economic burden." Are his views correct?

A: No. Mr. Williams has misstated applicable law. The FCC attempted to invoke an improper interpretation of what is meant by "undue economic burden," and the Courts have subsequently vacated the applicable FCC Rule relating to this subject.

Mr. Williams at p. 7, lines 1-3 and line 12-19, cites the FCC discussion in its *First Report and Order* of the narrow criteria that the FCC sought to apply with respect to the evaluation of Section 251(f)(1) exemptions and Section 251(f)(2) suspension and modification requests and the FCC's attempt to confine the definition of undue economic burdens. As the Courts have concluded, the FCC attempted improperly to narrow the exemption, suspension, and modification provisions of Section 251(f) of the Act by adopting Section 51.405 of its Rules. The FCC's conclusions and Section 51.405 of its rules were subsequently vacated. The statements of the FCC cited by Mr. Williams are in the section of the *First Report and Order* that has been completely invalidated by the Courts.

On July 18, 2000, on remand from the United States Supreme Court, the United States Court of Appeals for the Eighth Circuit issued its opinion in *Iowa Utilities Board v. Federal Communications Commission*, 219 F.3d 744(8th Cir. 2000) ("*IUB II*"), which, *inter alia*, vacated Section 51.405(a), (c) and (d) of the FCC's rules.

IUB II establishes that the proper standard for determining whether compliance with Section 251(b) or (c) would result in imposing a requirement that is unduly economically burdensome includes "the full economic burden on the ILEC of meeting the request that must be assessed by the state commission" and not just that which is "beyond

the economic burden that is typically associated with efficient competitive entry." 219 F.3d at 761 The Court emphasized that "undue economic burden" is just one of three alternative bases on which suspension or modification may be granted under § 251(f)(2) -- the others being adverse economic impact on users and technical infeasibility.

Q16: **How does this Eighth Circuit Court of Appeals decision support the Petitioners' positions with respect to their request for suspension of LNP?**

A: According to the Court, the FCC attempted unlawfully to limit the interpretation of "unduly economically burdensome," and, therefore, the FCC had "impermissibly weakened the broad protection Congress granted to small and rural telephone companies." 219 F.3d at 761. In no uncertain terms, the Court concluded that the FCC's interpretation (as reflected in the references Mr. Williams has provided) frustrated the policy underlying the statute and stated "[t]here can be no doubt that it is an economic burden on an ILEC to provide what Congress has directed it to provide to new competitors in § 251(b) or § 251(c)." *Id.*

Q17: **Mr. Williams, at pp. 12-15 of his Direct Testimony, questions the infeasible operational and technical implementation obstacles that would be encountered by the Petitioners. Do you have any comment?**

A: Yes. I will let the factual record speak for itself because it fully demonstrates the obstacles confronting carriers regarding potential routing of calls to ported numbers where there is no interconnection or other business arrangement in place.

Q18: **On page 14, the testimony of Mr. Williams may suggest that you are confused about the differences between Service Provider Portability and Location Portability, and what the FCC has ordered. Are you confused?**

A: No. Although additional issues remain before the FCC and before the Courts regarding the arbitrary aspects of the FCC's orders related to the FCC's own definition of Service Provider Portability compared to Location Portability, my testimony has emphasized the unresolved issues and inconsistencies in the FCC's order related solely to Service Provider Portability. Even Mr. Williams's words (on p. 14), about what Service Provider Portability means, further illustrates my point. Mr. Williams concedes that the statutory and FCC rule definition of Service Provider Portability is the substitution of service using the same number "at the same location where the customer receives landline service." Without debating the fact that a number ported to a mobile user of wireless service automatically means that the customer will most certainly not use the same number for service "at the same location where the customer receives landline service," the "at the same location" statutory and rule criterion is rendered unreasonably meaningless where the wireless carrier neither has a presence, nor an interconnection arrangement over which calls can be routed, in the rate center area that constitutes "at the same location." My testimony centers on the "at the same location" issue within the original rate center area. There are many additional issues, beyond this proceeding and the scope of my testimony, regarding what meaning to apply with respect to Location Portability.

Q19: **Mr. Williams questions whether there are really routing issue problems. Did the industry workgroup ever discuss problems associated with routing issues?**

A: Yes, the industry workgroup acknowledged and listed the same problems that the FCC has failed to recognize and address in the *Nov. 10 Order*. *See also* Watkins Direct at p. 15-21.

A thorough review of the workgroup reports reveals very interesting observations

and conclusions consistent with my Direct Testimony about the fact that intermodal porting would not be feasible if there are no business and network interconnection arrangements in place with the relevant wireless carrier in the local area that constitutes "at the same location." I want to emphasize that the "at the same location" criterion is part of the statutory requirement and the FCC's own definition of Service Provider Portability that forms the LNP requirement.

In a Report from the North American Number Council ("NANC") submitted by its Chairman to the FCC on May 18, 1998 ("1998 NANC Report"), the group reported and explained unresolved intermodal LNP issues (Section 3 on page 6):[1]

> SECTION 3 WIRELESS WIRELINE INTEGRATION ISSUES
>
> 3.1 Rate Center Issue
>
> 3.1.1 Issue: Differences exist between the local serving areas of wireless and wireline carriers. These differences impact Service Provider Portability with respect to porting both to and from the wireline and wireless service providers. . . .

The 1998 Report concludes (on p. 7) that consensus could not be reached on a solution to the Rate Center Issue. (And subsequent reports in 1999 and 2000 have concluded the issue is still open.)

This 1998 Report also includes, as an Appendix D, a Background Paper that discusses some of the same issues related to the rate center disparity issue between wireless

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[1] *See* letter from Alan C Hasselwander, Chair, North American Numbering Council, dated May 18, 1998, to Mr. A. Richard Metzger, Jr., Chief, Common Carrier Bureau, Federal Communications Commission. The various reports and white papers are attached to Mr. Hasselwander's May 18 letter. All of the NANC reports to be referenced in this rebuttal testimony can be found on the FCC's website by going to "Search" and then to "Search for Filed Comments." These NANC reports are attached to the Petition for Declaratory Ruling filed by CTIA on January 23, 2003 in CC Docket No. 95-116 addressing LNP. By entering the docket number

and wireline operations. As I concluded in my Direct Testimony, there are technical infeasibility implications for intermodal porting where there is no presence by the wire-less

and date, the documents (seven "pdf" files) are available on line through this search site.

carrier in the area that constitutes "at the same location" because there is no network or business arrangement in place for the routing of calls. Most notably, as far back as 1998, the NANC realized these same issues and obstacles and reported them to the FCC:

> 3.0 Limitations on the Scope of Service Provider Portability
>
> Due to the need to ensure proper rating and routing of calls, the NANC LNPA Architecture Task Force agreed that service provider portability was limited to moves within an ILEC rate center. Section 7.3 of the NANC LNP Architecture & Administrative Plan report which has been adopted by the FCC, states, "portability is technically limited to rate center/rate district boundaries of the incumbent LEC . . . .

1998 NANC Report, Appendix D - Rate Center Issue, Section 3.0, Limitations on the Scope of Service Provider Portability at p. 34, underlining added.

At p. 35 of the Appendix D Background Paper, the report notes four possible scenarios -- two for wireline-to-wireless porting and two for wireless-to-wireline porting. For the first two wireline-to-wireless porting scenarios, the Background Information paper concludes in both cases that:

> Porting would be permissible as long as the wireless service provider has established an interconnect agreement for calls to the wireless telephone number . . . .
>
> [Underlining added]

The Background Paper goes on to explain that some of the scenarios described for wireless-to-wireline porting would not be permissible, and this accounts for the competitive disparity that the FCC's *Nov. 10 Order* has allowed.

Finally, the Background Paper at p. 35 summarizes exactly the same kind of technical infeasibility issues related to routing that I set forth in my Direct Testimony, namely that LNP is only possible where there is a business and network interconnection arrangement in place with the relevant wireless carrier within the relevant rate center area:

> The above examples provide only a small sample of potential porting scenarios. If all of the potential scenarios were examined, the following patterns would emerge:
>
> > Porting from a wireline service provider to a wireless service provider ["WSP"] is permitted as long as the subscriber's initial rate center is within the WSP service area and the WSP has established interconnection/business arrangements for calls to wireless numbers in that rate center . . . .
> >
> > Porting from a wireless service provider to a wireline service provider is *only* allowed when the subscriber's physical location is within the wireline rate center associated with the wireless NPA-NXX.
>
> [Underlining added]

The latter statement above is the realization that porting in the wireless-to-wireline direction is limited by the rate center disparity issue and this limitation leads to disparity in competitive opportunities. The former underlined statement above that interconnection and business arrangements are prerequisites to permit porting is a conclusion that the FCC refuses to acknowledge, yet is a fact. In subsequent reports, NANC repeatedly stated that there had been no consensus on rate center disparity issues and no recommendation on a technical or competitively fair approach to remedy the reported obstacles. In the last report that I can identify, the NANC lists the Rate Center Issue as an "Open Issue" and states that the reader should review the 1998 and 1999 reports for details about the issue (the same discussion from the 1998 report that I have set forth above) and that "[n]o resolution of this issue has occurred."

Q20: **Are these conclusions by the FCC's expert industry work group consistent with your testimony?**

A: Yes. Where there is no interconnection/business arrangement with a wireless carrier to which a number may be ported, the Petitioners have no established network or business arrangement to route calls; therefore, porting is not "permitted" as the work group prop-

erly concluded. Furthermore, the Petitioners have no statutory right or other ability to force wireless carriers to enter into proper "interconnection/business arrangements." Accordingly, contrary to Mr. Williams' claims, the technical obstacles that I have outlined in the testimony are real.

A wireline LEC that may originate a call to a number of another carrier cannot unilaterally provision a calling service where there is no interconnection/business arrangement with the other carrier. Just as the introduction of an Extended Area Service ("EAS") route between two incumbent LECs involves the establishment of interconnection facilities and business arrangements between the two carriers, the ability of a LEC to exchange local exchange service calls with a wireless carrier also necessitates interconnection and the establishment of the necessary terms and conditions under which the traffic will be exchanged. Interconnection occurs as the result of a request by a carrier other than an incumbent LEC and is dependent on the mutual development of terms and conditions between the carriers for such interconnection. These obvious conclusions are embodied in the conclusion of the NANC work group.

Q21: **Mr. Williams at p. 20 and his Exhibit 6 diagrams claim that the Petitioners should provision network and/or create new arrangements for the delivery of local calls to some interconnection point beyond the Petitioners' networks. Do the local competition interconnection rules, or any other regulation, require the Petitioners to provision local services to distant points beyond their own networks?**

A: No. Mr. Williams' statements are misleading and contrary to the interconnection requirements in the Act. Further, as admitted by Western Wireless in response to Interrogatory 7.b., attached hereto as Exhibit 1, Mr. Williams' statements are contrary to

the interconnection agreements recently negotiated between Western Wireless and Petitioners.

For several reasons, the Petitioners are not required to provision services beyond their own networks, to purchase services from other carriers, or to deliver local exchange carrier service calls to points of interconnection beyond the Petitioners' own networks:

■ The interconnection obligations established under the Act apply with respect to the service area of the incumbent LEC, not the service area of some other LEC:

> For purposes of this section, the term `incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that (A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area . . . .

47 U.S.C. § 251(h), (underlining added)

■ It has long been established that the Act does not require an incumbent LEC to provision, at the request of another carrier, some form of interconnection arrangement that is superior or extraordinary to that which the LEC provisions for itself. The LEC's obligations are only to provide interconnection arrangements that are at least equal to those that the LEC provides for itself and its own service, not superior. However, the suggestion by Mr. Williams that a Petitioner could be required to provision local exchange carrier services with transport to some distant point, or to purchase services from some other carrier for transport of traffic beyond the Petitioner's network (*e.g.*, from Qwest to transport traffic to the Qwest tandem), would represent just such extraordinary arrangement not required of the Petitioners. While an incumbent LEC may, at the incumbent LEC's sole discretion, voluntarily agree to extraordinary arrangements, the LEC would not do so

unless the carrier requesting such extraordinary arrangement is prepared to compensate the incumbent LEC or be responsible for the extraordinary costs for any such superior arrangement.

In the same *IUB II* cited above, the Eighth Circuit Court of Appeals reaffirmed its earlier conclusion, not affected by the Supreme Court's remand, that the FCC had unlawfully adopted and attempted to impose interconnection requirements on incumbent LECs that would have resulted in superior arrangements to that which the incumbent LEC provides for itself. It is now well established that an incumbent LEC is not required to provision some superior form of interconnection service arrangement at the request of another carrier, but that is Mr. Williams' suggestion. The Court concluded that "the superior quality rules violate the plain language of the Act." The Court concluded that the standard of "at least equal in quality" does not mean "superior quality" and "[n]othing in the statute requires the ILECs to provide superior quality interconnection to its competitors." 219 F.3d at 757-758.

It is noteworthy here also to point out that under the invalidated superior quality rule that the FCC had originally adopted, even the FCC in imposing the unlawful requirement to provide some superior form of interconnection had nevertheless also concluded that the LEC should be paid for the extraordinary costs associated with the superior interconnection arrangement. Pursuant to Mr. Williams' suggestion, not only would Western Wireless require a superior quality interconnection from the Petitioners, he would also do so without compensation for the extraordinary costs.

■ The FCC's own interconnection rules addressing the exchange of traffic subject to the so-called reciprocal compensation requirements envision only that traffic exchange take

place at an "interconnection point" on the network of the incumbent LEC, not at an interconnection point on some other carrier's network. "Incumbent LECs are required to provide interconnection to CMRS providers who request it for the transmission and routing of telephone exchange service or exchange access, under the plain language of section 251(c)(2)." (underlining added) In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd. 15499 at para. 1015. *See also, Id.* at paras. 181-185. Moreover, Sections 251(c)(2)(A)-(C) of the Act states:

> (2) Interconnection.-- The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-- (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection . . . (underlining added)

Therefore, it is Western Wireless's obligation to provision its own network or arrange for the use of some other carrier's facilities outside of the incumbent LEC's network as the means to establish that "interconnection point" on the network of the incumbent LEC.

■ LECs such as the Petitioners generally do not offer or provide any local exchange calling service to their own customers that would involve transport to distant locations as suggested by Mr. Williams. Calls which involve transport to distant locations beyond the networks of the Petitioners are provided by interexchange carriers ("IXCs"), and these

calling services are not local exchange carrier services. The Act does not require the Petitioners to begin to offer some new and extraordinary form of local calling to their own customers. The involvement of the Petitioners in such calls is simply the provision of access services to IXCs that are the service providers to the end users.

Accordingly, there can be no expectation that Petitioners must transport local exchange service traffic to some distant point when the Petitioners have no statutory or regulatory interconnection obligation to do so. Whether Mr. Williams' suggestion to the contrary (or the presumption embodied in the FCC's confusing statements in its recent orders) equates to a request that is infeasible because it is premised on the fulfillment of a network arrangement that does not exist and for which there is no legal requirement, or a request that imposes undue economic burden on the Petitioners because it would require some extraordinary superior arrangement, it does not really matter because either potential outcome is sufficient to warrant suspension under Section 251(f)(2)(A) of the Act. Either condition is sufficient, on its own, under Section 251(f)(2).

Q22: **At page 20 of his Direct Testimony, Mr. Williams questions whether LNP costs would impose an undue economic burden on the Petitioners. What response do you have to his comments?**

A: With respect to the economic burden on the Petitioners, while some costs associated with LNP implementation may be recovered through a surcharge imposed on their own customers, there will be other costs incurred by the Petitioners beyond those costs that qualify for the surcharge treatment. And, if an improper form of LNP were imposed on the Petitioners, one that would impose some extraordinary form of interconnection with a requirement to incur transport costs to some distant point, there would be additional costs

associated with an attempt to comply with the directives and the provisioning of the extraordinary network and other business arrangements. The potential costs to transport traffic to some distant point are potentially unbounded.

Mr. Williams fails to acknowledge the significant adverse economic impact any of this would impose on the rural subscribers in South Dakota.

Q23: **On p. 22 of his Direct Testimony, Mr. Williams notes routing issues, potentially similar to those that you have discussed above, associated with a Notice of Apparent Liability ("NAL") issued by the Enforcement Bureau of the FCC against CenturyTel of Washington. What is your response?**

A: I note that the NAL is not a final decision. Further, although all of the facts are not clear from the NAL, it is clear that CenturyTel had not received a suspension or interim suspension of the LNP requirement from the state commission. For these reasons, it is not clear to what extent, if any, this case may apply to other LECs, like the Petitioners. What is clear, however, is that the proper routing of calls, including in the LNP environment, requires the carriers involved to establish interconnection and business relationships.

As I explained above, the Petitioners have no obligation to provision interconnection to distant points beyond that at which the Petitioners provision any other local exchange service calls; the Petitioners have no obligation to put in place some superior form of interconnection service for the benefit of some other carrier that has not requested interconnection; and the Petitioners, in any event, cannot resolve these routing issues unilaterally because the Act states that interconnection terms and conditions are established by a carrier's request to an incumbent.

Q24: **On pp. 22-23, Mr. Williams states that if Petitioners do not implement LNP it will limit wireless to wireless LNP because wireless carriers use numbers assigned by LECs. How do you respond?**

A: Mr. Williams admits in his answer to Interrogatory 19. that Western Wireless is not required to use numbers assigned by LECs and that it can obtain its own numbers and not use those assigned by LECs.

Q25: **On pp. 23-24 Mr. Williams notes that the FCC's Consumer and Governmental Affairs Bureau submitted a letter to NARUC addressing issues associated with requests for suspension before State commissions. Do you have any comment?**

A: Yes. A thorough review of the Snowden letter finds that the actual substance is supportive of the grant of the Petitioners' suspension requests. The letter simply asks the President of NARUC to remind state commissions to apply the "appropriate standard of review" to requests under Section 251(f) of the Act. The Petitioners have already demonstrated that grant of their requests is fully consistent with those standards, even beyond the standards required by the Act and beyond that which the Eighth Circuit Court of Appeals has confirmed and clarified.

The Snowden letter limits its suggestions regarding proper review to include only the "undue economic burden and technically infeasibility" criteria. Just as Mr. Williams has neglected to address the adverse impact on customers that LNP implementation would impose, Mr. Snowden also omits these considerations.

Q26: **On page 24, Mr. Williams suggests that there are likely to be greater numbers of customers switching to wireless service. Do you have any comment about his statements?**

A: Yes. First, Mr. Williams references Mr. Thierer's speculative CATO report that was prepared even before implementation of intermodal LNP in the top 100 MSAs had begun. The evidence that is available since November 24, 2003 indicates that the degree of intermodal porting from wireline to wireless, in the more urban areas, is small and less than expected. And any expected interest in rural areas, such as those served by the Petitioners, will even be less than the already nascent level of intermodal porting in urban areas. *See* Watkins Direct at pp. 10-15. In a May 21, 2004 News Release, the FCC reports that since November 2003, "[o]ver 3.5 million numbers have been switched. . . . Approximately 229,000 involved landline customers taking their landline number to a wireless carrier." The latter statistic represents the initial six months of intermodal LNP experience in the Nation's top 100 MSAs. Clearly, the national demand for intermodal LNP in metropolitan areas has been modest.

Q27: **Mr. Williams complains at pp. 24-25 that Western Wireless has had to spend resources for LNP. Is this relevant?**

A: No. The fact that the FCC mandated that LNP be implemented by CMRS carriers is not at issue in these proceedings. Congress explicitly established the opportunity for a rural telephone company to obtain a suspension or modification in Section 251(f)(2) under the broad protections Congress intended for rural customers and carriers. Nothing in these requirements includes consideration of actions of other carriers, either voluntarily or involuntarily.

Q28: **Mr. Williams complains at p. 25 that it would be "unfair" if the Petitioners are not required to implement LNP because it would limit Western Wireless opportunity to recoup its LNP costs by porting numbers from the Petitioners. How do you re-**

spond?

A: Mr. Williams statement is not compelling given that LNP in the wireless-to-wireline direction is only required, pursuant to the *Nov. 10 Order*, in the very limited circumstance where the wireless number resides in the correct LEC rate center. The current circumstances are more competitively fair than the disparate version of LNP that would result under the FCC's approach given the unresolved rate center disparity issues that I have discussed in my response to Question 19. At least, Western Wireless has some opportunity to port numbers from other wireless providers, whereas most of the Petitioners would have little or no opportunity to recoup their costs by porting-in numbers. Requiring the Petitioners to implement LNP would be even more "unfair" than the situation about which Western Wireless complains.

Q29: **What relevance does Mr. Williams' quote on p. 26 regarding rate centers and routing and rating of calls have here?**

A: None. Mr. Williams apparently believes that the quoted FCC statement at p. 26, lines 13-16 of his Direct Testimony has a meaning different than the facts would indicate. First, the rate center associated with a telephone number does not necessarily determine the service treatment of calls. Second, even if a LEC wanted to use rate center areas as the means to define local exchange carrier services, as I have already explained above, the LEC cannot and would not treat calls to a wireless user as a local exchange service call if the LEC has no interconnection or business arrangement in place with the wireless carrier because the LEC would have had no requirement to have network trunks in place or established terms with other carriers to route such calls. Calls to users of wireless carriers where there is no established network interconnection or business arrangements in place

are necessarily handed off to IXCs who complete such calls to a distant point. Therefore, "rated in the same fashion" simply means that the calls to the ported number are treated as IXC calls as any other call is treated for which there is no interconnection or business arrangement in place with the wireless carrier that would allow for the routing of a call by the LEC to the wireless carrier as a local call.

Q30: **What concluding comments would you offer to the Commission with regard to the pending Requests?**

A: For all of the reasons set forth in my Direct Testimony and herein, I respectfully urge the Commission to grant the suspension requests of the Petitioners. Their requests satisfy the criteria set forth in Section 251(f)(2) of the Act and are consistent with the preservation of the public interest:

- The costs to implement LNP, wireline-wireline and wireline-wireless, would impose significant adverse economic impacts on the users of telecommunications in rural areas of South Dakota served by Petitioners.
- The FCC's *Nov. 10 Order* as well as subsequent orders and statements regarding intermodal LNP create more problems than solutions. Intermodal LNP would impose on the Petitioners either undue economic burdens, requirements that are not technically feasible, or both.
- Suspension of the implementation of LNP for these Petitioners is consistent with the public interest, convenience and necessity in that the costs of LNP implementation to both telecommunications users and the Petitioners are significant and the benefits are slight as evidenced by the lack of demand for LNP among consumers in the areas served by the Petitioners in rural South Dakota.

Q31: **What is the scope of the modification or suspension that the Petitioners seek from this Commission pursuant to Section 251(f)(2)?**

A: Specifically, the current suspension of the FCC's LNP requirements should be extended until conditions may have changed (*i.e.*, a change in the cost related to demand) relevant to the public interest considerations that form the basis here for the Petitioners' suspensions. This would include suspension until the FCC and the Courts make a full and final disposition of the outstanding issues, including the porting interval and wireless to wireline LNP requirements. Further, the Commission should confirm that the Petitioners have no obligation to transport calls beyond their service areas for purpose of LNP or any other purpose. Finally, when the issues are resolved and the public interest circumstances may have changed, the Petitioners would need sufficient time to acquire and install the necessary hardware and software and to put in place the necessary administrative processes.

Q32: **Does this conclude your Rebuttal Testimony?**

A: Yes.

EXHIBIT 1

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITIONS FOR SUSPENSION OR MODIFICATION OF § 251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	Docket No. TC04-025; TC04-038; TC04-044 through TC04-056; TC04-060 through TC04-062; TC04-077; TC04-084; and TC04-085 **WWC'S RESPONSES TO SUPPLEMENTAL DISCOVERY REQUESTS OF PETITIONERS**

WWC License LLC, by and through its undersigned attorney, Talbot J. Wieczorek, of Gunderson, Palmer, Goodsell & Nelson, LLP, Rapid City, South Dakota, hereby responds to the Supplemental Discovery Requests of the Petitioners in the following dockets:

TC-04-025	Kennebec Telephone Co.
TC04-038	Santel Communications
TC04-044	Sioux Valley Telephone Co.
TC04-045	Golden West, Vivian Telephone Co and Kadoka Tele Co
TC04-046	Armour, Bridgewater-Canistota Tele Co and Union Tele Co
TC04-047	Brookings Municipal Utilities d/b/a Swiftel Communications
TC04-048	Beresford Municipal Telephone Company
TC04-049	McCook Cooperative Telephone Company
TC04-050	Valley Telecommunications Cooperative Association, Inc.
TC04-051	City of Faith Telephone Company
TC04-052	Midstate Communications, Inc.
TC04-053	Western Telephone Company
TC04-054	Interstate Telecommunications Cooperative, Inc.
TC04-055	Alliance Communications Inc. and Splitrock Properties
TC04-056	RC Communications, Inc., and Roberts County Telephone Cooperative Assn.
TC04-060	Venture Communications Cooperative
TC04-061	West River Cooperative Telephone Company
TC04-062	Stockholm-Strandburg Telephone Company
TC04-077	James Valley Cooperative Telephone Company
TC04-084	Tri-County Telcom
TC04-085	Cheyenne Sioux Tribe Telephone Authority

II. DISCOVERY REQUESTS

A. INTERROGATORIES

1. At page 10, lines 6-14 of Mr. Williams' testimony, he states that similarly situated LECs are not seeking a delay or suspension of LNP implementation. Identify the similarly situated LECs to which you refer and explain with specificity how they are similar to Petitioners, including information on their respective switch upgrade costs, number of lines in service and type of interconnection with wireless carriers.

   ANSWER: See Exhibit A for the list of similarly situated LECs that have implemented LNP. Further, numerous LECs throughout the country have not requested waivers of their obligation of porting numbers by May 24, 2004. In fact, some LECs in South Dakota did not apply for a waiver or extension and it was represented by Attorney Rogers that these LECs, planned on providing portability by the deadline and, therefore, were not filing for waivers or extensions. Western Wireless Corporation does not have access to specific switch upgrade costs for LEC's in our service area.

2. At page 10, lines 16-20, and page 11, lines 1-15, you identify other state commissions that have ruled on LEC LNP suspension requests. Identify any other state commissions that have ruled on temporary or permanent LNP suspension requests of which you are aware and indicate how they have ruled.

   ANSWER: A comprehensive list of regulatory filings and decisions related to Local Number Portability can be found at www.NECA.org.

3. At page 12, lines 23-26 and page 13, lines 1-7, you state that "Petitioners have identified only a few technical or feasibility issue in the implementation of local number portability" and list three issues. Identify where each Petitioner identified the alleged issues in its Petition, testimony and discovery responses by page number and where applicable, by line number or question number.

As way of clarification, it does not appear any of the companies claim that LNP would be a requirement that is "technically infeasible" under 47 U.S.C. § 251(f)(2)(A)(iii). However, in response to interrogatory 27 of Western Wireless' First Set of Interrogatories to the Petitioners, Petitioners either answered that there was no technical infeasibility but that implementing the portability under certain circumstances could be difficult based on the lack of rule makings or be difficult to do so using a local seven digit dialed basis. There exists testimony that has been prefiled by various Petitioners also reiterating these positions. To the extent that this interrogatory requests that every instance of every reference that any of the Petitioners' 22 witnesses may have made to these three areas must be set forth, the interrogatory is objected to as overly broad and unduly burdensome especially in that it seeks summaries of Petitioners' own testimony.

4. At page 14, lines 17-22, you state that "the LEC will need to route a call to a ported number to the serving tandem."

   a. Identify the serving tandem to which you refer.

   b. Identify any requirement that LECs must route calls to a ported number to the serving tandem. If you are not aware of any such requirement, indicate so.

   c. Indicate whether you contend that if the LECs route a call to a number ported to Western Wireless to the serving tandem they would also need to route calls to Western Wireless numbers that are not ported numbers to the serving tandem.

ANSWER:

4.a) The Qwest LATA or local tandem to which the trunk group that delivers wireless terminating traffic is connected.

4.b) Pursuant to federal law and regulation, it is the LEC's requirement to appropriately route the traffic for ported numbers. There is no specific requirement to route to a serving tandem. This is just one of several methods a carrier can use to deliver local traffic to a ported number. Typically, for low traffic volumes, tandem routing, using common or shared trunk groups, is the most cost efficient means of routing such traffic. It appears that Petitioners used the most costly way to route traffic as the basis for their cost analysis rather than considering other ways of routing.

4.c) Objection: How calls need to be routed for Western Wireless numbers separate and a part from LNP issues is not relevant in any of these filings and is not likely to lead to the discovery of admissible evidence.

5. At page 15, footnote 23, you state that the Central Office Code Administration Guidelines published by the Alliance for Telecommunications Industry Solutions "permit a carrier to receive a rate center number assignment and designate a routing point for calls to those numbers that is outside the rate center to which they are assigned." Do you contend that this requires Petitioners to route calls to a ported number to the serving tandem?

ANSWER: This reference was provided to indicate that tandem routing practices for local calling are not new to the industry. See also response to Question 4.a.

6. At page 15, line 6, you state that "[t]his practice is permitted under industry guidelines..." To what practice are you referring?

ANSWER: The practice of identifying separate rating and routing points for NPA-NXXs and properly rating and routing traffic based on those designations.

7. At page 3, lines 3-7, you state that you have been "actively involved in negotiation of interconnection agreements with most, if not all, of the Petitioners in this case on behalf of Western Wireless" in response to a question as to whether you have any background or familiarity with Western Wireless' system in South Dakota and any familiarity with the Petitioners' systems in South Dakota.

    a. Based on your familiarity with the Petitioners' systems obtained through the interconnection agreement process, do any of the Petitioners route traffic to Western Wireless customers to the serving tandem identified in 4a?

    b. Does Western Wireless contend that the Petitioners agreed in the interconnection agreements to route traffic to Western Wireless to the serving tandem?

    c. Does Western Wireless contend that the FCC's local number portability rules would require parties to an interconnection agreement to route traffic in a manner different from that to which they agreed?

ANSWER:

7.a) Not at this time. Petitioners can, at any time, begin to route traffic to Western Wireless customers to the serving tandem.

7.b) No.

7.c) No, but nothing prevents Petitioners from amending, by mutual agreement, the interconnection agreements with Western Wireless.

8. At page 16, lines 9-11, you state that "[t]he facts contained in the Petitions do not meet the standard that would lead one to conclude the economic burden exceeds that 'typically associated with efficient competitive entry.'" Identify the facts that would meet the standard that would lead one to conclude the economic burden exceeds that typically associated with efficient competitive entry.'"

ANSWER: One method to establish this burden might include demonstration of costs that are extraordinary in comparison to other similarly situated companies that have implemented LNP. Another method may be to demonstrate that a Petitioners financial wherewithal is insufficient to sustain implementation of LNP. Adoption of any new service to the public usually entails some costs. The fact that adoption and providing of new service to the public entails a cost in and of itself would not logically lead to the conclusion that there has been any type of undue economic burden or adverse economic impact. Otherwise, any service that would add costs could be barred under such a test.

9. At page 16, lines 12-17, you state that you have experience with SOA and LNP queries in response to a question concerning whether you have experience with the real life costs of LNP implementation.

    a. Indicate whether this means you have experience with the cost of SOA and LNP queries.

    b. If you have such experience, indicate the recurring and non-recurring cost associated with SOA and LNP queries.

ANSWER:

9.a) Yes.

9.b) Please see Western Wireless' response to question 12 of the First Discovery Requests.

10. At page 17, lines 11-13, you state that Petitioners have included fees for SOA non-recurring set up charge or non-recurring Service Order Administration "when estimated port volumes provide no justification for an automated SOA interface."

    a. Identify the specific Petitioners to which you refer.

    b. Indicate for each Petitioner identified in 10.a. whether you contend that the Petitioner's cost estimates for an automated SOA interface are unreasonable or whether you contend that an automated SOA cannot be justified, or both.

    c. Indicate whether Western Wireless utilizes an automated SOA.

    d. Indicate the recurring and non-recurring costs paid by Western Wireless for the SOA interface.

ANSWER:

10.a) All Petitioners

10.b) We contend that automated SOA is not justified for the low port volume forecasts made by the Petitioners

10.c) Although irrelevant to the proceeding, Western does use an automated SOA interface

10.d) Objection, this interrogatory calls for information that is irrelevant and not likely to lead to admissible evidence.

11. At page 17, lines 14-18, you state that "many of the Petitioners have not provided sufficient information in response to interrogatories to address the validity of switch upgrade cost claims at this time." Identify the Petitioners to which you refer.

ANSWER: All Petitioners that have not provided actual switch vendor quotations.

12. At page 18, lines 5-15, you state that Beresford Telephone has overstated SOA costs. Identify all other Petitioners that you contend have overstated SOA costs.

ANSWER: See response to 10.a.

13. At page 18, lines 9-11, you state that Beresford can utilize the Number Portability Administration Center Help Desk to perform the SOA function for 24 ports for a total of $360.

    a. Explain how you arrived at a cost of $360.

    b. Is the Number Portability Administration Center Help Desk and automated SOA interface?

    c. Does Western Wireless utilize the Number Portability Administration Center Help Desk?

    d. If Western Wireless does not utilize the Number Portability Administration Center Help Desk, explain why it does not and identify the factors that resulted in Western Wireless selecting a different SOA interface.

    e. How long does it take to complete a port using the Number Portability Administration Center Help Desk?

    f. Identify the annual number of port requests that Western Wireless has projected it will make of each of the Petitioners for the years 2004 through 2010.

ANSWER:

13.a) The $360 figure was estimated by taking the number of ports and multiplying by the estimated per port line charge for SOA services ($15).

13.b) No.

13.c) Western Wireless does use the Number Portability Administration Center Help Desk in certain situations.

13.d) N/A

13.e) The transaction time for using the Number Portability Administration Center Help Desk is estimated to take less than 2 minutes.

13.f) Please see Exhibit B.

14. At page 19, lines 1-3, you state that "Western Wireless estimates the cost of routing traffic to these ported numbers to be $1,120 for the year including non-recurring charges." Explain with specificity how you derived this amount.

ANSWER: **The estimate was calculated using these inputs:**

- **A $400 estimated non-recurring charge for reconfiguration of existing trunk group to Qwest tandem.**
- **West River estimate of annual ports – 12**
- **Qwest toll transit rate - $.003123**
- **Estimated local calls originated each day on West River network to each ported number – 6**
- **Estimated average length of local calls originated on West River network to ported numbers – 3.5 minutes**
- **Assuming a traffic volume estimate after 2.5 years of port activity**

- **The monthly recurring cost was calculated using this formula: (Annual Ports*2.5 years)*(local calls per day*length of calls*days per month)*transit rate**
  Alternatively: (12*2.5)*(6*3.5*30)*0.003123 = $59.02 per month x 12 months = $708

NRC of $400 + 12 Months of MRC of 708 = 1st year costs of $1108

15. At page 19, lines 1 and 2, you state "[a]ssuming these porting customers to have average incoming call characteristics…", identify with specificity what are the "average incoming call characteristics" to which you refer.

ANSWER: **See input assumptions in response 14.**

16. At page 19, lines 8-10, you state that you believe the FCC "views that it is the originating carrier's responsibility to deliver local traffic for termination..."

a. For each of the Petitioners, identify the calls to Western Wireless numbers by number and routing arrangement, for which Petitioner pays reciprocal compensation to Western Wireless.

b. Indicate whether you contend that Petitioners would be required to pay reciprocal compensation on calls to numbers ported from the Petitioner to Western Wireless.

ANSWER:

16.a) Objection, the interrogatory is irrelevant and unlikely to lead to admissible evidence and is also overly burdensome and unduly broad in that it seeks information on calling arrangements and number and routing arrangements not related to LNP. Further, each Petitioner would have this information readily available in their existing records.

16.b) Yes.

17. At page 20, lines 5-8, you state that you eliminated switch maintenance cost because LNP does not result in additional increase in this cost. At Addendum D to your Answers to Interrogatories, Local Number Portability Operations Agreement, Section 7.3, states that "[e]ach Party shall monitor and perform effective maintenance through testing and the performance of proactive maintenance activities such as routine testing, development of and adherence to appropriate network trouble isolation processes and periodic review of operational elements for translations, routing and network faults." Reconcile these two statements.

ANSWER: Switch maintenance and routing table management should be routine practice that is not altered by Local Number Portability operations.

18. At page 20, lines 13-15, you state that "[t]he routing methods proposed by the Petitioners are inefficient in that they make little or no utilization of existing equipment and shared facilities currently used to exchange calls with other carriers." Identify with specificity and for each Petitioner, the "existing equipment and shared facilities currently used to exchange calls with other carriers" to which you refer.

ANSWER: Trunk groups that currently deliver wireless and other carrier traffic to Petitioners directly from Qwest or any other common/shared trunk group that is connected to the PSTN.

19. At page 22, lines 18-23 and page 23, lines 1-4, you state that if Petitioners do not implement LNP it will limit wireless to wireless number portability because wireless carriers use numbers assigned to them by LECs.

    a. Are you required to use numbers assigned by LECs? If you contend that you are so required, identify the requirement.

    b. Can Western Wireless obtain its own numbers and not use those assigned by LECs? If you contend that Western Wireless cannot obtain its own numbers, explain why not.

ANSWER:

19.a) No, Western Wireless is not required to use numbers assigned by LECs, however, the Petitioners are required to provide them. Many of Western Wireless' customers and other wireless customers are currently served by numbers provided by LECs.

19.b) Yes, but it would take months and would not resolve porting issues for existing customers.

20. At page 23, lines 9-11, you state that "Qwest has experienced a substantial loss of customers to competitors since the advent of number portability."

a. Identify the basis for this statement.

b. Identify the number of customers lost by Qwest since the advent of number portability in South Dakota.

c. Identify the number of customers lost by Western Wireless since the advent of number portability in South Dakota.

ANSWER:

20.a) This statement was based on discussions with CLEC's in South Dakota and on transit billing volume changes for Western Wireless traffic delivered to CLEC CLLIs.

20.b) Western Wireless does not have specific customer counts for Qwest line loss in South Dakota.

20.c) Objection, this interrogatory calls for information that is irrelevant and not likely to lead to admissible evidence and the question is vague. Without waiving the objection, Western Wireless answers as follows: Western Wireless has experienced people leaving Western Wireless for other wireless providers and people leaving other wireless providers and coming to Western Wireless. Further, Western Wireless has experienced people wishing to leave Western Wireless who have not been able to port their numbers because Petitioners have refused to implement LNP.

21. At page 25, lines 3-7, you state that "it is unfair that carriers who we compete with, that are similarly obligated, would be exempted from their obligations and thereby limit our ability to recoup the LNP investments we have made by restricting our opportunity to leverage those investments in a competitive marketplace."

a. Do you believe it would also be unfair if the Petitioners' opportunity to leverage LNP investments was restricted?

b. Assuming the Petitioners were LNP capable, identify by Petitioner and by rate center all rate centers where Western Wireless would be required to port numbers from Western Wireless to the Petitioner.

ANSWER:

21.a) To the extent that Petitioners have to abide by the same coverage and rate center rules as other carriers, Yes.

21.b) Western Wireless would be obligated to port numbers where the Petitioner provides service.

22. At Exhibit 5A and 5B of your testimony, you list recurring and non-recurring transport costs for some Petitioners. For each Petitioner, explain how the recurring and non-recurring transport cost was derived. If no transport cost is listed for a Petitioner, explain why not.

ANSWER: Non-recurring costs in Exhibit 5A and 5B are, for the most part, those costs provided by the Petitioners. Any modifications made to these costs are explained in my testimony. Recurring costs in Exhibit 5A and 5B were developed as follows:

SOA: Ports per year / 12 months x $15 Neustar (NPAC) help desk fee per port.

LNP Query: Cost provided by Petitioners or access lines in service x six originating calls per day x 30 days x .00075 per query

If no transport cost is listed for a Petitioner, the Petitioner has indicated they will have no numbers ported from their network.

23. At the conference call sponsored by the South Dakota Commission on June 1, 2004, Western Wireless stated that the testimony and exhibits of Ron Williams include "general" and "company specific" portions. Identify by page and line number the parts of Mr. Williams' testimony that are "general" and the parts that "company specific." Also identify the Exhibits or parts thereof that are "general" and the ones that are "company specific." For the testimony and Exhibits that are company specific, identify the company to which they apply.

ANSWER: These terms were used in regard to comments made during that meeting that Mr. Watkins constitutes a general expert and the costs experts were considered cost company specific experts. In that regard, all the testimony of Ron Williams replying to the issues raised by Mr. Watkins should be considered general testimony applying to policy

and other issues raised by Mr. Watkins. Regarding company specific, the cost testimony of Williams is specific for each petitioner in that it replies to the specific cost testimony submitted by each petitioner. To the extent that the cost testimony could be argued to also apply to the public interest, convenience and necessity issues, the cost analysis is presented for that matter. The same would be said for the testimony of technical difficulties in implementing LNP. Namely, the technical testimony is directed at each petitioner specifically but may also be regarded as applying to general testimony regarding implementation issues.

24. Do you contend that imposing the LNP obligations on Petitioners is not unduly economically burdensome? If your answer to the preceding interrogatory is in the affirmative, please state the following with respect to each Petitioner:

a. State in detail each fact, matter and circumstance upon which you rely to support your answer.

b. Identify each person having knowledge of the facts that support your answer and state the substance of their knowledge.

c. Identify all documents upon which you rely which support you're answer.

ANSWER: Yes.

24.a) Petitioners have failed in their burden to show undue economic burden in their refusal to provide their cost documents received from vendors. Refusal of the Petitioners to provide such documents makes it impossible to make a conclusion that undue economic burden exists. Further, Petitioners all have the financial ability to pay for LNP. See also responses to interrogatory 8 above.

24.b) Petitioners and their witnesses.

24.c) Discovery to date and prefiled testimony of Petitioners.

25. On page 25, lines 1-3 of Mr. Williams' testimony, he states that "We have upgraded our network, implemented new processes, systems, and hired supporting resources to implement LNP in South Dakota. In other words, we have absorbed the costs of implementing LNP

under our FCC obligations." Please list the cost Western Wireless has incurred for these various items in South Dakota.

ANSWER: Objection, as this interrogatory calls for information that is not relevant or likely to lead to admissible evidence, unduly burdensome and overly broad and vague. Without waiving said objection, Western Wireless answers as follows: Such costs are not kept by State.

B. DOCUMENT PRODUCTION

1. At page 13, lines 15-21, you cite the testimony of Steven D. Metts. Provide a complete copy of Mr. Metts' testimony that includes the cited language.

ANSWER:

1) Q. "On Page 2 Line 21, beginning on 20 and 21 you state the purpose of your testimony. Is it your contention that suspension of the FCC requirements is based upon technological incapability for any of your companies?"

A. "No."

See attached Exhibit C.

2. Provide all documents referenced in your responses to Interrogatories 1-25.

ANSWER: Documents previously provided otherwise. Also, see attached Exhibits A, B and C.

DATED this _____ day of June, 2004.

WWC License, LLC

By _____
Ron Williams

Its _____

State of _____)
) ss.
County of _____)

On this, the _____ day of _____ 2004, before me, the undersigned officer, personally appeared _____ as _____ of WWC License LLC, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

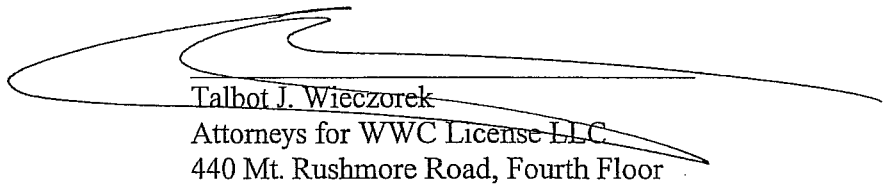
(SEAL)
My Commission Expires:

_____

Dated this 11 day of June, 2004.

AS TO OBJECTIONS:

GUNDERSON, PALMER, GOODSELL
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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

CERTIFICATE OF SERVICE

The undersigned certifies that on the 11 day of June, 2004, I served a true and correct copy of WWC's Responses to Petitioners Supplemental Discovery Requests in LNP Dockets, by email and Next Day Delivery, postage paid to:

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Valley Telecommunications Cooperative Association, Inc.
City of Faith Telephone Company
Midstate Communications, Inc.
Western Telephone Company
Interstate Telecommunications Cooperative, Inc.
Alliance Communications Inc. and Splitrock Properties
RC Communications, Inc., and Roberts County Telephone Cooperative Assn.
Venture Communications Cooperative
West River Cooperative Telephone Company
Stockholm-Strandburg Telephone Company
Tri-County Telcom
Cheyenne Sioux Tribe

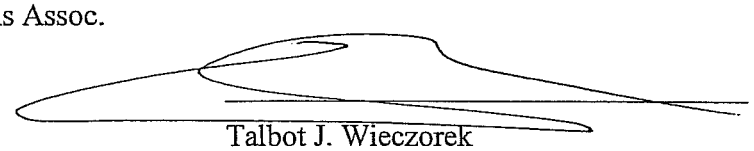
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Talbot J. Wieczorek

EXHIBIT A TO WWC REPLY TO PETITIONERS' SUPPLEMENTAL DISCOVERY REQUEST

Similarly Situated Carriers

ND LEC's with Similar Profiles to SD Petitioners

STATE	NAME	STATUS	ICA	Suspension Filed?	LNP DATE	ACCESS LINES	Number of Switches
ND	NORTHWEST COMMUNICATIONS COOPERATIVE	SENT BFR	Y	No	5/24/2004	5,302	15
ND	CONSOLIDATED TELCOM	SENT BFR	Y	No	5/24/2004	8,713	19
ND	DAKOTA CENTRAL TELECOMMUNICATIONS COOP.	SENT BFR	Y	No	5/24/2004	5,228	8
ND	DICKEY RURAL TELEPHONE COOPERATIVE	SENT BFR	Y	No	5/24/2004	5,400	17
ND	GRIGGS COUNTY TELEPHONE CO.	SENT BFR	Y	No	5/24/2004	2,171	4
ND	INTER-COMMUNITY TELEPHONE COMPANY, LLC	SENT BFR	Y	No	5/24/2004	2,626	9
ND	BEK COMMUNICATIONS COOPERATIVE	SENT BFR	Y	No	5/24/2004	7,267	18
ND	MOORE & LIBERTY TELEPHONE CO.	SENT BFR	Y	No	5/24/2004	998	2
ND	POLAR COMMUNICATIONS MUTUAL AID CORP.	SENT BFR	Y	No	5/24/2004	9,233	22
ND	POLAR TELECOMMUNICATIONS, INC.	SENT BFR	Y	No	5/24/2004	1,604	7
ND	RESERVATION TELEPHONE COOPERATIVE	SENT BFR	Y	No	5/24/2004	7,812	20

EXHIBIT B TO WWC'S RELY TO SUPPLEMENTAL DISCOVERY

Western Wireless Corp.

LEC	Projected Port Requests (first 5 years of porting)
ALLIANCE/SPLITROCK TOTAL	660
BERESFORD MUNICIPAL TELEPHONE CO.	96
CHEYENNE RIVER SIOUX TRIBAL TELEPHONE AUTH.	230
CITY OF BROOKINGS MUNICIPAL TELEPHONE DEPT.	1117
CITY OF FAITH MUNICIPAL TELEPHONE CO.	0
FORT RANDALL TELEPHONE COMPANY/MT. RUSHMORE	458
GOLDEN WEST COMPANY - KADOKA TELEPHONE CO.	42
GOLDEN WEST COMPANY - UNION TELEPHONE CO.	122
GOLDEN WEST COMPANY-BRDGWATER-CANISTOTA TELEPHONE CO. (Armour)	224
GOLDEN WEST TELEPHONE COOPERATIVE, INC.	1101
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	1019
JAMES VALLEY COOPERATIVE TELEPHONE COMPANY	284
KENNEBEC TELEPHONE CO.	54
MCCOOK COOPERATIVE TELEPHONE COMPANY	154
MIDSTATE COMMUNICATIONS, INC.	323
RC COMMUNICATIONS, INC./ROBERTS COUNTY	147
SANTEL COMMUNICATIONS COOPERATIVE, INC.-SD	348
SIOUX VALLEY TELEPHONE CO.- GOLDEN WEST COMPANY	397
STOCKHOLM - STRANDBURG TELEPHONE CO.	52
TRI-COUNTY TELCOM, INC.	31
VALLEY TELECOM COOPERATIVE ASSOCIATION, INC.	253
VENTURE COMMUNICATIONS COOPERATIVE	173
VIVIAN TELEPHONE CO.	1279
WEST RIVER COOPERATIVE TELEPHONE COMPANY	272
WEST RIVER TELECOMMUNICATIONS COOP (MOBRIDGE) - SD	181
WESTERN TELEPHONE CO.	77

implementation.

Q. Do you have any sense or any feel for what the additional charges incurred by each of these companies is?

A. No. Those companies withdrew before we had the data request for the costs and did not submit any costs to me.

Q. On Page 2 Line 21, beginning on 20 and 21 you state the purpose of your testimony.

Is it your contention that suspension of the FCC requirements is based upon technological incapability for any of your companies?

A. No.

Q. If you would, turn to Page 5, as well.

A. (Witness complies.)

Q. When was the FCC Order -- referring to Page 5, when was the FCC Order issued?

A. November 10th, 2003.

Q. So all of the NMECG members have known since then that they were going to have to be within compliance?

A. Yes.

Q. When did ENMR and ValleyTel apply for a request of waiver to the FCC?

A. I don't know that.

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JUN 15 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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June 14, 2004

Ms. Pamela Bonrud
Executive Director
SD Public Utilities Commission
500 East Capitol Ave.
Pierre, South Dakota 57501

Re: Docket Number TC04-047 (Swiftel)

Dear Pam:

Enclosed are the original and ten copies of the REBUTTAL TESTIMONY OF W. JAMES ADKINS on behalf of SWIFTEL COMMUNICATIONS for filing in the above docket.

By copy of this letter, I am also serving those persons named on the Certificate of Service.

Sincerely yours,

Darla Pollman Rogers

Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

CC: Talbot J. Wieczorek
Richard D. Coit
Richard Helsper
W. James Adkins

RECEIVED

JUN 15 2004

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF BROOKINGS MUNICIPAL UTILITIES d/b/a SWIFTEL COMMUNICATIONS FOR SUSPENSION OR MODIFICATION OF § 251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	Docket No. TC04-047 REBUTTAL TESTIMONY OF W. JAMES ADKINS

REBUTTAL TESTIMONY OF

W. JAMES ADKINS

ON BEHALF OF

BROOKINGS MUNICIPAL UTILITIES d/b/a SWIFTEL COMMUNICATIONS

June 14, 2004

Q. Please state your name, business name and address.

A. My name is W. James Adkins. I am the Technical and Network Operations Manager of Brookings Municipal Utilities d/b/a Swiftel Communications, whose address is 415 4th Street, Brookings, South Dakota, 57006.

Q. What is the purpose of your testimony?

A. I will provide rebuttal testimony to various statements made by Ron Williams in his testimony filed on May 28, 2004 on behalf of WWC License L.L.C. (Western Wireless).

Q. At page 6, lines 8-10, Mr. Williams alleges that the Petitioners "waited 4 months to seek a suspension of their LNP obligations, hopeful that this tactic would result in delay of their legal obligations." How do you respond?

A. I dispute Mr. Williams' characterization of events as baseless and inflammatory. Once the FCC made it clear that wireline carriers would be required to port numbers to wireless carriers in areas outside the top 100 MSAs by May 24, 2004, Swiftel took immediate steps to investigate the cost and the processes involved with LNP and to explore its legal options. Because Swiftel had little experience with LNP, it took time to gather the pertinent information, inform our Brookings Municipal Utility Board and for them to make the decision to seek a suspension of the requirement from the South Dakota Public Utilities Commission. Further, the suspension petition itself took time and effort to prepare because Swiftel wanted to present as complete a petition as possible with cost information as complete as possible.

Q. Do you agree with Mr. Williams' statement at page 14, lines 19-22, in which he states that "LECs will need to route a call to a ported number to the serving tandem" and to Mr.

Williams' statement at page 15, lines 1-4 when he discusses the routing of allegedly "local calls?"

A. In its answer to Interrogatory 4., Western Wireless identifies the "serving tandem" as the Qwest LATA or local tandem, which is outside of Swiftel's service territory. (Western Wireless' responses to interrogatories are attached to the rebuttal testimony of Steven E. Watkins.) Therefore, Mr. Williams' statement is not consistent with Swiftel's current call routing practices, because it would require Swiftel to route calls to a point outside of its service territory, other than via an EAS arrangement, as local. I note that in its answer to Interrogatory 7., Western Wireless admits that there is no requirement for Swiftel to route calls to the Qwest tandem and currently, Swiftel does not do so. (*See* Western Wireless Response to Interrogatory 7 attached to the Rebuttal Testimony of Steven E. Watkins). Further, Western Wireless admits that its interconnection agreement with Swiftel does not require Swiftel to route calls to the Qwest tandem. Rather, calls that terminate outside of Swiftel's service territory, including calls to Western Wireless, other than via EAS arrangements, are routed to interexchange carriers for termination. Pursuant to the interconnection agreement, traffic terminating to Western Wireless is routed to either an interexchange carrier or Interstate Telecommunications Cooperative, Inc. (ITS) through an EAS arrangement. A diagram showing the current arrangements for routing traffic is attached hereto as Exhibit 1. Therefore, it appears that Western Wireless' argument really is a bad faith attempt to change the agreement between the parties.

Q. At page 19, lines 8-10, Mr. Williams states that it is his belief that "the FCC views that it is the originating carrier's responsibility to deliver local traffic for termination and that

the costs associated with fulfilling that responsibility are not a number portability cost." What is your response to this statement?

A. Mr. Williams' statements are inconsistent and should be rejected. First he argues that Swiftel should be required to install new facilities to deliver ported calls to Western Wireless and other wireless carriers and then he argues that the cost of those facilities are not number portability costs. Further, as discussed above, Mr. Williams' suggestion that it is Swiftel's responsibility to deliver traffic destined to Western Wireless through a serving tandem is not consistent with the interconnection agreement between Swiftel and Western Wireless nor, as admitted by Western Wireless, is there any requirement for Swiftel to route traffic in this manner.

Q. Would Western Wireless' routing proposal have impacts to Swiftel?

A. Yes. It is my understanding that Western Wireless' proposal would increase Swiftel's costs. First, Western Wireless' proposal would require Swiftel to pay for new facilities to the tandem provider that it would not need for any purpose other than to route calls to ported numbers to wireless carriers. Second, Swiftel would most likely have to pay transit traffic charges to the tandem provider for transporting the traffic to the wireless carriers. Third, in response to Interrogatory 16.b. Western Wireless indicates that Swiftel would be required to pay reciprocal compensation on calls to ported numbers, even if Swiftel does not pay compensation on such calls today. (*See* Western Wireless Response to Interrogatory 16.b. attached to the Rebuttal Testimony of Steven E. Watkins).

Q. Is there any other impact?

A. Yes. Western Wireless' proposal would create a regulatory arbitrage scenario that could lead to the loss of access revenues. Today, certain calls to wireless carriers are routed to

interexchange carriers. For example, if Swiftel customer A calls Western Wireless customer B with a 605-360 Western Wireless number, Swiftel customer A incurs a toll charge. However, under Western Wireless'proposal, it is my understanding that if Swiftel customer A calls customer B who now has a number ported from Swiftel, Swiftel customer A would be charged for a local call. Customers may be encouraged to "give up" their existing wireless numbers and obtain wireline numbers for the sole purpose of porting that number to avoid toll charges. This is not only a bad public policy result, but also simply a bad faith attempt to avoid an important contract provision upon which Western Wireless has already agreed with our company.

Q. Does this conclude your rebuttal testimony?

A. Yes.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the foregoing **REBUTTAL TESTIMONY** upon the persons herein next designated, on the date below shown, by depositing a copy thereof in the United States mail at Pierre, South Dakota, postage prepaid, in an envelope addressed to each said addressee, to-wit:

Richard D. Coit
richcoit@sdtaonline.com
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Talbot J. Wieczorek
tjw@gpgnlaw.com
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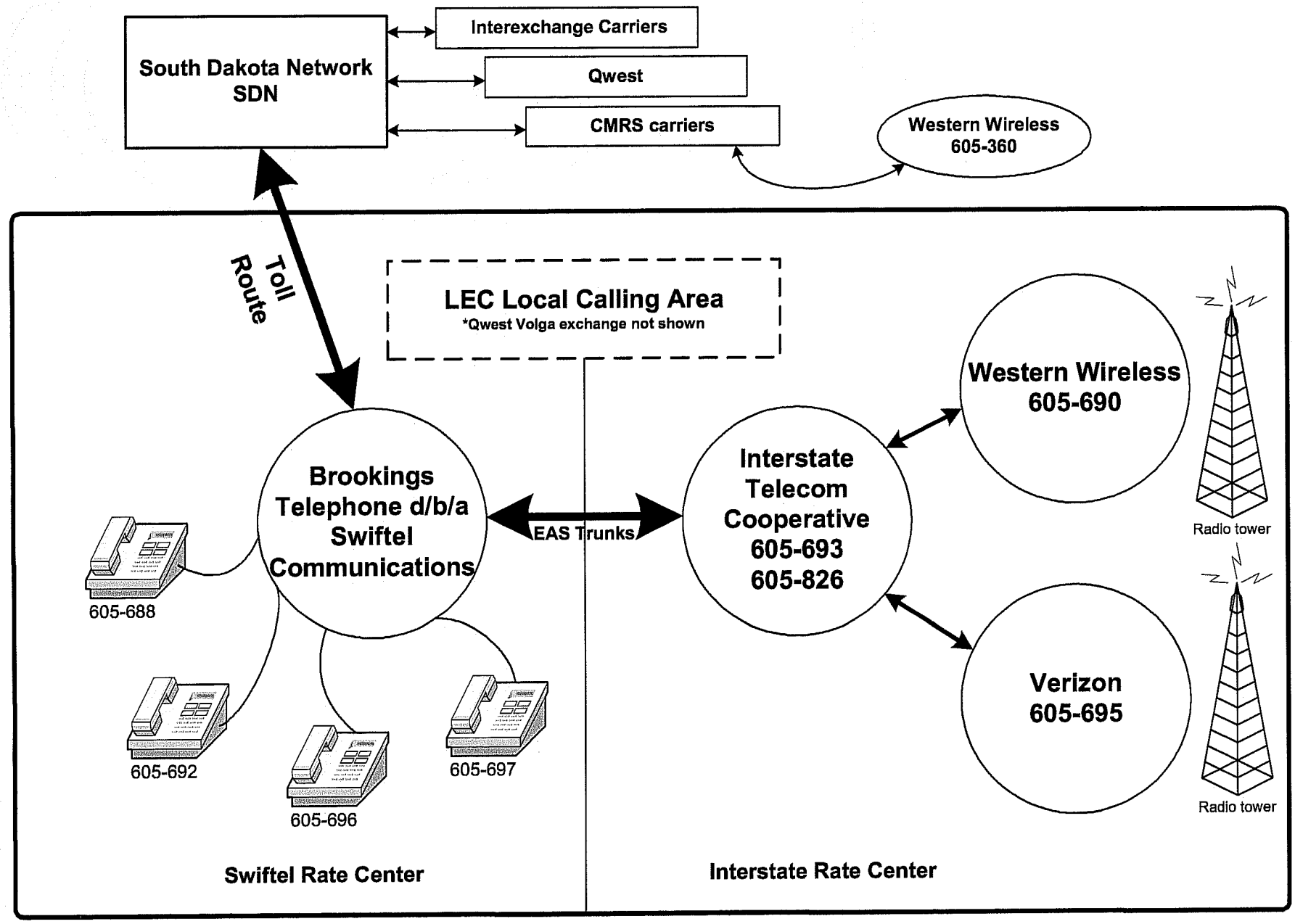
Dated this fourteenth day of June, 2004.

Richard Helsper by Darla Pollman Rogers
Richard Helsper
Glover, Helsper & Rasmussen
100 22nd Ave., #200
Brookings, SD 57006

EXHIBIT 1

Routing for CMRS traffic

Exhibit #1



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June 14, 2004

RECEIVED
JUN 15 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Ms. Pamela Bonrud
Executive Director
SD Public Utilities Commission
500 East Capitol Ave.
Pierre, South Dakota 57501

Re: Docket Numbers TC04-047 (Swiftel); TC04-054 (ITC); TC04-077 (James Valley); TC04-038 (Santel); TC04-062 (Stockholm-Strandburg); TC04-060 (Venture); and TC04-061 (West River)

Dear Pam:

Enclosed are the original and ten copies of the REBUTTAL TESTIMONY OF JOHN DeWITTE on behalf of the above-named companies for filing in the above dockets. Because of the volume of the testimony and exhibits, I am mailing the Rebuttal Testimony in two separate packets.

By copy of this letter, I am also serving those persons named on the Certificate of Service.

Sincerely yours,

Darla Pollman Rogers

Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

CC: Talbot J. Wieczorek
Richard D. Coit
David Gerdes
James Cremer
Jeff Larson
Richard Helsper

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

RECEIVED
JUN 15 2004
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION FOR LOCAL NUMBER PORTABILITY SUSPENSION OR MODIFICATION ON BEHALF OF	)	
BROOKINGS MUNICIPAL UTILITIES d/b/a SWIFTEL COMMUNICATIONS	)	Docket No. TC04-047
INTERSTATE TELECOMMUNICATIONS COOPERATIVE, INC.	)	Docket No. TC04-054
JAMES VALLEY COOPERATIVE TELEPHONE COMPANY	)	Docket No. TC04-077
SANTEL COMMUNICATIONS	)	~~Docket No. TC04-038~~
STOCKHOLM-STRANDBURG TELEPHONE COMPANY	)	Docket No. TC04-062
VENTURE COMMUNICATIONS COOPERATIVE	)	Docket No. TC04-060
WEST RIVER COOPERATIVE TELEPHONE COMPANY	)	Docket No. TC04-061

PRE-FILED REBUTTAL TESTIMONY OF JOHN DE WITTE

June 14, 2004

Q: What is your name?

A: My name is John M. De Witte.

Q: Are you the same John M. De Witte who filed direct pre-filed testimony in this proceeding?

A: Yes.

Q: What is the purpose of your rebuttal testimony?

A: To discuss some of the cost and technical issues Western Wireless Corporation (WWC) raised in the direct testimony of Mr. Ron Williams and to provide information regarding the impact of some of WWC's proposals.

Q: Have you read the pre-filed direct testimony of Mr. Williams filed on behalf of WWC in this proceeding?

A: Yes.

Q: Do you understand the technical issues that were raised in Mr. Williams' Direct Testimony?

A: Yes, as I describe in this rebuttal testimony. My staff and I have performed the technical engineering and economic analysis for many of the rural South Dakota ILECs over the past several years. We have been involved with the strategic planning and implementation for many of the broadband networks that are serving rural South Dakota subscribers today. In every instance with which I am familiar, the ILECs have carefully invested their limited funds where technology deployments are feasible and serve the public interest. The South Dakota PUC can be proud of its role in the encouragement and deployment of those services. I would like to particularly point out that through cooperative ventures undertaken by the rural ILECs,

many operating efficiencies have been realized. As we have demonstrated in our original petitions, the lack of demand and projected high implementation costs of LNP do not appear to serve the public interest for the deployment of the service.

Q: Mr. Williams believes that the LNP Implementation Costs are overstated in several categories. Can you provide additional detail to support your cost estimates?

A: Mr. Williams takes issue with the LNP implementation cost estimates for several categories. Specifically, Mr. Williams raises issues with transport cost estimates, SOA cost estimates, LNP Testing/Verification/Administrative cost estimates, and LNP Marketing Flyer Cost Estimates. I will address each of these categories individually.

Transport Cost Estimates

The transport cost estimates were derived by provisioning a DS1 to each of the Petitioner's rate centers for each wireless carrier. The basis for this methodology is simple. The Telecom Act of 1996 states that the Point of Interconnection (POI) for connecting carriers should be at "any technically feasible point *within the carrier's network.*[1]" CMRS carriers with a desire to exchange traffic directly with a wireline carrier typically order a Type 2B (End Office) or Type 2A (Access Tandem) DS1 facility from the wireline carrier. The CMRS carriers have not universally deployed direct connections to the rural areas served by the Petitioner. In South Dakota, the CMRS carriers have ordered (and paid for) very few Type 2B connections into rural ILEC service areas. Most of the South Dakota ILECs which whom I am familiar, do not have any existing Type 2B connections. Of the South Dakota

[1] 47 U.S.C. § 251 (c) (2) (emphasis added)

ILECs that do have direct Type 2B connections, it is typically a single connection to a single exchange. The CMRS carriers have not universally deployed Type 2B connections to all South Dakota ILEC territories and all ILEC exchanges.

The CMRS carriers issued BFRs to the Petitioner for LNP services with a listing of each of the Petitioner's exchanges by Common Language Location Identifier (CLLI) code. The BFR notifications did not include any provisions for agreements detailing interconnection, transiting, or reciprocal compensation. In addition, none of the CMRS providers provided any POI information with their BFRs to allow the Petitioner to evaluate transport options or costs. In order to maintain the proper routing for the wireless calls and local rating for calls to wireless numbers, the Petitioner assumed that direct Type 2B connections would be deployed in each exchange for each CMRS carrier. If a CMRS carrier had ordered a Type 2B direct connection to an exchange, it was assumed that this existing facility would be utilized to carry that CMRS' LNP traffic for that exchange. As none of the CMRS carriers placed orders for Type 2B or Type 2A direct interconnection facilities with their BFRs, the Petitioner included these costs as part of their Implementation Cost estimates.

The routing methods reflected in the cost exhibits attached to my direct testimony are based on the current routing arrangements that the Petitioner has in place with other toll and EAS connecting carriers. In general, calls that route using 10 digits are considered to be toll calls and calls that route using 7 digits are considered to be local calls. Calls that use 7 digit dialing either terminate in the Petitioner's network or utilize a direct connection (referred to as an EAS trunk). There-

fore, if calls to numbers ported to a carrier are to be dialed on a local 7-digit basis (local call), a direct connection needs to be established between the carriers, hence the requirement for direct Type 2B connections with the CMRS carrier. This connectivity is depicted in Rebuttal Testimony Exhibit 1. The Petitioner assumed that each CMRS provider would require separate facilities since there are no known Agreements in place that allow the CMRS carriers to share a common connection with the Petitioner's network. The anticipated cost of the transport facilities from the Petitioner's exchanges to Sioux Falls, SD was provided by SDN Communications and attached as Rebuttal Exhibit 2.

WWC has agreed to the routing methodology described above, which requires a dedicated Type 2B connection to each end office, in the Reciprocal Compensation Agreement negotiated as part of WWC's arbitration proceeding in South Dakota. Paragraph 3.1.3 of the Agreement states: "Type 2B Interconnection: Facilities which provide a trunk side connection between the CMRS Provider and the Telephone Company end office. The CMRS Provider's POI must be located within the Telephone Company's end office exchange boundary of that Telephone Company end office." Since none of the CMRS carriers have ordered Type 2B connections to every end office, the cost estimates for these transport facilities were included in the Petitioner's cost exhibits. As a result, the revised cost exhibit provided by Mr. Williams in his direct testimony[2] does not accurately depict the transport costs that would be incurred due to the implementation of LNP. The updated transport figures from Rebuttal Exhibit 1 have been incorporated into the Petitioner's revised cost estimates attached as Rebuttal Exhibit 3.

[2] Testimony of Ron Williams on behalf of Western Wireless, Exhibit 5B – Transport Related Costs

While there may be more efficient network trunking configurations that could be implemented as Mr. Williams asserts in his direct testimony, there are no Interconnection Agreements or Reciprocal Compensation Agreements in place for alternative arrangements and the Petitioners cannot require other carriers to agree to other arrangements. One way to address the impasse over transport costs may be to allow the Petitioners to investigate alternative transport options and then offer those alternatives to carriers that wish to port numbers. Carriers like WWC could then either negotiate direct connections through the interconnection process, chose to use the alternative transport option, or chose not to port with a particular Petitioner. This would seem to be a fairer alternative than simply placing the entire burden of transport on Petitioners and their end user customers.

Service Order Administration (SOA) Cost Estimates

As detailed in our response to WWC's Discovery Requests, the SOA cost estimates were derived by evaluating planning pricing from several vendors that offer automated SOA provisioning services. The actual pricing provided by these providers was obtained under a NDA with the providers. We have asked for permission to release the data for this proceeding, but to date, the SOA providers have not released Vantage Point Solutions from the obligations of the NDA to provide actual pricing. While the actual pricing for each provider is confidential information, the cost estimates can be expressed by looking at the range of pricing for the automated SOA providers. From the pricing that we have received from these providers, the non-recurring setup fees range from $1,800 to $2,000 with monthly recurring fees ranging from $500 to $1,200. The LNP Query charge ranges from monthly recurring

minimums of $100 to $150 with query charges ranging from $0.0005 to $0.00075 per query. In his testimony, Mr. Williams asserts that these costs are overstated since lower cost alternatives are available based on the number of projected ports.[3] However, in response to interrogatory 10.b., WWC does not contend that the cost amounts for an automated SOA interface are unreasonable. (*See* WWC Response to Interrogatory 10.b. attached to the Rebuttal Testimony of Steven E. Watkins). Therefore, if an automated process is not rejected, the cost estimates in the Petitioners' cost exhibits should be allowed. The Petitioner agrees that lower cost SOA alternatives are available; however, the factor for generating the SOA cost estimates was not the quantity of ports, but the porting interval. These manual SOA processes will not be sufficient if the CMRS carriers are successful in their ongoing efforts to reduce the porting interval from its current duration of four (4) days to the FCC target of 2.5 hours. Assuming that the CMRS carriers are successful in their endeavors to reduce the porting interval, the Petitioner assumed the use of an automated SOA system for the five (5) year costs estimates that will be used to generate the anticipated NECA End User charge. If the Petitioners are not required to comply with a reduced porting interval, the Petitioners may be able to reduce their SOA cost estimates by planning to implement a manual, low-tech SOA interface. As a result, the revised cost exhibit provided by Mr. Williams in his direct testimony[4] (which uses "low tech" interfaces) does not accurately depict the anticipated SOA costs that would be incurred due to the implementation of LNP.

LNP Testing/Verification/Administrative Cost Estimates

[3] Testimony of Ron Williams on behalf of Western Wireless, pg 17, lines 9-10
[4] Testimony of Ron Williams on behalf of Western Wireless, Exhibit 5B – NPAC Related Costs

In his testimony, Mr. Williams incorrectly asserts that the LNP Testing, Verification, and Administration cost estimates "appear to be overstated and redundant".[5] As stated in our response to WWC's First Set of Discovery Questions 4(a)(iii) and 5(a)(xiii), the Petitioner will be required to perform testing and verification on a recurring and non-recurring basis to ensure that the ported calls are routing properly. This activity differs from the initial switching translations setup and testing that will be required after the appropriate software features are activated. As stated in my direct testimony, the non-recurring initial translations cost estimates were based on the anticipated fees to data-fill and test basic LNP functionality in the Petitioner's switching system. This testing includes coordination of testing with the SOA provider, verification of proper LNP dip activities, verification of billing system interaction, and other translations activities.

With the initial software translations in place, additional testing, verification, and administration activities will be required for each carrier requesting LNP. The non-recurring technical implementation and testing cost estimates were based on the anticipated fees to data-fill and test specific LNP functionality in the Petitioner's switching system. The Petitioner would seek to ensure that all calls route appropriately for each carrier that has ported one of the Petitioner's numbers. No carrier has provided a mechanism for alerting the Petitioners to updates and changes to their dialing plan. As a result, each Petitioner must research the common industry databases and other sources to ensure that the traffic destined for carriers is routed properly. These anticipated costs are identified as the non-recurring testing and implementation costs on each Petitioner's cost exhibit. Once the routing in-

[5] Testimony of Ron Williams on behalf of Western Wireless, pg 18, lines 2-3

formation is tested and verified for each carrier, the Petitioner plans to perform tests for each ported number as the port is requested to ensure that the ported number route correctly flows through the Petitioner's network. As a result, the revised cost exhibit provided by Mr. Williams in his direct testimony[6] does not accurately depict the recurring testing, verification, and administrative costs that would be incurred due to the implementation of LNP.

Marketing/Informational Flyer Cost Estimates

In his testimony, Mr. Williams incorrectly asserts that the Marketing/Informational Flyer Costs "are not justified on a recurring basis".[7] As stated in our response to WWC's First Set of Discovery Question 13(d), the Petitioner does not plan to provide recurring monthly information to customers regarding LNP. The Petitioner plans to develop a marketing program and provide an explanation of LNP end user fees to their subscribers on an appropriate periodic basis. The revised cost exhibits (reference De Witte Rebuttal Exhibit 3) assume a single mailing. In order to arrive at a monthly estimated cost for the Petitioner's Cost Exhibit, the annual cost estimate for the periodic flyer was divided by twelve (12) to show an average monthly amount.

This type of marketing is required to address customer questions concerning new LNP End User Charges as well as to educate customers about LNP. As a result, the Petitioner will incur an expense to provide an informational flyer. This cost estimate is supported by an advertising and marketing firm. When contacted, this firm estimated that the cost of the development of a marketing program was

[6] Testimony of Ron Williams on behalf of Western Wireless, Exhibit 5B – Technical/Administrative Costs
[7] Testimony of Ron Williams on behalf of Western Wireless, pg 18, lines 3-4

typically in the range of $5,000 to $10,000 depending upon the requirements for color scheme, concept, copyright, art direction (minimal photography), and final production. The costs would increase if additional artwork is required. For printing costs, single page 8"x10" glossy brochures typically run approximately $800 per 1,000 pieces and color postcards typically run approximately $800 per 1,000 pieces. These estimates do not include any radio or television voice work, direction, or production. In addition, these estimates do not include any setup for newsprint media. If other marketing services (voice services, brochures, etc.) are required, additional expenses would likely apply. These revisions have been incorporated into and are supported by the attached marketing company estimate, which is attached as Rebuttal Exhibit 4.

Q: Do you have any other comments about Mr. William's testimony with respect to SOA costs and transport costs?

A: Yes. Mr. Williams' revised cost estimates are based on the Petitioner's projection that there will be a low volume of ports. WWC, however, in response to interrogatory 13.f. estimates a far greater number of ports per year and over a five year period. (*See* WWC Response to Interrogatory 13.f. attached to the Rebuttal Testimony of Steven E. Watkins). If you assume that other wireless carriers will have a similar number of ports, the total number of ports per year could be greater than what I have estimated in my testimony. My SOA and transport cost estimates are sensitive to the number of ported customers for each Petitioner. Therefore, to the extent that the number of ports is closer to WWC's testimony than mine, my cost estimates could increase significantly. Further, under WWC's assumptions and

formulas, the cost of LNP will be greater than that reflected in Mr. Williams' cost exhibit.

Q: How does the number of ported customers impact any end user charge for LNP?

A: If WWC's estimate of the number of ports is correct, there will be far fewer Petitioner subscribers and, therefore, the per subscriber cost of LNP will be much greater than the per subscriber cost projected by WWC.

Q: Is there a way to try to better estimate how many ports may occur and, therefore, more accurately determine the per subscriber cost of LNP?

A: Yes. A review of the actual number of wireline to wireless ports in other rural areas over some period of time may provide a better indication of how many of Petitioner's customers may chose to port their numbers to wireless carriers.

Q: There are several South Dakota ILECs that have Type 1 line side connections to CMRS carriers. How are these connections affected by LNP requirements?

A: For clarification, Type 1 line side numbers reside in an end office of a LEC and are assigned to a Type 1 interconnection group, which connects the wireless carrier's switch and the LEC's end office switch. Type 2 directory numbers reside in a wireless carrier's switch and are assigned to a Type 2 interconnection group, which connects the wireless carrier's switch and a LEC access tandem switch (Type 2A) or end office switch (Type 2B). In the November 10, 2003 *Order*, the FCC acknowledged the inherent difficulties and complexities that would be involved with mandating LNP with Type 1 connections. The FCC found that no action was necessary regarding the porting of numbers served by Type 1 interconnection because

carriers are migrating these numbers to switches served by Type 2 interconnection or are otherwise developing alternative solutions.[8] In his direct testimony, Mr. Williams incorrectly asserts that wireless to wireless portability will be hampered in South Dakota due to these Type 1 connections[9]. However, in response to interrogatory 19, WWC admits that it is not required to use numbers assigned by LECs and that it can obtain its own numbers. (*See* WWC Response to Interrogatory 19 attached to the Rebuttal Testimony of Steven E. Watkins).

Q: In his Direct Testimony, Mr. Williams asserts that the risk for implementing LNP immediately is low.[10] What do you see as the risks for immediate implementation of LNP?

A: It appears that Mr. Williams is looking at the risk for implementing LNP from WWC's viewpoint, not the viewpoint of the Petitioner or its customer that will pay for the LNP implementation through End User charges. WWC's risk for immediate implementation of LNP is a very low risk because WWC appears to have the opinion that they should not have to compensate the Petitioner for transport, transiting, or any other LNP related costs. WWC expects the Petitioner or its customers to pay for all of these costs. At the same time, they are arguing that the LNP transport costs are minimal, even if direct connections do not exist. Based on the Discovery Responses provided by WWC, their solution appears to rely on the use of Qwest as a traffic aggregator for the LNP-related traffic and the conversion of the Petitioner's existing connections with Qwest from one-way toll trunks to 2-way toll trunks. The Petitioners currently do not use Qwest as a traffic aggregator and, as admitted by

[8] FCC CC Docket 95-116 dated November 10, 2003 §19
[9] Testimony of Ron Williams on behalf of Western Wireless, pg 22, lines 20-21
[10] Testimony of Ron Williams on behalf of Western Wireless, pg 21, lines 19-20

WWC, there is no requirement that they do so. Further, the use of Qwest as an aggregator has not been acceptable to the Petitioners for a number of reasons such as the ongoing disagreements with Qwest on the issue of "Phantom Traffic" on the Qwest terminating facilities and other service issues. The use of these Qwest facilities for LNP traffic could exacerbate the "Phantom Traffic" and other ongoing service issues with Qwest. In addition, transit traffic rates and terms and conditions are not governed by the interconnection rules and regulations. As a result, there is no basis to accept the transport scenario reflected in WWC's cost exhibit as a valid reflection of transport costs.

Q: Does this conclude your rebuttal testimony?

A: Yes. I reserve the opportunity to revise or modify this pre-filed rebuttal testimony at or before the hearing if I receive additional information pertaining to the issues I presented herein.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the foregoing **REBUTTAL TESTIMONY** upon the persons herein next designated, on the date below shown, by depositing a copy thereof in the United States mail at Pierre, South Dakota, postage prepaid, in an envelope addressed to each said addressee, to-wit:

Richard D. Coit
Director of Industry Affairs
South Dakota Telecommunications Association
P. O. Box 57
Pierre, South Dakota 57501

Richard Helsper
Glover, Helsper & Rasmussen
100 22nd Ave., #200
Brookings, SD 57006

Talbot J. Wieczorek
Gunderson, Palmer, Goodsell & Nelson, LLP
P. O. Box 8045
Rapid City, South Dakota 57709-8045

James Cremer
Bantz, Gosch & Cremer
P.O. Box 970
Aberdeen, SD 57402

David A. Gerdes
MAY, ADAM, GERDES & THOMPSON
P. O. Box 160
Pierre, South Dakota 57501

Jeffrey Larson
Larson & Nipe
P.O. Box 277
Woonsocket, SD 57385

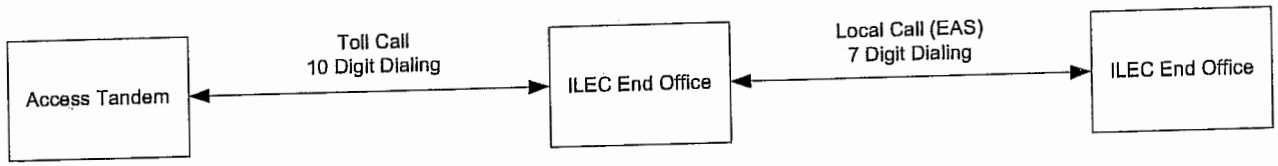
Dated this fourteenth day of June, 2004.

Darla Pollman Rogers

Darla Pollman Rogers
Riter, Rogers, Wattier & Brown
P. O. Box 280
Pierre, South Dakota 57501
Telephone (605) 224-7889

Local and Toll Call Dialing Plans

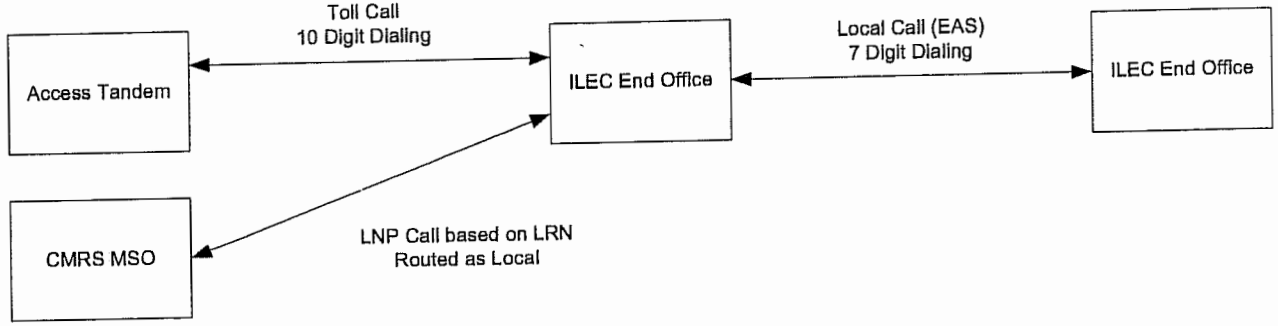
Today - Non LNP Routing



LNP Routing without Direct Connections



LNP Routing with Direct Connections



CONFIDENTIAL

#3

CONFIDENTIAL

#4

DeWITTE REBUTTAL EXHIBIT 4

John De Witte

From: Tom Helland [tom.helland@l-s.com]
Sent: Wednesday, June 02, 2004 9:51 AM
To: John De Witte
Subject: Re: Marketing Program Development Costs

John,
Yes, those "ballpark" figures are accurate. Some of the variables would include: the amount of copywriting, photography needs, and how extensive revisions to the original work would be. I hope this is helpful.

Thanks,
Tom Helland

John De Witte wrote:

> Hi Tom,
>
> It was great to speak with you this afternoon. I wanted to verify the numbers that we discussed this afternoon concerning the development of a marketing program that a rural Independent Local Exchange Carrier (ILEC) would utilize to explain the end user fees for Local Number Portability (LNP). While I understand that L-S has no position (for or against) this issue, if a marketing campaign were to be developed to explain any similar issue, the costs to develop a marketing campaign would likely be similar. I was wondering if you could verify that these estimated costs are in the ballpark for the development of a marketing campaign:
>
> Development of the marketing program, including color scheme, concept, copyright, art direction (minimal photography), and final production
> Range: $5,000 - $10,000 depending upon art requirements
>
> Printing Costs
> 8x11 Color Glossy – approximately $800/1000 pieces
> Color Postcard – approximately $800/1000 pieces
> There may be applicable discounts for higher volumes of printed media.
>
> These estimates do not include any radio or television voice work, direction, or production. In addition, these estimates do not include any setup for newsprint media. If other marketing services (voice services, brochures, etc.) are required, additional expenses would likely apply.
>
> Please verify that these Marketing Program Development accosts are reasonable. Thanks,
>
> ***John M. De Witte, PE***
> ***Vice President of Engineering***
> ***Vantage Point Solutions, Inc.***
> *1801 N. Main Street*
> *Mitchell, SD 57310*
> *(605) 995-1742 - Direct*
> *(605) 995-1778 - Fax*
> *(605) 999-9943 - Cell*
> *www.vantagepnt.com*

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE LOCAL NUMBER PORTABILITY SUSPENSION DOCKETS	))))))	**SUPPLEMENTAL ORDER FOR AND NOTICE OF HEARING TC04-025, TC04-038, TC04-044-056, TC04-060-062, TC04-077, TC04-084-085**

On May 4, 2004, the Commission issued an Order for and Notice of Procedural Schedule and Hearing and of Intent to Take Judicial Notice (Order) in this matter. The procedural history of this docket and statement of jurisdiction is set forth in the Order. The Order provided *inter alia*:

> To the extent that the issues and the witnesses and documentary evidence are materially identical in more than one LNP suspension docket, the parties are encouraged to present such common evidence in a consolidated manner that will minimize repetition and opposing parties are encouraged to reasonably stipulate to such consolidated presentation of evidence. The hearing will commence on June 21, with consideration of MidContinent Communications' Motion to Compel, Docket No. TC03-192. Following the hearing on this related docket, the remaining dockets will be heard in docket number order except to the extent that the parties otherwise agree or the Commission shall otherwise order, either prior to or during the hearing. Petition of Santel Communications Cooperative, Inc., Docket No. TC04-038, will be heard on July 1, 2004.

On June 1, 2004 at 1:30 p.m., a pre-hearing scheduling conference was held by teleconference to consider further refinements to the hearing schedule following the filing of pre-filed testimony. The conference was attended by attorneys representing all parties, including commission staff. The purpose of this Order is to expand on and clarify the Order to more specifically schedule the order for consideration of case-specific evidence in the various LNP suspension dockets in order to accommodate, insofar as possible, the schedules of attorneys and witnesses, many of whom will present evidence pertaining to multiple dockets, and to conclude the hearings in time to permit the Commission to render decisions within the time period prescribed by 47 U.S.C. Section 251(f)(2) and ARSD 20:10:32:39 while yet affording a reasonable period for post-hearing briefs.

The parties having conferred through their counsel and having agreed upon a schedule to most efficiently manage the numerous LNP suspension hearings within the limited time available by law for decision, it is therefore

ORDERED, that the hearings in the LNP suspension petition dockets and Docket No. TC03-192 will be conducted in the following order except as the Commission shall otherwise order either prior to or during the hearings (all dates 2004):

June 21, 10:00 a.m.	TC03-192, Midcontinent's Motion to Compel, including any evidence common to this docket and TC04-054
June 21 following TC03-192	TC04-054, ITC
June 22, 10:30 a.m.	TC04-047, Brookings Municipal Utilities

Dated at Pierre, South Dakota, this 16th day of June, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 6/17/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE LOCAL NUMBER PORTABILITY SUSPENSION DOCKETS	)))))	ORDER FOR AND NOTICE OF HEARING ON MOTION TO COMPEL TC04-025, TC04-038, TC04-044-056, TC04-060-062, TC04-077, TC04-084-085

On June 14, 2004, Western Wireless, LLC (WWC) filed an Intervenor's Motion to Compel Discovery or in the Alternative to Strike Petitioners' Pre-Filed Testimony Regarding Costs (Motion). On June 18, 2004, Petitioners electronically transmitted Petitioners' Response in Opposition to Intervenor's Motion to Compel Discovery or in the Alternative to Strike Petitioners' Pre-Filed Testimony Regarding Costs. Commission counsel transmitted an email to attorneys for all parties in these proceedings and attempted to schedule a hearing on the Motion for June 18, 2004. Several of the parties have not responded and a quorum of Commissioners cannot be obtained for a hearing on this date. Accordingly, the hearing on WWC's Motion will be held at 11:00 a.m. on June 21, 2004, in the Second Floor Conference Room of the Soldiers and Sailors War Memorial Building (across Capitol Avenue from the Capitol Building), Pierre, South Dakota. The hearing in TC03-192 will be recessed during the hearing on the Motion. It is therefore

ORDERED, that a hearing on WWC's Motion to Compel Discovery or in the Alternative to Strike Petitioners' Pre-Filed Testimony Regarding Costs will be held at the above time and place and the hearing in TC03-192 will be recessed to accommodate such hearing.

Dated at Pierre, South Dakota, this 18th day of June, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Tina Douglas

Date: 6-18-04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

ROBERT K. SAHR, Chairman

GARY HANSON, Commissioner

JAMES A. BURG, Commissioner

Bantz, Gosch & Cremer, L.L.C.

♦Attorneys at Law♦

Douglas W. Bantz (1909-1983)
Kennith L. Gosch
James M. Cremer
Rory King
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June 17, 2004

RECEIVED
JUN 18 2004
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

08416-009
Ms. Pamela Bonrud
Executive Director
S.D. Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

Re: In the Matter of the Petitions for Suspension or Modification of § 251(b)(2) of the Communications Act of 1934 as Amended

Docket No. TC04-025; TC04-038; TC04-044 through TC04-056; TC04-060 through TC04-062; TC04-077; TC04-084; and TC04-085

Dear Ms. Bonrud:

Enclosed is the original and ten copies of Petitioners' Response in Opposition to Intervenor's Motion to Compel Discovery or in the Alternative to Strike Petitioners' Pre-Filed Testimony Regarding Costs. By copy of this letter, I am serving the other parties in this matter. If you have questions, please contact me.

Sincerely,

JAMES M. CREMER

JMC:mvs
\JVT\LNP Waiver\Bonrud10
Enclosures
pc James Groft
Talbot J. Wieczorek
Richard D. Coit
David A. Gerdes
Darla Pollman Rogers
Richard J. Helsper
Jeffrey D. Larson

RECEIVED
JUN 18 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITIONS FOR SUSPENSION OR MODIFICATION OF § 251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	Docket No. TC04-025; TC04-038; TC04-044 through TC04-056; TC04-060 through TC04-062; TC04-077; TC04-084; and TC04-085 PETITIONERS' RESPONSE IN OPPOSITION TO INTERVENOR'S MOTION TO COMPEL DISCOVERY OR IN THE ALTERNATIVE TO STRIKE PETITIONERS' PRE-FILED TESTIMONY REGARDING COSTS

COMES now Petitioners by and through their undersigned attorneys, and submit this response to Intervenor's Motion To Compel Discovery Or In The Alternative To Strike Petitioners' Pre-Filed Testimony Regarding Costs ("Motion To Compel"). Petitioners submit that the Motion To Compel should be denied in its entirety. As grounds for such denial, the Petitioners will show that the Motion itself is factually flawed, as it misrepresents discovery answers provided by certain of the Petitioners. Moreover, the principal focus of the Motion seeks the production of cost numbers and documents, all of which concern pricing for Service Order Administration ("SOA") functions with which Western Wireless has no quarrel. And, even if Western Wireless were to change its position regarding the relevancy of this information to its case, Western Wireless has not complied with the terms of the Confidentiality and Protective Agreement ("Agreement") regarding document production from non-parties.

These points will be discussed in order.

The Motion Confuses The Facts

As previously discussed, the Motion To Compel mistates the discovery responses for some Petitioners. For instance, Western Wireless' Brief in Support of its Motion To Compel

purports to represent the response of "All Petitioners" to Question 4a(i) and (ii) (Brief, p. 2). Such is not the case. The Cheyenne River Sioux Tribe, which is subject to the Motion To Compel, did not supply the response attributed to them. Additionally, the answers to interrogatory no. 5 purport to apply to all of the Petitioners. This is not correct. For instance, the answers supplied by the City of Brookings/SWIFTEL and the Cheyenne River Sioux Tribe are at variance with the answers attributed to them in Western Wireless' Brief. Questions 13, 16, 18, 19 and 21 suffer from more egregious error, in that Western Wireless did not even propound this question to all Petitioners. For example, question 13 only was addressed to the City of Brookings, Interstate Telecommunications Cooperative, Santel and a few others. And questions 18, 19 and 21 were only addressed to the Joint Petition filed by Armour, Union and Bridgewater-Canistota.

The Requested Proprietary Information Is Not In Dispute

Notwithstanding the factual errors discussed above, the Motion's principal focus concerns proprietary data (held by non-parties) about which there is no dispute. In this respect, Western Wireless' interrogatory questions number 4, 5, 13 and 16, and Production of Documents number 3, all sought SOA pricing information and documents. These items are all the subject of its Motion To Compel and Brief In Support. In Responses to Supplemental Discovery Requests of Petitioners ("Supplemental Responses") dated June 11, 2004, Western Wireless made clear that it was not challenging SOA pricing, rather, it challenged whether port volumes justified the use of automated SOA. See Interrogatory 10.b. and answer of Western Wireless.

Against this background, the Motion To Compel appears to be a fishing expedition. The Brief In Support is heavily freighted with the notion that the cost information sought by Western

Wireless is so important that Petitioners' cost testimony should be stricken if it is not produced. Yet plainly, this is not an issue with Western Wireless, except in the Motion To Compel itself. This is an unwarranted use of the parties' and Commission's time, and the Motion should be denied as to these SOA cost items and documents.

Western Wireless Has Not Followed The Confidentiality Agreement

Paragraph 10 of the Agreement contemplates that a "non-party" will supply documents "pursuant to process issued by the Commission." All of the SOA cost information and documents sought in the Motion To Compel are the subject of non-disclosure agreements (NDA's) between the Petitioners and third-party SOA vendors. All of these vendors have now been contacted by Petitioners, or their representatives, for permission to supply the SOA information. The vendors have refused to release such information and no process has been requested by Western Wireless from the Commission, as contemplated by the Agreement. The third party SOA vendors have the right to claim a privilege and prevent other persons from disclosing trade secrets owned by them, and if disclosure is required the order shall take such protective measures as is in the interest of the holder of the privilege and the interest of justice required. SDCL 19-13-20. Under these circumstances, particularly in view of the fact that Western Wireless has no quarrel with the SOA costs themselves, the Motion should be denied.

Interrogatory Numbers 18 and 19 Directed to Armour, Union and Bridgewater-Canistota Will Be Supplied Pursuant To The Confidentiality Agreement

Interrogatories 18 and 19 requested certain switch investment information for Armour, Union and Bridgewater-Canistota. Objections were filed based on the confidential nature of the data. Such data has now been developed and will be produced, subject to the Confidentiality Agreement. Interrogatory 21 sought an explanation as to why local switching support resources

should not be used to offset LNP implementation costs. A relevancy objection was made, because there is no connection between the universal service support and LNP rate structure regimes, and Western Wireless' Motion To Compel attempts no explanation as to this interrogatory. The only argument Western Wireless does make concerned the parties' entry into the Confidentiality Agreement, but such Agreement clearly does not erase the discovery standard, which is not met here. Accordingly, the Motion To Compel should be denied in its entirety.

Dated this 17th day of June, 2004.

ATTORNEYS FOR PETITIONERS:

/s/ Jeffrey D. Larson
Jeffrey D. Larson
Larson & Nipe
P.O. Box 277
Woonsocket, SD 57385-0277

/s/ Darla Pollman Rogers
Darla Pollman Rogers
Riter, Rogers, Wattier & Brown
P.O. Box 280
Pierre, SD 57501

/s/Richard J. Helsper
Richard J. Helsper
Glover, Helsper & Rasmussen
100 22nd Ave. #200
Brookings, SD 57006

James M. Cremer
Bantz, Gosch & Cremer, L.L.C.
P.O. Box 970
Aberdeen, SD 57402-0970

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 17th day of June, 2004, a true and correct copy of the foregoing **PETITIONERS' RESPONSE IN OPPOSITION TO INTERVENOR'S MOTION TO COMPEL DISCOVERY OR IN THE ALTERNATIVE TO STRIKE PETITIONERS' PRE-FILED TESTIMONY REGARDING COSTS** was mailed electronically and by first class mail, postage prepaid, to:

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Rapid City, SD 57709
Email: tjw@gpgnlaw.com

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BANTZ, GOSCH & CREMER, L.L.C.



305 Sixth Avenue S.E.
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Attorneys for James Valley Cooperative Telephone Company

GUNDERSON, PALMER, GOODSELL & NELSON, LLP

ATTORNEYS AT LAW

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JAMES S. NELSON
DANIEL E. ASHMORE
TERENCE R. QUINN
DONALD P. KNUDSEN
PATRICK G. GOETZINGER
TALBOT J. WIECZOREK
MARK J. CONNOT

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PAMELA SNYDER-VARNS
SARA FRANKENSTEIN
AMY K. SCHULDT
JASON M. SMILEY

June 17, 2004

RECEIVED
JUN 18 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Pamela Bonrud
Executive Director
SD Public Utilities Commission
500 E Capitol Avenue
Pierre SD 57501

RE: Western Wireless License LLC Petition for Suspension or Modification of Local Number Portability Docket Nos. TC 04-025; TC04-038; TC04-044 through TC04-056; TC04-060 through TC04-062; TC04-077; TC04-084 and TC04-085

Dear Ms. Bonrud:

Pursuant to SDCL §16-8-2.2, please find an original and ten copies of the Certification of Dean of Law School to permit Paul A. Lewis, a summer intern with Gunderson, Palmer, Goodsell & Nelson, LLP, to attend and participate in Western Wireless License LLC's upcoming hearings regarding local number portability. I checked with the Clerk of Court in Hughes County and Chris informed me I did not need to file this document with the Court.

Western Wireless License, LLC has approved Mr. Lewis' attendance and participation in the hearings.

If you need anything further at this time, please let me know.

Sincerely,

Talbot J. Wieczorek

TJW:klw
Enclosures
c: Darla Rogers
Rich Coit
James Cremer
Rich Helsper
Ben Dickens
Jeff Larson
David Gerdes

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

RECEIVED
JUN 16 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE
CERTIFICATION OF LAW STUDENT AS LEGAL INTERN

Certificate of Admission

I, Joseph Haas, Clerk of the District Court of the United States for the District of South Dakota, do hereby certify that

Paul A. Lewis

has been duly admitted and qualified as a law student intern of this Court pursuant to the provisions of Rule 2, Section 9.2 and Section 9.3 of the Rules of Practice of this Court.

This Certificate shall terminate August 13, 2004.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of this court at my office in Sioux Falls in the District of South Dakota, this 26th day of May, 2004.

Joseph Haas, Clerk

BY: Sharon Sours
Deputy Clerk

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA

IN THE MATTER OF THE CERTIFICATION OF LAW STUDENT AS LEGAL INTERN

Court File No. _____
CERTIFICATION OF DEAN AND LAW STUDENT, ET AL.

TO THE CLERK OF THE ABOVE ENTITLED COURT:

CERTIFICATION OF DEAN OF LAW SCHOOL

Pursuant to the provisions of Local Rule 83.2(I)(2) of the Rules of Practice of this Court, I do hereby certify to the Court that **Paul A. Lewis** is according to my best knowledge, information, and belief, of good moral character, was a student in good standing from the University of South Dakota School of Law (a law school approved by the American Bar Association), will complete legal studies amounting to four semesters on **May 7, 2004**, and is qualified to serve as a Legal Intern. This certificate is valid until **August 13, 2004,** or until termination at any time by a judge of this Court without notice or hearing and without any showing of cause.

Dated April 16, 2004

Barry R. Vickrey, Dean
University of South Dakota School of Law
414 E. Clark St.
Vermillion, SD 57069-2390
Telephone (605) 677-5443

CERTIFICATION OF LAW STUDENT

Pursuant to the provisions of Local Rule 83.2(I)(2)(c)(ii) of the Rules of Practice of this Court, I do hereby certify that I have read and agree to abide by the rules of the Court, and all applicable codes of professional responsibility and other relevant federal practice rules.

Dated 04/20/04

Legal Intern

IN THE
SUPREME COURT OF
THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE CERTIFICATION OF LAW STUDENT AS LEGAL INTERN

Court File No. _____
CERTIFICATION OF DEAN AND LAW STUDENT, ET AL.

TO THE CLERK OF THE ABOVE ENTITLED COURT:

CERTIFICATION OF DEAN OF LAW SCHOOL

Pursuant to the provisions of SDCL 16-18-2.2, I do hereby certify to the Court that **Paul A. Lewis** is duly enrolled at the University of South Dakota School of Law, will have completed legal studies amounting to at least four semesters, or the equivalent, on May 07, 2004, and that said individual, according to my best knowledge, information, and belief, is of good moral character and competent legal ability and is adequately trained to perform as a Legal Intern. This certificate is valid until **August 13, 2004,** and shall not remain in effect in excess of eighteen months after it has been filed. Pursuant to SDCL 16-18-2.3, this certification may be terminated by the above entitled Court at any time without notice or hearing and without any showing of cause.

Dated April 16, 2004 _____

Barry R. Vickrey, Dean
University of South Dakota School of Law
414 E. Clark St.
Vermillion, SD 57069-2390
Telephone (605) 677-5443

CERTIFICATION OF LAW STUDENT

Pursuant to the provisions of SDCL 16-18-2.2(6), I do hereby certify that I have read and am familiar with the South Dakota Rules of Professional Conduct of the State Bar of South Dakota, the provisions of SDCL Title 16, and the provisions of SDCL 19-13-2 to 19-13-5, inclusive, and I agree to govern my conduct accordingly as a Legal Intern.

Dated 04/20/04 _____

Legal Intern

DEAN'S APPROVAL OF SUPERVISING LAWYER PURSUANT TO SDCL 16-18-2.9:

Name of Supervising Lawyer: Mark J. Connot

Dated April 16, 2004 _____

Barry R. Vickrey, Dean
University of South Dakota School of Law
414 E. Clark St.
Vermillion, SD 57069-2390
Telephone (605) 677-5443

(Rev. 1 April, 1996)

RECEIVED
JUN 2 2 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

In the Matter of the Petition of Brookings Municipal Utilities d/b/a Swiftel Communications for Suspension or Modification of 47 U.S.C. Section 251 (b)(2)) Of the Communication Act of 1934 as Amended	Docket Nos. TC04-047; TC04-192; TC04-025; TC04-044 throughTC04-046; TC04-048 through TC04-056; TC04-060 through TC04-062; TC04-084; and TC04-085
	ORDER

The above referenced matter having come before the Honorable Judge Gors, Circuit Court Judge and the Court having reviewed the Motion Requesting Admission of a Nonresident Attorney that was filed in accordance with SDCL 16-18-2 and the Court being in all things duly advised; it is hereby,

ORDERED that the Motion Requesting Admission of a Nonresident Attorney is granted and that Benjamin H. Dickens, Jr., the nonresident attorney, may appear before the South Dakota Public Utilities Commission in Docket No. TC04-047, along with all the other above referenced Docket Nos.

Dated this 16 day of June, 2004.

BY THE COURT:

Circuit Court Judge

ATTEST:

Christal L Espeland
Clerk of Court

State of South Dakota } ss
County of Hughes
I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.
Dated this 21 day of June, 2004
CHRISTAL L. ESPELAND, Clerk of Courts
By Christal L Espeland
Clerk of Courts/Deputy

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.
FILED
JUN 16 2004
Christal L. Espeland Clerk
By_____Deputy

RECEIVED
JUN 2 2 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

In the Matter of the Petition of Brookings Municipal Utilities d/b/a Swiftel Communications for Suspension or Modification of 47 U.S.C. Section 251 (b)(2)) Of the Communication Act of 1934 as Amended	Docket Nos. TC04-047; TC04-192; TC04-025; TC04-044 throughTC04-046; TC04-048 through TC04-056; TC04-060 through TC04-062; TC04-084; and TC04-085
	ORDER

The above referenced matter having come before the Honorable Judge Gors, Circuit Court Judge and the Court having reviewed the Motion Requesting Admission of a Nonresident Attorney that was filed in accordance with SDCL 16-18-2 and the Court being in all things duly advised; it is hereby,

ORDERED that the Motion Requesting Admission of a Nonresident Attorney is granted and that Mary J. Sisak, the nonresident attorney, may appear before the South Dakota Public Utilities Commission in Docket No. TC04-047, along with all the other above referenced Docket Nos.

Dated this 21 day of June, 2004.

BY THE COURT:

Circuit Court Judge

ATTEST:

Christal L Espeland
Clerk of Court

State of South Dakota } ss
County of Hughes
I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.
Dated this 21 day of June, 2004.
CHRISTAL L. ESPELAND, Clerk of Courts
By Christal L Espeland
Clerk of Courts/Deputy

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.
FILED
JUN 21 2004
Christal L. Espeland Clerk
By _____ Deputy

LNP TRANSCRIPTS OF

HEARINGS HELD JUNE 21, 2004

TO JULY 1, 2004 ARE IN

DOCKET TC04-025

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE LOCAL NUMBER PORTABILITY SUSPENSION DOCKETS	)))))	ORDER ESTABLISHING BRIEFING AND DECISION SCHEDULE TC04-025, TC04-038, TC04-044-056, TC04-060-062, TC04-077, TC04-084-085

At the conclusion of the hearing in the dockets requesting suspension of local number portability (LNP) obligations on July 1, 2004, the issue of the briefing and decision meeting schedule was left open due to the absence of counsel for many of the parties. Also not decided was whether oral argument was desired. Following the hearing, counsel for the Commission engaged in an exchange of email with counsel for the parties and discussed with the Commissioners their desire to hear oral argument. Counsel for the parties agreed that there should be oral argument if the Commissioners desired to hear it. Having considered the comments and requests of the parties regarding the schedule and of the Commissioners regarding oral argument, it is

ORDERED, that the schedule for filing and service of briefs and for the decision hearing by the Commission in the above-referenced dockets will be as follows (all dates 2004):

July 7	Transcripts received
Aug 5	Petitioners' and SDTA's briefs due
Aug 20	Intervenors' and Staff's briefs due
Aug 27	Petitioners' and SDTA's reply briefs due
Aug 31	Decision hearing (at least one Commissioner has requested oral argument)
Sep 7	Decisions issued in at least Kennebec, Santel, Sioux Valley, Golden West, and Armour/Bridgewater-Canistota/Union; and it is further

ORDERED, that because of the abbreviated schedule in these cases, all briefs will be served by email or by fax on all counsel for the parties to the applicable docket(s) on or before the above due dates in addition to the ordinary means of service on counsel; and it is further

ORDERED, that counsel may incorporate their argument pertaining to multiple or all of the LNP dockets in one brief; and it is further

ORDERED, that a decision hearing will be held on August 31, 2004, at 1:30 P.M. CDT in Room 412 of the State Capitol Building, 500 East Capitol Avenue, Pierre, SD, at which time the Commission will render decisions on at least Kennebec, Santel, Sioux Valley, Golden West, and Armour/Bridgewater-Canistota/Union. The parties may present oral argument at this hearing if they desire.

Dated at Pierre, South Dakota, this 13th day of July, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 7/13/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner

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August 5, 2004

RECEIVED
AUG 05 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Ms. Pamela Bonrud
Executive Director
SD Public Utilities Commission
500 East Capitol Ave.
Pierre, South Dakota 57501

Re: LNP Suspension Dockets
Post-Hearing Brief of Petitioners and SDTA

Dear Ms. Bonrud:

Enclosed herein are the original and ten copies of the Post-Hearing Brief of Petitioners and SDTA in the LNP Dockets.

Sincerely,

Margo D Northrup

Margo D. Northrup
Attorney at Law

MDN/ph

Enclosures

RECEIVED
AUG 05 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITIONS FOR SUSPENSION OR MODIFICATION OF §251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	DOCKET NUMBERS:

TC04-025 Kennebec Telephone Co.
TC04-038 Santel Communications
TC04-044 Sioux Valley Telephone Co.
TC04-045 Golden West, Vivian Telephone Co and Kadoka Tele Co
TC04-046 Armour, Bridgewater-Canistota Tele Co and Union Tele Co
TC04-047 Brookings Municipal Utilities d/b/a Swiftel Communications
TC04-048 Beresford Municipal Telephone Company
TC04-049 McCook Cooperative Telephone Company
TC04-050 Valley Telecommunications Cooperative Association, Inc.
TC04-051 City of Faith Telephone Company
TC04-052 Midstate Communications, Inc.
TC04-053 Western Telephone Company
TC04-054 Interstate Telecommunications Cooperative, Inc.
TC04-055 Alliance Communications Inc. and Splitrock Properties
TC04-056 RC Communications, Inc., and Roberts County Telephone Cooperative Assn.
TC04-060 Venture Communications Cooperative
TC04-061 West River Cooperative Telephone Company
TC04-062 Stockholm-Strandburg Telephone Company
TC04-084 Tri-County Telcom
TC04-085 Cheyenne River Sioux Tribe Authority

POST-HEARING BRIEF OF PETITIONERS AND SDTA

Submitted on behalf of the above-named Rural Local Exchange Carriers and the South Dakota Telecommunications Association

August 5, 2004

INTRODUCTION

Pending before the Public Utilities Commission of the State of South Dakota ("Commission") are 20 Petitions[1] filed by rural telephone companies pursuant to 47 U.S.C. §251(f)(2) seeking suspension or modification of the requirements of 47 U.S.C. §251(b)(2) concerning number portability, including suspension or modification of the requirements set forth In the Matter of Telephone Number Portability, CC Docket 95-116, Memorandum Opinion and Order and the Further Notice of Proposed Rulemaking, FCC 03-284 (released November 10, 2003) ("*November 10 Order*"), insofar as the Order requires these Petitioners to implement local number portability ("LNP").

The *November 10 Order* obligates local exchange carriers located outside the top 100 metropolitan statistical areas (MSAs) to provide LNP and to port numbers to wireless carriers when certain conditions have been met. Such obligation commenced on May 24, 2004, or commences within six months of the date that the wireline carrier receives a bona fide request for LNP from a commercial radio service ("CMRS") provider. (*November 10 Order* at ¶29.)

In §251(f)(2) of the Act, Congress granted state commissions jurisdiction to suspend or modify the application of a requirement of §251(b) or (c) for "two percent rural carriers," which includes a suspension of the requirement to provide LNP.[2] Each of the Petitioners in this case is seeking suspension or modification of the requirement to implement LNP. Thus, the fundamental question presented in this proceeding is whether the Commission should suspend or modify

[1] Initially, 21 companies filed Petitions with the Commission requesting suspension or modification of LNP requirements. Subsequently, two Petitioners (CRST and James Valley) entered into settlement stipulations with Western Wireless. CRST's settlement position is that the Commission's ultimate disposition of transport issues may affect third parties, other than Western Wireless, which has its own transport arrangement with CRST. For this reason only, CRST's docket number is included in the caption of this brief.

[2] It is undisputed that each of the Petitioners in the pending applications constitute carriers with less than 2% of the nation's subscriber lines, nationwide.

the Petitioners' requirements to implement LNP, both wireline to wireline and wireline to wireless.

The Petitioners represent that when the Commission considers the initial and ongoing costs of implementing LNP, the Commission will conclude that such costs create a significant adverse economic impact on users of telecommunications services generally and, to the extent that any costs are not recovered by an end user LNP surcharge, on the individual Petitioners themselves. Specifically, each company estimated the increase in a subscriber's monthly local service cost that would result from the implementation of LNP. Additionally, each company estimated the total increase in a subscriber's local service cost if the company is required to absorb the cost of transporting calls to ported numbers outside of Petitioner's local service area. While recognizing that the Federal Communications Commission ("FCC") has determined that local exchange carriers ("LECs") must implement LNP to wireless providers, each Petitioner contends that the *November 10 Order* does not address issues relating to the routing of calls to ported numbers in those cases in which no direct connection exists between carriers. Further, the Petitioners assert that in light of current routing arrangements, it is technically infeasible to complete calls on a local basis to telephone numbers ported to a wireless provider. Finally, Petitioners demonstrated through evidence that there is little or no public demand for LNP. As a result, the Petitioners believe it is not consistent with the public interest, convenience and necessity to expend the significant investment necessary to deploy LNP.

All of the remaining Petitioners and Intervenor SDTA hereby submit this Post-Hearing Brief in support of their request that the Commission suspend or modify the LNP requirement in Section 251(b)(2) of the Act. Based on the evidence presented at the hearing in this matter, each Petitioner has demonstrated that it satisfies the requirements of Section 251(f)(2) and SDCL 49-

31-80. Accordingly, the Commission should grant continued suspension or modification of the requirement of Petitioners to provide LNP.

PROCEDURAL HISTORY

By twenty separate Petitions filed by rural telephone companies, beginning with Kennebec Telephone Company ("Kennebec") on February 12, 2004, and most recently, Tri-County Telcom, Inc. ("Tri-County") on April 23, 2004, said carriers are seeking suspension or modification of the FCC's requirement to implement LNP. Notice of the filing of each of the Petitions was electronically transmitted by the Commission in accordance with this Commission's Administrative Rules. Petitions for intervention were filed by WWC License, LLC ("WWC" or "Western Wireless") in each docket; by South Dakota Telecommunications Association ("SDTA") in each docket; and by Midcontinent Communications ("Midcontinent") in eight of the dockets. Intervention was granted to each party petitioning for intervention.

Each of the Petitioners requested the Commission to (1) issue an interim order that suspends any obligation that may exist for Petitioner to provide LNP until six months after entry of a final order; (2) issue a final order that grants a permanent suspension or modification of Petitioner's obligation to implement LNP until conditions are met as described in the Petition; and (3) grant Petitioner such other and further relief that may be proper. At a regularly scheduled meeting on April 6, 2004, the Commission heard arguments from Petitioners, WWC, and SDTA regarding the Petitioners' requests for an order granting interim suspension. Pursuant to 47 U.S.C. §251(f)(2) and SDCL 49-31-80, the Commission granted the requests for an interim suspension order pending final decision.

By Orders dated May 4, 2004, and June 16, 2004, the Commission implemented a Procedural Schedule in each of the dockets that established a timeline for discovery, a schedule for the

presentation of prefiled testimony and exhibits of all the parties, and dates for administrative hearings in the dockets. On June 21, 2004, through July 2, 2004, pursuant to that schedule, hearings were held before the Commission in each docket. Petitioners presented testimony through the following witnesses: Steven E. Watkins, a telecommunications consultant specializing in LNP issues, affiliated with the law firm of Kraskin, Mormon and Cosson in Washington, D.C. (SDTA Exhibits 1, 2; Tr. 495-526); John DeWitte, Vice President of Engineering for Vantage Point Solutions, Mitchell, South Dakota, who presented cost evidence on behalf of Interstate Telecommunications Cooperative, Inc. ("ITC"), Stockholm-Strandburg Telephone Company ("Stockholm"), Venture Communications Cooperative ("Venture"), West River Cooperative Telephone Company ("West River"), and Swiftel Communications ("Swiftel") (Brookings Ex. 3, Stockholm Ex. 3, Venture Ex. 3, West River Ex. 3, ITC Exs. 4(A) and 4(B); Tr. 135-290; 454-492; 1085-1089; 1121-1125); Tom Bullock and Dan Davis, both consultants with TELEC Consulting Resources, Omaha, Nebraska, office, who presented cost evidence on behalf of the remaining Petitioners (except CRST) (Valley Ex. 3, Faith Ex. 3, Golden West Ex. 3, Armour Ex. 3, Sioux Valley Ex. 3, Bullock Exs. 1, 2, 3, Alliance Ex. 3, Tri-County Ex. 1, Western Ex. 1, Davis Exs. 1 and 2, Midstate Ex. 3, Beresford Ex. 3, Kennebec Ex. 3, Roberts County Ex. 3; Tr. 83-917; Tr. 989-1015; 1037; 1054-1056). In addition, the general managers of most of the petitioning companies presented testimony throughout the course of the hearings. WWC presented its case through the testimony of Ron Williams (WWC Ex. 1; Tr. 529-591; 600-713; 925-940; 1019-1035; 1058-1059; and 1129-1134).

Thereafter, on July 13, 2004, the Commission entered an Order Establishing Briefing and Decision Schedule in all of the remaining LNP dockets. On July 15, 2004, the Commission extended Petitioner Kennebec's suspension of obligation to implement LNP, pursuant to 47 U.S.C.

§251(f)(2) and ARSD 10:10:32:39, until September 7, 2004, which is the date for final Commission order in all dockets.

I.

THE SOUTH DAKOTA PUBLIC UTILITY COMMISSION HAS JURISDICTION TO SUSPEND LOCAL NUMBER PORTABILITY OBLIGATIONS PURSUANT TO DEFINED FEDERAL STANDARDS

As set forth in Petitioners' pleadings initiating these consolidated proceedings, the FCC has set forth requirements for the implementation of LNP, pursuant to 47 U.S.C. § 251(b)(2), applicable to the Petitioners. See e.g. Petition of Interstate Telecommunications Cooperative, Inc. (ITC), p. 2. Specifically, the FCC has set forth rules concerning the implementation of LNP by wireline carriers in sections 52.23-52.29 and 52.32-52.33 of its rules. 47 C.F.R. §§52.23-52.29 and 52.32-52.33. Further, pursuant to the *November 10 Order*, the FCC has required that local exchange carriers outside the largest 100 Metropolitan Statistical Areas (MSAs) provide LNP and port numbers to wireless carriers beginning May 24, 2004, or within six months of the date upon which a bona fide request has been received by such carrier. The *November 10 Order* is currently before the U.S. Court of Appeals for the District of Columbia Circuit, in United States Telecom Association v. FCC, case nos. 03-1414 and 03-1443. The Order has not been stayed by the FCC itself, nor the D.C. Circuit.

The requirements of this Order went far beyond existing rules for LNP between wireline carriers, which rules limited portability between such carriers to the LEC rate center. Specifically, the *November 10 Order* found that LECs must implement LNP to allow porting to wireless carriers, even where the wireless carrier does not have a point of interconnection or telephone numbers in a particular LEC's rate center. Moreover, the Order applied this new requirement in a discriminatory way. It did not require wireless carriers to allow porting back to wireline carri-

ers where a "mismatch" exists – a frequent occurrence – between wireline and wireless rate centers. Rather, the FCC only instituted a rulemaking to consider this issue, while requiring wireline LECs nevertheless to proceed with such one-sided porting.

The Petitioners are all eligible to request suspension of the FCC's LNP requirements from this Commission, and this Commission has jurisdiction to grant the suspension request. Section 251 (f)(2) frames both this Commission's jurisdiction, and the standards to be met for the suspension of the LNP requirements. As to jurisdiction, this section reads in pertinent part, that "a local exchange carrier with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide may petition a state Commission for modification" of the number portability requirements.

The Petitioners all easily fall below this "two percent" threshold; indeed their eligibility to request suspension based on the two percent size threshold is undisputed on the record.

Western Wireless witness Ron Williams attempted a sophistical attack on this Commission's jurisdiction by suggesting, apparently, that the LNP suspension requests were waiver requests over which the FCC exercised jurisdiction. (Tr. 565). He later admitted that the FCC document he relied upon in fact recognized state commission jurisdiction under Section 251(f) and further that FCC Chairman Powell had, shortly before the hearing, issued a letter to the President of NARUC. In that letter, Chairman Powell urged close consideration of rural LEC LNP "waiver" requests (technically known as suspension or modification requests under the statute) filed with state commissions by rural LECs. (Tr. 565-68; Venture Ex. 4). Ultimately, when questioned by Vice-Chairman Hanson on the question of jurisdiction, Mr. Williams conceded "this is a good forum to resolve this." (Tr. 659). That the petitioning LECs here are eligible to seek suspension of the FCC's LNP requirements, and that this Commission has jurisdic-

tion to grant the suspension requests under Section 251(f)(2), are clear both as a matter of record and law.

The statutory standards that govern state commission-ordered suspensions or modifications are equally straightforward. Pursuant to Section 251(f)(2), the Commission shall grant a petition for suspension or modification to the extent that, and for such duration as, the 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 to avoid imposing a requirement that is technically infeasible; and

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

47 U.S.C. § 251(f)(2).

The correct application of the foregoing statutory standard was described by the United States Court of Appeals for The Eighth Circuit in Iowa Utilities Board v. Federal Communications Commission, 219 F.3d 744 (8th Cir. 2000)(IUB II) in a proceeding on remand from the United States Supreme Court. There, the Court construed the language of "undue economic burden" found in Section 251(f)(2)(A). In finding that the FCC had gone too far in its construction of the meaning of "undue economic burden," the Court noted that such undue economic burden is just one of three bases upon which suspension or modification may be granted under Section 251(f)(2)(A). 219 F.3d at 761. *See also*, Order Granting Suspension, Nebraska Public Service Commission (*Nebraska Order*); Application Nos. C-3096 et seq., p.6 ("Applicants required to establish at least one of the criteria listed in Section 251(f)(2)(A) and that suspension is consistent with public interest, convenience and necessity").

When the record of this proceeding is examined against the statutory framework discussed above, it is abundantly clear that suspension and modification of the LNP requirements are warranted. Demand for LNP is virtually non-existent in Petitioners' customer base, due in no small part to the sorry state of wireless coverage in rural South Dakota. Against this complete lack of demand, as almost every manager testified and as is recounted in detail later in this brief, are very real costs for implementing LNP. Whether these costs turn up as monthly LNP surcharges or as general rate increases, they still constitute "adverse economic impact" and "undue economic burden" within Section 251(f)(2)(A) of the statute, particularly given the very questionable "benefit" that LNP will bring to rural customers.

The balance of this brief focuses on the very real costs of LNP, (including the issue of transport responsibility and its broad implications for the industry), and the public interest consequences of LNP implementation devoid of any tangible benefits. And while the Commission considers this calculus, it should bear in mind the apparent cynicism of LNP's advocate in chief, Western Wireless. In this respect, Mr. Williams admitted that the company projected zero ports for the city of Faith, despite requesting LNP from it. (Tr. 586-87). He further admitted that until recently, Western Wireless was in fact opposed to LNP. (Tr. 574-75). South Dakota's consumers deserve better use of the PUC's regulatory machinery, and its grant of the requested suspensions clearly will serve that purpose.

II.

PETITIONERS HAVE MET THE REQUIREMENTS OF SECTION 251(F)(2)(A).

Pursuant to Sections 251(f)(2)(A)(i) and (ii), Petitioners have demonstrated that a suspension or modification of the LNP requirement is necessary "to avoid a significant adverse economic impact on users of telecommunications services generally" and "to avoid imposing a re-

quirement that is unduly economically burdensome." As discussed below, each Petitioner has presented detailed information concerning the costs that will be incurred to implement LNP, including switch software and hardware costs, LNP service order and query costs, and the technical and administrative costs associated with implementing LNP. There is no dispute that Petitioners will incur such costs to implement LNP. The Petitioners also have presented information concerning the transport issue and its related cost. The transport issue and the costs associated with transport are much in dispute and will be addressed separately in this brief.

A.

PETITIONERS HAVE DEMONSTRATED THAT A SUSPENSION OR MODIFICATION OF THE LNP REQUIREMENT IS NECESSARY "TO AVOID A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON USERS OF TELECOMMUNICATIONS SERVICES GENERALLY"

Petitioners' cost exhibits and testimony present the known cost elements and amounts that will be incurred if Petitioners are required to implement LNP. Petitioners did not limit their cost showing only to the costs that will be included in the federal LNP surcharge. This was to reflect the full cost burden of LNP that will impact consumers and the Petitioners.

Most of the costs shown by Petitioners are not disputed by Intervenors and where certain costs are disputed, the arguments are not valid. Western Wireless disputes certain costs identified by some Petitioners, such as switch costs, because it alleges the particular cost cannot be recovered through the federal LNP surcharge. This criticism, however, is misplaced and improperly seeks to limit the expansive review that is to be undertaken by state commissions pursuant to section 251(f)(2). Rather, the duty of this Commission is to consider all economic impacts—even those that may not be easily identifiable on end-user telephone bills through the federal LNP surcharge.

In other cases, Western Wireless disputes an element of Petitioner's cost exhibit because it contends that Petitioner should have used a more cost efficient methodology. For example, Western Wireless generally disputes the method used by Petitioners to provide transport, however it does not dispute the cost amount projected by Petitioners for their method. Similarly, Western Wireless disputes including costs for an automated Service Order Administration (SOA) process because it argues that an automated process cannot be justified in light of the small number of projected ports. Western Wireless, however, does not dispute what an automated SOA service would cost.

The Commission should not be tempted by Western Wireless' false arguments to simply reject certain costs projected by Petitioners because there may be a "cheaper" alternative. There is no requirement that Petitioners implement LNP in the cheapest way possible. And, as demonstrated in the record, there are valid business reasons why a company may not select the least cost alternative. For example, a company may choose to implement an automated SOA process to be able to process ports in a shorter time-frame. The real fallacy of Western Wireless' argument, however, is that the costs Western Wireless urges this Commission to reject will impact consumers, to their detriment. Therefore, the Commission must consider all costs identified by Petitioners to make an accurate determination of the impact of LNP.

In any event, the most striking aspect of the evidence on the cost issue is that, other than the dispute over the cost of transport, Western Wireless' estimates for the cost of LNP, in many cases, are fairly close to the Petitioners' estimates and, in the remaining cases, even Western Wireless' cost estimates are significant. Thus, even though Western Wireless has disputed some aspects of the costs presented by Petitioners, by Western Wireless' own estimates the cost of LNP, even without transport, would have "a significant adverse economic impact on us-

ers of telecommunications services generally" and would impose "a requirement that is unduly economically burdensome."

A company specific discussion of the costs elements in dispute follows:

Companies represented by John De Witte

1. Swiftel (TC04-047)

Swiftel's projected cost of LNP, excluding transport, ranges from $0.74 per line per month in the first year after implementation to $0.83 per line per month in the fifth year after implementation. (ITC Ex. 4B) Western Wireless projects the cost at $0.68 to $0.76. (WWC Ex. 9)

Western Wireless disputes the use of an automated SOA process by Swiftel and, instead, argues that the cost exhibit should only reflect the cost of a manual SOA process. As alleged by Western Wireless, this would reduce the SOA non-recurring cost by $1,000 and it would reduce the monthly recurring cost by $100. Western Wireless' revised cost estimate should be rejected because there are valid business reasons to use an automated SOA mechanism. An automated mechanism will be necessary if the porting interval is reduced (ITC Ex. 4 at 6); and it reduces the need for additional personnel for LNP. In addition, once the LNP surcharge is established, carriers are allowed to change the surcharge only in special circumstances. (Tr. 484). Therefore, even if current circumstances, such as porting volumes and porting interval, may not require an automated process, a carrier must implement LNP in anticipation of changed circumstances in order to ensure that its LNP mechanisms and its cost recovery is appropriate for the long term.

Western Wireless also alleges that the monthly recurring marketing cost projected by Swiftel of $1,000 is not justified. As explained by Mr. De Witte, however, this cost estimate assumes a single annual mailing of an informational flyer to customers to explain LNP. The recurring cost is based on a price quote from a marketing firm that the printing cost of an informa-

tional flyer would be approximately $800 per 1,000 copies. In 2003, Swiftel had approximately 14,057 access lines. Assuming each access line would receive the informational flyer with their bill, the annual cost to print the flyer would be approximately $12,000. This cost, represented as a monthly recurring cost, is $1,000 per month. (ITC Ex. 4 at 8).

Accordingly, Swiftel's projected cost should be accepted.

2. ITC (TC04-054)

ITC's projected cost of LNP, excluding transport, ranges from $0.54 per line per month in the first year after implementation to $0.61 per line per month in the fifth year after implementation. (ITC Ex. 4B) Western Wireless projects the cost at $0.55 to $0.62. (WWC Ex. 9).

Western Wireless disputes the use of an automated SOA process and, instead argues that the cost exhibit should only reflect the cost of a manual SOA process. As alleged by Western Wireless, this would reduce the non-recurring SOA cost by $1,000 and the recurring cost by $100 per month. For the same reasons as discussed for Swiftel, Western Wireless' cost revision on this point should be rejected.

Western Wireless argues that the entire recurring cost for testing, translations and administrative functions, totaling $380 per month, should be eliminated because it is overstated and redundant. As demonstrated by Mr. De Witte, however, this expenditure is necessary "to perform tests for each ported number as the port is requested to ensure that the ported number route correctly flows through the Petitioner's network." (ITC Ex. 4 at 8). This cost was derived based on Petitioner's estimate that Translations activities for each port will require approximately one hour at a loaded hourly rate of $46 per hour. This equates to approximately $90 per month. Further, the Petitioner estimates that Testing and Verification activities for each port will require approximately one hour at a loaded hourly rate of $46 per hour. This equates to approximately

$90 per month. For the administrative functions, the Petitioner estimates that this function will require for each consumer approximately 2.5 hours at $41 per hour. This equates to approximately $200 per month at a rate of 2 ports per month. Accordingly, these costs are justified and should be included.

Western Wireless disputes the monthly recurring marketing cost projected by ITC of $1,000. For the same reasons as discussed for Swiftel, Western Wireless' cost revision on this point should be rejected.

ITC's projected cost of providing LNP in the Webster exchange as requested by Midcontinent is over $2.00 per line per month for five years and approximately $1.47 per line per month thereafter. Midcontinent provides no evidence to dispute any of the costs presented by ITC in connection with the provision of LNP in the Webster exchange. Midcontinent questioned the estimated per line charge, however, and argued that the cost of LNP associated with the Webster exchange should have been spread over ITC's entire customer base. (Tr. 211-214) Midcontinent is simply wrong on this point as the FCC's rules only allow carriers to assess a federal LNP surcharge to customers for whom LNP is available. If ITC is directed to implement LNP as requested by Midcontinent, LNP will be available only in the Webster exchange and ITC would be allowed to assess a federal LNP surcharge only to its customers served by the Webster exchange. Moreover, this is the only fair allocation method. ITC's method of calculating the per line charge, therefore, is correct.

Accordingly, ITC's projected costs for providing LNP company-wide and for providing LNP to Midcontinent in the Webster exchange only should be accepted.

3. Stockholm (TC04-062)

Stockholm's projected cost of LNP, excluding transport, ranges from $4.99 per line per month in the first year after implementation to $5.58 per line per month in the fifth year after implementation. (ITC Ex. 4B) Western Wireless projects the cost at $2.62 to $2.93. (WWC Ex. 9).

The majority of the difference in these estimates results because Western Wireless removes $35,000 in non-recurring switch hardware requirements and $15,000 in additional non-recurring software features. These upgrades are required to support the addition of AMA recording capabilities that will be required to allow the Petitioner to record and bill traffic (including LNP traffic). Western Wireless provides no explanation for this change.

Western Wireless disputes the use of an automated SOA process and, instead argues that the cost exhibit should only reflect the cost of a manual SOA process. As alleged by Western Wireless, this would reduce the non-recurring SOA cost by $2,000 and the recurring cost by $500 per month. For the same reasons as discussed for Swiftel, Western Wireless' cost revision on this point should be rejected.

Western Wireless disputes the monthly recurring marketing cost projected by Stockholm of $67. For the same reasons as discussed for Swiftel, Western Wireless' cost revision on this point should be rejected.

Western Wireless reduces the non-recurring customer care cost from $10,000 to $5,000. This is the estimated cost for a 5 day on-site training session for the customer care system. Western Wireless offers no explanation for its reduction. Therefore, the reduction should be rejected.

4. Venture (TC04-060)

Venture's projected cost of LNP, excluding transport, ranges from $0.55 per line per month in the first year after implementation to $0.61 per line per month in the fifth year after implementation. (ITC Ex. 4B) Western Wireless projects the cost at $0.53 to $0.59. (WWC Ex. 9).

Western Wireless argues that the non-recurring SOA cost should be reduced by $200 and provides no support for this position. Therefore, it should be rejected.

Western Wireless disputes the monthly recurring marketing cost projected by Swiftel of $933. For the same reasons as discussed for Swiftel, Western Wireless' cost revision on this point should be rejected.

Accordingly, Venture's projected cost should be accepted.

5. West River (TC04-061)

West River's projected cost of LNP, excluding transport, ranges from $0.93 per line per month in the first year after implementation to $1.04 per line per month in the fifth year after implementation. (ITC Ex. 4B) Western Wireless projects the cost at $1.17 to $1.31. (WWC Ex. 9)

Western Wireless disputes the use of an automated SOA process and, instead argues that the cost exhibit should only reflect the cost of a manual SOA process. As alleged by Western Wireless, this would reduce the non-recurring SOA cost by $2,000 and the recurring cost by $223 per month. For the same reasons as discussed for Swiftel, Western Wireless' cost revision on this point should be rejected.

Western Wireless disputes the monthly recurring marketing cost projected by West River of $267. For the same reasons as discussed for Swiftel, Western Wireless' cost revision on this point should be rejected.

Accordingly, West River's projected cost should be accepted.

6. Santel (TC04-038)

Santel's projected cost of LNP, excluding transport, ranges from $0.78 per line per month in the first year after implementation to $0.87 per line per month in the fifth year after implementation. (ITC Ex. 4B). Western Wireless projects the cost at $0.61 to $0.69. (WWC Ex. 9).

Western Wireless disputes Santel's cost amounts for SOA service; recurring testing, translations and administrative cost; and recurring marketing cost. For the same reasons as discussed previously, Western Wireless' cost revisions on these points should be rejected.

Accordingly, Santel's projected cost should be accepted.

Companies represented by Tom Bullock

7. Alliance and Splitrock (TC04-055)

In the case of Alliance, Mr. Bullock estimated the total LNP non-recurring costs (excluding transport) at $158,353.00, and total recurring monthly costs (excluding transport) at $3,668.00. WWC disputed only three aspects of Alliance's cost figures, aside from transport. In the category of "Switch Upgrade Costs," Alliance's estimated cost was $94,308.00, compared with WWC's estimated cost of $62,743.00 (Bullock Ex. 3; WWC Exhibit 15). The basic difference between these two figures results from "equipped line" counts. Petitioner's estimate is the correct one, as it is based upon actual counts of equipped lines in the DMS-10 switches for Alliance and Splitrock. (Tr. 836).[3] These numbers were based upon actual contact with the vendor, as opposed to a speculative calculation based upon a formula that Mr. Williams apparently concocted for Alliance. (Tr. 930-931).

The second category with which WWC differed in the Alliance case is "Other Internal Costs," wherein Mr. Bullock's cost estimate was $33,532.00, and Mr. Williams' was

[3] Mr. Bullock submitted a corrected Exhibit 3 to the Commission after the hearing to reflect the corrected counts of equipped lines. (Bullock Ex. 3)

$15,000.00. In fact, Mr. Williams arbitrarily inserted $15,000.00 as "Other Internal Costs" for all Petitioners, based upon his unsubstantiated "nonarithmetic mean" for Petitioners, apparently derived by utilizing the services of SDTA to negotiate contracts. (Tr. 934). By contrast, Alliance (and all other Petitioners) based its "Other Internal Cost" estimate upon Alliance's past experience of negotiating contracts with Western Wireless and other carriers. "Negotiating as a group" was also taken into consideration in Alliance's final cost in the "Other Internal Costs" category. (Tr. 851).

The final dispute between WWC's cost estimates for Alliance and Mr. Bullock's is contained in the category entitled "Other Monthly Costs", $2,068.00 in Mr. Bullock's Exhibit 3 versus $488.00 in Exhibit 15. Once again, Mr. Williams arbitrarily reduced this figure based upon his estimates of how long it would take each company to port a number. (Tr. 935). Mr. Bullock's calculation is based upon evidence that there will be very little demand for porting, thus no one will become very proficient with the porting process, which will result in more time to port numbers. (Tr. 854). As shown, the evidence substantiates Mr. Bullock's cost calculations.

8. Armour, Bridgewater-Canistota, and Union (TC 04-046)

For this group of Petitioners, Mr. Bullock's final cost estimates (excluding transport) do not differ significantly from WWC's estimates. Petitioner estimated total non-recurring costs for LNP implementation at $121,276.00, and total monthly recurring costs at $1,591.00. The differences are found in the "Other Internal Costs" ($35,152 versus $15,000); "SOA Monthly Charge" ($225.00 versus $165.00); and "LNP Query Costs per Month" ($750.00 vs. $412.00). In addition, WWC estimated more ports for this group of companies than did Mr. Bullock. The explanation for the differences in the first two categories is the same as for Alliance.

Petitioner's estimate for the LNP query costs per month is based upon actual quotes received from a query service provider (Tr. 852). Mr. Williams, on the other hand, provided no explanation or justification for his lower estimate. Mr. Williams conceded, however, that the cost estimate differences (excluding transport) for this Petitioner were not significant. (Tr. 933). Therefore, Petitioner's costs estimates are basically uncontested.

9. Faith (TC04-051)

By any cost consultant's calculations, the cost of LNP implementation in the case of Petitioner Faith, even excluding transport, is very high. Non-recurring LNP costs were estimated by Mr. Bullock at $42,565.00, and recurring monthly costs at $285.00. This translates to LNP cost per line per month, excluding transport, of $3.10. (Bullock Ex. 2, Ex. R-1-TB; WWC Exhibit 15). While WWC had very minor cost disagreements with Mr. Bullock's estimates, the conclusion reached by both cost consultants was the same: "Faith is one of the companies that would have significant costs," and Faith's application for suspension of the requirement to implement LNP should be granted. (Tr. 933).

10. Golden West, Vivian, and Kadoka (TC04-045)

For this group of Petitioners, Mr. Bullock estimated the total non-recurring monthly costs (excluding transport) at $233,468.00, and total recurring monthly costs (excluding transport) at $5,400.00. (Bullock Ex. 3)[4] The most significant difference between WWC's cost estimates for Golden West, et al and Mr. Bullock's estimates is reflected in the "Switch Upgrade Costs" category. Mr. Bullock revised his switch upgrade cost based upon a price quote from Nortel (Bullock Ex. 3, WWC Exhibit 15). Without any justification other than it was a lower figure and the first one provided by Mr. Bullock in original Exhibit 1, Mr. Williams used Mr. Bullock's origi-

[4] Mr. Bullock submitted a corrected Exhibit 3 to the Commission after the hearing to reflect several changes in information (Tr. 842), including corrected switch costs (Tr. 933). (Bullock Ex. 3)

nal switch upgrade cost estimate. (Tr. 934). Mr. Williams' estimate for LNP Query costs per month was actually higher than Mr. Bullock's figure, undoubtedly because Mr. Williams estimated 1076 ports per year, while Mr. Bullock estimated 240. Other differences were consistent with the other Petitioners, but overall, the cost differences, excluding transport, were not significant. (Tr. 934). Accordingly, the Commission should accept the cost estimates of Petitioner.

11. McCook (TC04-049)

For Petitioner McCook, Mr. Bullock estimated total non-recurring costs to implement LNP (excluding transport) at $88,103.00, and total recurring monthly costs of $1,502.00. This calculates to a per-line cost per month, excluding transport, of $1.66. (Bullock Ex. 2, Ex. R-TB-1).

The most significant differences between Mr. Bullock's calculations of LNP costs for McCook and those of Mr. Williams are in the "Switch Upgrade Costs" category ($26,400.00 versus $17,152.00); and in the "Other Internal Costs" category ($41,316.00 versus $15,000.00). As noted previously, Mr. Bullock's calculation of Other Internal Costs for each company is based upon the "number of man hours that we estimate would be required in order to analyze and fill out the forms that companies receive from wireless carriers as part of the arrangement that must be established between companies in order to facilitate porting." (Tr. 851). Mr. Williams' figure of $15,000.00, by contrast, is a "more or less nonarithmetic mean" arbitrarily "picked" by Mr. Williams. (Tr. 934). With regard to the Switch Upgrade Costs, Mr. Bullock's estimate is based upon an investigation of "the pricing policies of the individual switch manufacturers" utilized by McCook, i.e. Nortel. (Tr. 849). Mr. Williams merely adopted the Switch Upgrade Costs provided in Exhibit 1 attached to McCook's original Petition, without further verification. (Tr. 934). The balance of the cost differences, which are insignificant in amount, are the same as re-

flected in the preceding analyses. Petitioner's cost estimates are legitimate and clearly supported by the evidence.

12. Sioux Valley (TC04-044)

Mr. Bullock's calculation of the total non-recurring costs to implement LNP in Petitioner Sioux Valley's service areas is $103,671.00, excluding transport. (Bullock Ex. 2, Ex. R-TB-1), while the total recurring monthly costs is $1,933.00. Mr. Williams' estimates did not vary significantly in any cost category. Mr. Bullock included $1,000.00 as the cost for SOA non-recurring set-up charge (Mr. Williams estimated 0 (WWC Exhibit 15)). The amount included by Mr. Bullock is based upon the registration fee charged for "SOA Option B," as explained in Bullock Ex. 1, page 19), and is certainly a justifiable cost. (Tr. 835; 895-898).

13. Tri-County (TC04-084)

Costs of implementation of LNP, even excluding transport costs, are very significant for this company. Mr. Bullock's estimates show total non-recurring costs of $40,354.00, and total recurring monthly costs of $429.00. (Bullock Ex. 2, Ex. R-TB-1). This calculates to a cost per line per month, excluding transport, of $3.03. Even this, however, does not paint the entire cost picture for Tri-County which would have to replace its outdated DMS-10 switches to implement LNP. According to Mr. Bullock, the $10,640 in switch upgrade costs reflected in the cost exhibit does not include the cost to replace the switches. Therefore, the actual cost associated with LNP would be much greater than that set forth in the cost exhibit. (Tr. 912-913)

Further testimony by Mr. Bullock emphasized the potential impact on Tri-County if the company is required to provide LNP:

> Q. (By Ms. Ailts Wiest) For Tri-County you stated they needed a new switch . . . . .
>
> A. . . . . I wanted to provide [that information] here so the Commission

> so the Commission would have an understanding that in at least one case the cost of implementing LNP can go far beyond the costs of providing LNP as defined by the FCC's regulations in terms of cost recovery through the end-user charge.
>
> It's not our position that this huge switch replacement cost is eligible to be included in an LNP end-user charge, but if Tri-County does not receive a suspension of the LNP requirements and Tri-County proceeds to implement LNP, they have to replace their switches, and it will cost them a lot of money to do that. (Tr. 917)

Mr. Williams' disputes of Tri-County's cost data pale to mere shadows in comparison to the costs facing Tri-County should the Commission not continue a suspension of Tri-County's requirement to implement LNP. The costs as estimated by Mr. Bullock and attributable just to LNP costs are very high, but the costs not even included on Mr. Bullock's estimate and not recoverable through any type of surcharge would be devastating to this small company, with only 447 access lines.

14. Valley (TC04-050)

Mr. Bullock submitted a revised cost exhibit for Valley after the hearing, because he learned during Mr. Oleson's testimony that there was a third wireless carrier in Valley's service area. (Tr. 835). According to the revised exhibit, Valley's total non-recurring costs (excluding transport) to provide LNP would be $69,844.00, and total recurring monthly costs would be $797.00. (Bullock Exhibit 3). Mr. Williams had very few disputes with Mr. Bullock's figures, and in fact estimated SOA monthly charges and LNP Query costs per month higher than did Mr. Bullock. Valley's estimated costs to implement LNP were basically not contested by WWC. (See WWC Exhibit 15).

Companies Represented by Dan Davis

Mr. Dan Davis of Telec Consulting Resources presented cost testimony on behalf of Kennebec Telephone Company (TC04-025); Midstate Communications, Inc. (TC04-052); Beres-

ford Municipal Telephone Company (TC04-048); Western Telephone Company (TC04-053), and RC Communications, Inc. and Roberts County Telephone Cooperative Association (TC04-056). (Tr. 989). Mr. Davis' summary of the cost calculations for the companies he represented states:

> Each unique individual RLEC estimate reflects the cost of local number portability as calculated for each company. If the RLECs are not responsible for transport costs, which we contend that they are not, the estimate - or the estimated costs for local number portability range from a per-line per-month cost of $1.15 for Midstate Communications to $4.56 per line per month for Western Telephone Company.
>
> If for some reason the RLECs would be financially responsible for transporting calls using DS-1 direct connections, the estimated costs range from a low of $3.04 per line per month for Midstate Communications to $11.58 per line per month for Kennebec Telephone Company.
>
> The estimates are organized between one-time nonrecurring costs to implement local number portability and monthly recurring local number portability costs. (Tr. 992).

The overall non-recurring costs of deploying LNP for the Petitioners (excluding transport) is not really a point of significant controversy between Petitioners and WWC. As shown by Mr. Davis, for the companies for which he prepared the cost estimates, the overall nonrecurring cost for LNP is approximately $519,000. In comparison, the estimated costs prepared by Mr. Williams for Western Wireless was approximately $469,000. (Tr. 993).

15. Beresford (TC04-048)

For Beresford, Mr. Davis estimated non-recurring costs (excluding transport) of $55,905.00, and total recurring monthly costs of $578.00. (Davis Ex. 2, Ex. R-1). This calculates to an LNP cost per line per month (excluding transport) of $1.27, compared to WWC's estimate of $1.22. (WWC Exhibit 18). The only significant difference between these figures is found in the "Other Internal Costs" category. This point has already been addressed in this Brief

previously, but Mr. Davis further clarified the justification for his estimated company-specific costs of negotiating porting agreements with cellular providers, intercarrier porting forms and trading partner profiles. In response to questioning about economies of scale if companies "went together" on negotiations, Mr. Davis noted that his cost estimates in this regard did take into account economies of scale. "Three days per contract I assumed was fairly efficient." (Tr. 1007). Mr. Williams conceded that his across-the-board $15,000.00 figure was not "developed from Beresford's internal structure." (Tr. 1022). Mr. Williams' small downward adjustment to monthly recurring costs results in calculations of how long it would take Beresford to port a number. Mr. Davis's estimate is based on low demand and less proficiency with the porting process by Beresford's employee(s).

16. Kennebec (TC04-025)

This small company of less than 800 access lines is another one that would experience dramatic economic consequences if ordered to implement LNP. Mr. Davis estimated total non-recurring costs of $98,569.00, and total recurring costs of $381.00. This translates to a per line per month cost of $3.45, excluding transport. (Davis Exhibit 2, Exhibit R-1).

WWC disputed the switching costs for Kennebec, but the evidence clearly supported inclusion of these costs. Kennebec would not purchase the switch upgrade except to implement LNP, and LNP could not be implemented without purchase of a generic software upgrade. WWC Exhibit 16 is a letter from a switch vendor to Kennebec setting forth switch upgrade costs. In response to cross-examination by WWC's attorney, Mr. Davis clearly articulated the necessity of the switch upgrade costs included in his cost estimates. (Tr. 999-1000).

Mr. Williams did not dispute that the switch software generic may need to be upgraded to support LNP. Nor did he dispute that in order to implement LNP, Kennebec would have to ex-

pend $47,979 to get their generics up to a level to support LNP software. (Tr. 1025). Accordingly, the evidence clearly supports the cost estimates presented by Mr. Davis on behalf of Kennebec.

17. Midstate (TC04-052)

Mr. Davis's estimate of non-recurring costs for LNP implementation for Midstate was $113,394.00, and $2,288.00 for recurring monthly costs. (Davis Exhibit 2, Exhibit R-1). Again, the most controversial issue was in the Switch Upgrade Costs category. Mr. Williams' $25,000.00 switching cost was based upon the mistaken assumption that switch translation costs were included in the per-line cost quote from Nortel. (Tr. 1026-1028). Mr. Davis corrected that mistaken assumption on redirect:

> A. (by Mr. Davis) $29,000.00 ..... is what Nortel would charge Midstate on a per-equipped-line basis for the LNP software.
>
> There was an additional charge ..... for switch translations..... Switch translations is a function that is separate and apart from the Nortel pricing on the per-equipped-line basis and that is actually a price that Martin Group would charge Midstate on a per-switch basis for switch translations. It's not part of that activation fee that is waived. (Tr. 1038-1039).

Mr. Davis then concluded that the correct amount for Midstate's switching cost is approximately $65,000.00. Mr. Davis also provided justification for his estimated costs in the non-recurring "Other Internal Costs" category. (Tr. 1039-1040).

The evidence clearly supports Mr. Davis's cost calculations for Midstate, as clarified at the hearing.

18. Western (TC04-053)

Of all the Petitioners requesting suspension of the requirement to provide LNP, Western's per-line costs are among the highest. Mr. Davis estimated total non-recurring costs (ex-

cluding transport) of $176,780.00, and recurring monthly costs of $419.00. (Davis Ex. 2, Ex. R-1). This calculates to a per-line per-month LNP cost, excluding transport, of $3.97.

Western's situation is similar to that of Kennebec. Mr. Davis testified that "in order (for Western) to have the LNP functionality, they'd have to upgrade their switch." (Tr. 1005). The costs of the switch upgrade came from Western's engineering consultant. (Tr. 1005). While Mr. Williams included only $45,987.00 for switch upgrade costs, he conceded that it would cost Western $145,987.00 in switch upgrades to be LNP capable.

> Q. You're not contending that they could provide LNP to their customers if ordered to do so by this Commission for $45,987.00, are you?
>
> A. No. Western's situation is similar to the Kennebec situation that we discussed ..... I would not disagree that they would need to get their switch generics upgraded to support LNP implementation.
>
> Q. And that would be a cost to Western Telephone Company; is that correct?
>
> A. That's correct. (Tr. 1028)

Based on this undisputed and overwhelming cost evidence, Western Telephone Company's request for suspension of implementation of LNP should be granted.

19. Roberts County/RC Communications (TC04-056)

Mr. Davis estimated non-recurring costs for LNP for Roberts County/RC at $74,199.00, and recurring monthly costs at $880.00, excluding transport. (Davis Ex. 2, Ex. R-1). This calculates to an LNP cost per line per month (excluding transport) of $1.23. WWC's per line per month LNP cost for Roberts County/RC is $1.05, which indicates very little difference between the parties' cost estimates. The most significant dispute is in the "Other Internal Costs" category. (Davis at $22,319.00, Williams at $15,000.00), and that difference has been discussed at

length above. All other costs are nearly identical. Accordingly, this Commission should accept Petitioner's cost estimates for Roberts County/RC as presented by Mr. Davis.

B.

PETITIONERS HAVE DEMONSTRATED THAT A SUSPENSION OR MODIFICATION OF THE LNP REQUIREMENT IS NECESSARY "TO AVOID IMPOSING A REQUIREMENT THAT IS UNDULY ECONOMICALLY BURDENSOME."

As shown, LNP implementation would result in the assessment of a new LNP surcharge on end users and could increase local rates. These actions would make Petitioners' service offerings less competitive with the services provided by wireless and other competitive carriers. In addition, if the total cost of LNP is assigned to Petitioners' subscribers through a surcharge and local rate increases, some segment of their subscribers may discontinue service or decrease the number of lines to which they subscribe. The resulting reduction in line count would increase further the per-subscriber cost of LNP, which, in turn, could lead to more rate increases followed by additional losses in lines. Ultimately, Petitioners may not be able to recover the costs of LNP from their subscribers, which would reduce the Petitioners' operating cash flow and profit margins.

It also is unduly economically burdensome to require Petitioners to implement LNP when a number of implementation issues are not resolved. It would be more efficient and less costly to implement LNP only once, after the LNP parameters are more certain, rather than require carriers to implement LNP when important issues are unresolved (such as whether a trunk connection will be required), or could be changed (such as whether the porting interval will be reduced).

Wireline to wireless porting under current routing protocols also would impose an unduly economically burdensome requirement by making the network less efficient and by confusing consumers which could result in reduced calling. If direct connections are not established, calls

to ported numbers will be routed to an interexchange carrier and the calling customer will incur a toll charge. The local exchange network also will be less efficient as a result of porting because end users who continue to dial a ported number on a seven-digit basis will likely receive a message that the call cannot be completed as dialed, or a message instructing the party to redial using 1+ the area code. Thus, callers would have to dial twice, with the resulting network use, to place one call.

C.

PETITIONERS HAVE DEMONSTRATED THAT THE RESOLUTION OF OUTSTANDING ISSUES COULD INCREASE THE COST OF LNP.

In addition to the known costs of LNP, the Petitioners also presented evidence that there are a number of outstanding issues that could make the adverse economic impact of LNP on users of telecommunications services even greater and could make LNP even more unduly economically burdensome. For example, an industry advisory group recently recommended that the FCC reduce the porting interval to 2 days, and in a pending rulemaking proceeding the FCC is examining whether the current four-day porting interval for wireline carriers should be shortened, perhaps to match the wireless porting interval of 2.5 hours. A shorter porting interval will significantly increase the cost of LNP because more systems would have to be automated and more personnel would have to be hired to take and implement porting requests. (Davis Ex. 1 pp. 18, 19; ITC Ex. 3 p. 18; Brookings Ex. 3 pp. 18, 19; Stockholm Ex. 3 p. 19; Venture Ex. 3 pp. 18, 19; West River Ex. 3 p. 18; SDTA Ex. 1 pp. 15, 36; Tr. pp. 897, 898).

The Petitioners' cost exhibits also do not include the cost of implementing wireless to wireline porting, which is under consideration by the FCC. In this regard, the FCC has asked for comment on whether wireline carriers should be required to absorb the cost of providing a customer with a ported wireless number with the same local calling area as the customer received

from the wireless carrier and whether LECs should be required to provide LNP through foreign exchange (FX) and virtual FX service.[5] These proposals also would increase the cost of LNP, however, it is not clear to what extent.

Changes to the LNP requirements that would impose new LNP costs after Petitioners are required to implement LNP also will impose a requirement that is "unduly economically burdensome" because it is very likely that Petitioners would be unable to recover these costs. Under the current FCC rules pertaining to the establishment of a "monthly number-portability charge" the charge is to be "levelized" over five years, or in other words must remain constant over that period. There are no provisions in the FCC rule relating to LNP cost recovery (47 C.F.R. § 52.33) that permit revision to the established monthly number portability charge, should actual LNP related costs change over the 5 year period that the charge is to be in effect. Accordingly, the only means through which a revision to the charge can be obtained is to seek a waiver of the LNP cost recovery rule from the FCC, pursuant to the FCC's general waiver authority found in 47 C.F.R. § 1.3. Under this rule provision, a waiver can only be obtained based on a showing of "good cause" and it requires a separate petition and a separate FCC process, outside of the FCC's tariff filing procedures. With respect to obtaining waivers of the established LNP cost recovery rule provisions, the FCC recently commented on the issue in a decision addressing a request for declaratory ruling and/or waiver filed by BellSouth Corporation.[6] In that case, the BellSouth was granted a waiver to increase its end-user LNP charge, so that it could include in such charge the additional costs of implementing "intermodal" LNP. In granting this waiver, however, the FCC

[5] It is not clear what "virtual FX" service would entail as the FCC did not define it and the Petitioners offer no such service.

[6] In the Matter of Telephone Number Portability, BellSouth Corporation Petition for Declaratory Ruling and/or Waiver, CC Docket No. 95-116, *Order*, FCC 04-91, released April 13, 2004.

signaled that it was not likely in the future that it would view such requests in a favorable manner. In its decision, the FCC stated:

> . . . we expect that carriers implementing LNP in the future will include intermodal capability and there will be no need for staggered end-user charges. Thus, any incumbent LECs that have not filed tariffs for LNP cost recovery as of the release date of this order must comply with the five-year rule. In other words, once they have implemented number portability, these carriers should include the initial implementation costs of both wireline and intermodal LNP costs in any future tariff filing and recover costs over five years. Further, carriers who already have included intermodal costs in filed tariffs will not be eligible for additional recovery under a separate intermodal charge. . . .
>
> In the Cost Recovery Order, the Commission discouraged carriers from attempting to raise their end-user charge. *Emphasis added.*[1]

D.

THE UNRESOLVED ISSUE OF TRANSPORT RESPONSIBILITY FURTHER SUPPORTS MODIFICATION AND /OR SUSPENSION

The matter of transport responsibility is perhaps the most insidious aspect of LNP implementation before the Commission. The FCC's *November 10 Order* indicates that LNP implementation does not depend on the FCC's long-delayed resolution of this issue, but in a real-world sense, it is difficult to ignore when examining LNP costs.

The Petitioners' submit that the possible imposition of transport responsibility on them does nothing but further support their suspension and/or modification requests. It drives up costs, both to customers and/or the companies themselves (an issue left hanging by the FCC) and threatens to unravel an intercarrier compensation mechanism that has helped rural South Dakota to the forefront of modern telecommunications facilities and service.

Petitioners are confident that as this Commission considers the transport issue it will conclude as the Nebraska Commission recently has, that indirect connections are technically infeasi-

ble presently, and that the resulting costs "...would either be an additional significant adverse economic impact on end users or would be an economic burden on the local exchange carriers..." *Nebraska Order* at 7, 10-11.

The Petitioners' cost exhibits contain estimates for the recurring and non-recurring cost of transport, which essentially is the cost of installing facilities to enable calls to ported numbers to be routed as local calls. It is undisputed that under current network configurations, a call originating on one of the Petitioner's networks and terminating to a wireless carrier's customer is routed to an interexchange carrier and is billed to the originating customer as a toll call, unless the wireless carrier has a direct connection with the Petitioner or it is part of an extended area service arrangement. It also is undisputed that there are very few direct connections between the Petitioners and the wireless carriers operating in their service areas, including Western Wireless. Thus, if no new transport facilities are installed, in many cases the only facilities currently available to route a call to a number ported to a wireless carrier will be interexchange facilities.

Further, Petitioners contend that they have no legal obligation to transport traffic to points beyond their service territories, whether the traffic is associated with a ported number or not. Under the provisions of 47 U.S.C. §251(c)(2)(B), incumbent LECs are required to provide interconnection only at a "technically feasible point within the carrier's network."

Western Wireless contends that, pursuant to the FCC's *November 10 Order*[7], Petitioners have an obligation to transport traffic to a number ported to a wireless carrier as a local call even if the wireless carrier's point of interconnection is located outside of a particular Petitioner's service territory. In essence, Western Wireless argues that the FCC's Order established a new routing obligation on rural incumbent LECs in connection with traffic to ported numbers.

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[7] *Id.* at pars. 16 and 17.

Western Wireless' argument clearly fails by the plain language of the *November 10 Order*. In its Order, the FCC acknowledged that LNP raised certain routing issues for rural carriers where no direct connection exists. The FCC, however, specifically found that these issues did not need to be resolved in the LNP proceeding. Rather, the FCC indicated that they would be addressed in a pending Petition for Declaratory Ruling filed by Sprint Corporation.[8] Therefore, it is clear that the question of whether Petitioners have an obligation to transport traffic to a wireless carrier as a local call, even if the wireless carrier's point of interconnection is located outside of a particular Petitioner's service territory, including traffic to a ported number, is pending at the FCC.

In addition, there is no language in the FCC's Order directing rural LECs to install new facilities to transport local calls. Rather, the FCC seems to assume, incorrectly, that existing facilities are sufficient. As testified to by Mr. Watkins:

> the Nov. 10th Order does not automatically create service arrangements between the Petitioners and wireless carriers . . . [and further] does not clearly answer questions about the manner in which calls to ported numbers of mobile users will be treated from a service definition basis, how such calls will be transported to locations beyond the ILECs' service territories, and over what facilities these calls will be routed. (SDTA Ex. 1 p. 16).

Mr. Watkins further explained:

> No LEC, including the Petitioners, has network arrangements for the delivery of local exchange service calls to, and the exchange of telecommunications with, carriers that operate at distant locations beyond the LEC's actual service area in which local exchange service calls originate, and there is no requirement for LECs to establish such extraordinary arrangements. LECs have no obligation to provide at the request of a wireless carrier, at additional costs and expense to the LEC, some extraordinary form of local exchange service calling beyond that which the LEC provides for any other local exchange service call." (Id., p. 17).

[8] In the Matter of Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of traffic by ILECs, CC-Docket 01-92, Petition of Sprint, May 9, 2002 (*Sprint Petition*).

> The *Nov. 10th Order* neglects to address specific operational and network characteristics of the smaller LECs such as the Petitioners. . . . What the FCC fails to understand . . . is that calls routed outside of the Petitioners' local exchanges are routed to interexchange carriers (IXCs). Therefore they are routed and billed correctly as interexchange calls. The Petitioners do not have any obligation to provision local exchange carrier services that involve transport responsibility or network functions beyond their incumbent LEC service areas. . . . Furthermore, it is well settled that LECs interconnection obligations only pertain to their own networks, not to carriers' networks or to networks in areas beyond their own RLEC service areas. While the FCC has generally acknowledged a limitation on a Bell company to route calls no further than to a LATA boundary, the FCC's 10th Order apparently failed also to recognize that the Petitioners are physically and technically limited to transporting traffic to points of interconnection on their existing network that are no further than their existing service territory boundaries. . . [T]elecommunications services provided to end users that involve transport responsibility to interconnection points with other carriers' networks at points beyond Petitioner's limited service area and network are generally provided by IXCs, not by the Petitioner LECs. (Tr. pp. 17, 18).[9]

Thus, it is clear that the arrangements necessary to route calls to ported numbers as local calls are not in place currently. Further, the record shows that there are a number of options that could be considered to address this issue. The methods contained in the record are briefly outlined below.

Petitioners' Methodologies

Based on the existing network configuration for the wireless carriers, the Petitioners (represented by cost consultant John De Witte) assumed a dedicated facility from each of Petitioners' rate centers to each wireless carrier, where the wireless carrier does not have a point of interconnection or numbers in the LEC's rate centers. This method is driven by the fact that to enable

[9] Dan Davis, a witness for numerous Petitioners, in addressing the transport issues, expressed similar concerns, noting that "RLECs do not route local traffic to a point of interconnection outside of its local exchange or service area. Requiring RLECs to route traffic to a point of interconnection outside of its exchange or service area would

intermodal LNP on a level playing field (wireline to wireless and wireless to wireline), without separate transiting agreements in place, each CMRS carrier must obtain an NPA-NXX in each wireline rate center to accommodate proper rating and routing of calls. Thus, the cost exhibits for these Petitioners shows the estimated recurring and non-recurring cost of providing a DS-1 for Type 2B interconnection from each of Petitioners' rate centers to each of the wireless carriers. The record indicates that this methodology is, in fact, the current configuration used by the Parties. Thus, currently, calls to wireless carriers are routed as local calls when the wireless carrier establishes and pays for a direct connection to the Petitioner's switch. This configuration complies with the Interconnection Agreements recently entered into between Petitioners and Western Wireless. The transport facility pricing was based on firm, market-driven pricing from SDN Communications (SDN) for DS-1 circuits. Further, the record establishes that this configuration will work and will require no additional negotiated interconnection, transport or transiting agreements between the parties.

The methodology utilized by Mr. Davis and Mr. Bullock is similar in principle to that proposed by Mr. De Witte, however the actual implementation is slightly different. Messrs. Davis and Bullock calculated transport costs using a DS-1 direct connection from each host office location and from each stand-alone end office switch location to each wireless provider's point of interconnection. The traffic that originates from a remote switch was assumed to be transported on the same DS-1 as used by its host switch. The point of interconnection was assumed to be located at the nearest rate center in which a tandem was located. The calls to the ported numbers would then be carried over these DS-1s to a POI located within a Petitioner's service area or exchange, and the Petitioner would then connect with the wireless provider, who

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add the responsibility of a LEC from providing local exchange service and exchange access to providing interexchange service as well." (Tr. p. 994).

would then transport the calls back to its switch. For the group of companies represented by Mr. Davis, the assumption was made that there were only two wireless carriers. For Mr. Bullock's companies, the estimated number of wireless carriers varied from company to company.

This routing arrangement also is consistent with the Interconnection Agreements entered into between Western Wireless and the Petitioners. The cost is reliable because it is based on tariffed rates for T-1 circuits. Further, this configuration will work and it will allow the porting of numbers from wireless carriers to the Petitioners.

The transport costs estimated by Petitioners range from approximately $0.20 to $30.00 per line per month. Most of the Petitioners would see a per line increase of more than $1.00 per month solely related to transport. Accordingly, it is clear that this issue could have a tremendous adverse impact on end-users and Petitioners.

Western Wireless' Methodology

Western Wireless criticized the transport proposals presented by Petitioners as inefficient. In the alternative, Western Wireless states that Petitioners should route calls to ported numbers to the Qwest tandem and, that Petitioners should pay for the network facilities and per call charges associated with this option. Although he admitted that this routing could require the Petitioners to route traffic outside their local exchange boundary or certificated area (Tr. p. 576), Mr. Williams stated that "local companies, since they are the originating carrier of a call to a ported number, do have an obligation to route that traffic to the designated routing location within the LATA." (Tr. p. 576). He was unwilling to accept that there should be any exceptions from such obligation, even for a company like Kennebec whose service area is located approximately 180 miles from the Qwest tandem in Sioux Falls. (Tr. pp. 576, 577).[10]

[10] It would appear that Western Wireless' transport proposal, given the company's insistence on imposing the transport costs on Petitioners, is contrary to existing FCC and court decisions. The FCC and the courts have stated that

There are a number of problems with the Western Wireless proposal. First, Western Wireless assumed that existing one-way facilities with Qwest could be converted to two-way facilities; that Qwest would agree to convert the facilities at a specified cost; and that Qwest would charge a specified cost for transiting traffic. However, Qwest is not a party to this proceeding and there is no evidence that it would agree to these terms.

Second, Western Wireless completely ignores the numerous regulatory, policy and business issues that would arise with a "Qwest tandem" option as well as the very real impacts that landline LECs will experience if the transport issues are not resolved in a fair manner. Some of these issues were summarized by Mr. Bullock during the hearing when he described the advantages of not using a tandem option as follows:

> The first one is if you don't go through a tandem switch, whether it's Qwest or SDN or somebody else, you're eliminating a potential point of failure. If you direct connect – if you connect directly to the wireless carrier's switch, you're going to establish an operationally more reliable connection. (Tr. 857-858)

Mr. Bullock further stated that:

> circuits that come into the ILEC network – I should say trunk links that are established to the ILEC network directly from the individual wireless carriers can be more easily monitored for call detail and billing purposes. Whether you're billing one way or the other way, you know who your trunk link is connected to, as opposed to going through a tandem there's a possibility that you might lose

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a LEC is free to treat as interexchange service any call to a point of interconnection that is beyond the local calling area of the originating LEC end user. *See e.g. Memorandum Opinion and Order*, In the Matter of TSR Wireless, L.L.C., et al. v. US West Communications, Inc. et al, released June 21, 2000, in File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18 at para. 31, affirmed Qwest Corporation vs. FCC, 252 F. 3rd 462 (D.C. Cir. 2001); See also Mountain Communications, Inc. v. Qwest Communications, FCC 02-220, *Order on Review*, July 25, 2002, para. 6, vacated in part and remanded, Mountain Communications v. FCC, 355 F. 3rd 644, 647 (D.C. Cir. 2004) wherein the Court of Appeals recognized that LECs may treat as toll calls any call to a mobile user that must be delivered to an interconnection point beyond the normal local calling area.

Toll calls are transported by interexchange carriers, toll calls are interexchange service. Petitioners, as rural LECs, hand off toll calls to competing interexchange carriers consistent with the equal access requirements. There is no requirement for a LEC to deliver local exchange service calls to some distant point or to the "terminating carrier's switch" when that switch is beyond the local calling area and beyond the point that a LEC transports any other local exchange service call.

some information that reveals the identity of where the traffic is coming from. (Tr. 857-858).

Third, contrary to the perception that Western Wireless wants to create, the transport issue is not a simple one and depending on how it is resolved the financial impact on rural LEC operations could be very substantial. Randy Houdek, general manager of Venture Communications Cooperative, offered considerable testimony concerning the transport issues and how they may affect his cooperative. He indicated that the transport issue is a "huge" issue for Venture, and explained that Western Wireless' proposal for transport would not only make his company responsible for the costs of transport to the Qwest access tandem, but that it would also, by allowing for a bypass of the existing toll network, affect his company's access and toll revenues. (Tr. pp. 385, 391, 425, 399, 400, 405, 406, 413, 414, 422). This would be in addition to the increase in Venture's local service rates caused by the direct costs of LNP. According to Mr. Houdek, "the downstream effects of what it will do to access, what it will do to my toll revenues, the impact it will have on my local service it will be in excess of $3 million." (Tr. pp. 424). If rural carriers, with their limited service areas, are ultimately forced to bear the burden of transporting landline calls to ported wireless numbers to a serving LATA tandem and are forced to exchange these calls with Western Wireless and all other wireless carriers as local calls, the impacts will be "huge" for all of the Petitioners. (Tr. pp. 204, 478).

The testimony of John DeWitte, on behalf of a number of the Petitioners, confirms that many items must be considered in addressing the transport issues. In referencing the Western Wireless proposal, he noted that utilizing the existing Qwest facilities for traffic destined to ported numbers is not that "simple." Rather, "an extremely complex analysis . . . would have to be done to determine whether it's even a viable solution." (Tr. 266, 267). As part of that analysis, the fact that incumbent LECs are not obligated to transport outside of their service area

would have to be taken into account. (Tr. pp. 269, 279, 269) And also, impacts on "settlements" or separations, toll revenues, other revenues, and toll billing practices would have to be considered. (Tr. pp. 266, 272-274, 482).

Western Wireless attempts to downplay the impacts of its transport proposal, but it would have far reaching impacts on all landline LECs. Not only would there be additional direct costs associated with LNP implementation, there also would be impacts on other LEC revenues. If the traffic to ported numbers is considered local the LEC minutes flowing through the separations process utilized to establish federal and state access rates will be affected. There would be a resulting increase in local traffic and this increase would translate into a greater shift of cost recovery to the intrastate jurisdictions. This in turn would require higher local exchange service rates and/or intrastate access rates. In addition, if the traffic is considered local and not subject to access charges, customers would be encouraged to bypass to an even greater extent the current landline toll network. This increased bypass would lead to fewer access minutes and higher intrastate access charges. The business of landline toll carriers competing also would be impacted. If landline to landline calls moving from one landline local calling area to another landline are considered toll, but landline to wireless calls are not, landline long distance companies are tremendously disadvantaged. There undoubtedly would be a negative impact on landline carriers' toll revenues.

Western Wireless suggested at the hearing that the impact of its transport proposal would be small because of the small number of expected calls to ported numbers. However, while the number of calls to ported numbers (served by wireless carriers) is expected to be small given the lack of demand for intermodal LNP, this is a fraction of the total traffic that is at stake. Thus, any decision imposing transport responsibilities on rural LECs beyond their existing network

would impact all traffic—including calls to wireless users who do not have a ported number, calls to CLECs, and calls to Qwest customers. Mr. Bullock commented on this particular concern in his testimony. He stated:

> I think it is particularly important, at this time [and] I think it's safe to say that nobody can predict the volume of traffic that we're going to see between wireless carriers and rural ILECs. We were talking about the example here of LNP generated traffic. It's quite conceivable that there could be more. If we use this thing as kind of a precedent, there's no telling what could happen. And so assuming that the only traffic that we're talking about that might be [exchanged] between wireless and wireline carriers on a local basis where there's no interexchange carrier, assuming that that level of traffic is going to only the level of traffic attributable to delivering calls to ported numbers is a faulty assumption. *Emphasis added.* (Tr. pp. 857, 858).[11]

Other Methodologies

A number of other transport options also were discussed at the hearing. For example, Western Wireless is negotiating settlement agreements with James Valley and CRST in which Western Wireless will pay most, if not all, of the cost of new transport facilities and the LECs will not be required to transport calls to ported numbers beyond their service territory. Also on record there was some discussion as to whether SDN could be a tandem provider for traffic to ported numbers instead of Qwest. This proposal suffers from some of the same problems as the Qwest proposal, however, in that SDN is not a party to this proceeding; it is not known if SDN would be interested in acting as a tandem provider; and it is not know what rate SDN would charge.

[11] As indicated by the testimony of Mr. Watkins, Petitioners believe that Western Wireless in these LNP proceedings may be primarily interested in burdening the rural LECs with "extraordinary and unfair transport obligations . . . beyond those that actually apply." (SDTA Ex. 2 p. 4). "It appears even that the wireless carriers' interest in these issues may have more to do with transferring that responsibility of transporting local calls beyond the small and

Study Group Proposal

At the hearing, the Commission asked the parties if they would participate in a study group to examine the transport issue and possible alternatives. Given the complexity of the issue; the number of possible options; and the huge potential impact of the issue, Petitioners agree that a study group would be an appropriate mechanism to consider this issue. Accordingly, Petitioners urge the Commission to grant Petitioners a suspension of LNP until a study group can be convened and its findings on the transport issue reviewed.

E.

GRANT OF THE REQUESTED SUSPENSIONS/MODIFICATIONS IS CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY

In addition to meeting at least one of the criteria listed in 47 U.S.C. § 251(f)(2)(A) relating to adverse economic impacts or technical infeasibility, in order for any request for LNP suspension and/or modification to be granted, it must be "consistent with the public interest, convenience and necessity." 47 U.S.C. § 251(f)(2)(B). As testified to by Petitioners' and SDTA's witness, Steven E. Watkins, a determination of the public interest inherently involves a cost/benefit analysis. The determination of the public interest "should involve an evaluation of the cost of LNP implementation and operation compared to the benefits that LNP implementation would present for consumers." (SDTA Ex. 1 p. 8, Tr. pp. 497-505). [12]

Petitioners believe that the evidence presented in this matter leaves no doubt that the public interest will be served by granting the requested LNP suspensions. Fundamental to any analysis of LNP benefit is an assessment of demand for the service. It is clear from the record in

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rural LECs' service areas, more to do with that than LNP." (Tr. p. 501; See also Mr. Houdek testimony, Tr. pp. 405, 406).

[12] It appears that the necessity to weigh cost vs. benefit as part of the public interest analysis is not challenged by Western Wireless. Mr. Williams expressly referenced in his testimony that the public interest standard is about

this matter that there is little, if any, demand for intermodal LNP from Petitioners' end-user subscribers. In addition, in evaluating the costs of LNP, it is strikingly apparent from the record that there are a number of substantial issues related to the provisioning of LNP that have not yet been resolved by the FCC and that the resolution of these issues will impact LNP implementation costs. Given these unresolved issues, the Commission cannot quantify at this time the total costs of LNP implementation nor, in turn, either reasonably or reliably fully evaluate end-user and/or rural carrier impacts.

Under these circumstances, given the almost complete lack of demand for intermodal LNP in the Petitioners' service areas, and taking into account the significant unresolved issues relating to LNP that will affect LNP implementation costs, Petitioners believe there is no other justifiable result than to grant the LNP suspension petitions. As testified to by Mr. Watkins, "the Commission should extend the current interim suspension of the LNP requirements for the Petitioners until the conditions confronting the Petitioners . . . have changed such that the per-line cost of LNP is more reasonable compared to whatever demand, if any, may exist. . . [And] any consideration under the criteria of Section 251(b)(2) cannot occur until after the issues pending before the Courts and the FCC related to the apparent directives contained in the FCC's November 10, 2003 Order on LNP (*November 10 Order*) are fully resolved, including any further and final disposition of the remaining rulemaking issues and the resolution of the routing issues that the FCC explicitly has left to be resolved later." (SDTA Ex. 1, p. 6).

There is overwhelming evidence in the record to support an affirmative public interest finding with respect to each of the LNP suspension petitions. A finding that the suspensions are in the public interest is supported by the following:

"cost" and "benefit" and that it's also about "from a company perspective, revenue and financial wherewithal." (Tr. 562).

1. THERE IS A LACK OF CONSUMER DEMAND FOR LNP

Central to the evaluation of whether consumers will benefit from the implementation of LNP is the level of demand for LNP in Petitioners' service areas. (SDTA Ex. 1 p. 10). Regarding demand for LNP, substantial evidence was presented by Petitioners' witnesses that shows that demand for the service is almost non-existent. Mr. Watkins supplied evidence regarding the demand for intermodal number portability in those areas where intermodal LNP has already been implemented, and indicated that there appears to be very little demand from wireline customers to port their numbers to wireless carriers. According to Mr. Watkins, "the vast majority of wireless ports appear to be from one wireless carrier to another. . . . the demand for wireline-to-wireless porting for the non-rural, large local exchange carriers has been small." (SDTA Ex. 1 p. 10). Mr. Watkins presented information from recent FCC press releases, "Communications Daily" and from various other telecommunications industry publications supporting the conclusion that, at the present time, end-user customers do not have much interest in porting their wireline number to a wireless phone. He noted that this lack of interest in wireline-to-wireless porting is probably due to the fact that wireline and wireless services are viewed more as "complementary" and not "substitute" or "replacement" type services. (SDTA Ex. 1 pp. 12-15). He also explained that the interest in rural areas for wireline-to-wireless porting is likely to be even less than in the more urban, top 100 MSAs, because of the fact that wireless service is "less ubiquitous in rural areas, and landline users would be more reluctant to abandon dependable wireline service for a wireless service of less certainty." (SDTA Ex. 1 p. 11; Tr. 499, 500).

The testimony provided by the Petitioners' general managers confirms that there is no demand for LNP. (Tr. 43, 294, 344, 360, 414, 429, 446, 770-772, 806, 814, 822, 825, 949, 957, 969, 982, 1044, 1045; Santel Ex. 1, p. 3). Among the general managers testifying, only three,

Jerry Heiberger, James Adkins, and Steve Oleson, indicated that their company had received a customer inquiry and/or request regarding LNP as a service. Mr. Heiberger and Mr. Oleson indicated that their company had received only one inquiry and/or request, and Mr. Adkins indicated that Brookings Municipal Telephone had, to date, received only two requests or inquiries. (Tr. 43, 106, 294, and 748). Rod Bowar, testifying as general manager for Kennebec Telephone Company, presented more specific information on the issue of consumer demand for LNP, noting that his company had conducted a survey of its local exchange service subscribers. (Tr. 949). He referenced that survey and indicated that the results overwhelmingly indicate that a majority of customers in his service area "do not want to pay for LNP at any price." He indicated that his survey showed that 73 percent of the survey respondents had a wireless phone, but only 2.6% of the total survey respondents would be willing to pay a surcharge of $2.00 for the LNP service. (Tr. 957). If the LNP surcharge were established at $3.00, only 1.6% of the responding customers indicated they would want the service. (Kennebec Ex. 1 p. 3). He further noted that the age of Kennebec's subscribers is older than the nationwide average, that the average income is lower than the nationwide average and that requiring LNP "would make . . . older customers on fixed incomes pay for a service that they will not use and are not requesting." According to Mr. Bowar, the "[b]ottom line [is], LNP implementation would have an extreme adverse impact with little or no benefit." (Tr. 949).

On the other hand, Midcontinent did not present any evidence concerning demand for wireline LNP and Western Wireless' witness, Ron Williams, did not present any empirical data indicating that there is any present demand for the deployment of intermodal LNP in the rural service areas in South Dakota. Western Wireless introduced a document captioned "Survey of Rural Consumers- Western Wireless Markets," but that exhibit includes no information specific

to the demand for LNP. (Western Wireless Ex. 11). For instance, although information is presented as to the number of consumers within the surveyed group that would be willing to substitute their landline service with wireless service, there is nothing in the document bearing upon LNP. (Tr. 645). The document is also based on a survey of 1,000 customers throughout Western Wireless' service area covering 19 states but is not specific to the Petitioners' rural service areas. (Tr. 545). Western Wireless also submitted its Exhibit No. 13, a "2004 Rural Youth Telecommunications Survey" conducted by the National Telecommunications Cooperative Association (NTCA) and the Foundation for Rural Service. (Tr. 691). This document is similarly deficient. It is a nationwide survey and, as admitted by Mr. Williams, is not specific to LNP. It speaks merely to general technology concerns of rural telephone companies as those concerns relate to the youth market. (Tr. 730).

As part of its evaluation of Petitioners' LNP costs, in particular recurring costs, Western Wireless included certain port projections. The record shows, however, that these port projections are purely speculative and that they are not relevant to actually determining what level of demand (if any) exists for the LNP service. Mr. Williams indicated that the port volumes used by Western Wireless were developed internally by the company -- that they were are based on internal "forecasts" or "projections" (Tr. 606, 608, 644, 645, 690, 691, 929, 1023). He indicated that they are only "estimates," and explained that the port volume numbers were arrived at by taking an "estimate based on Western's belief of the volume of port activity it would see from these companies, and then [by dividing] . . . that number by what we believe our market share to be to get a total intermodal porting estimate." (Tr. 1023, 1024).[13]

[13] In regard to these port projections, Mr. Williams testified that most of them come in around a "3 percent per year range which is similar to the . . . line loss experience that we've seen in competitive markets when LNP has been implemented on a wireline to wireline basis." (Tr. 645). Further, with respect to the Faith Municipal Telephone Company, the cost exhibit and related testimony provided by Mr. Williams projects, as previously discussed, the

The evidence presented thus clearly establishes a lack of demand in rural areas for LNP. Accordingly, and as SDTA witness Watkins testified, there is "no policy balance between the substantial costs that would be imposed on the public and the potential benefits of LNP in the rural areas of South Dakota." (SDTA Ex. 1, p. 6). Further, "the cost to implement LNP in the rural exchanges of the Petitioners is significant and would lead to explicit surcharges and other potential rate increases to the rural users beyond that which would be balanced with any benefit to be derived by the small number, if any, of users that may actually seek to port their wireline service telephone numbers. Accordingly, suspension of the LNP requirements would avoid these burdens consistent with the public interest, convenience, and necessity." (Id., p. 5).

2. GIVEN THE LACK OF CONSUMER DEMAND, RURAL LEC RESOURCES SHOULD NOT BE DIVERTED TO LNP IMPLEMENTATION.

As expressed by Mr. Watkins, "it is not in the public interest for society, and particularly the rural subscribers of Petitioners, to incur the cost of implementing LNP and to divert the limited resources of Petitioners which are already challenged by their service to sparsely populated areas and relatively lower income customers, for such small, if any, demand and such a speculative and abstract objective." (SDTA Ex. 1, p. 15). Many general managers expressed similar concerns. Specifically, they indicated opposition to being forced to commit human resources and company dollars towards LNP, and away from other company projects, such as the continued deployment of broadband services. (Tr. 349, 357, 360, 1098, 1099, 1107, 1108, 1109, 1111). This concern arises from their understanding that there is little customer interest in LNP, but significant interest in broadband services.

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number of ports for the company (over the next five years) at zero. This information presented by Western Wireless provides further evidence supporting Petitioners' claims that there is little, if any, current demand for the LNP service by consumers.

Testimony also was provided concerning the demographics of the rural service areas of Petitioners. In general, the Petitioners provide service to an aging population and, in many cases, to consumers falling on the lower end of the income scale. Because of the older than average age of consumers in the rural areas, many of the consumers are on fixed incomes. (Kennebec Ex. 1 p. 5; Tr.. 1110, 1111).

It is important to keep these demographics in mind in reviewing LNP implementation under the public interest standard. As indicated by Gene Kroell, Santel's general manager, customers in his area are concerned about additional surcharges on their telephone bills. He indicated that his company had received hundreds of telephone calls from these customers when the "end user charge was raised to $6.50 about a year ago."[14] He also indicated that the population of Sanborn County is ranked fourth in the state on the poverty scale and that Hanson County is ranked third. (Tr.. 1111). Further, he pointed out that Hutchinson County, served by Santel, has more people per capita that are 85 years and older than any other county in the State. (Tr.. 1111).

These demographics indicate that subscribers will have a difficult time paying higher telephone bills and, consequently, it is essential that this Commission recognize the present lack of demand for LNP. All of the Petitioners are rural LECs and all of them face similar challenges in providing state-of-the-art, affordable telecommunications services throughout their service areas. Substantial evidence was presented indicating that broadband services such as DSL are of much greater importance to end-users in the Petitioners' rural service areas than intermodal LNP. (Tr.. 349, 357, 360, 1098, 1099, 1107, 1108, 1109, 1111; Santel Ex. 1, p. 3). All of the Petition-

[14] This reference relates to the increase in the "subscriber line charge" (SLC) from $6.00 to $6.50 on July 1, 2003, pursuant to the FCC's *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256*, In the Matter of the Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

ers are involved in upgrade plans to expand broadband availability within their service areas and very clearly "any amount of capital investment that is diverted to the implementation of LNP will reduce needed capital from broadband investments." (Santel Ex. 1, p. 3).

Considerable evidence was presented indicating that broadband deployments would be impacted if the requested LNP suspensions are not granted. These impacts provide further good reason for finding that granting the requests would be in the public interest consistent with 47 U.S.C. § 215(f)(2)(B). Petitioners should not be forced to incur substantial costs and to redirect their limited resources into the provisioning of an unwanted, and unnecessary, service.

3. GIVEN THE CURRENT LACK OF DEMAND, THE ASSESSMENT OF A LNP SURCHARGE ON REMAINING LANDLINE CUSTOMERS IS ALSO CONTRARY TO THE PUBLIC INTEREST.

As pointed out by a number of witnesses during the hearing, there are also concerns with LNP implementation because of the current method prescribed for the recovery of carrier-specific costs directly related to providing LNP. (Tr. 297, 324, 444, 445; SDTA Ex. 1, p. 9). Pursuant to the FCC's rules, incumbent local exchange carriers implementing LNP are directed to recover "specific costs directly related to providing long-term number portability" by establishing a "monthly number-portability charge" that is charged to its end-users on a per-line basis (excluding lines provided to customers on Lifeline Assistance). 47 C.F.R. § 52.33. Under present day circumstances, where there is little, if any, demand for intermodal LNP, this prescribed cost recovery method gives rise to other public interest related concerns. As Mr. Watkins testified, the surcharges and potential basic rate increases that would be necessary for Petitioners to recover the costs of LNP implementation are not consistent with "cost causer principles". This presents an extreme irony: "The very few customers that may want to port their wireline number from Petitioners to another carrier's service, such as a wireless carrier's service, will no longer be customers of the Petitioners. The vast majority of Petitioners' end users that remain will

shoulder the charges and costs to the benefit of only a handful of users that are no longer customers of the LEC. The vast majority of customers that do not want to port will be forced to foot the bill for the very few that do." (SDTA Ex. 1, p. 9).

This method of cost recovery is especially unfair if the demand for the service is almost non-existent, as with intermodal LNP. Why should all customers be forced to pay for a service that will only bring benefit to a few individuals? Arguably, there may be justification for socializing the cost recovery method and recouping costs from most, if not all telecommunications end users, where demand for the service is prevalent. But, if this is not in fact the case, the assessment of charges on customers who do not use and thus do not benefit from the service is particularly unfair. It is plainly contrary to the "public interest."

Moreover, it should be remembered that the FCC departed from the cost-causer method of cost recovery in the case of LNP because, theoretically, all carriers and customers would be able to benefit from LNP. Therefore, the FCC reasoned, each carrier should be responsible for its own implementation costs. This is not the case with intermodal LNP for Petitioners, however. As previously discussed, wireless to wireline porting will not be available because, in most cases, the rate centers of wireless carriers do not match the rate centers of Petitioners. Thus, the mutual benefit upon which the FCC relied to justify departure from cost causer principles does not exist for Petitioners.

4. GENERAL CLAIMS THAT IMPLEMENTING LNP WILL PROMOTE GREATER COMPETITION AND CONSUMER CHOICE ARE INSUFFICIENT.

Both Western Wireless and Midcontinent contend that implementing LNP is necessary to promote further competition in the Petitioners' rural service areas and to bring consumers greater choice. (Midcontinent Ex. 1, pp. 3, 4; Western Wireless Ex. 1, pp. 23, 25, 26). Such general claims of competitive benefits are not sufficient to override the intended purposes of Section

251(f)(2). Although one purpose of the Telecommunications Act of 1996 was to promote competition for local exchange services, a second primary purpose was to protect universal service and the provisions of Section 251(f)(2) were clearly put into the Act for that reason. State Commissions are specifically given authority under Section 251(f)(2) to suspend and/or modify any of the requirements contained in §§ 251(b) and 251(c) of the Act (including interconnection and other service requirements that were specifically imposed for the purpose of promoting local service competition). Indeed, the very purpose of the suspension and modification provisions contained in Section 251(f)(2) is to allow state commissions to override, in effect, rules related to competition. This being the case, it is obviously insufficient, for purposes of addressing Section 251(f)(2)'s public interest standard, to claim that the implementation of LNP is necessary to promote competition.

There is also no reason to conclude that benefits would result in bringing consumers greater choice, because as noted above, there currently is no consumer demand for the LNP service. Simply put, diverting carrier resources in order to bring consumers a choice they do not want does not benefit consumers.[15]

Furthermore, even though claims are made by Western Wireless that the provisioning of LNP by the rural carriers is necessary to enhance competition, there is other evidence to the contrary. The record reflects, for instance, that Western Wireless is already competing in the Petitioners' service areas without LNP. (Tr. 568, 640, 641, 644) And, as indicated by the testimony

[15] The previously referenced decision of the Nebraska Public Service Commission, which granted a LNP suspension until January 20, 2006 to many of Nebraska's rural local exchange carriers, includes findings addressing the claims made by Western Wireless that LNP is necessary to provide greater choice. In that decision, the Nebraska PSC noted that "Mr. Williams testified that public interest means consumer choice and that LNP is about elimination of a barrier for consumer choice." In response, the Nebraska PSC concluded: "While the Commission acknowledges that introduction of competition into telecommunications markets is a key policy of the 1996 Telecommunications Act, without any evidence that demand for intermodal LNP exists and thus, that consumer choice is being thwarted, this Commission must assign greater weight to another Congressional policy of the Act." See, *Nebraska Order*, page 14.

of Mr. Adkins of Swiftel, Western Wireless is competing successfully. He indicated that Swiftel already has seen a significant migration of customers from wireline to wireless. (Tr. 311). Over the last three years, as a result of college students moving from wireline to wireless, the company's access line count has gone down approximately 1,200 phone lines. This illustrates, as pointed out by Mr. Adkins, "that what we have is pretty fair competition without local number portability." (Tr. p. 312). With respect to the claimed advantages of LNP, as further commented on by Mr. Adkins, "in an environment where competition is being served, the customers are, in fact, migrating as they desire from wireline to wireless . . . to say that they would be advantaged when you look at the cost to provide that small advantage, it certainly doesn't seem to . . . it certainly doesn't seem to pass muster on the benefit ratio." (Tr. 312).

It is also clear, and as has been noted previously, that Western Wireless itself is a new and, perhaps, disingenuous, advocate of the position that LNP is necessary to promote competition between wireless and wireline providers. As Mr. Watkins testified, "Western Wireless has also previously concluded in comments filed with the Federal Communications Commission (FCC) that 'LNP is unnecessary to further competition.' Reply Comments of Western Wireless filed October 21, 2001, in WT Docket No. 01-184 at pp. 2-5 . . .. Western Wireless noted that, as a provider of conventional cellular and wireless local loop services, 'Western is making significant inroads competing against wireline service providers – without offering LNP." Western Wireless went on to state that "there is no evidence to suggest that the inability of CMRS customers to port their numbers is an impediment to changing service providers."

Thus, contrary to the general claims made by both Midcontinent and Western Wireless, there is absolutely no evidence on the record that any measurable public benefit will be facilitated by LNP implementation. There is no consumer demand for the service

and, as a result, forced implementation of LNP would only result in substantial additional costs and charges without any corresponding consumer benefit.[16]

5. IF THE FCC SHORTENS THE "PORTING INTERVAL" THIS WILL ALSO INCREASE LNP IMPLEMENTATION COSTS.

Along with its *Nov. 10th Order*, the FCC issued a Further Notice of Proposed Rulemaking on a number of issues including the issue of whether the current established "porting interval" should be reduced and also issues related to the porting of telephone numbers from wireless-to-wireline.[17] Specifically, regarding the porting interval, the FNPR seeks comment on whether the FCC should "reduce the current wireline four business day porting interval for intermodal porting."[18] In seeking these comments, reference was made in the FNPR to the intention of wireless carriers to complete their "intramodal wireless ports" within two and one-half hours, which raises concerns among landline LECs that the current four day porting interval could be shortened considerably.

As testified to by a number of Petitioners' witnesses, if the FCC proceeds under its pending FNPR to reduce the porting interval from the current four day interval there will be an impact on LNP implementation costs, and in many cases this impact would be substantial. (Davis Ex. 1 pp. 18, 19; ITC Ex. 3 p. 18; Brookings Ex. 3 pp. 18, 19; Stockholm Ex. 3 p. 19; Venture Ex. 3 pp. 18, 19; West River Ex. 3 p. 18; SDTA Ex. 1 pp. 15, 36; Tr. pp. 897, 898). Thus, the costs differences are significant between the costs that are necessary to implement a "manual" vs. "automated" service order administration ("SOA") process. Moreover, the prospect of some future decision by the FCC causes Petitioners to be concerned, because under the current FCC

[16] Mr. Williams also claimed that the absence of LNP also affects wireless-to-wireless ports, specifically alleging that the benefits of wireless-to-wireless porting may be lessened if LNP is not ordered. (Tr. 562). In later questioning regarding these alleged impacts, however, Mr. Williams indicated that the particular problem (associated with routing calls from landline to wireless customers who have a ported number) was already being addressed by Western Wireless through its provisioning of a "default query service." (Tr. 599).

rules pertaining to the establishment of a "monthly number-portability charge" the charge is to be "levelized" over five years, or in other words must remain constant over that period. As previously discussed, there are no provisions in the FCC rule relating to LNP cost recovery (47 C.F.R. § 52.33) that permit revision to the established monthly number portability charge, should actual LNP related costs change over the 5 year period that the charge is to be in effect and the FCC has indicated that waivers will not be forthcoming easily.

It is obvious from the foregoing that revising end-user LNP surcharges after they have been established would be problematic; it is also very possible that the FCC will reduce the current porting interval; and that this will affect costs to be incurred by Petitioners in their provisioning of the LNP service. This additional uncertainty related to the pending "porting interval" issue also supports and affirmative public interest finding pursuant to 47 U.S.C. § 251(f)(2).

6. THE FCC'S FAILURE TO ADDRESS WIRELESS-TO-WIRELINE PORTING ISSUES IN CONJUNCTION WITH ORDERING WIRELINE-TO-WIRELESS PORTING SHOULD ALSO BE CONSIDERED.

In addition to not addressing the pending porting interval issue in its *November 10 Order*, the FCC also left to another day issues needing to be resolved in order to implement wireless-to-wireline porting capabilities. Like the porting interval issue, various issues related to wireless-to-wireline porting were noticed for comment as part of the FNPR issued along with the *November 10 Order*. In implementing intermodal LNP, wireline-to-wireless, but not at the same time requiring under similar circumstances the porting of numbers from wireless-to-wireline, the FCC has established what amounts to a "one-way" porting environment.

As testified to by Mr. Watkins:

> The manner in which the FCC put in place intermodal porting, inconsistent with the reports of the industry workgroup that had been

[17] *Nov. 10th Order*, FCC 03-284, at pars. 41 thru 51.
[18] *Id.* at par. 49.

> charged with examining the intermodal issues, means that there is an extreme disparity between wireline-to-wireless opportunities to port versus wireless-to-wireline. Therefore, for the most part, Petitioners will be able to lose customers if LNP is implemented, but will not be able to get them back. The necessary methods and rules to allow wireless-to wireline porting that would be competitively fair are the subject of a further rulemaking proceeding before the FCC with no apparent resolution of the geographic disparity issues that are at the root of the issues. . . . In the meantime, a competitively unfair version of intermodal LNP is in place. (SDTA Ex. 1 pp. 9, 10)

Petitioners strongly urge this Commission to keep the above described competitive unfairness in mind in reviewing the requested LNP suspensions. Under the version of intermodal LNP ordered by the FCC, there is absolutely no upside for the rural LECs. The Petitioners are faced with losing local service customers and must expend substantial additional dollars to facilitate this loss. Such a result can only have negative impacts and will only serve to increase local service rates for most rural consumers and harm universal service efforts. (Tr. pp. 297, 303, 304, 364, 365, 378, 399, 400, 445, 503, 511, 514).

IV.

CONCLUSION AND SUMMARY OF REQUESTED RELIEF

As this brief and the record demonstrate, LNP deployment in South Dakota is an expensive solution in search of a problem. Western Wireless has defined the "problem" as the need to better compete in the local exchange market. Yet, the record clearly demonstrates (e.g., testimony of Brookings' witness, Mr. Adkins) that wireless companies are winning customers away from rural ILECs without LNP. And, for the vast majority of rural customers, whose telephone company managers testified at the hearing, LNP is a service they simply do not want. As this brief has discussed earlier, wireless services in South Dakota complement, rather than replace, wireline service and logically so, given the poor coverage afforded by wireless carriers.

Against such modest advantages of LNP are arrayed its considerable costs. The costs of implementation alone, setting aside the transport issue, constitute a "significant adverse economic impact" and 'undue economic burden' on both the companies and their customers. The recently issued *Nebraska Order*, discussed earlier, finds that a range of end user surcharges between $0.64 and $12.23 per month, including surcharges and taxes, would impose a "significant adverse economic impact on users of telecommunications generally." Id., p. 11. The prospect of additional costs being imposed on Nebraska's rural carriers, by virtue of FCC determinations, likewise justified suspensions as "unduly economically burdensome", according to the Nebraska Commission. Id., p. 12. The evidence in this case proves the likelihood that similar costs and cost uncertainties attend the imposition of LNP.

All of this, of course, does not contemplate the havoc that could be wreaked upon South Dakota's intercarrier compensation regime of access charges, reciprocal transport and termination charges and potential transit charges charged by third parties, such as Qwest, if rural carriers are forced to carry traffic to locations distant from their exchanges.

In light of these costs, and the technical infeasibility of transporting LNP traffic without any intercarrier arrangements, the imposition of LNP by the rural carriers clearly is not in the public interest. The Petitioners accordingly request the following relief, consistent with the recommendations of SDTA's witness, Mr. Watkins (Tr. 504-05):

1). The current suspension of the FCC's LNP requirements should be extended until cost and demand are better balanced from a public interest perspective;

2). Such suspension should continue and evaluations take place, no earlier until such time that the courts and the FCC resolve outstanding LNP issues, including currently pending LNP rulemakings;

3). The Commission should meanwhile confirm that under no circumstances do the Petitioners have the responsibility to transport local calls to some distant location, and ;

4). If and when the issues are resolved, and public interest circumstances have changed to warrant LNP implementation, some period of time should be allowed to facilitate Petitioners' provisioning of the necessary hardware and software, and to implement necessary administrative processes.

DATED this fifth day of August, 2004

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the original and ten copies of the foregoing POST-HEARING BRIEF OF PETITIONERS AND SDTA upon:

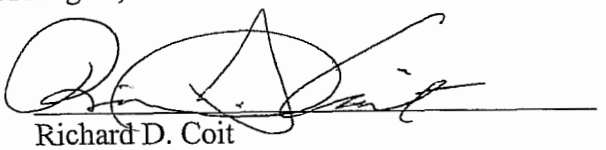
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and a copy upon the persons herein next designated, on the date below shown, by depositing a copy thereof in the United States mail at Pierre, South Dakota, postage prepaid, in an envelope addressed to each said addressee, to-wit:

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Re: Local Number Portability Suspension or Modification
Dockets TC04-025, TC04-038, TC04-044-056, TC04-060-062 and TC04-084

Dear Folks:

Enclosed each of you will find a copy of Staff's Brief with reference to the above captioned matters. This is intended as service upon you by mail.

Very truly yours,

Rolayne Ailts Wiest

Rolayne Ailts Wiest
Staff Attorney

RAW:dk
Enc.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITIONS FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. § 251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	))))	STAFF'S BRIEF DOCKET NUMBERS:

TC04-025	Kennebec Telephone Company
TC04-038	Santel Communications Cooperative, Inc.
TC04-044	Sioux Valley Telephone Company
TC04-045	Golden West Telecommunications Cooperative, Inc., Vivian Telephone Company and Kadoka Telephone Company
TC04-046	Armour Independent Telephone Company, Bridgewater-Canistota Independent Telephone Company and Union Telephone Company
TC04-047	Brookings Municipal Utilities d/b/a Swiftel Communications
TC04-048	Beresford Municipal Telephone Company
TC04-049	McCook Cooperative Telephone Company
TC04-050	Valley Telecommunications Cooperative Association, Inc.
TC04-051	City of Faith Telephone Company
TC04-052	Midstate Communications, Inc.
TC04-053	Western Telephone Company
TC04-054	Interstate Telecommunications Cooperative, Inc.
TC04-055	Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc.
TC04-056	RC Communications, Inc. and Roberts County Telephone Cooperative Association
TC04-060	Venture Communications Cooperative
TC04-061	West River Cooperative Telephone Company
TC04-062	Stockholm-Strandburg Telephone Company
TC04-084	Tri-County Telcom, Inc.

PROCEDURAL HISTORY

In 2004, a number of rural local exchange telephone companies filed petitions pursuant to section 251(f)(2) of the federal Communications Act of 1934 as amended, (the Act) and SDCL 49-31-80 seeking suspension or modification of their requirement to implement local number portability (LNP) under section 251(b)(2) of the Act. The

Petitioners are as follows: Kennebec Telephone Company (Kennebec); Santel Communications Cooperative, Inc. (Santel); Sioux Valley Telephone Company (Sioux Valley); Golden West Telecommunications Cooperative, Inc., Vivian Telephone Company, and Kadoka Telephone Company (Golden West/Vivian/Kadoka); Armour Independent Telephone Company, Bridgewater-Canistota Independent Telephone Company, and Union Telephone Company (Armour/Bridgewater/Union); Brookings Municipal Utilities d/b/a Swiftel Communications (Brookings); Beresford Municipal Telephone Company (Beresford); McCook Cooperative Telephone Company (McCook); Valley Telecommunications Cooperative Association, Inc. (Valley); City of Faith Telephone Company (Faith); Midstate Communications, Inc. (Midstate); Western Telephone Company (Western); Interstate Telecommunications Cooperative, Inc. (ITC); Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc. (Alliance/Splitrock); RC Communications, Inc. and Roberts County Telephone Cooperative Association (Roberts County/RC); Venture Communications Cooperative (Venture); West River Cooperative Telephone Company (West River); Stockholm-Strandburg Telephone Company (Stockholm-Strandburg); James Valley Cooperative Telephone Company (James Valley); Tri-County Telcom, Inc. (Tri-County); and Cheyenne River Sioux Tribe Telephone Authority (CRST).

Intervention was granted to WWC License LLC d/b/a CellularOne (WWC) and the South Dakota Telecommunications Association (SDTA) in all of the dockets and intervention was granted to Midcontinent Communications (Midcontinent) in Santel, Sioux Valley, Valley, Faith, ITC, Alliance/Splitrock, Roberts County/RC, Venture, West River and

James Valley. Midcontinent later withdrew its interventions in Roberts County/RC and West River. Prior to the hearings on the petitions, the Commission issued an order granting the Petitioners' requests for interim suspension of their obligations to implement LNP pending final decision as allowed by section 251(f)(2) and SDCL 49-31-80.

The hearings were held on these dockets beginning on July 21, 2004. A related docket, TC03-192, was also included as part of the hearings. This docket concerned a motion by Midcontinent to compel local number portability or good faith negotiations with ITC. During the course of the hearing, James Valley and CRST went on record as stating that they had entered into settlement agreements and, thus, no hearings were held on those two dockets. In addition, Midcontinent and ITC entered into a Settlement Agreement concerning Docket TC03-192. At its July 20, 2004, meeting, the Commission approved that Settlement Agreement. At its August 17, 2004, meeting, the Commission approved the Stipulation for James Valley (Docket TC04-077) and the Stipulation for CRST (Docket TC04-085).

JURISDICTIONAL STATEMENT

The Commission has jurisdiction over this matter pursuant to section 251(b)(2) of the federal Act and SDCL 49-31-80. Although Western Wireless attempted to cast doubts on the Commission's jurisdiction to consider suspensions, the FCC has recognized the jurisdiction of the state commissions to grant or deny petitions to suspend the implementation of LNP.[1]

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[1] TR. at 565-68. Staff notes that the chairman of the FCC is urging "State Commissions to consider the burdens on small businesses in addressing those waiver requests and to grant the requested relief if the State Commissions deem it appropriate." Venture Exhibit 4.

LEGAL STANDARDS

The federal Act requires local exchange carriers "to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the [Federal Communications] Commission." 47 U.S.C. § 251(b)(2). In its November 10, 2003 order, the Federal Communications Commission (FCC) required local exchange carriers that are located outside of the top 100 metropolitan statistical areas to provide LNP and to port numbers to wireless carriers.[2] Pursuant to this order, local exchange carriers were required to provide LNP by May 24, 2004, or within six months of the date that the local exchange carrier receives a bona fide request.

State commissions are given the authority under the Act to grant a suspension or modification of local number portability requirements if the local carrier has fewer than two percent of subscriber lines nationwide.[3] The applicable South Dakota statute is based on the federal statute. SDCL 49-31-80 provides as follows:

> Consistent with 47 U.S.C. § 251(f)(2) as of January 1, 1998, the commission may grant a suspension or modification of any of the interconnection or other requirements set forth in 47 U.S.C. §§ 251(b) and 251(c), as of January 1, 1998, to any local exchange carrier which serves fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide. Any such carrier shall petition the commission for the suspension or modification. The commission shall grant the petition to the extent that, and for such duration as, the commission determines that the requested suspension or modification is consistent with the public interest, convenience, and necessity and is necessary:
>
> (1) To avoid a significant adverse economic impact on users of telecommunications services generally;

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[2] *In the Matter of Telephone Number Portability*, CC Docket 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 03-284 (rel. November 10, 2003).

[3] 47 U.S.C. § 251(f)(2). All of the Petitioners meet the "less than two percent" requirement.

(2) To avoid imposing a requirement that is unduly economically burdensome; or
(3) To avoid imposing a requirement that is technically infeasible.

The commission may suspend enforcement of the requirement or requirements identified in the petition pending final action on the requested suspension or modification.

Thus, based on both state and federal law, the Commission must evaluate the three standards as outlined in the statutes and determine whether a suspension or modification is necessary and is also consistent with the public interest, convenience, and necessity. If the Commission grants a suspension or modification, the Commission must also determine how long any such suspension or modification should last.

The first two standards focus on economic impacts. The first standard is centered on the customer - is suspension or modification necessary to avoid significant adverse economic impact on customers. The difficulty in applying this standard lies in deciding at what point the economic impact becomes significantly adverse.

The second standard requires the Commission to look at whether implementation of LNP would impose a requirement that is unduly economically burdensome. Although at first Staff thought that this standard could be evaluated by looking at the impact on the company, it seems to make more sense that this standard should be applied to both the consumer and the company, especially given the uncertainties surrounding how the costs of LNP will be distributed between the company and the consumers. For instance, it is difficult, at this point, to actually determine a fairly definite number that would be used by

the company to impose a surcharge on their customers.[4] Second, even if a surcharge could be stated with a relatively certain degree of accuracy, any costs not recovered in the surcharge could still be recovered from the customers through an increase in local rates. Third, an LNP surcharge is not mandatory and a company could choose not to implement one. Thus, Staff will evaluate this standard by considering the possible effects on both consumers and company.

With respect to the two economic standards, Staff notes that even without transport costs, the costs to implement LNP are considerable.[5] Predictably, the smaller the number of access lines, the greater the economic impact is on the consumer and the company. In addition, for some companies there are economic impacts beyond those that perhaps could reasonably have been expected. For example, in some cases, the implementation of LNP would require a company to acquire a new switch or invest a considerable amount of money to upgrade a switch that may need to be replaced in the next couple of years.

The third standard requires the Commission to determine whether the imposition of local number portability is technically infeasible. Staff will discuss this standard further below.

The final standard is one that this Commission is certainly familiar with -- is the request for suspension consistent with the public interest, convenience, and necessity. One of the main benefits of local number portability is that it is a tool for fostering

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[4] The FCC has authorized the companies to place a surcharge on their customers for LNP costs.

[5] When evaluating the individual companies, Staff has not included transport costs. This is based on Staff's position, discussed in more detail below, that the Petitioners are not responsible for the cost to transport calls outside of their exchange areas.

competition. In addition, Staff would expect that the demand for LNP will continue to grow, especially in areas where wireless coverage is good or where wireline competition exists. On the other hand, there are significant costs associated with the implementation of LNP and there are unresolved issues that could further impact those costs. Staff believes that the Commission needs to conduct a cost versus demand analysis when considering the public interest. Or, in other words, the lower the demand and the higher the costs, the greater the likelihood becomes that the imposition of LNP is not in the public interest. Conversely, higher demand coupled with lower costs tilts the balance in favor of requiring implementation of LNP. When making its recommendations, Staff has attempted to conduct this balancing test for each of the companies.

ISSUES

Staff will first discuss some of the major areas of disagreement among the parties. Following that discussion, Staff will evaluate the particular facts for each company and make recommendations.

1. Transport

Transport costs comprised a significant portion of the costs to implement LNP as estimated by the Petitioners. Transport costs as estimated by WWC were considerably smaller. The highest transport costs were set forth by the companies who used John DeWitte as their cost witness. DeWitte's high transport costs were due to the method that he chose to provide transport. Under DeWitte's method, each wireless carrier would directly connect with a DS-1 to each end office or host office. DeWitte estimated the cost of each direct connection at either $4,000 or $5,000, depending on the company. TR. at 216-17. In addition, DeWitte did not limit the number of wireless carriers to wireless

carriers who were currently serving each exchange, but also included wireless carriers that were authorized to serve and that were considered, by the Petitioners, to be likely to serve in the next few years. TR. at 218.

The transport method proposed by the Petitioners who used Dan Davis and Tom Bullock, the TELEC cost witnesses, was somewhat similar to the method proposed by DeWitte. The TELEC cost witnesses proposed using a T-1 circuit installed between each host or stand-alone switch that is not subtended from a local tandem to each wireless carrier that is currently providing service in the RLEC's territory that does not already have a direct trunk into the RLEC's network. TR. at 868. This methodology also resulted in significant transport cost although the costs were less than the costs derived using DeWitte's method.

By contrast WWC's routing method was based on converting existing one-way trunks to the Qwest tandem to two-way trunks and using Qwest as the transit provider. This routing method resulted in significantly lower costs.[6] For example, under DeWitte's routing method, ITC's non-recurring transport costs would be $576,000 with a monthly recurring cost of $153,069. ITC Revised Exhibit 4B. Contrast those numbers with WWC's routing method which resulted in non-recurring costs of $1,200 and monthly recurring costs of $2,228. WWC Exhibit 9. For Alliance/Splitrock, the TELEC witness' routing methodology resulted in non-recurring transport costs of $11,789 and recurring transport

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[6] Staff notes that WWC stated at the hearing that WWC would pay for transport on an interim basis, until the final FCC decision on transport, provided the Qwest tandem based routing method was used. TR. at 939.

costs of $15,502. Alliance Exhibit 3. For the same company, WWC estimated non-recurring costs of $564 and recurring transport costs of $1,441. WWC Exhibit 15.

The main basis for the routing methodology as proposed by the Petitioners' cost witnesses appeared to be that the Petitioners' current interconnection agreement requires direct connections. TR. at 175. However, the Petitioners' routing methods are not the most efficient methods to route or, obviously, the least costly methods. *Id.*

Staff's position is that the Commission does not need to dictate any particular transport route. Staff believes that the question that the Commission *does* need to answer is whether the Petitioners are responsible for the costs of transporting LNP traffic outside of their exchange areas.[7] Staff"s position is that the Commission should find that an RLEC is *not* responsible for the cost of transporting LNP traffic outside of its exchange area. A local exchange company should not be required to transport local exchange calls beyond its local exchange area.

If the Commission finds that an RLEC is not responsible for transporting LNP traffic outside of its area, the next question that needs to be answered is how should the traffic be routed. Staff believes that the Commission should not require that a requesting carrier directly connect with the RLEC in each exchange. It will then be up to the RLEC and requesting carrier to negotiate the most efficient and reliable transport method. Thus, the RLEC and the requesting carrier will negotiate the method of transport, knowing that if the routing method requires transport of the call outside of the RLEC's area, the requesting

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[7] Apparently the FCC is considering this issue in a pending docket. *See In the Matter of Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs*, CC-Docket 01-92, Petition of Sprint, May 9, 2002.

carrier would be responsible for those transport costs. The routing method would then be based on how each carrier's current network is configured for that particular service area. Staff believes that the settlement agreements in James Valley and CRST demonstrate that the parties are in the best position to determine how to route LNP traffic.

2. Porting Estimates

A critical element in the analysis of whether LNP requirements should be suspended is whether the costs of LNP can be justified given the demand for the service. Unfortunately, it would appear that accurately estimating LNP demand, especially for wireline to wireless ports, is fairly difficult. Based on the evidence presented, Staff does not have much confidence in the porting estimates presented by any of the parties.

WWC's witness, Williams, stated that WWC's porting estimates were "based on what we thought we would be able to obtain as a result of both our coverage and our view of what their demographics represented." TR. at 1031. His estimates for ports, based on each company's number of access lines, ranged from a low of 2.743% for Golden West to a high of 3.528% for Brookings. WWC Exhibits 9, 15, 18, 19. Williams further stated that, for most of the companies, the numbers are close to what WWC would expect in WWC's rural areas, which is approximately 15 percent intermodal porting over a five year period. TR. at 1031. He assumed that WWC would have about 45% of the total estimated ports. TR. at 690. Williams stated that there has not yet been any experience in intermodal porting in rural service areas so far. *Id.* He went on to state that there is a track record for wireline to wireline portability and that has resulted in an annual migration of 3.5% to 4.5%. *Id.* at 1033. He also stated that he would not expect wireline to wireless migration to be that high. *Id.*

Regarding the issue of demand, Steven Watkins, a witness for the Petitioners, stated that NeuStar reported that "95% of wireless ports have been from one wireless carrier to another and only 5% of wireless ports were between wireline and wireless carriers." SDTA Exhibit 1 at 11. He noted that these numbers were based on wireless to wireline reporting in more urban areas and expected that interest in rural areas would be even less. *Id.* He stated that in rural areas "the public does not recognize wireless service as an absolute substitute for wireline service" due to reliability and that "demand for wireless service is more for its mobile capability[.]" *Id.* at 12. He further stated that even for customers who decide to give up their wireline service for wireless generally will try wireless service first and then drop their wireline service. *Id.* Thus, there would not be a need to port numbers in that case. *Id.*

DeWitte, the cost witness for Brookings, ITC, Stockholm-Strandburg, Venture, West River, and Santel, also referenced the NeuStar report. Santel Exhibit 2 at 18. DeWitte believed that the porting percentage would be small for rural areas because of the "lack of ubiquitous quality and incomplete coverage of the Petitioner's existing service area by the existing wireless carriers." *Id.* DeWitte's estimated number of ports were quite low and ranged from 0.021% to 0.341% of a company's access lines per year.

Bullock, the cost witness for Alliance/Splitrock, Armour/Bridgewater/Union, Faith, Golden West/Vivian/Kadoka, McCook, Sioux Valley, Tri-County, and Valley, stated that he assumed that if LNP were required, the wireless companies would begin an aggressive marketing campaign which may generate some porting activity. TR. at 890. He also assumed that some of the customers would port back to the wireline carrier. *Id.* He stated

that he did not do a scientific analysis since there is no track record for number porting in rural areas. *Id.* He also stated that his porting estimates were not based on the number of wireless carriers operating in any particular area. *Id.* at 891. Bullock's estimated number of ports were higher than DeWitte's and ranged from 0.694% to 3.061% of a company's access lines per year.

Davis, the cost witness for Beresford, Kennebec, Midstate, Roberts County/RC, and Western, also used porting estimates when he calculated the cost to implement LNP. However, at the hearing, he stated that his porting numbers should not be taken as "any sort of estimate for demand" and that he did not do any type of empirical analysis. TR. at 1009-10. He just picked a number to "show a relationship between a specific demand level and what the resulting costs would be." TR. at 1009.

Only one company, Kennebec, attempted to forecast demand through a survey to its customers. The survey showed that 2.6 of the survey respondents were willing to pay a surcharge of $2.00 per month for LNP. TR. at 957. If the surcharge were a $1.00 a month, the demand increased to 12%. TR. at 964-65.

After reviewing the evidence presented, it appears to Staff that, as might be expected, the demand for porting will likely fall somewhere in between the numbers as forecasted by the Petitioners and those set forth by WWC. Staff believes that Williams numbers are too high based on a number of factors. First, according to Williams own testimony *wireline to wireline* portability has only resulted in porting percentages of 3.5% to 4.5%. TR. at 1033. Moreover, a survey regarding *wireless porting* showed that only 5% of wireless ports were *between wireline and wireless carriers*. SDTA Exhibit 1 at 11. On

the other hand, DeWitte's estimates that averaged less than two tenths of one percent appear to be somewhat low. For example, in Kennebec, 12% of the survey respondents would be willing to pay a dollar a month in order to have the ability to port their wireline numbers to their wireless carrier. TR. at 965. In addition, one of the cost witnesses, Bullock, used estimates that ranged from 0.694% to 3.061%.

Based on all of the evidence presented at the hearing, Staff asserts that a more realistic number might be around one and one half percent for the more densely populated areas that have adequate cellular coverage. Staff would expect the percentage to be lower in less densely populated areas with less than adequate cellular coverage.

3. Non-Transport Costs

With respect to non-transport related costs, the Petitioners and WWC disagreed on some categories of costs. Staff will address the major disagreements, to the extent they are relevant to Staff's recommendation, when Staff makes its recommendation for each company.

4. Technical Infeasibility

In their brief, the Petitioners contend that "in light of current routing arrangements, it is technically infeasible to complete calls on a local basis to telephone numbers ported to a wireless provider." Post-Hearing Brief of Petitioners and SDTA at 3. The Petitioners' brief also refers to "the technical infeasibility of transporting LNP traffic without any intercarrier arrangements." *Id.* at 54. To the extent the Petitioners are claiming that this meets the standard of "technical infeasibility," Staff asserts that the Petitioners' definition is incredibly broad and serves to render the standard almost meaningless. An analysis of whether LNP is technically infeasible should not be based on whether, using the current

routing methods, LNP can be implemented. Using this type of analysis, the Petitioners could just as well argue that LNP is technically infeasible because their switches do not currently have any LNP capability.

According to some of the Petitioners' own witnesses, LNP is technically feasible. Bryan Roth, manager for McCook, agreed that LNP was technically feasible. TR. at 829. Pamela Harrington, general manger of Roberts County and RC, stated that LNP is technically feasible with the proper upgrades. TR. at 1049. Davis, one of the cost witnesses, stated that under his proposed routing method, LNP is technically feasible. TR. at 997. Dennis Law, Golden West's manager, stated that his companies are technically able to connect to the Qwest tandem. TR. at 791-792.

It is Staff's position that it is technically feasible for each of the Petitioners to implement LNP. It will obviously cost money to implement LNP, but it can be implemented. Therefore, Staff will evaluate each company in light of the two economic standards and the public interest standard.

RECOMMENDATIONS BY COMPANY

Based on the evidence presented at the hearing, Staff has three different recommendations. Staff recommends that some of the very high cost companies should be granted a two year LNP suspension, which would be until May 24, 2006. For the companies in this group, Staff submits that the high costs, coupled with the small number of access lines which will result in a very low number of monthly ports, demonstrate that these companies meet the statutory standards.

For the second group of companies, Staff recommends that these companies be granted an one year LNP suspension, which would be until May 24, 2005. For these companies, the costs are still considerable. Staff believes that these companies also meet the statutory standards.

Given the projected costs and demand, Staff submits that these companies would benefit from additional certainty in the process which would result when the FCC acts on issues such as porting intervals and transport routing issues. Staff would hope that the FCC decisions will be made by late this year or early next year. After the FCC decisions are issued, the companies should have a clearer picture of what costs must be incurred to implement LNP. The decisions may result in lower projected costs or higher projected costs, but either way, there should be more certainty. Further, the additional time should result in the ability to more accurately predict demand based on what has occurred in other rural areas. Depending on the demand that is experienced in other rural areas where LNP has been implemented, it is possible that these companies could justify a further suspension. On the other hand, if the demand is closer to Western Wireless' estimates of 3% per year or 15% over five years, then the Commission may decide to not allow any further suspensions.

Staff believes that these suspensions should be reviewed sooner than the first group given that the estimated costs per line are lower and the number of monthly ports will likely be higher given the larger number of access lines when compared with the first group. Or, in other words, because these companies present a closer question as to whether a suspension is necessary, Staff recommends a one year suspension as opposed to a two year suspension.

For the third group of companies, Staff recommends that the Commission deny any further suspension beyond what is needed to immediately begin implementation of LNP. Given the lower costs and higher expected demand, Staff does not believe that these companies meet the public interest standard. In each case, the companies estimated costs are below a dollar, in some cases considerably below a dollar a month, and their number of access lines are greater which will result in a higher number of ports each month. For each company Staff attempted to balance the economic impact on the consumers and company with the benefits of LNP. For these companies, where the estimated costs are lower and the estimated demand is higher, Staff believes that the cost versus demand balancing test is tilted in favor of implementing LNP.

Companies that should be granted a suspension until May 24, 2006.

Faith

Faith's cost witness projected an LNP cost of $3.10 per line per month. WWC projected $2.42 cost per line per month. WWC Exhibit 15. Both projected only 12 ports per year, one per month. *Id.* In addition, Faith will lose support for its Mitel switch at the end of 2007. TR. at 762. Faith did not know whether it would need to buy a new switch or upgrade the switch at that time. TR. at 762. WWC's witness stated that it would be appropriate for the Commission to give Faith a suspension until March 31, 2005 and allow Faith the opportunity to request a further suspension depending on its projected cost and estimated demand at that time. TR. at 622.

It is Staff's position that given the high per line costs (whether one relies on WWC's or Faith's cost testimony) and the projected low demand by both Faith and WWC, that

Faith should be granted a suspension until May 24, 2006. At that point, Staff anticipates that there will also be much better numbers regarding demand for LNP based on numbers from other rural areas where LNP has been implemented. Staff further expects that the issues that are currently pending at the FCC will be decided.[8] The Commission can then evaluate whether any further suspension should be granted.

Another reason why Staff believes that Faith should be granted a suspension until May 24, 2006 is that Staff would expect that by 2006, Faith should know what it intends to do regarding its switch. It makes little sense to require a company to put in significant dollars to upgrade a switch that may be replaced in a couple years. If Faith intends to replace the switch, Staff assumes the new switch will be LNP compliant.

Given the high costs, low porting estimates, and switch situation, Staff believes that Faith has shown that it meets the statutory standards for suspension.

In order to evaluate any future request for suspension, Staff recommends that Faith be required to keep track of all LNP inquiries or requests from its customers. Staff also recommends that the wireless carriers serving Faith also keep track of inquiries or requests.

Tri-County

Tri-County's cost witness projected an LNP cost of $3.03 per line per month. WWC projected a cost of $1.83 per line per month. WWC Exhibit 15. Tri-County estimated 12 ports per year while WWC projected only 13 ports per year. *Id.* At the hearing, Tri-

[8] In addition, depending on what decisions are made at the FCC, it is conceivable that an RLEC may request suspension or modification of any FCC requirements.

County's cost witness stated that he had learned that Tri-County would actually require a new switch to implement LNP. Bullock stated that "Tri-County has some ancient DMS-10s and to actually provide LNP they would have to replace both of their switches." TR. at 912. He stated that he did not include the costs of new switches because it was not Tri-County's position "that this huge switch replacement cost is eligible to be included in an LNP end-user charge, but if Tri-County does not receive a suspension of the LNP requirements and Tri-County proceeds to implement LNP, they have to replace their switches, and it will cost them a lot of money to do that." TR. at 917. As with Faith, WWC's witness stated that it would be appropriate for the Commission to give Tri-County a suspension until March 31, 2005. TR. at 623.

Based on the high costs and estimated low demand plus the need for Tri-County to replace its switches to implement LNP, Staff makes the same recommendation as its recommendation for Faith.

Stockholm-Strandburg

Stockholm-Strandburg's cost witness projected an LNP cost of $4.99 to $5.58 per line per month. ITC Revised Exhibit 4B. WWC projected $2.62 to $2.93 cost per line per month. WWC Exhibit 9. Stockholm-Strandburg estimated one port per year while WWC projected 23 ports per year. ITC Revised Exhibit 4B; WWC Exhibit 9. Even at 23 ports per year, Staff believes that Western Wireless' estimate is too high. As with Faith, WWC's witness stated that it would be appropriate for the Commission to give Stockholm-Strandburg a suspension until March 31, 2005. TR. at 623.

Once again, it is Staff's position that given the high per line costs (whether one relies on WWC's or Stockholm-Strandburg's cost testimony) and the projected low demand

by both Stockholm-Strandburg and WWC, that Stockholm-Strandburg should be granted a suspension until May 24, 2006.

Kennebec

Kennebec's cost witness projected an LNP cost of $3.45 per line per month. WWC projected $1.84 cost per line per month. WWC Exhibit 18. One of the major reasons for the differences in projected per line costs concerned switch-related investment costs. The issue was whether generic upgrades should be included as a cost. Williams excluded the costs for the generic upgrade to the switch in the amount of $31,400 for Kennebec. TR at 1024. Williams agreed that Kennebec could not actually implement LNP without the generic upgrade but stated that the upgrade is "part of ongoing switch operations, maintenance investments, and includes other features and capability sets unrelated to LNP and, therefore, shouldn't be included when one's trying to estimate the cost of what LNP costs for a company." TR. at 1024-25.

Davis, Kennebec's cost witness, did not check with Kennebec as to whether it had planned to upgrade the host at any time in the future. TR. at 1006. Davis further stated that with respect to Kennebec, he did not know what other benefits would be derived from the generic upgrade or if it provides extra services. TR. at 999 to 1000.

Staff believes that under the statutory standards, the costs for the generic upgrades can be considered. It is not disputed that the generic upgrade will need to be done before LNP can be implemented. Whether the costs can be included in an LNP customer surcharge is not relevant when considering whether the costs of LNP meet the statutory standards for suspension -- these costs can still be recovered from the customer through

an increase in local rates. Thus, Staff believes that the per line costs will be closer to Kennebec's estimate than to Western Wireless' estimate. However, if the Commission grants Kennebec a suspension and Kennebec later asks for a further suspension, Kennebec should provide more information regarding when it plans to do a generic upgrade.

Regarding the estimation of ports, both Kennebec and WWC estimated 24 ports per year. WWC Exhibit 18. Staff believes that even this low estimate is too high. As with Faith, WWC's witness stated that it would be appropriate for the Commission to give Kennebec a suspension until March 31, 2005. TR. at 661-62.

Based on the high costs and estimated low demand, Staff makes the same recommendation as its recommendation for Faith.

Western

Western's cost witness projected an LNP cost per line of $3.97, compared to $1.80 as projected by WWC. WWC Exhibit 18. As with Kennebec, the major reason for the difference was whether generic upgrades should be included as an LNP cost. Williams, Western Wireless' witness, excluded the costs for the generic upgrade to the switch in the amount of $93,000, stating that the costs are not directly related to LNP. TR. at 1021. Again, Davis, Western's cost witness, did not check with Western as to whether it had planned to upgrade the switch at any time in the future. TR. at 1006.

As with Kennebec, Staff believes that the costs for the generic upgrades can be considered. Thus, Staff believes that the per line costs will be closer to Western's estimate than to Western Wireless' estimate. However, if the Commission grants Western

a suspension and Western later asks for a further suspension, Western should provide more information regarding when it plans to do a generic upgrade.

Regarding the estimation of ports, both Western and WWC estimated 36 ports per year. WWC Exhibit 18. Staff believes that these estimates, although low, are still overly optimistic.

Based on the high costs and estimated low demand, Staff makes the same recommendation as its recommendation for Faith.

Companies that should be granted a suspension until May 24, 2005.

Armour/Bridgewater/Union

Armour/Bridgewater/Union's cost witness projected an LNP cost of $1.44 per line per month. WWC projected $1.15 cost per line per month. WWC Exhibit 15 Armour/Bridgewater/Union projected 60 ports per year and WWC estimated 88 ports per year. *Id.* Armour/Bridgewater/Union has a Mitel switch that will lose support in 2007. TR. at 771.

Staff believes that Armour/Bridgewater/Union meets the statutory standards. First, given Armour/Bridgewater/Union's relatively low number of access lines, the number of estimated ports per month is quite low. The parties' estimates for ports range from five to seven ports per month. Staff would be very surprised if the number of actual ports per month will approach the 3% (seven ports per month) level. Second, the cost per line, although less than the previous cases, is still considerable. Third, Staff notes that Armour/Bridgewater/Union has a Mitel switch that will lose support in 2007. Any additional time will allow Armour/Bridgewater/Union to determine what it intends to do regarding its

switch. If Armour/Bridgewater/Union intends to replace the switch, Staff believes that it makes little sense to require Armour/Bridgewater/Union to spend over $76,000 to upgrade a switch that will be replaced in the near future. As stated earlier, Staff anticipates that by next year there will also be much better numbers regarding demand for LNP based on numbers from other rural areas where LNP has been implemented. In addition, Staff hopes that the outstanding issues will be resolved by the FCC by next year. Therefore, based on all of the factors just listed, Staff recommends that Armour/Bridgewater/Union be granted a suspension until May 24, 2005.

As with the first group of companies, Staff recommends that the companies listed in this second group be required to keep track of all LNP inquiries or requests from its customers. Staff also recommends that the wireless carriers serving these companies also keep track of inquiries or requests.

Roberts County/RC

Roberts County/RC's cost witness projected an LNP cost of $1.23 per line per month. WWC projected $1.05 cost per line per month. WWC at Exhibit 18. Roberts County/RC projected 48 ports per year and WWC estimated 65 ports per year. *Id.*

As with Armour/Bridgewater/Union, this company also has a relatively low number of access lines and the number of estimated ports per month is quite low. The parties' estimates for ports range from four to five and one half ports per month. Again, Staff does not believe that these numbers are realistic. Second, the cost per line, although less than the previous cases, is still considerable. Thus, based on the evidence presented in this case, it is Staff's opinion that Roberts County/RC be granted a suspension until May 24, 2005.

Beresford

WWC's and Beresford's cost witnesses projected very similar LNP costs with Beresford estimating an LNP cost of $1.27 per line per month and WWC coming in at $1.22. WWC Exhibit 18. Beresford projected 36 ports per year and WWC estimated 43 ports per year. *Id.*

Once again, an examination of the facts presented in this case leads Staff to recommend that Beresford be granted a suspension until May 24, 2005. Porting estimates range from three to a mere three and one half per month and per line costs are still considerable.

McCook

McCook's cost witness projected an LNP cost of $1.66 per line per month. WWC projected $0.84 cost per line per month. WWC Exhibit 15. McCook projected 48 ports per year and WWC estimated 70 ports per year. *Id.*

Unlike the previous case, this case has a significant cost difference between the parties' estimated per line costs. The most significant difference in estimates concerns "other internal costs." McCook estimated $41,316, while WWC estimated $15,000. Williams' estimate of $15,000 was used for each company. TR. at 934. He stated that this cost was based on his involvement with the process of establishing LNP. TR. at 935-36. Bullock's calculation was based on his estimation of the number of hours required to analyze and fill out forms to facilitate porting to wireless carriers. TR. at 851. Since Bullock's calculations appear to be more company specific, Staff would expect that these costs will probably fall closer to Bullock's estimates.

Another significant cost difference concerned switch upgrade costs. McCook used $26,400 and Western Wireless estimated $17,152. Western Wireless' estimate was based on McCook's original estimate. TR. at 934. Bullock's revised estimate was based on "the pricing polices of the individual switch manufacturers that the telephone companies utilize in their networks" and information from the companies. TR. at 849. Staff finds that Bullock's numbers are more reliable since the numbers are based on the company's actual switches. Thus, Staff believes that the per line number would be closer to McCook's number of $1.66 per line.

Once again, an examination of the facts presented in this case leads Staff to recommend that McCook be granted a suspension until May 24, 2005. Porting estimates range from four per month to almost five per month. Staff believes that the per line costs and the low ports (which Staff believes are probably overstated) allows the Commission to grant the suspension.

West River

West River's cost witness projected an LNP cost of $0.93 to $1.04 per line per month. ITC Exhibit 4B. WWC projected costs of $1.17 to $1.31 per line per month. WWC Exhibit 9. West River projected one port per year and WWC estimated 121 ports per year. ITC Exhibit 4B; WWC Exhibit 9.

WWC is estimating 10 ports per month. Staff believes that WWC's estimate of over 3.2% of access lines porting per year is too high. A more realistic number would be 54 ports per year, or 4.5 per month. Thus, for the same reasons as the previous cases, Staff recommends that West River be granted a suspension until May 24, 2005.

Valley

Valley's cost witness projected an LNP cost of $0.67 per line per month. Valley Exhibit 3. WWC projected costs of $0.63 per line per month. WWC Exhibit 15. Valley projected 60 ports per year and WWC estimated 112 ports per year. Valley Exhibit 3; WWC Exhibit 15. Although the cost witnesses differed on some costs, as can be seen, the cost differences did not amount to much.

Since the estimated per line costs were almost the same, Staff will look at the porting estimates. Steve Olesen, Valley's manager, testified that Valley currently has 25% or less cellular coverage. TR. at 740-41. Olesen also testified that his customers had complained about the lack of cellular coverage and he had no indication from the cellular companies that service would improve in the near future. TR. at 752. As stated earlier, WWC's witness, Williams, stated that WWC's porting estimates were "based on what we thought we would be able to obtain as a result of both *our coverage* and our view of what their demographic represented." TR. at 1031 (emphasis added).

However, despite the lack of coverage for Valley, Williams *still* estimated that a little over 3% of Valley's access lines would be ported each year. Staff finds it hard to believe that porting demand will exceed three percent in an area with this type of cellular coverage. Thus, although the costs for implementing LNP are less than the previous cases we have analyzed thus far, Staff believes requiring implementation of LNP in an area that has 25% or less cellular coverage is not in the public interest and recommends a suspension until May 24, 2005.[9]

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[9] Staff notes that although Midcontinent intervened in this case, Midcontinent is not providing service in Valley's service area.

Midstate

Midstate's cost witness projected an LNP cost of $1.00 per line per month. WWC projected costs of $0.54 per line per month. WWC Exhibit 18. Midstate projected zero ports per year and WWC estimated 143 ports per year. *Id.*

With respect to projected costs, one of the major differences concerned switch upgrade costs. At the hearing Midstate's cost witness changed the switch upgrade cost to $65,000, which lowered the per line cost to $0.92. Western Wireless asserted that $25,000 was the appropriate cost. WWC Exhibit 18. Staff believes that WWC's lower estimate is based on a misunderstanding of a per-line cost quote from Nortel. TR. at 1038-1039. Staff believes that Midstate's projected cost for the switch upgrade is more accurate.

Porting estimates ranged from zero to almost 12 per month. Again, Staff finds that using 3% of access lines (12 per month) as an estimate for demand is too high.

Staff recognizes that this case, along with the next cases, pose a closer question on whether LNP suspension should be granted. Staff is recommending suspension for these cases because Staff believes that given the low number of ports expected and the costs, it is not in the public interest to require immediate implementation of LNP. As stated previously, a suspension until May 24, 2005, should help to clarify costs, routing responsibilities, and will allow the Commission to more accurately determine the actual demand for porting. Thus, Staff recommends that Midstate be granted a suspension until May 24, 2005.

Sioux Valley

Sioux Valley's cost witness projected an LNP cost of $0.71 per line per month. WWC projected costs of $0.62 per line per month. WWC Exhibit 15. Sioux Valley projected 120 ports per year and WWC estimated 177 ports per year. *Id.* Given the less than ten cents difference in the parties' cost estimates, Staff will not attempt to analyze the slight cost differences.

Staff would estimate that ports per month might be closer to seven per month or lower. Based on the same rationale as the previous case, Staff recommends granting Sioux Valley's request for suspension until May 24, 2005.

Santel

Santel's cost witness projected an LNP cost of $0.78 to $0.87 per line per month. ITC Exhibit 4B. WWC projected costs of $0.73 to $0.82 per line per month. WWC Exhibit 19. Santel projected one port per year and WWC estimated 155 ports per year. ITC Exhibit 4B; WWC Exhibit 19. Staff would just note that one of the differences in costs concerns service order administration costs. Santel's cost witness used the more costly automated SOA based on the uncertainty regarding whether the porting interval will be shortened. TR. at 222-23. Staff believes that this is an example of why allowing for a suspension may result in more accurate cost estimates. If the FCC were to decide the porting interval question, then the company will be better able to evaluate what type of service order administration is necessary.

Porting estimates ranged from one to over 12 per month. Again, Staff believes that Western Wireless' estimate is too high given that it is based on 3.2% of Santel's access lines. Staff believes that it would be more reasonable to expect six per month or even

lower. Based on the same rationale as the previous case, Staff recommends granting Santel's request for suspension until May 24, 2005.

Companies that should be denied a suspension.

Brookings

Brookings' cost witness projected an LNP cost of $0.74 to $0.83 per line per month. ITC Exhibit 4B. WWC projected costs of $0.68 to $0.76 per line per month. WWC Exhibit 9. Brookings projected 48 ports per year and WWC estimated 496 ports per year. ITC Exhibit 4B; WWC Exhibit 9. Given the relatively small difference in the cost estimates, Staff will not explore these costs any further.

Staff finds that it is in the public interest to deny suspension when the costs are balanced along with a higher expected level of demand than the other cases. Brookings is a significantly larger company than the other companies that have been discussed thus far. Staff does not believe that demand for porting will reach 3%, especially in the first few years. However, cutting that number in half and using 1.5% of Brookings' access lines as an estimate of demand would result in over 210 ports per year, or over 17 ports per month. In addition, Staff notes that Brookings' wireless company is LNP capable. Therefore, Staff believes that it is in the public interest to deny Brookings request for suspension.

ITC

ITC's cost witness projected an LNP cost of $0.54 to $0.61 per line per month. ITC Exhibit 4B. WWC projected costs of $0.55 to $0.62 per line per month. WWC Exhibit 9. ITC projected 24 ports per year and WWC estimated 453 ports per year. Given the nearly identical cost estimates, Staff will not attempt to analyze any of the cost differences.

As with Brookings, Staff finds it is in the public interest to deny suspension when these costs are reviewed in conjunction with a higher level of estimated demand. Using a 1.5% estimate for demand, ITC could expect to port around 218 numbers per year, or over 18 per month. And, in ITC's case, the demand could certainly be higher given Midcontinent's entry into parts of ITC's service area. Thus, Staff believes that it is in the public interest to deny ITC's request for suspension.

Venture

Venture's cost witness projected an LNP cost of $0.55 to $0.61 per line per month. ITC Exhibit 4B. WWC projected costs of $0.53 to $0.59 per line per month. WWC Exhibit 9. Venture projected 24 ports per year and WWC estimated 409 ports per year. ITC Exhibit 4B; WWC Exhibit 9. Again, since there is not much difference in the parties' cost estimates, Staff will not attempt to analyze these minimal cost differences.

As with Brookings and ITC, Staff finds that it is in the public interest to deny suspension when the costs are around $0.60 and there is a higher expected level of demand. Using 1.5% estimate for demand, Venture could expect to port up to 204 numbers per year, or around 17 per month. Therefore, Staff believes that it is in the public interest to deny Venture's request for suspension.

Golden West/Vivian/Kadoka

Golden West/Vivian/Kadoka's cost witness projected an LNP cost of $0.32 per line per month. Golden West Exhibit 3. WWC projected costs of $0.35 per line per month. WWC Exhibit 15. Golden West/Vivian/Kadoka projected 240 ports per year and WWC estimated 1076 ports per year. WWC Exhibit 15.

By choosing to combine the three companies, the monthly costs are the lowest of all the Petitioners and the expected porting demand is the highest. Staff finds that it is not in the public interest to grant a suspension when the costs are this low and there is a higher expected level of demand. Using 1.5% estimate for demand, Golden West/Vivian/Kadoka could expect to port up to 588 numbers per year, or around 49 per month. Staff believes that it is in the public interest to deny Golden West/Vivian/Kadoka's request for suspension.

Alliance/Splitrock

Alliance/Splitrock's cost witness projected an LNP cost of $0.79 per line per month, which was reduced at the hearing to around $0.73. Alliance Exhibit 3. WWC projected costs of $0.47 per line per month. WWC Exhibit 15. Alliance/Splitrock projected 180 ports per year and WWC estimated 293 ports per year. WWC Exhibit 15.

One of the major cost differences concerned switch upgrade costs. It is Staff's position that the switch upgrade costs as set forth by Alliance/Splitrock at the hearings are more accurate than Western Wireless. Alliance/Splitrock's estimate is based on the actual number of equipped lines in the DMS-10 switches for Alliance and Splitrock. TR. at 836.

Staff finds that this case poses a closer question of whether a suspension should be granted. However, using 1.5% estimate for demand, Alliance/Splitrock could expect to port up to 147 numbers per year, or over 12 per month. Thus, Staff believes that it is in the public interest to deny Alliance/Splitrock's request for suspension.

CONCLUSION

Staff has attempted to conduct a company specific analysis in order to arrive at reasonable recommendations that are consistent with the facts of each case and the legal

standards. Admittedly, some of the cases presented a much clearer picture as to whether a suspension should be granted than other cases. However, Staff hopes that its analysis will give the Commission some guidance in making its decisions for these cases.

Dated at Pierre, South Dakota, this 20th day of August, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that copies of Staff's Brief were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the addresses shown below on this the 20th day of August, 2004.

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SDPUC
500 E Capitol Street
Pierre, SD

RE: WWC License LLC – Local Number Portability Post-Hearing Brief
GPGN File No. 5924.040157

Dear Mr. Bonrud:

Enclosed for filing, please find the original and ten copies of Western Wireless's Post-Hearing Brief.

If you have any questions, please call me.

Sincerely,

Talbot J. Wieczorek

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AUG 2 3 2004
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITIONS FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. § 251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	**WWC LICENSE LLC's POST-HEARING BRIEF**

DOCKET NUMBERS:

TC04-025	Kennebec Telephone Company
TC04-038	Santel Communications Cooperative, Inc.
TC04-044	Sioux Valley Telephone Company
TC04-045	Golden West Telecommunications Cooperative, Inc., Vivian Telephone Company and Kadoka Telephone Company
TC04-046	Armour Independent Telephone Company, Bridgewater-Canistota Independent Telephone Company and Union Telephone Company
TC04-047	Brookings Municipal Utilities d/b/a Swiftel Communications
TC04-048	Beresford Municipal Telephone Company
TC04-049	McCook Cooperative Telephone Company
TC04-050	Valley Telecommunications Cooperative Association, Inc.
TC04-051	City of Faith Telephone Company
TC04-052	Midstate Communications, Inc.
TC04-053	Western Telephone Company
TC04-054	Interstate Telecommunications Cooperative, Inc.
TC04-055	Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc.
TC04-056	RC Communications, Inc. and Roberts County Telephone Cooperative Association
TC04-060	Venture Communications Cooperative
TC04-061	West River Cooperative Telephone Company
TC04-062	Stockholm-Strandburg Telephone Company
TC04-084	Tri-County Telcom, Inc.

Intervenor, WWC License LLC, by and through its attorney, Talbot J. Wieczorek, of Gunderson, Palmer, Goodsell & Nelson, LLP, hereby submits this post-hearing brief.

STATEMENT OF THE ISSUE

Whether the South Dakota consumers living within the areas served by petitioning local exchange carriers (hereinafter "LEC"s) will receive the right to port their numbers as the remaining South Dakota citizens are allowed to do today.

PROCEDURAL HISTORY

In 1996, Congress enacted the Telecommunications Act of 1996 (hereinafter the "Act"). This Act was intended to effectuate comprehensive changes to the 1934 Telecommunications Act. Pub.L. 104-104, 110 Stat. 56 (codified as amended in sections of Title 47, United States Code). The 1996 Act's primary purpose, "...was to reduce regulation and encourage the rapid deployment of new telecommunications technology." Reno v. American Civil Liberties Union, 521 U.S. 844, 857-58 (1997). Moreover, the Court noted that many of the provisions found in the Act were intended to, "promote competition in the local telephone service market, the multi-channel video market, and the market for over-the-air broadcasting." Id.; *See Also* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, first Report and Order, 11 F.C.C.R. 15499, FCC 96-325 (1996).

The provision of the Act that is relevant to this matter is Intermodal Portability, Section 251(b) of the 1934 Telecommunications Act as amended by the 1996 Act. 47 U.S.C. § 251(b). Section 251(b), "... requires LECs to provide local number portability (LNP), to the extent technically feasible, in accordance with the requirements prescribed by the Commission." 47 U.S.C. § 251 (b)(2); In the Matter of Telephone Number Portability, CC Docket No. 96-98, Order, 19 F.C.C.R. 875 (2004). Congress required LNP because it determined LNP was necessary to enhance competition between wireless and wireline carriers. Id. at 876.

The Federal Communications Commission ("FCC") initially designated November 24, 2003 as the date when carriers in the top 100 metropolitan statistical areas ("MSA"s) must be

capable of LNP. Id. The FCC extended this requirement for LECs that operate in an area with less than two percent of the nation's subscriber lines until the later of May 24, 2004 or six months after receiving a request for LNP. Id.

In addition, the 1996 Act also provides rural carriers with fewer than two percent of the nations subscriber lines the ability to petition the State commission for a suspension or modification of the LNP requirements. 47 U.S.C.A. § 251 (f)(2). It is undisputed that the Petitioning parties constitute "rural carriers" under § 251 (f)(2).

On February 12, 2004, Kennebec Telephone Company petitioned the Public Utilities Commission of the State of South Dakota (hereinafter "Commission") for suspension or modification of the § 251 (b)(2) LNP requirements. Santel Communications Cooperative, Inc. petitioned on February 23, 2004. On March 9, 2004, Armour Independent Telephone Company, Bridewater-Canistota Independent Telephone Company and Union Telephone Company jointly petitioned, Sioux Valley Telephone Company individually petitioned, and Golden West Telecommunications Cooperative, Inc., Vivian Telephone Company and Kadoka Telephone Company jointly petitioned. During March 10-17, 2004, the following companies filed individual petitions: Brookings Municipal Utilities d/b/a Swiftel Communication, Beresford Municipal Telephone Company, McCook Cooperative Telephone Company, The City of Faith Telephone Company, Midstate Communications, Inc., Interstate Telecommunications Cooperative, Inc., Valley Telecom Coop. Assoc., Venture Communications Coop., Western Telephone Company, and West River Coop. Telephone. On March 15, 2004, Alliance Communications Inc. and Splitrock Properties Inc. jointly petitioned, RC Communications, Inc. and Roberts County Telephone Cooperative Assn. jointly petitioned, and Stockholm-Strandburg Telephone Company individually petitioned.

On March 29, 2004, WWC License LLC, doing business as CellularOne (hereinafter "Western Wireless") petitioned to intervene in the above referenced actions. After Western Wireless filed its petition to intervene, James Valley Cooperative Telephone Company, Tri-County Telecom and Cheyenne River Sioux Tribe Telephone Authority individually petitioned on April 13, 2004 and April 23, 2004 respectively. Western Wireless subsequently filed similar petitions to intervene in those actions and the Commission allowed intervention.

On April 19, 2004, the Commission issued an Order Granting Interim Suspension Pending Final Decision and an Order Granting Intervention. The hearing for all previously referenced Petitioners commenced on June 21, 2004. During this hearing, the burden of proof was appropriately placed upon each rural carrier to demonstrate it is entitled to a suspension or modification of the LNP requirements.[1] *See* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, first Report and Order, 11 F.C.C.R. 15499, 15518, FCC 96-325 (1996).

During the course of the hearing, James Valley Telephone reached a stipulated settlement agreement with Western Wireless. Cheyenne River Sioux Tribe Telephone Authority also reached a settlement agreement with Western Wireless but remains part of the action to the extent that the decision may impact future transport obligations.

FACTUAL BACKGROUND

Throughout this brief, cites to the transcripts will be cited as "TR, Page ___, Lines ____." Cites to prefiled testimony will be given setting forth the name of the witness, whether the citation is to direct or rebuttal prefiled testimony and a page number.

[1] The 8th Circuit Court of Appeals has considered which party burden is appropriately placed upon under § 251(f) and it concluded that burden is appropriately placed upon the petitioning party. Iowa Utilities Board v. Federal Communications Commission, 219 F.3d 744, 761 (8th Cir. 2000), *reversed in part on other grounds by* Verizon Communications Inc. v. Fed'l Communications Comm'n, 535 U.S. 467 (2002).

Mr. Williams, testifying on behalf of Western Wireless, explained that Petitioners had two obligations related to LNP. One was to perform updates to their switches to be able to port out numbers from their customers. The second was to update their networks to permit customers to call ported numbers. TR, Page 555, Lines 12-16. The second obligation is not an obligation that can be suspended or modified by the Commission. The first obligation does fall within the jurisdiction of the Commission. Id.

The obligation of LNP is not a new requirement. Rather, it is a long-term plan under the federal law. Mr. Williams testified that the FCC clarified issues and deadlines for implementing LNP in its November Order of 2003. TR, Page 556, Lines 1-11.

In presenting the factual evidence that Petitioners claimed would support modification or suspension of their obligations to provide LNP, the Petitioners for the most part followed a standard format. Each Petitioner presented cost testimony through one of four cost experts. Most Petitioners then also had a company representative testify. The following delineates the various evidence introduced, and the issues surrounding that evidence.

1. Consumer Demand.

With the exception of Kennebec Telephone Company, no Petitioner did any survey of their customer base as to whether they desired LNP or what they were willing to pay for LNP. Additionally, while company representatives may have generally testified concerning their customer base, no Petitioner presented any documentary evidence or any testimonial evidence actually providing such things as the average household income or any other demographic information regarding their customer base.

In the case of Kennebec, the Kennebec manager did testify that he had commissioned a survey. Mailings were sent to their customers who were asked to fill the survey out and mail it back. Bowar Direct, Page 1. Even using this unscientific poll, approximately twelve percent of

the customer base was willing to pay over $1.00 per month to have the opportunity to port their landline number to wireless. Bowar Direct, Page 3.

Ron Williams, of Western Wireless, also talked about the desire for local number portability. In response to Commissioner's questions, he explained how people identify and are "invested in their land line phone number." TR, Page 619, Lines 8-14. Further, he explained how Congress intended LNP to be a universal feature available throughout the country. As a universal feature, it eliminates any "costs causer" argument because a person moving from one provider to another pays for LNP at his/her new carrier. TR, Page 621, Lines 5-6.

Mr. Williams provided two surveys showing the interest in the ability to use a cellular phone as a primary phone. *See* Western Wireless Hearing Exhibits 11 and 14. The survey done by Western Wireless covers rural areas that it serves, including South Dakota. *See* Western Wireless Exhibit 11. That exhibit showed 16 percent of people eventually replacing their land line phone and 25 percent unsure whether they would replace their land line phone. Id. Mr. Williams explained in response to Commissioner Berg's questions that wireline to wireless migration facilitated by local number portability has been predicted anywhere from three percent to as high as 50 percent. TR, Page 645, Lines 7-14. However, Western Wireless' experience has been approximately three percent per year migration. TR, Page 645, Lines 15-19.

II. Cost Analysis.

In regard to the cost of LNP, on behalf of the Petitioners, four cost experts testified. These cost experts were John DeWitte, Tom Bullock, Dan Davis and Douglas Neff.[2] They presented three different ways to provide LNP. Intervenor, Western Wireless, presented a witness, Ron Williams, to provide cost analysis testimony. Although, Mr. Williams questioned

[2] Mr. Neff's cost analysis was only done on behalf of Cheyenne River Sioux Tribe Telephone Authority. He predicted LNP cost per access line at $.70 monthly without transport and $2.46 per month with transport costs. Because Cheyenne River Sioux Tribe Telephone Authority agreed to begin providing LNP pursuant to a stipulated settlement, Mr. Neff's analysis will not be addressed further in this brief.

the legitimacy of some of the numbers Petitioners presented, he still used those numbers in his cost analysis.

In regard to economic burden, none of the Petitioners have taken the position that they could not afford to implement LNP, even at the costs submitted by the Petitioners' experts. TR, Page 558, Lines 5-14. Rather, Petitioners acknowledged that they have the ability to pay for LNP and to recover their investment in LNP through the LNP surcharge. TR, Page 558, Lines 15-18; TR Pages 89, 92, 313, 346, 378-379, 438-439, 742, 784-785, 816, 829, 953-954, 973, 984, 1047 and 1101. Further, a number of the Petitioners' company representatives acknowledged that these LNP surcharges would also, to the extent allowable, be included in submissions for USAC funding. Id.

While Petitioners' cost witnesses differed on how to provide LNP, all Petitioners' cost experts agreed that they only considered one way to provide LNP. They restricted their review on how to provide LNP to methods already contained within existing interconnection agreements. *See* TR, Pages 857, 997. They did this even though they acknowledged that the FCC has specifically stated that transport agreements are not required to provide LNP. *See* DeWitte ITC Direct Prefiled Testimony, Page 6, Lines 19-21; TR, Page 857, Lines 1-3. On the other hand, Williams submitted a lower cost alternative which was not restricted to existing interconnection agreements.

Because the Petitioners' cost experts required that their structure for providing LNP be subject to existing interconnection agreements, they as a whole, without analysis, rejected Western Wireless' proposed method for facilitating LNP. TR, Page 177; Page 997, Lines 13-15. Still, it was pointed out during the hearing that in Minnesota, rural LECs had jointly petitioned the Minnesota Public Utilities Commission proposing the same method being proposed by Western Wireless for facilitating LNP. The Minnesota rural LECs stated that LNP, "can be

accomplished efficiently and cost effectively," under such a method. Hearing Exhibit 6, Page 5. Further, the rural LECs of Minnesota referred to such method of providing LNP as an "eminently reasonable solution of making use of the very same facilities used by the CMRS providers to deliver traffic to [rural LECs]." Id. at page 10. Regardless, Petitioners continued to reject Western Wireless' proposal.

A. Cost testimony proffered by Mr. DeWitte.

The first cost expert to testify was Mr. DeWitte. Mr. DeWitte is employed by Vantage Point Solutions, Inc. He testified on behalf of Swiftel Communications, Interstate Telecommunications Cooperative, James Valley Cooperative Telephone Company, Santel Communications, Stockholm-Strandburg Telephone Company, Venture Communications Cooperative and West River Cooperative Telephone Company. Notably, Mr. DeWitte's analysis on the costs changed every time he submitted testimony. His final cost analysis is contained in ITC Hearing Exhibit 4B.

Mr. DeWitte told the Commission the way to provide LNP is to provide a DS1 connection between every wireless carrier to every end and host office, essentially every exchange, of each Petitioner. Mr. DeWitte's plan for Interstate is graphically illustrated by Western Wireless Exhibit 5. Based on this proposal, Mr. DeWitte assumed six CMRS carriers or wireless carriers would require DS1 lines to all twenty-four Interstate Telecom end or host offices. He then priced each DS1 line at $4,000. *See* DeWitte Prefiled Direct, Page 13, Lines 7-23. After accounting for any pre-existing Points of Interconnection ("POI"), his one-time nonrecurring transport cost for Interstate is $560,000. *See* ITC Exhibit 4B.

Although Mr. DeWitte admitted the traffic over these POIs would be minimal, he testified minimum monthly recurring charges for each line would be $1,150 per month. *See*

DeWitte Prefiled Direct, Page 13, Line 21. This resulted in a final monthly reoccurring transport cost of $153,069. *See* ITC Exhibit 4B.

Mr. DeWitte further admitted that when coming up with these calculations, he projected future wireless carriers coming into the market, and included those costs. *See* TR, Page 218, Lines 11-17. He even admitted that in the case of some companies, he included POIs for wireless carriers currently doing business in part of the LECs territory, but not having a license to do business in the remaining parts. TR, Page 217, Lines 18-24. Thus, even though no license existed in some cases, he included POIs to exchanges even where carriers were not licensed. His rationale was that some day more wireless carriers *may* come into the area. TR, Page 217, Lines 18-24.

With respect to Interstate, Interstate's corporate representative, acknowledged Interstate was a named party in a proceeding in front of the Minnesota Public Utilities Commission. TR, Page 56. In that proceeding, an entity similar to South Dakota Telecommunications Association ("SDTA"), Minnesota Independent Coalition ("MIC"), had petitioned on behalf of its members for an extension of the time to provide LNP to allow agreements to be reached with Qwest to transport ported numbers. *See* Hearing Exhibit WW6 ("MIC Petition"). Mr. DeWitte admitted that he did not investigate in any way this alternative avenue to provide LNP services. TR, Page 165. Rather, he reiterated that he simply confined his analysis to an approach where interconnection agreements already exist regarding traffic. TR, Page 178, Lines 14-22. Although Mr. DeWitte did admit that the Qwest hardware to make the trunk group two way, as being requested in the Minnesota MIC filing, exists here in South Dakota. TR, Page 163.

Mr. DeWitte contended that he needed to stay with his plan even though his plan was more expensive than that proposed by Western Wireless. In discussions about the monthly

recurring costs dealing with Interstate, he was questioned regarding the large variance between the proposed plans.

Question: Alright. 1,825. And rather than absorbing that cost what Interstate is proposing to do is spend monthly recurring $157,000 to provide porting; correct?

Answer: Based on the information in the ruling and, you know, all the rules that were in place, yes.

Question: And essentially we could do that same mathematical model for each one of the companies you are testifying for?

Answer: Yes.

TR, Page 283, Lines 10-17. Regarding the installation costs, Vice Chair Hansen inquired of Mr. DeWitte's plan versus how James Valley had solved the transport issue.

Vice Chair Hansen: Thank you. Is it realistic for us to believe that when looking at the $4,000 option and the $576,000 option that notwithstanding the recurring costs, etc., it is realistic for us to believe that there are considerably less expensive ways of skinning this cat than the methodology that was shown on 3A?

Mr. DeWitte: I believe there are other options that could be explored.

TR, Page 239, Lines 1-9

As to Mr. DeWitte's other categories of cost beyond transport, such as switch related costs and technical and administrative costs, Mr. DeWitte admitted that he had not calculated in any economies of scale. He assumed each of his clients would bring in their own trainers and not pursue cost sharing arrangements. He did not account for any of the Petitioners working together. TR, Page 154, Lines 1-4, although SDTA has done some of that for their members previously.

As a cost, he assumed such things as a subscriber flyer, costing $2 per subscriber nonrecurring, and then an additional one dollar per year per subscriber in the future. He based this on printing and mailing costs. *See*, for example, DeWitte Direct Prefiled Testimony in

Interstate, Page 12, Lines 3 – 18. He obtained this information from a third party contact and not the actual companies he represented. He did not consider that the information could be placed in a regular flyer already produced by some of the companies he represented, at a lower cost. For example, one of Interstate's flyers was marked as an exhibit for the hearing. *See* Midcontinent Hearing Exhibit 2. That flyer is sent out by Interstate on a regular basis. The actual publishing cost for that flyer is twenty-five cents, as noted on the flyer, and not the one dollar a piece estimated by Mr. DeWitte. Id.

Additionally, for the flyers, he estimated $15,000 to come up with the first informational flyer. He assumed that all seven of the Petitioners he was testifying on behalf would pay the $15,000 to come up with this additional flyer for a total of $105,000 to be expended by these companies. TR, Page 153, Lines 1-9. He did not make any assumption that these companies could get together to do one informational flyer explaining LNP and spread the cost between them. He assumed all the companies would have to work on their own to do everything. TR, Page 153, Lines 14-24.

B. Cost Testimony proffered by Mr. Bullock and Mr. Davis.

Cost experts Bullock and Davis are both employed by TELEC Consulting Resources, Inc., in Nebraska. *See* Davis Prefiled Direct Testimony, Page 1; Bullock Prefiled Direct Testimony, Page 1. Mr. Bullock testified extensively on how the TELEC experts had calculated costs.

Mr. Bullock testified that the TELEC routing provision assumed a necessary T1 circuit be installed between each host or stand alone switch and each wireless carrier currently providing service in an ILECs territory. He further indicated a T1 switch would not be necessary between a host switch and a subtended local tandem switch. TR, Page 868, Lines 15-22. *See* also TR Pages 993-994 (Davis Testimony).

In coming up with his calculations for required T1 lines and monthly recurring transport costs, TELEC simply asked each Petitioner what wireless carriers *might* be doing business in *any* part of their territory. For example, with respect to Golden West, TELEC received the response that five (5) wireless companies provided service somewhere in its area. From there, TELEC made the assumption that these wireless carriers operated throughout the service area, and T1 lines would be needed for every exchange to every wireless carrier. TR, Page 873, Lines 10-14. The companies doing business somewhere in the Golden West area are Verizon, Western, Viaero, Qwest and AT&T. TR, Page 875, Lines 11-13. Based on this, TELEC created a cost analysis assuming the necessity of five (5) T1s for every Golden West exchange, less any already existing POIs. Mr. Bullock admitted TELEC did not investigate or even ask whether any of these wireless companies simply resold services or roamed off of someone else's facilities. TR, Page 875, Line 16. Rather, since Golden West reported five (5) wireless companies doing business somewhere in their area, TELEC assumed five (5) T1s necessary for such sights as Philip, Wall, Pine Ridge and every other Golden West exchange. Bullock did agree that while TELEC had no independent knowledge of any of these wireless carriers or what exchanges they actually operated in, if they were roaming, roaming would not be a direct charge and therefore, there would be no need for a T1. TR, Page 877, Lines 15 – 25; TR, Page 874, Lines 5 – 25.

Moreover, TELEC did not consider any other traffic mechanisms, such as the Western Wireless proposal, because one of TELEC's criteria in coming up with its traffic proposal was that the proposal would be "consistent with existing interconnection agreements." TR, Page 857, Lines 1-3. Additionally, Mr. Bullock took the position that it would be inappropriate to transport through Qwest, although he admitted it would be cheaper, because it would shift the responsibility of transportation outside the local calling area of the LEC. He did agree, in response to a question by Vice Chairman Hansen, that if the wireless company is going to be

responsible for paying the transport costs, the wireless company should be able to choose such a mode of transportation. TR, Page 919, Lines 4-20.

Mr. Davis then testified on behalf of the remaining companies TELEC was hired to represent including: Beresford Municipal Telephone, Kennebec Telephone, Midstate Communications, RC Communications/Roberts County Telephone and Western Telephone. He stated that exhibit R1 attached to his prefiled rebuttal testimony was the most accurate numbers that he was presenting to the Commission. These numbers range from a low of $.55, Midstate's LNP cost per line per month excluding transport, to a high of $3.76, Western's LNP cost per month including transport. Exhibit R1 of Davis Rebuttal.

During cross examination at the hearing, Mr. Davis confirmed that LNP was technically feasible. TR, Page 997, Lines 6-10. He only contended that the Western Wireless proposal was technically infeasible because it did not follow the existing interconnection agreements. TR Page 997, Lines 11-15.

In addition to estimating standard costs related to LNP, with respect to in at least two of the companies, Mr. Davis also included significant switch upgrades. On behalf of Kennebec, he included a switch upgrade to a platform that could then support LNP. TR, Page 999. He acknowledged that companies regularly upgrade switches, (TR, Page 1000), but that he did not bother to ask Kennebec when it had this switch scheduled for an upgrade. Id. As to Kennebec alone upgrade cost was estimated to be $37,400. This amount is continued in Mr. Davis' switch upgrade costs under Kennebec. He did not bother to ask Kennebec what other services it would derive from the upgrade or how it impacted their need to upgrade the switch anytime in the future. TR, Page 999, Lines 24-25 and Page 1000, Lines 16-18.

He also included a similar non LNP upgrade for Western Telephone. The upgrade to the host switch was $76,795 of his projected costs for Western Telephone's switch upgrade costs.

As with Kennebec, he did not ask Western Telephone if it obtained any other services based on this upgrade. TR, Page 1009, Lines 3-6. Further, Mr. Davis did not ask Western Telephone whether it already had this upgrade planned. Id. at Lines 7-9.

Like Mr. Bullock, Mr. Davis acknowledged that TELEC did not assume any economics of scale that would occur if the companies they were testifying on behalf jointly negotiated agreements, or provide training with other companies. TR, Page 1007, Lines 12-20.

C. Cost Testimony proffered by Mr. Williams.

Ron Williams, testifying on behalf of Western Wireless, addressed the costs submitted by Petitioners and the subsequent public policy issues. Western Wireless Hearing Exhibits 9 and 19 present its cost analysis regarding Mr. DeWitte's companies. Western Wireless Hearing Exhibit 15 presents its costs information for the companies Mr. Bullock provided testimony. Western Wireless Hearing Exhibit 18 provides the cost information regarding the companies Mr. Davis testified.

Regarding the mechanism recommended by the Petitioners' cost experts to provide LNP service, Mr. Williams made it clear that the existing facilities should be maximized to save the Petitioners' money. Mr. Williams noted it was unnecessary and unreasonable to build an entire specialized infrastructure for LNP service when existing facilities could handle the service. TR, Pages 579 and 734. Mr. Williams presented a cost analysis using a reasonable and efficient mechanism. TR, Page 579. Id. *See also* Western Wireless Exhibits 9, 15, 18 and 19. While Mr. Williams used some of the estimates made by Petitioners cost experts, he questioned a number of them as being too high. Williams has experience in providing LNP and has noted that even beyond transport costs, Petitioners' costs seemed excessive. TR, Page 560.

The proposal by Western Wireless to use the Qwest tandem is low cost and can be quickly accomplished. Williams noted that in the MIC petition, Qwest had filed comments in

Minnesota wherein it said it could provide such a service within three weeks. TR, Page 631, Lines 22-25; TR, Page 699, Lines 1-9. *See* Western Wireless Hearing Exhibit 14, Page 2 of comments. Additionally, Qwest stated its desire to provide a transit service similar to the rural LECs in Minnesota. Id. The entire debate in Minnesota between the MIC RLECs and Qwest was whether Qwest would charge $.0089 per minute or, the charge MIC RLECs wanted $.00164 per minute use. *See* Western Wireless Exhibit 6, Page 6 of petition

Under examination by the Commission, Mr. Williams stated Western Wireless' LNP monthly surcharge is approximately $.85 to its users. TR, Page 679, Lines 17-20.

The Commission expressed concerns about whether this is a situation where the cost causer was not paying the expense for the service. In response, Williams explained that when the FCC established the mechanism for providing LNP it envisioned every company charging for LNP use. TR, Page 561, Lines 1-8; TR, Page 621, Lines 2-20. Because of this, someone porting from a rural LECs may be causing costs to the rural LEC but the individual would pay the cost to the new provider. Thus, the cost becomes "socialized" over all companies with all users paying for LNP. Id.

III. Joint Filings.

Mr. Bullock did not provide individual cost testimony for each Petitioner he represented. Rather, Mr. Bullock provided combined financial information for various companies. Specifically, Armour Independent Telephone Company, Bridgewater-Canistota Independent Telephone Company and Union Telephone Company applied for suspension or modification in one petition. Bullock then provided the financial information in one document incorporating all three companies together. *See* Bullock Prefiled Rebuttal Testimony, Exhibit R-1-TB. Similarly, Golden West Telecommunications Cooperative, Inc., Vivian Telephone Company and Kadoka Telephone Company filed a joint petition. Bullock merged all of their financial information

together and provided one set of numbers. Id. No breakdown for these individual companies was provided at the hearing nor does it appear in the record.

Commission staff inquired why the companies did not file separate studies as required by the Commission at its April 6, 2004 meeting. TR, Page 791, Lines 2-5. In response to staff's question, the corporate representative merely acknowledged that nothing in the record shows separate costs for any of these companies. TR, Page 792, Lines 17-19.

It was noted that there was no evidence presented by any of the Petitioners that any of the policy issues being represented were unique to these Petitioners. Rather, the policy arguments appear to be a general argument against LNP. TR, Page 557, Lines 1-7.

IV. Public Policy.

Petitioners submitted the testimony of Steven Watkins to address public policy. Mr. Watkins testified under cross examination at the hearing that his opinions were all general in nature and thereby not specific to any Petitioner. Further, he did not perform an independent evaluation of any of the Petitioners. Consequently, he offered no differentiation amongst any of the Petitioners, nor had he investigated any of the Petitioners' clientele. TR, Page 509, Lines 1-10.

Primarily, Mr. Watkins' testimony centered on his complaint that the FCC had not provided enough guidance or rules regarding how LNP should be implemented. TR, Pages 500-502. Additionally, he argued that there was no evidence of a demand for LNP. It appears he based this on the fact that he saw no "anecdotal experience" of LNP demand. TR, Page 499, Lines 2-3.

As to public policy concerns, Williams pointed out that these types of services are being demanded in rural America. TR, Page 693, Lines 19; TR, Page 692, Line 21. *See* also Western Wireless Hearing Exhibit 11 and 13. Further, the people of rural America are asking for the

same types of services that are being offered in metropolitan areas. Id. Regarding the actual migration given LNP, Williams pointed out that some forecasts had ranged from three to as much as 50 percent. TR, Page 645, Lines 13-14. Western Wireless had been experiencing approximately three percent migration per year in competitive markets where LNP had been implemented. TR, Page 624, Lines 15-19. This would amount to a 15 percent migration over a five year period.

Williams did concede some that of the Petitioners who will incur low numbers of envisioned ports and higher costs should be given additional time to become LNP compliant. To that end, he agreed that Kennebec, City of Faith, Western, Stockholm and Tri-County, all being approximately $2 or over under Western Wireless' projections, should be granted more time to transition into LNP. He therefore acknowledged suspension for these entities until the end of March, 2005, would be appropriate. TR, Page 622, Lines 19-25; TR, Page 661.

ARGUMENT

I. Each Petitioner Bears the Burden of Proving that it is entitled to a suspension or modification of LNP by either proving (1) that such a suspension or modification is necessary to avoid a significant adverse economic impact, avoid imposing an unduly economical burden, or avoid imposing a requirement that is technically infeasible; and, (2) proving that as to the Petitioner, providing this LNP is not consistent with the public interest, convenience and necessity.

Section 251(b)(2) requires all local exchange carriers provide LNP, to the extent technically feasible, in accordance with the requirements of the Commission. 47 U.S.C. § 251 (b)(2). Section 251(f)(2) provides local exchange carriers with fewer than two percent of the Nation's subscriber lines the ability to petition the State Commission for a suspension or modification of the LNP requirements found in § 251(b). It states,

> 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.

47 U.S.C. § 251(f)(2). In 1998, South Dakota promulgated S.D.C.L. § 49-31-80, which adopted the requirements set forth in 47 U.S.C. § 251(f)(2). Under both, the party filing the petition bears the burden of establishing the above required factors. Iowa Utilities Board, 219 F.3d at 761.

The statute clearly requires the finding of two elements. First, the Commission must find that it is necessary to grant a modification or suspension to avoid one of the three factors enumerated under 47 U.S.C. § 251(f)(2)(A). In addition then, the Commission must find that such a suspension or modification is also consistent with the public interest, convenience, and necessity. It must be noted that the Commission's power is limited to only granting a suspension or modification to the extent "necessary" to avoid one of the enumerated three factors.

Moreover, the Commission is under no obligation to grant a suspension or modification under § 251(f)(2) at all. The Commission should not grant each individual Petitioner's request for suspension or modification unless that Petitioner demonstrates suspension or modification is necessary due to the existence of one of the above factors, and that such suspension or modification is consistent with the public interest. 47 U.S.C. § 251(f)(2). "In seeking an extension of the LNP deployment deadline, a carrier must provide substantial, credible evidence to support its contention that it is unable to comply with the deployment schedule." In the Matter

of Telephone Number Portability Petition of the North-Eastern Pennsylvania Telephone Company for Temporary Waiver of its Porting Obligations, Order, 2004 WL 1066289, CC Docket No. 95-116, DA 04-1312 (*citing* 47 C.F.R. §§ 52.23(e) and 52.31(d)). "All of these determinations require an affirmative act and technical findings by the State commission before a decision may be reached." Indiana Bell Telephone Compay Incorporated v. Smithville Telephone Company, Inc., 31 F.Supp.2d 628, 632 (S.D.Ind. 1998) (*citing* 47 U.S.C. § 251(f)). Denial is the appropriate course of action if the requirements set forth in § 251(f)(2) are not satisfied. 47 U.S.C. § 251(f)(2).

Congress granted the states the authority to determine what is necessary to demonstrate the existence of the requirements of § 251(f)(2). To do so, the Commission must ensure its' interpretation is consistent Congress' intent supporting the promulgation of the statute. Indiana Bell Telephone Company Incorporated, 31 F.Supp.2d at 636-37 (*citing* Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 138 (1990)). In discerning intent, it is proper to consider the statutory framework as a whole and the objectives of the statute. Indiana Bell Telephone Company Incorporated, 31 F.Supp.2d at 637 (*citing* Crandon v. U.S., 494 U.S. 152, 158 (1990)). It is further proper for the Commission to rely upon guidance promulgated by the FCC, the agency tasked with implementation of the Act. Iowa Utilities Board, 219 F.3d at 748 (*citing* Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984)).

In determining whether a petitioner has met its burden of establishing the need for a waiver of modification under 47 U.S.C. § 251(f)(2), the Commission must examine each Petitioners case individually. The text of § 251(f)(2) refers to, "A local exchange carrier...." Thus, the plain meaning of the statute requires that each individual Petitioner demonstrate the existence of the above factors before a suspension or modification can be granted under § 251(f)(2).

In conformance with the plain meaning of the statute, the North Carolina Utilities Commission has rejected joint submissions. In the Matter of Petition by the Alliance of North Carolina Independent Telephone Companies for Limited Modification of the Requirement to Provide Number Portability, Docket No. P-100, Sub 133r, State of North Carolina Utilities Commission Raleigh, (2003). It held,

> While the Commission knows of no problem with the Alliance bringing these claims on behalf of its members, it would appear necessary for each *individual company* in the Alliance which wishes to benefit from this exemption to provide data showing that in fact the exemption is necessary for it to avoid significant adverse economic impact on users generally, to avoid imposing a requirement that is unduly economically burdensome, or to avoid imposing a requirement that is technically infeasible. Unfortunately, the Alliance's Petition contained no such individual data; instead the Alliance appears to argue that *any* imposition of what it believes to be a wrongful obligation *ipso facto* meets those tests. The Commission believes that Section 251(f)(2) requires more than this, especially since the proceeding must be concluded within 180 days of receiving the Petition.

Id. (*emphasis in original*). Consequently, under the plain meaning of § 251(f)(2), the Commission should reject all joint petitions that fail to delineate company specific data.

A. 47 U.S.C. §251(f)(2)(A) requires that each Petitioner prove that action of the Commission is "necessary."

Under 47 U.S.C. §251(f)(2)(A), the burden is upon the Petitioner to prove the existence of one of three factors which would justify a suspension or modification. The statute only authorizes the Commission's action if the action is necessary to avoid one of these three events. The term "necessary" needs to be read in context with the statute. Cellular Telecommunications and Internet Association v. Federal Communications Commission, 330 F.3d, 502, 510 (US App. D.C. 2003). *See also* AT&T Corporation v. Iowa Utilities Board, 525 U.S. 366, 388-89 (199).

The Eighth Circuit has already interpreted the term necessary under § 251. Iowa Utilities Board, 291 F.3d at 761. It indicated a formal interpretation of the term was intended. Id. In the context of this statute, "necessary" clearly should be read to require the Commission's action only if Petitioners cannot avoid one of the circumstances. Because the Commission action has to

be necessary, logically, the Commission must only order a suspension of the minimum length or the minimum modification to resolve the issue. Obviously, if a Petitioner purposely arranges for one of these three events to occur, it is not necessary for the Commission to act to avoid one of these events because Petitioner has brought the event upon itself. A Petitioner cannot be allowed to bring upon its own harm and then argue that action of the Commission becomes necessary.

B. Significant adverse economic impact to telecommunications users.

The first factor under § 251(f)(2) is significant adverse economic impact. 47 U.S.C. § 251(f)(2)(A)(i). The FCC has not promulgated definitional guidance regarding significant adverse economic impact. As a result, it is proper to consider the common meaning of the terms. Significant is defined as, "...having or likely to have influence or effect; important; of a noticeably or measurably large amount...." Webster's Ninth New Collegiate Dictionary, Merriam Webster Inc., 1096 (1991). Adverse is defined to be, "...opposed to one's interests...." Id. at 59. Economic is defined as, "...of or relating to a household or its management...." Id. at 395. Lastly, impact is defined to be, "...an impelling or compelling effect...." Id. at 603. As a result, Petitioners claims of significant adverse economic impact fail unless each Petitioner provides substantial credible evidence of a significant financial impact upon its users that is likely to be contrary to his/her financial interests. Indiana Bell Telephone Company Incorporated, 31 F.Supp.2d at 632 (*citing* 47 U.S.C. § 251(f)).

Several state PUCs have considered the impact of monthly costs upon their consumers. Although the resultant decisions are not binding upon the Commission, they do provide some guidance as to what has been deemed to be a "significant adverse economic impact." The Arizona Corporation Commission has found an end user direct cost of two dollars and ninety-three cents insufficient to be a significant adverse economic impact. In the Matter of the

Emergency Petition of Arizona Telephone Company for Suspension of the LNP Obligations of Section 251(b), Arizona Corporation Commission, Docket No. T-02063A-04-0010 (2004).

Moreover, the NY PUC has found failure to introduce concrete evidence of actual impact upon a LECs users fatal to a claim of adverse economic impact. It flatly rejected petitioners' claims of adverse economic impact upon users when those petitioners failed to produce any impact evidence. *See* Order Denying Petition, State of New York Public Service Commission, Case 03-C-1508 (2004). It stated,

> FCC number portability orders permit incumbent local telephone companies to recover certain costs of providing number portability by charging their customers a monthly fee for a period of five years. Petitioners provided individual estimates of the cost of number portability to support their contention that intermodal portability is unduly economically burdensome. *However no company provided a detailed analysis of the impact on their respective customers in the petitions.* Using the company submissions, the Commission does not find a basis to conclude that there would be 'significant adverse economic impact.'

Id. (*emphasis added).* Failure to produce a detailed analysis of impact upon users should likewise be fatal to Petitioners' claims of significant adverse economic impact upon users in this case.

C. Unduly economically burdensome requirement.

The second circumstance is for the avoidance of an unduly economically burdensome requirement. 47 U.S.C. § 251(f)(2)(A)(ii). The Commission has been provided some guidance on what constitutes unduly economically burdensome as required in the tests found under both § 251(f)(1) and (2). *See* In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Order, FCC 96-483 (1996). In that decision, the FCC has stated that in order to justify a suspension or modification, the proof must be sufficient to establish, "...burden beyond the economic burden that is typically associated with efficient competitive entry." Id.

The Eighth Circuit Court of Appeals has further fleshed out the unduly economically burdensome standard. The court has indicated a Commission must look to the whole of the burden, and not just a discrete part. Iowa Utilities Board, 219 F.3d at 761. In addition, the court noted that a Commission should also consider the fact that the LECs will, "...be paid for the cost of meeting the request and may also receive a reasonable profit pursuant to § 252(d)." Id. at 762.

Failure to introduce specific and supported information of economic harm is fatal to a claim of the existence of this element. Speculation and unsupported allegations of economic harm have been deemed insufficient to establish undue economic burden. *See* Clarification Order, Pennsylvania Public Utility Commission, 33 Pa.B. 1904, Doc. No. P-00971177 (2003). Speculation and unsupported allegations are insufficient because a finding of undue economic burden is not proper unless the PUC reaches sufficient technical findings. Indiana Bell Telephone Company Incorporated, 31 F.Supp.2d at 632 (*citing* 47 U.S.C. § 251(f)).

D. Technical feasibility.

The remaining basis to meet the first part of the test for a suspension or modification is technical infeasibility. 47 U.S.C. § 251(f)(2)(A)(iii). The FCC has defined the term technically feasible as it is intended to apply with respect to interconnections considerations under § 251(f). *See* 47 C.F.R. § 51.5. Specifically, § 51.5 states,

> Technically feasible. Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. *A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available.* The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by *clear and convincing evidence* that such

interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

47 C.F.R. § 51.5 (*emphasis added*). Under the above regulation, the clear and convincing evidence standard applies. Id. "The 'clear and convincing' standard lies somewhere between 'the rule in ordinary civil cases and requirements of our criminal procedure, that is, it must be beyond a reasonable doubt.'" In the Matter of the Medical License of Dr. Setliff, M.D., 2002 SD 58, ¶ 13, 645 N.W.2d 601, 604 (*citing* Kent v. Lyon, 1996 SD 131, ¶ 15, 555 N.W.2d 106, 111). Under this standard, Petitioners must introduce clear and convincing evidence of technical feasibility before this element can be satisfied.

The Commission should find the implementation of LNP technically feasible if Petitioners fail to demonstrate LNP is technically infeasible under a similar analysis as the above guidance. In addition, the Commission should disregard, "unsupported statements" regarding "unspecified existing technical limitations" as unpersuasive. *See* Order Denying Petition, State of New York Public Service Commission, Case 03-C-1508 (2004). Rather, the Commission must reach sufficient technical findings of technical infeasibility before this factor can be deemed established. Indiana Bell Telephone Company Incorporated, 31 F.Supp.2d at 632 (*citing* 47 U.S.C. § 251(f)). Without such findings, Petitioners technical infeasibility claims fail.

E. If a Petitioner shows that Commission action is necessary because of technically infeasibility, significant adverse economic impact on its consumers or because an unduly economic burden will result to Petitioner, before acting the Commission must determine whether its actions are consistent with public interest, convenience and necessity.

A suspension or modification is not properly granted under§ 251(f)(2) unless the Petitioners establish that such a suspension or modification is consistent with the public interest, convenience and necessity. 47 U.S.C. § 251(f)(2)(B). Consistency with public interest alone is not enough to warrant a suspension or modification under § 251(f)(2). Petitioners must still establish the existence of a factor required under § 251(f)(2)(A). Should the PUC find

Petitioners fail to establish the three criteria necessary for suspension or modification, then consideration of public interest is not necessary. Id.

In making a determination of whether LNP is inconsistent with the public interest, convenience and necessity of a LEC service area, the Commission needs to look at the basis in a historical context of why LNP end service has been promulgated. In 1996, the FCC noted promotion of competition was one of the objectives of the 1996 Act. *See* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCCR 15499, Fcc 96-325 (1996). Congress recognized that LNP was critical to fostering competition. Id. The United States Supreme Court has also indicated that a purpose of the Telecommunications Act was to promote competition in local telephone markets. Reno, 521 U.S. at 857-58. The FCC continues to maintain the position that LNP is in the public interest. It has stated, "Implementations of LNP for CMRS providers has promoted, and will continue to promote, competition by allowing consumers to move to carriers that would better serve consumers' needs without having to make the difficult choice to give up their number." *See* In the Matter of Telephone Number Portability, Order, CC Docket No. 95-116 (May 7, 2004). As a result, the FCC has concluded that unnecessarily delaying implementation would improperly delay benefits to the public. Id.

In addition, state PUCs continue to recognize LNP to be, "...clearly in the public interest in a competitive telecommunications environment." Order Denying Petition, State of New York Public Service Commission, Case 03-C-1508 (2004)(noting, "...number portability has consistently and repeatedly been found to be in the public interest at both the state and federal levels."). The Michigan PUC has likewise denied a request to suspend or modify the requirements because it concluded that such action would be, "anti-competitive" and "anti-consumer." *See* In the Matter of Waldron Telephone Company and Ogden Telephone Company

for Temporary Suspension of Wireline to Wireless Number Portability Obligations Pursuant to § 251 (f)(2) of the Federal Telecommunications Act of 1996, as Amended, Michigan Public Service Commission, Opinion and Order, Case Nos. U-13956 and U-13958 (February 12, 2004).

When making a determination of whether Commission's actions would be consistent with the public interest, convenience and necessity, the Commission should only look to the individual Petitioner's area. It would be inconsistent with the Act and statutory scheme to some how construe this test to be an analysis of LNP as a whole or LNP in rural areas as a whole. Rather, state Commissions need to look at the petitioning LECs area and the public interest, convenience and necessity within that area. To look beyond a petitioner's area, would be inconsistent with the language of 47 U.S.C. § 251(f)(2) where the evaluation concerns "a local exchange carrier."

II. The Commission must deny any requests for suspension or modification from Golden West, Vivian Telephone Company, Kadoka Telephone Company, Armour, Bridgewater-Canistota Telephone Company and Union Telephone Company because the companies failed to provide individual company specifics upon which the Commission could base a decision under 47 U.S.C. § 251(f)(2)(A).

Docket Number TC-045 is a joint petition filed by Golden West, Vivian Telephone Company and Kadoka Telephone Company. Docket Number TC-046 is a joint petition filed by Armour, Bridgewater-Canistota Telephone Company and Union Telephone Company. The corporate witness for all these companies testified that the Petitioners did not provide individual information on these companies. TR, Page 792, Lines 1-19. To meet the burden to prove the necessity for waiver or exemption, the statute clearly requires that "a local exchange carrier" must file with the state Commission. 47 U.S.C. § 251(f)(2). The State of North Carolina Utilities Commission has already recognized that failure to do so obligates the Commission to reject the petition. *See* In the Matter of Petition by the Alliance of North Carolina Independent Telephone Companies for Limited Modification of Their Requirement to Provide Number

Portability, Docket No. P-100, SUB 133R, State of North Carolina Utilities Commission, Raleigh, 2003. Furthermore, noted by staff counsel during the hearing, prior to the hearing, the Commission requested such individual information be provided. TR, Page 72, Lines 1-4.

The reason this information must be provided by each LEC becomes obvious when one reviews the standards that the Commission must judge the request for modification or suspension. The need to avoid a significant and adverse economic impact on telecommunications users must center on the LECs' customers. One cannot argue that the Commission must make this judgment on some broader scale. Clearly, the FCC and Congress have allowed LNP to go forth in a large portion of the United States. The only logical reading of the statute is to require the Commission to do an analysis of each LEC area for impact.

The same also applies in regard to imposing a requirement that is unduly and economically burdensome. It would be inappropriate for the LEC to somehow argue costs and economic burdens associated with LNP requirements in other areas somehow justify a modification or suspension for that particular LEC.

Further, the testimony of Mr. Law, the corporate representative on behalf of these various companies, illustrates the need to reject these joint petitions. When asked whether he was representing to the Commission that all these companies have the same demographic make-up, he clearly stated "No I am not." TR, Page 777, Lines 20-24. Even with the information submitted, one has to conclude there are significant differences between these companies.

Armour, which is geographically separated from the other companies that its financial information is commingled with, has only 583 access lines and has 33 lifeline customers. TR, Page 783, Lines 3-8. This equates to 5.66 percent of their access lines being lifeline customers. Union Telephone Company has 1600 access lines and only 38 lifeline companies. Making less than 2.5 percent of its customers lifelines customers. TR, Page 777, Lines 1-10.

Golden West, Kadoka Telephone and Vivian Telephone, may be located in contiguous areas but, there is no way for this Commission to ascertain whether LNP implementation in Kadoka is an extremely low cost because of limited numbered exchanges or an extremely high cost because of an older switches. The Commission's inability to make these determinations is a result of these companies failing to properly file their information individually. The plain language of the statute requires the Commission to consider each of these Petitioners individually. Petitioners have failed to provide information under which the Commission can make an individual determination. Therefore, under 47 U.S.C. § 251(f)(2)(A), these two petitions must be rejected outright.

III. None of the Petitioners have met their burden to prove they are entitled to a suspension or modification under 47 U.S.C. § 251(f)(2) as the Petitioners have failed to submit the necessary evidence to support such action.[3]

Petitioners' cost estimates should be rejected. The cost estimates are fundamentally flawed because they assume that LNP must be provided pursuant to an interconnection agreement. Because the costs of providing LNP service ripple throughout the standards that Petitioners have to prove under 47 U.S.C. § 251(f)(2), it is appropriate to address Petitioners' cost analysis as a threshold issue. All three costs experts presented by Petitioners conditioned their proposed LNP transportation system to meet in existing interconnection agreements.[4] Mr. Davis went as far to claim that Western Wireless' proposal was technically infeasible because Western Wireless' its interconnection agreement with Petitioners did not allow for traffic over the Qwest tandems. TR, Page 997. Lines 6-15.

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[3] While Western Wireless is contending that no Petitioner has actually met its burden in this filing, Western Wireless is not disputing that it stipulated in the record to a continuing suspension until May 31, 2005 for the City of Faith, Stockholm, Tri-County and Kennebec. *See* TR, Page 622 – 623, 661.

[4] A fourth cost expert was presented on behalf of Cheyenne River Sioux Tribe Telephone Authority. Since that matter has been settled, his analysis is not independently reviewed in this brief.

It is inappropriate for Petitioners' cost experts to condition LNP delivery on the existence of an interconnect agreement. The FCC has already determined interconnection agreements are not necessary to provide local number portability. *See* In the Matter of Telephone Number Portability, CC Docket No. 96-98, Order, 19 F.C.C.R. 875 (2004) at paragraph 1. In rejecting the need for an interconnection agreement to provide for local number portability, the FCC concluded

> ...that wireline carriers should be required to port numbers to wireless carriers without necessarily entering into an interconnection agreement because this obligation can be discharged with a minimal exchange of information. We thus find that wireline carriers may not unilaterally require interconnection agreements prior to intermodal porting."

Id. at paragraph 34. In complete disregard to the FCC, Petitioners' cost experts require interconnection agreements. Consequently, they have come up with proposals that drive costs extraordinarily high in an attempt to convince this Commission that a significant adverse economic impact will occur on the users or that the requirement for LNP becomes unduly economically burdensome[5] and Petitioners meeting their LNP obligation is contrary to public policy.

As illustrated by the MIC petition in front of the Minnesota Public Utilities Commission, Petitioners could have taken the approach of providing this service at a low cost as MIC did in Minnesota. Some of the Petitioners, specifically Sioux Valley Telephone and Interstate Telecommunications, are members of MIC and were part of this original petition in front of the Minnesota Public Utilities Commission. While these individual Petitioners may have withdrawn from the Minnesota action after the hearing started in front of this Commission, it does not

[5] It appears that Western Wireless is being penalized because they have an interconnection agreement with Petitioners. Because of this, defendants' experts claim you have to route LNP traffic pursuant to the existing interconnection agreement. Since the FCC does not require interconnection agreements, it would appear a wireless carrier who does not have an interconnection agreement with Petitioner would be treated better. It is incongruent to the total purpose of the Act to penalize people for entering into interconnection agreements.

diminish the fact that they could have taken the same approach to reduce the cost of providing LNP. *See* ITC Exhibit 9, Letter of June 23, 2004 to Minnesota Public Utilities Commission

Petitioners spend a large section of their brief dealing with the unresolved issue of transport. *See* Petitioners' Brief, Pages 30-40. The issue of transport runs throughout Petitioners' analysis. It has implications of whether there is a significant adverse economic impact, whether there is a resulting unduly economic burden and whether Petitioner' avoidance of their LNP obligation is in the public interest.

The difficulty with the analysis presented by Petitioners arises out of their all or nothing approach. For instance, Petitioners continually assail the Western Wireless suggestion to use existing tandem trunks, whether it be SDN or Qwest, rather than requiring hundreds of additional DS1s be installed. They complain that they are not "obligated" to route traffic over SDN or Qwest tandem trunks. At the same time, Petitioners wail about the install costs and monthly reoccurring costs associated with all the DS1s that they insist they must use to be conducive with their interconnection agreements.

It does not appear that Petitioners contest they have an obligation to route ported calls under the LNP constructs. Simply, they do not want to be obligated to deliver those calls by sending them over a tandem trunk out of their service area.

Providing LNP should not be examined as an all or nothing approach. The opportunity, not the obligation, exists to route ported traffic over existing facilities. The opportunity to use existing facilities reduces the monthly line item charge by as much as 90 percent as illustrated between calculations of Petitioners' experts and Western Wireless' expert.[6]

[6] See for example, ITC Exhibit 4B, Interstate's LNP costs per line per month including transport is $13.46 while under the Western Wireless transport analysis (See Western Wireless Hearing Exhibit 9) the LNP monthly per line cost including transport is $.80.

Moreover, testimony was clear that a number of the Petitioners already have existing points of interconnect with wireless carriers. As Mr. Williams correctly pointed out, the same type of resolution used by James Valley could be available to these Petitioners, for example Interstate, since Western Wireless already has existing POIs.

Instead of finding a low cost effective way to provide for LNP traffic,[7] Petitioners' cost experts proposed creating new facilities and dedicating them to LNP. For example, a proposed remedy for Venture entailed the installation of well over 100 new type 2B DS1s. *See* DeWitte Prefiled Direct for Venture, Page 13. Mr. DeWitte's resulting cost numbers for Venture entailed $486,000 for nonrecurring transport related costs and recurring monthly transport related costs of $218,546. *See* ITC Exhibit 4B.[8] Under these numbers, in the first year alone for transport, Venture is trying to convince this Commission it would rather spend $3,118,552 ($496,000 plus 12 times $218,546) than transport the traffic as recommended by Western Wireless.

Mr. Houdek contends this is necessary to maintain the integrity of his system and because under Western Wireless' proposal he would then have to potentially carry his competitors traffic for free. TR, Page 383, Line 22 through Page 385, Line 19. When Mr. Houdek complains that he might have to pay for transportation for Western Wireless under the MIC approach endorsed by Western Wireless in this filing, he wants this Commission to accept the premise that Venture should spend over 3.1 million dollars the first year to provide LNP rather than the $25,000 in transport costs Venture would incur following the Western Wireless proposal. *See* Exhibit 9 ($800 nonrecurring plus 12 times $2,012 monthly recurring). Mr. Houdek's complaint that

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[7] In the MIC petition, it was presented to the Minnesota PUC that routing LNP traffic "can be accomplished efficiently and cost effectively, if such calls were routed via the same facilities used by the CMRS providers to deliver their traffic to the companies." Hearing Exhibit 6, Petition Page 5. Further, such a method of routing ported numbers was "technically sound, efficient and not unduly economically burdensome." Id. Petition, Page 9.

[8] Mr. DeWitte's original numbers showed a requirement of $625,000 in initial costs and $220,000 in recurring costs. After several errors in his calculations were pointed out to him, Mr. DeWitte's final numbers are reflected on ITC Exhibit 4B.

Venture would have to pay for the transport of LNP under Western Wireless' approach falls flat. Under his own experts' cost analysis, he is paying 3.1 million dollars in the first year to provide LNP call transport. Western Wireless over the Qwest tandem lines currently pays three tenths of one cent per minute. TR, Page 588, Lines 21-25. Even if one were to accept Mr. Houdek's argument that he might have to pay as much as $.20 per minute to transport LNP calls, in the first year Venture would have to transport 15,592,760 minutes of LNP calls before it spent the same amount they are proposing to spend under Mr. DeWitte's proposal. This is the equivalent of 10,829.3 days of phone usage.

This same analysis applies to all Petitioners' cost estimates. Every Petitioner and every cost expert ratcheted up their transport costs as high as possible and refused to look at any alternatives.

In addition, every cost expert testified that he did not consider any economics of scale. Instead, they all assumed such things contractual negotiations to be required by all Petitioners with all wireless companies, whether the wireless companies were actually doing business in their territory or not.

A readily available example of this overstatement is how Mr. DeWitte treated the marketing flyer. He not only assumed that it would cost a dollar per line user per year to provide this marketing flyer, although Interstate's own documents show that they produced a monthly flyer at a quarter a piece, he assumed that all seven of his clients would each spend $15,000 designing this flyer. He did not assume that one flyer explaining LNP could be designed for all his clients or even potentially all the Petitioners. TR, Page 153, Lines 1-25. Because the cost analysis presented by the Petitioners were clearly overstated, they should be disregarded by this Commission.

The waiver and modification statute, 47 U.S.C. § 251(f)(2)(A) requires a finding that Commission action must be necessary to avoid a significant adverse economic impact or unduly economically burdensome imposition. Commission action is not necessary in these petitions. Rather, the Petitioners hold in their hands the power to avoid causing a significant adverse economic impact on their own customers or imposing any kind of economic burden upon themselves.

A. Each Petitioner has failed to show the Commission that its action is necessary to avoid a significant adverse economic impact on users of telecommunications services wherein none of the Petitioners provided any demographic information from their customer base and, with the exception of Kennebec, failed to provide any information on their customers' desires for LNP.

In Mr. Bowar's prefiled direct testimony, he provided some information regarding a survey they had conducted on Kennebec's customer base. In that survey, Kennebec mailed out surveys to their customer base. It was left to the recipient's discretion to return the completed survey.[9] Bower Direct Page 2, Lines 12-15. Of the surveys mailed back, over one-fifth of Kennebec's customers said they would be willing to pay a surcharge of $.50 per month to have an option for LNP. At $1.00 per month, the demand was just short of twelve percent. No feedback was solicited regarding a rate of $1.50. However, even at a surcharge of $3 there were still 1.6 percent of the responding customers willing to pay for a LNP service. Bower Direct, Page 3, Lines 6-12.

As to the demographic information, Mr. Bowers testified that one in five residents of Kennebec and Presho are 65 years of age or older according to the 2000 U.S. Census. He compared this to one in eight or 12.4 percent of the United States. Bower Prefiled Direct, Page 5, Lines 3-6. The Kennebec interest is gauged at a lower income demographic in South Dakota.

[9] Western Wireless would assert that people who do not want to pay extra fees generally will respond to these surveys as opposed to people who do not object extra fees and thus, people who want LNP are likely unrepresented in such a survey.

It is logical that if 12 percent of the customer base is willing to pay $1 per month in a community such as Kennebec, then Petitioners with higher demographics and those closer to metropolitan areas would have increased interests and increased tolerance for these rate increases.

As unscientific as they are, these numbers support LNP implementation. Western Wireless predicts that they will see ports of three percent a year from wireline customers. A rate Western Wireless has observed in other areas. TR, Page 645, Lines 13-19. Over the five year projected cost analysis done by Western Wireless, it was predicted that approximately 15 percent would move over five years. As the testimony of Mr. Williams reflected, the desire for these types of services is growing in rural communities. TR, Page 693, Lines 19; TR, Page 694, Lines 21, *See* also Western Wireless Hearing Exhibits 11 and 13.

By Western Wireless' estimates, excluding transport, Alliance and Splitrock, Golden West, Vivian and Kadoka all have costs below $.50. Mid-State's cost is only $.54. *See* Western Wireless Exhibit 18. In this range, over 20 percent of the people in Kennebec wanted to pay for this option. As a comparison, Western Wireless customers pay $.85 per month for LNP. TR, Page 679, Lines 17-20.

Several companies fell into a range of less than $1 but more than $.50. Brookings is only $.76, excluding transport. *See* Western Wireless Exhibit 9. Interstate is only $.62; Venture is only $.59; McCook Telephone is $.89; Sioux Valley is $.62; and Valley Telephone is $.63, excluding transport. *See* Western Wireless Exhibit 15. Santel is only $.82. *See* Western Wireless Hearing Exhibit 19. None of these companies provided any type of polling or research on what their customers were willing to pay. Areas such as Brookings have a younger population than areas Kennebec and likely a higher household income. Based on these demographics, demand for LNP will be higher. *See* Exhibit 13.

All Petitioners except Kennebec relied on simply anecdotal, self-serving reports reported by company representatives suggesting that no one has bothered to ask them for portability. If 20 percent of the people in Kennebec and Presho are interested in paying for number portability at $.50 and twelve percent in those same communities are interested at $1 per month, there is a substantial interest in number portability in this state.

Obviously, from the testimony submitted at the time of the hearing and from the briefs, Petitioners do not want to provide LNP. Petitioners know there is demand for LNP. Kennebec's survey demonstrated demand. *See* Bowar Direct, Page 3. Western Wireless' survey of its customers showed 16 percent were willing to switch land line service to wireless and 25 percent were unsure if they would make the switch. If individuals could take their land line number with them, common sense tells you a number of these people would chose to make that transition. *See* Hearing Exhibit 11. As noted by the FCC, "the focus of the porting rules is on promoting competition, rather than protecting individual competitors" In the Matter of Telephone Number Portability, CC Docket No. 96-98, Order, 19 F.C.C.R. 875 (2004) at paragraph 27. This Commission should disregard the cost proposals submitted by all the Petitioners in this case because they were created with an intent to avoid competition and avoid obligations of LNP. The cost studies were done in such a way to artificially create an impression that LNP was extraordinary expensive.

The company witnesses as a whole testified that they did an extensive investigation as to the economically feasibility of LNP. Yet, none of them contacted Western Wireless or any other cellular providers about how they could provide this service at low cost and only came up with one cost analysis. *See* TR, Pages 47-49, 315, 345, 376-377, 430-431, 433, 742, 782, 816, 829, 913, 984, 1046 and 1098. None of them asked wireless companies how they could lower transport costs or what might be an effective method to provide this service at a low cost. These

actions coupled with the over-the-top mechanisms suggested by the cost experts clearly imply that the Petitioners simply want to avoid providing LNP.

The Petitioners must show under this element that it is the Commissions actions are necessary to avoid a "significant adverse economic impact on the users of telecommunication services generally." Any increase in fees arguably causes some economic impact. However, increase in competition actually nullifies some of the increase in fees by lowering costs to the public generally and providing better services. TR, Page 560, Lines 12-18. Petitioners have not demonstrated at what level an increase in fees creates an adverse economic impact. Therefore, Petitioners had not demonstrated the existence of this element.

B. None of the Petitioners have shown how this Commission's action is necessary for any Petitioner to avoid an undue economic burden where all the Petitioners have testified that they can pay for LNP.

None of the Petitioners have taken the position that they cannot pay for implementation of LNP. Petitioners all freely admit that they believe they could cover at least the majority of their costs through an end user surcharge. TR, Page 558, Lines 15-18; TR Pages 89, 92, 313, 346, 378-379, 438-439, 742, 784-785, 816, 829, 953-954, 973, 984, 1047 and 1101.

As detailed above, Petitioners' experts greatly overstated the costs of implementing LNP. Yet, Petitioners do not take the position they could not pay for it even at these exaggerated estimates. Some of the Petitioners complain that if they have to provide LNP it may slow down their rollout of other services, such as DSL. This is irrelevant to this analysis of undue economic burden. The test is not whether Petitioners would prefer to rollout a service where they had no competitors rather than provide LNP where they could lose some customer base. The standard is whether the Commission's action is necessary to prevent the imposition of an unduly economically burdensome requirement. 47 U.S.C. 251(f)(2)(A)(ii).

The mere fact that these Petitioners do not want to provide LNP does not justify an undue economic burden. Similarly situated LECs have agreed to provide LNP services. Both James Valley and Cheyenne River Sioux Tribe Telephone Authority, during the pendency of these proceedings, agreed to provide LNP. Further, at least three LECs located in the State of South Dakota did not even apply for suspension or modifications. In all, Petitioners did not cite to anything that distinguished any one of them from other LECs that are providing this service, or from the other Petitioners in these filings that resulted in individual economic burden. Because of this, the Commission cannot find that any of the Petitioners met the standards required under the statute.

C. Providing LNP for all Petitioners is technically feasible as all their cost experts have agreed that there are technically feasible ways in which to implement the service.

In the absence of clear and convincing evidence of technical infeasibility, the PUC should reject Petitioners claims of the existence of the third prong delineated under § 251(f)(2). *See* Post-Hearing Brief of Petitioners and SDTA, pp. 3, 54; 47 C.F.R. § 51.5. Notably, Commission proffered a pre-hearing opinion that LNP is technically feasible.

> Ms. Wiest: Thank you. Commission staff has not yet taken a position on any of the LNP Dockets. However, based on our valuation of the prefiled testimony we have arrived as some initial thoughts with respect to the standards that the Commission has to apply in these cases. On of the questions is whether the suspension is necessary to avoid imposing a requirement that is technically infeasible. Based upon our evaluation of the prefiled testimony, it's staff's belief that, no, it is not technically infeasible for any of the Petitioners to implement LNP. There is certainly costs associated with implementation and there appear to be routing and who pays issues that are not necessarily easy to resolve but it does appear that LNP can be implemented.

See Hearing Transcript, p. 38. Based upon the Commission's pre-hearing findings, it is apparent that Petitioners offered no clear and convincing evidence of technical infeasibility it their pre-file testimony.

Petitioners further failed to introduce any evidence of technical infeasibility in the hearing. Rather, all of Petitioners' witnesses testified that LNP is technically feasible.

> Attorney Wieczorek: And when we talk about the technical cost issues you'd agree with me that, you know, LNP is technically feasible – can be technically done, it's all a matter of how much it costs.
>
> Mr. DeWitte: That's correct. In no – I'm not going to tell you that it technically can't be done, at least for any of the clients that we're representing as part of these proceedings. And I think that you can take a look at anything, and the fact is if you throw enough money at it, yeah, you can make it work from a technical perspective.

See Hearing Transcript, p. 157.

> Attorney Wieczorek: Yeah. But that's trunk groups. And I don't want to get into any confusion here but what you have proposed, your method, that's technically feasible today; correct?
>
> Mr. Davis: That is correct, yes.

See Hearing Transcript, p. 997. Based upon the above excerpts, it is evident that the Petitioners' evidence supports feasibility. In fact, Petitioners introduced no evidence to indicate LNP is technically infeasible. Therefore, Petitioners repeated inferences of technical feasibility in their post-hearing brief should be categorically rejected as unsupported.

IV. Even if a Petitioner demonstrates Commission action is necessary to avoid significant adverse impact, or imposition of an unduly economically burdensome requirement, or technical feasibility all the Petitioners failed to show how the Petitioner having to provide local number portability within its service area would be inconsistent with public interest, convenience and necessity.

Under 47 U.S.C § 251(f)(2), a Petitioner must show how Commission action is necessary to avoid significant adverse economic impact or to avoid the imposition of an unduly economic burden, or technical infeasibility, before the Commission need even address whether providing the LNP is somehow inconsistent with public interest, convenience and necessity.[10] No where within the Petitioners' submitted testimony did they show how providing LNP services within

[10] As all the Petitioners' cost experts admitted that LNP is technically feasible, it is not addressed in this section.

their service area would be inconsistent with the public interest, convenience and necessity. Rather, Petitioners relied upon broad complaints against LNP.

Mr. Watkins freely admitted that he did no independent evaluation of any of the Petitioners. In fact, he contended that all of his opinions applied "evenly" to every Petitioner. TR, Page 509, Lines 1-4. He also freely admitted that nowhere in his testimony did he single out any specific Petitioner and talk about how LNP could impact it specifically in any certain way. TR, Page 509, Lines 5-9. He then went on to state no amount of cost would be reasonable because he did not believe there was any demand for LNP. TR, Page 511, Line 21 through Page 513, Line 3.

Mr. Watkins makes no distinction between the Petitioners where wireless service might be ubiquitous throughout their service areas and those where there might be parts of their service area with no wireless service. He makes no distinction on demographic information. He makes no distinction on whether the Petitioner serves a South Dakota urban community, such as Brookings, or a more rural area. Rather, he essentially simply complains that the FCC is not requiring interconnection agreements and that some of the issues are yet unresolved. TR, Page 502. And, thus, LNP should not be allowed.

Moreover, he claims there is no evidence of demand for LNP. He relies solely upon anecdotal experience in urban areas. TR, Page 499, Lines 1-3. He disregards the Kennebec survey results. He ignores the surveys submitted by Western Wireless showing the customer demand for portability. *See* Western Wireless Hearing Exhibit 11 and 13.

Basically, Mr. Watkins' testimony is so broad and general it should be rejected. His opinions are not derived from any kind of review of these Petitioners' situations or even the State of South Dakota. By his own admissions, his opinions supposedly apply evenly to a consumer who is in the suburbs of Sioux Falls and a consumer who is in a remote area of western South

Dakota. Mr. Watkins wants this Commission to believe that demand for LNP is the same in Faith as it is in Brookings, South Dakota. Yet, he has done no surveys. He cites no studies out of South Dakota. He cites no particularities as to why LNP would be inconsistent with public interest for any Petitioner. He simply does not think LNP should be allowed in South Dakota, or for that matter, anywhere else.

When looking at whether LNP is consistent with public interest, convenience and necessity, the Commission is not looking at this issue for the whole nation. 47 U.S.C. § 251(f)(2). It does not provide this Commission with the ability to redraft the Telecommunications Act of 1996. While Mr. Watkins would like to revisit LNP under the Act, this Commission's focus is that LNP impact on these Petitioners and the South Dakota consumers who these Petitioners serve.

One need only to look as far as Kennebec's own survey to see a desire for LNP portability as a service. In Kennebec evidence exists of a significant demand. Mr. Watkins ignores Kennebec's own survey and only talks about anecdotal experience. In doing so, his analysis becomes incomplete and irrelevant.

More appropriately, one needs to look at the fact that the competition created by local number portability will improve services to all users. As Mr. Williams testified, the ability to take that phone number that someone feels identified with to another carrier strengthens customer choice immensely. TR, Page 619, Lines 11-25. By strengthening consumer choice, one encourages businesses to satisfy the consumer. What is the demand for LNP in Brookings or in those areas outside of Sioux Falls or Aberdeen or Mitchell? Petitioners did not choose to provide that information. Rather, the remaining Petitioners simply offer this Commission generic complaints about LNP. None of the complaints deal with the facts that the public in

South Dakota is extremely mobile and, according to all the actual hard numbers provided to this Commission, interested in LNP services.

Furthermore, Petitioners are not currently providing LNP. There has not been any marketing to individuals promoting the competition. Education through marketing will increase the demand for LNP. That education cannot occur until Petitioners begin to provide the required service.

V. Should the Commission determine a suspension or modification is warranted, the Commission should not grant any suspension or modification beyond 60 days from the date of the decision to become compliant with LNP.

Western Wireless stipulated to the propriety of granting an extension until March 31, 2005 to Kennebec, City of Faith, Western, Stockholm and Tri-County as they all have implementation costs at approximately at $2 or over based on Western Wireless' projections. James Valley Telephone and Cheyenne River Sioux Tribal Telephone Authority agreed to implement LNP in 90 days. In James Valley's situation, even thought DeWitte had estimated in his prefiled testimony for James Valley that it would take several months to implement LNP, James Valley agreed it could become LNP compliant within 90 days.

Of the remaining Petitioners, none have provided a valid showing of why modification or suspension should be granted. Company representatives took the position that they fully investigated LNP before coming to this Commission with these Petitions. During the hearing, it became evident that most of the companies approach to the investigation was simply on how not to implement LNP. No substantial steps had been made to become LNP compliant. Nonetheless, Petitioners have requested at least six months from any decision to implement LNP.

As Mr. Williams testified at the hearing, on most Nortel switches, which most Petitioners have, LNP software only needs to be activated. The software does not need to be installed. TR, Page 632, Lines 5-10. The Petitioners should not be rewarded for their attempts at trying to

build up reasons for this Commission to take action. Petitioners could have adopted a much more prudent, cost effective approach. For example, under Mr. DeWitte's plan, it was allegedly necessary for James Valley to provide LNP services to Western Wireless to have thirteen DS1s installed. Presently, James Valley is going to provide that service to Western Wireless using one DS1.

The Petitioners have the ability to avail themselves to the existing facilities in South Dakota, which are low costs alternatives, just like the RLECs have done in the MIC petition filed before the Minnesota Public Utilities Commission. In addition to the tandem solution, are the existing POIs. As Mr. DeWitte testified to in response to Commission questions, the way James Valley resolved its LNP obligations "merits evaluation by other carriers." TR, Page 238, Lines 4-5.

Rather than look to these alternatives, the Petitioners wholesale ask this Commission to simply give an open-ended extension of these suspensions. These suspensions are not tied to any dates certain but rather a six-month window after the rules are "finalized." However, no one could define for the Commission what "finalized" means.

When judging whether the Petitioners have met their burdens under 47 U.S.C. § 251(f)(2) in regards to the Petitioners use of available existing infrastructure, the tandems of SDN and Qwest and existing POIs with wireless carriers, the Commission should find the failure to meet their LNP obligations using these viable, low cost alternatives means Petitioners have not sustained their burden.

To reward other Petitioners who have held on to unreasonable proposals by granting them more that 60 days would only encourage such activities in the future. An Order by this Commission saying it will take no action for 60 days from the Order for noncompliance gives the

remaining Petitioners enough time to implement LNP in a low cost, efficient, and effective manner.

CONCLUSION

For the reasons set forth above and the hearings in this matter, this Commission should grant to Kennebec, City of Faith, Western, Stockholm and Tri-County a suspension of their LNP requirements until March 31, 2005. As to the remaining Petitioners, the Commission should deny these petitions and enter an order setting forth it will take no action for 60 days but at the conclusion of 60 days, all Petitioners need to be compliant and provide LPN for their customers' benefit.

LNP is required under the Telecommunications Act of 1996. The fact that Petitioners may disagree with LNP implementation by Congress and the FCC does not reopen that issue in front of a state Commission.

Dated this 20 day of August, 2004.

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 20 day of August, 2004, I served a true and correct copy of the foregoing **WESTERN WIRELESS, LLC's POST-HEARING BRIEF** by email and NEXT DAY DELIVERY to:

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City of Faith Telephone Company
Midstate Communications, Inc.
Western Telephone Company
Interstate Telecommunications Cooperative, Inc.
Alliance Communications Inc. and Splitrock Properties
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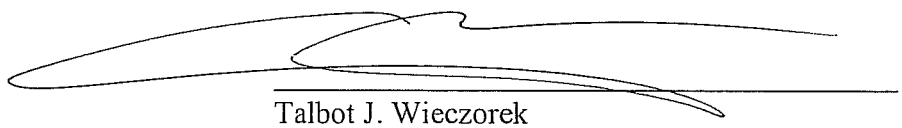
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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITIONS FOR SUSPENSION OR MODIFICATION OF §251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	DOCKET NUMBERS:

TC04-025 Kennebec Telephone Co.
TC04-038 Santel Communications
TC04-044 Sioux Valley Telephone Co.
TC04-045 Golden West, Vivian Telephone Co and Kadoka Tele Co
TC04-046 Armour, Bridgewater-Canistota Tele Co and Union Tele Co
TC04-047 Brookings Municipal Utilities d/b/a Swiftel Communications
TC04-048 Beresford Municipal Telephone Company
TC04-049 McCook Cooperative Telephone Company
TC04-050 Valley Telecommunications Cooperative Association, Inc.
TC04-051 City of Faith Telephone Company
TC04-052 Midstate Communications, Inc.
TC04-053 Western Telephone Company
TC04-054 Interstate Telecommunications Cooperative, Inc.
TC04-055 Alliance Communications Inc. and Splitrock Properties
TC04-056 RC Communications, Inc., and Roberts County Telephone Cooperative Assn.
TC04-060 Venture Communications Cooperative
TC04-061 West River Cooperative Telephone Company
TC04-062 Stockholm-Strandburg Telephone Company
TC04-084 Tri-County Telcom

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AUG 27 2004
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

REPLY BRIEF OF PETITIONERS AND SDTA

Submitted on behalf of the above-named Rural Local Exchange Carriers and the South Dakota Telecommunications Association

August 27, 2004

PETITIONERS HAVE CORRECTLY STATED THE LEGAL STANDARD

Petitioners' initial brief contains a detailed discussion of this Commission's jurisdiction to adjudicate the suspension/modification petitions that are now before it (Id. pp. 6-8). Western Wireless' brief does not challenge the Commission's jurisdiction to grant or deny the petitions, as its witness, Mr. Williams, conceded this point at the hearing. (Tr. 659).

Once having crossed that bridge, however, Western Wireless draws in a number of state and federal decisions in an apparent attempt to fashion a slightly different statutory framework that fits its version of the facts. As is demonstrated below, Western Wireless' Brief on this score is largely irrelevant. It is a classic "strawman" argument, constructed for no other purpose than to distract.

Western Wireless begins its statutory argument with a lengthy recitation of the language of section 251(f)(2) itself (the suspension statute), as it notes that the party filing the modification/suspension petition bears the burden of proof, and then recites FCC and federal court decisions that have precious little to do with the matters before this agency (Western Wireless brief, pp. 17-20). The brief then concludes on this score that: "Consequently, under the plain meaning of § 251(f)(2), the Commission should reject all joint petitions that fail to delineate company specific data" citing In the Matter of Petition by the Alliance of North Carolina Independent Telephone Companies for Limited Modification of the Requirement to Provide Number Portability, Docket No. P-100, Sub 133r, State of North Carolina Utilities Commission Raleigh, 2003. (Id.) This reliance upon a decision by the state of North Carolina appears designed to fit Western Wireless' later argument that a joint submission on behalf of Golden West and certain affiliates should be rejected, and, indeed, the North Carolina decision is cited again in that portion of Western Wireless' brief (Id., pp. 26-27).

This reply brief later reveals the disingenuousness of Western Wireless' argument on the joint submission of affiliates; the assertion that the North Carolina decision is at all relevant merits some discussion here, however.

A review of the decision illustrates its irrelevancy. The petition covered by the North Carolina Order concerned a legal question as to whether North Carolina's independent telephone companies (The Alliance of North Carolina Independent Telephone Companies ("Alliance")) were required to implement LNP – particularly for wireless carriers – where no showing was made by the requesting carrier that the ported number would only be used within the rate center from which it was ported. It appears that no data, collective or otherwise, was filed, in sharp contrast to the instant record, to permit any sort of economic or public interest analysis. Of course, this context was not disclosed by Western Wireless when it plucked the language upon which it relies from the North Carolina Order. The first three sentences of the quoted paragraph, omitted by Western Wireless, further expose this misuse of the case: "Whether landline-to-wireless number portability of the type described is a valid requirement is a separate question from whether a rival company should receive an exemption from number portability requirements pursuant to Section 251(f)(2) of the Telecommunications Act. Section 251(f)(2) allows for an exemption for a rival company from even a lawful obligation. In this regard, the Commission does not believe that the Alliance made a threshold showing under the exemption provision of Section 251(f)(2) of the Telecommunications Act that it is entitled to such exemption." In short, the North Carolina decision involved a legal issue, rather than the factual showings made in this case. Hence, as a legal standard, it is a strawman and irrelevant.

Western Wireless' brief next launches into a discussion of the meaning of the word "necessary" found in section 251(f)(2)(a). (Western Wireless brief, pp. 20-21). The import of this

discussion in the context of legal standards appears to be Western Wireless' contention that: "A Petitioner cannot be allowed to bring upon its own harm and then argue that action of the Commission becomes necessary." (Id., p. 21.)

This argument is a bizarre eyewash intended to cloud the issue. Nowhere in the rest of Western Wireless' brief does it contend that Petitioners have arranged to bring economic harm on themselves, or their subscribers, so that they could then file and prosecute their suspension/modification petitions. That would necessarily be the case, since Western Wireless made no such claim during the hearing.

Western Wireless' advocacy of what the "significant adverse impact" standard means in section 251(f)(2)(A)(i) fares no better. (Western Wireless brief, pp. 21-22). In this respect, Western Wireless resorts to Webster's Dictionary to define "significant adverse economic impact" and concludes from its less than objective dictionary survey[1]: "As a result, Petitioners claims of significant adverse economic impact fail unless each Petitioner provides substantial credible evidence of a significant financial impact upon its users that is likely to be contrary to his/her financial interests" citing Indiana Bell Telephone Company Incorporated v. Smithville Telephone Company, Inc., 31 F.Supp.2d 628, 632 (S.D. Ind. 1998) (Id.).

This argument suffers from serious defects, chief among which is the citation to Indiana Bell. Petitioners have examined that case, and its does not stand for the proposition cited, or anywhere close to it. The case dealt with EAS arrangements between Ameritech and Indiana independents, and simply does not contain the proposition attributed to it by Western Wireless.

[1] As an example, Western Wireless defines "impact" to be "...an impelling or compelling effect..." Western Wireless brief, p. 21. An additional definition of "impact" found in Webster's is "to impinge upon", which certainly differs from "compelling."

And, while Petitioners do not believe that Webster's Dictionary is an unreasonable source of authority to define words, we question the need to so carefully meter the meaning of "significant adverse impact" when the Commission's expertise will serve that very purpose. If Webster's is deemed necessary, Petitioners urge the Commission to take a more balanced view, as earlier discussed.

Western Wireless' brief next discusses its highly incorrect understanding of the "unduly economically burdensome" statutory modification/suspension element found in section 251(f)(2)(A)(ii). It states that the FCC's Local Competition Order defined this element to require proof of a "burden beyond the economic burden that is typically associated with competitive entry." The brief goes on to assert that the Eighth Circuit "fleshed out" this standard. (Western Wireless brief, pp. 22-23). This characterization is, to say the least, incomplete. In Iowa Utilities Board v. Federal Communications Commission, 219 F.3d 744 (8th Cir. 2000), the Court vacated FCC Rule 51.405(d) (47 C.F.R. § 405(d)). This section contained the proof requirement Western Wireless urges upon this Commission. This was not changed in the Supreme Court's review of that decision and the further decision on remand by the Eighth Circuit court. Iowa Utilities Board v. Federal Communications Commission, 301 F.3d 957 (8th Cri. 2002). Thus, the higher proof standard urged by Western Wireless has no lawful basis. Western Wireless again invokes Indiana Bell as instructive as to the meaning of "undue economic burden." (Western Wireless brief, p. 23). As previously discussed, however, the value of this precedent is nil given the passing reference made by the court to section 251(f)(2). In any event, the rule against "speculation and unsupported allegations" that Western Wireless attributes to this case is unremarkable.

The remaining standard discussed by Western Wireless under section 251(f)(2)(A) concerns the showing of technical infeasiblity (47 U.S.C. § 251(f)(2)(A)(iii). Western Wireless urges a novel standard of "clear and convincing" proof as to technical feasibility, which it then translates, based on South Dakota judicial precedent, as "beyond a reasonable doubt," citing In the Matter of Medical License of Dr. Settliff, M.D., 2002 S.D. 58, 645 N.W. 2d 601, 604 (further citation omitted) (Western Wireless brief, pp. 23-24).

As Western Wireless has relied upon a demonstrably incorrect FCC Rule, the rest of its syllogism fails. As is evident from the text quoted by its brief, FCC Rule section 51.5 concerns the definition of "technically feasible." That section defines the term by reference to "access to unbundled network elements" as the first sentence demonstrates.

As the Commission is no doubt aware, however, access to unbundled elements is an unbundling obligation contained in section 251(c), while the duty to provide Local Number Portability is contained in section 251(b) of the Communications Act of 1934, as amended. As such, the standard urged upon this Commission by Western Wireless is patently flawed, and should be rejected.

Relatedly, Western Wireless relies upon a New York Public Service Commission Order Denying Petition because the suspension and/or modification requests were "unsupported" as to technical infeasibility. (Western Wireless brief, p. 24). As Western Wireless has earlier recognized, however, those state decisions are not binding upon the Commission, but do provide some "guidance" as to the findings of other commissions. (Western Wireless brief, p. 21). In this vein, the Nebraska Public Service Commission's Order Granting Suspension, Application Nos. C-3096 et seq. is at least as persuasive as a decision from a more urbanized state like New York. In Nebraska, the Commission found that, absent direct connects, intermodal LNP between a

CMRS provider and a local exchange carrier "...is technically infeasible at this time..." Id., p. 7.[2]

In sum, the legal standard urged upon the Commission by Western Wireless is flatly unlawful. The Commission may easily find that LNP implementation is technically infeasible, just as have Nebraska supra, and the Mississippi Public Service Commission. See, Order, *Petition of Mississippi Incumbent Rural Telephone Companies for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 251(f)(2) of the Communications Act of 1934, as amended*; 03-UA-918.

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[2] Indeed, the value of other state decisions is probably best appreciated as a whole. For instance, Western Wireless' brief earlier points to an Arizona decision for the proposition that an end user cost of $2.93/month was insufficient to constitute a significant adverse economic impact. Western Wireless brief, pp. 21-22. On the other hand, the Nebraska Order, referred to above, found surcharges ranging from $0.64 to $12.23, monthly, to all be excessive. Id., p. 11. The Commission may review a more complete record of state activity, including a state-by-state survey of LNP suspension activity and decisions in the states, compiled by NeuStar and the National Association of Regulatory Utility Commissioners ("NARUC"), updated as of June 22, 2004. While an exact count is difficult, and the reader can draw his or her own conclusions, the summary report indicates that approximately 250 LNP suspension requests have been submitted in 38 states on behalf of approximately 786 LECs. It also appears that as of June 22, 2004, approximately 150 companies have been granted LNP suspensions for various periods of time; approximately 53 LECs were denied suspension requests; approximately 446 LECs were granted temporary suspensions while the overall merits of their applications are being considered; approximately 62 companies have LNP suspensions pending but have not been granted temporary relief during the interim period; and 75 LECs have withdrawn their petitions prior to final state commission action.

Of course, the status of that activity in each state is different and is based on the facts and circumstances of the carriers in those states, the specific suspension requests of those carriers, and the specific judgements made by the individual state commissions. Regardless of how one might tabulate the activity based on a review of survey, the majority of those states that have pending suspension requests have granted some relief to the rural LECs. And for the minority of the states that have denied the LNP suspension requests, it is not surprising that the state commissions have struggled with their decisions as a result of the FCC's less than adequate handling of its confusing LNP orders, the obfuscation of the wireless carriers, and the uncertainty surrounding the consequences of the unresolved issues.

Western Wireless' final argument on the subject of statutory standards concerns the public interest standard. This argument is addressed later in this Reply Brief.

PETITIONERS HAVE MET THE REQUIREMENTS OF SECTION 251(F)(2)(A)(1).

Pursuant to Section 251(f)(2)(A)(1), Petitioners have demonstrated that a suspension or modification of the LNP requirement is necessary "to avoid a significant adverse economic impact on users of telecommunications services generally." As demonstrated in the Post-Hearing Brief (Brief) of Petitioners and supported by the cost exhibits and testimony filed by each Petitioner, each Petitioner has presented detailed information concerning the known costs that will be incurred to implement LNP, including switch software and hardware costs, LNP service order and query costs, and the technical and administrative costs associated with implementing LNP. As indicated by Staff in its Brief, "even without transport costs, the costs to implement LNP are considerable."[3] Moreover, as stated by Staff and demonstrated by Petitioners, these costs will impact users of telecommunications services because they will be recovered either through the federal LNP surcharge on such users or increases in local rates.

Staff's Brief confirms Petitioners' argument that the only party to dispute the Petitioners' cost showings was Western Wireless and that Western Wireless only disputed a few cost elements. Even where Western Wireless did dispute certain cost elements, Staff confirms that Western Wireless' estimates of the cost of LNP, in many cases, are fairly close to the Petitioners' estimates.

Further, in its Brief, Staff supports the Petitioners' cost estimates disputed by Western Wireless.[4] Staff also supports the per-line, per-month impact of LNP as presented by the Peti-

[3] Staff's Brief at 7.
[4] Id. at 17-31.

tioners.[5] Accordingly, Petitioners ask the Commission to find that the Petitioners' estimates of the known cost of providing LNP are reasonable and accurate. Further, the Petitioners ask the Commission to find that the estimated known per-line, per-month impact of LNP is as follows for each Petitioner (Petitioners have grouped the companies following the method used by Staff in its Brief):

GROUP 1
Faith $3.10
Tri-County $3.03
Stockholm-Strandburg $4.99 to $5.58
Kennebec $3.45
Western $3.97

GROUP 2
Armour/Bridgewater/Union $1.44
Roberts County/RC $1.23
Beresford $1.27
McCook $1.66
West River $0.93 to $1.04
Valley $0.67
Midstate $1.00
Sioux Valley $0.71
Santel $0.78 to $0.87

GROUP 3
Brookings $0.74 to $0.83
ITC $0.54 to $0.61
Venture $0.55 to $0.61
Golden West/Vivian/Kadoka $0.32
Alliance/Splitrock $0.73

In their Brief, Petitioners argue that they meet the requirement of Section 251 251(f)(2)(A)(1) because the known per-line, per-month impact of LNP as reflected above would impose "a significant adverse economic impact on users of telecommunications services generally." Although Staff has grouped the Petitioners' into three groups depending on its evaluation of the cost of LNP versus demand, it appears that Staff supports the conclusion that all of the Pe-

[5] Id.

titioners, even those whom Staff recommends should be required to implement LNP, have met this requirement. Thus, for Group 1, Staff states that the Petitioners' costs are "high."[6] Similarly, for Group 2, Staff states that the costs "are still considerable."[7] For Group 3, Staff states that "[g]iven the lower costs and higher expected demand, Staff does not believe that these companies meet the public interest standard." (emphasis added).[8] Thus, even for the Petitioners in Group 3, it appears that Staff found that the implementation of LNP should not be suspended because the Petitioners do not meet the public interest requirement in Section 251(f)(2)(B) and not because they do not meet the requirements of Section 251(f)(2)(A)(1) and (2).

In addition to the known costs of LNP, the Petitioners also presented evidence that there are a number of outstanding issues that could make the adverse economic impact of LNP on users of telecommunications services even greater. For example, the FCC is considering whether to shorten the porting interval for wireline carriers, which would significantly increase the cost of LNP. (Davis Ex. 1 pp. 18, 19; ITC Ex. 3 p. 18; Brookings Ex. 3 pp. 18, 19; Stockholm Ex. 3 p. 19; Venture Ex. 3 pp. 18, 19; West River Ex. 3 p. 18; SDTA Ex. 1 pp. 15, 36; Tr. pp. 897, 898) The FCC also is considering options to require wireless to wireline porting, which also would increase the cost of LNP.

In its Brief, Staff acknowledges that issues such as these could further impact the cost of LNP. As stated by Staff, "there are significant costs associated with the implementation of LNP and there are unresolved issues that could further impact those costs."[9] Staff also states that the Petitioners in Group 2 "would benefit from additional certainty in the process which would result

[6] Staff's Brief at 16.
[7] Id.
[8] Staff's Brief at 17.
[9] Staff's Brief at 8.

when the FCC acts on issues such as porting intervals and transport routing issues."[10] While Staff is correct with respect to Group 2, all Petitioners, including those in Group 3, would benefit from more certainty. Thus, even if the known per-line, per-month cost of LNP for certain Petitioners as stated above was not sufficient to meet the standard of Section 251(f)(1)(A)(1), the known cost plus the additional adverse economic impact that would be imposed by the outstanding issues supports a finding that the standard has been met.

The arguments of Western Wireless and Midcontinent in opposition to the evidence presented by Petitioners are wrong and should be rejected. In addition to the few cost elements challenged by Western Wireless, Western Wireless argues that the Commission should reject the cost studies of all Petitioners that filed a combined study for more than one company. According to Western Wireless, a combined study does not meet the requirement of Section 251(f)(2)(A) and, therefore, such companies have not met their burden. Western Wireless is simply wrong. The plain language of Section 251(f)(2)(A) does not require separate filings or impose a "penalty" when separate filings are not made. Rather, this Commission has the expertise to evaluate the merits of the information presented by each Petitioner for the purposes offered. Further, the Petitioners that filed consolidated cost studies did so because of the consolidated nature of the companies' operations. Therefore, a consolidated filing more accurately reflects the costs that the individual companies will incur, and the resulting impact on their end users. Petitioners note the irony of Western Wireless' argument in that elsewhere, Western Wireless argues that the Petitioners' cost studies are flawed because unrelated Petitioners did not assume economies of scale by consolidating certain functions with other Petitioners. Yet, when affiliated entities with common operations prepare cost studies to reflect those common operations, Western Wireless argues that the studies should be rejected.

[10] Staff's Brief at 16.

Midcontinent's position also is wrong and should be rejected. Midcontinent argues that the cost of transport, which primarily involves intermodal LNP, is significant and possibly even greater than the other costs associated with LNP. Therefore, Midcontinent incorrectly concludes that "the cost of providing intramodal LNP is not such that it represents an adverse economic impact on users of telecommunications services generally, [or] imposes a requirement that is unduly economically burdensome..."[11] Midcontinent reaches this faulty conclusion by simply ignoring the Petitioners' cost studies and brief which clearly show that the cost of LNP is significant even when the cost of transport is not included and that the non-transport LNP costs would impose "a significant adverse economic impact on users of telecommunications services generally." As demonstrated earlier in this reply brief, it appears that Staff supports Petitioners on this point.

Furthermore, Midcontinent has ignored the cost exhibit presented by ITC which shows that the per-line cost of providing LNP for Midcontinent in the Webster exchange is even greater than the cost of company-wide LNP. This is so primarily because most, if not all, of the non-transport costs of LNP would have to be incurred to provide LNP in only one exchange. Those costs, however, only could be assessed to the lines in the Webster exchange and not all ITC lines. Accordingly, contrary to Midcontinent's position, the cost of providing intramodal LNP as requested by Midcontinent imposes an even greater adverse economic impact on users of telecommunications services generally.

[11] Midcontinent's Post Hearing Brief at 3.

Thus, Petitioners ask that the Commission find that each Petitioner has met the requirement of Section 251(f)(2)(A)(1) and that a suspension of the LNP requirement is necessary "to avoid a significant adverse economic impact on users of telecommunications services generally."

PETITIONERS HAVE MET THE REQUIREMENTS OF SECTION 251(F)(2)(A)(2).

Petitioners also have met their burden under Section 251(f)(2)(A)(2) and demonstrated that a suspension of the LNP requirement is necessary "to avoid imposing a requirement that is unduly economically burdensome." It is unduly economically burdensome to require Petitioners to implement LNP when a number of implementation issues are not resolved. It would be more efficient and less costly to implement LNP only once, after the LNP parameters are more certain, rather than require carriers to implement LNP when important issues are unresolved (such as the requirements of wireless to wireline porting), or could be changed (such as whether the porting interval will be reduced).

Changes to the LNP requirements that would impose new LNP costs after Petitioners are required to implement LNP also will impose a requirement that is "unduly economically burdensome" because it is very likely that Petitioners would be unable to recover these costs through the authorized federal LNP surcharge. Under the current FCC rules pertaining to the establishment of a "monthly number-portability charge" the charge is to be "levelized" over five years, or in other words must remain constant over that period. There are no provisions in the FCC rule relating to LNP cost recovery (47 C.F.R. § 52.33) that permit revision to the established monthly number portability charge, should actual LNP related costs change over the 5 year period that the charge is to be in effect and the FCC has indicated that requests to change the surcharge will not be granted readily.

As shown, LNP implementation also would result in the assessment of a new LNP surcharge on end users and could increase local rates. These actions would make Petitioners' service offerings less competitive with the services provided by wireless and other competitive carriers. In addition, if the total cost of LNP is assigned to Petitioners' subscribers through a surcharge and local rate increases, some segment of their subscribers may discontinue service or decrease the number of lines to which they subscribe. The resulting reduction in line count would increase further the per-subscriber cost of LNP, which, in turn, could lead to more rate increases followed by additional losses in lines. Ultimately, Petitioners may not be able to recover the costs of LNP from their subscribers, which would reduce the Petitioners' operating cash flow and profit margins.

Finally, if the appropriate transport arrangements are not implemented, wireline to wireless porting under current routing protocols would impose an unduly economically burdensome requirement by making the network less efficient and by confusing consumers which could result in reduced calling. If direct connections are not established, calls to ported numbers will be routed to an interexchange carrier and the calling customer will incur a toll charge. The local exchange network also will be less efficient as a result of porting because end users who continue to dial a ported number on a seven-digit basis will likely receive a message that the call cannot be completed as dialed, or a message instructing the party to redial using 1+ the area code. Thus, callers would have to dial twice, with the resulting network use, to place one call.

Thus, Petitioners ask that the Commission find that each Petitioner has met the requirement of Section 251(f)(2)(A)(2) and that a suspension of the LNP requirement is necessary "to avoid imposing a requirement that is unduly economically burdensome."

PETITIONERS SHOULD NOT BE REQUIRED TO TRANSPORT CALLS BEYOND THE LOCAL SERVICE AREA.

Petitioners have demonstrated that they have no legal obligation to transport traffic to points beyond their service territories, whether the traffic is associated with a ported number or not. Thus, under the provisions of 47 U.S.C. §251(c)(2)(B), incumbent LECs are required to provide interconnection only at a "technically feasible point within the carrier's network." The Petitioners' position also is supported by the plain language of the *November 10 Order*.[12] In its Order, the FCC acknowledged that LNP raised certain routing issues for rural carriers where no direct connection exists and that these issues would be addressed in a pending Petition for Declaratory Ruling filed by Sprint Corporation.[13]

In its Brief, Staff states that "the Commission should find that an RLEC is *not* responsible for the cost of transporting LNP traffic outside of its exchange area" and that "[a] local exchange company should not be required to transport local exchange calls beyond its local exchange area."[14] Petitioners wholeheartedly agree with and support this aspect of Staff's recommendation. Accordingly, Petitioners urge the Commission to modify their LNP obligation pursuant to Section 251 of the Act to clearly state that each Petitioner is not required to transport calls beyond its local exchange area.

Staff further states, however, that the Commission should not require direct connections, nor should it require any specific routing method. Rather, "the RLEC and the requesting carrier will negotiate the method of transport, knowing that if the routing method requires transport of the call outside of the RLEC's area, the requesting carrier would be responsible for those trans-

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[12] *In theMatter of Telephone Number Portability*, CC Docket 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 03-284 (released Nov. 10, 2003) (November 10 Order).

[13] In the Matter of Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of traffic by ILECs, CC-Docket 01-92, Petition of Sprint, May 9, 2002 (*Sprint Petition*).

[14] Staff's Brief at 10.

port costs."[15] Staff states that it believes "that the settlement agreements in James Valley and CRST demonstrate that the parties are in the best position to determine how to route LNP traffic."[16]

In connection with this aspect of Staff's recommendation, Petitioners make the following comments. First, it must be remembered that in the James Valley and CRST settlements, Western Wireless either had or agreed to establish a direct connection with the LEC. For example, the Stipulation between CRST and Western Wireless, and approved by the Commission, states that "[t]he Parties agree that CRST shall deliver calls to numbers ported to a wireless carrier as local calls only when the wireless carrier establishes a direct connection with CRST."[17] Further, the Stipulation states that CRST will offer the same terms and conditions to other wireless carriers requesting LNP. If a wireless carrier rejects the terms and conditions, i.e., refuses to establish a direct connection, then the parties can petition the Commission for modification of the Order entered pursuant to the Stipulation.

Second, although there are other potential transport options, such as Western Wireless' proposal, none has been fully examined by the Parties to establish that they are feasible. Therefore, if a direct connection is not required, it is not clear that negotiation of this issue will be achieved easily or quickly. In other words, for any carriers that are required to implement LNP, it is not a foregone conclusion that a successful negotiation of the transport issue will be achieved. This could result in a LEC spending thousands of dollars to implement LNP before calls to ported numbers can be transported as local calls. And, as established by Petitioners, if

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[15] Id. at 11.
[16] Id.
[17] Stipulation, Docket No. TC04-085, at 1.

such transport is not established, calls to ported numbers will be routed to interexchange carriers and assessed a toll charge. Petitioners believe that such a result is not in the public interest.

Therefore, Petitioners request that the Commission modify the Petitioners obligation to only require the implementation of intermodal LNP if the wireless carrier establishes a direct connection and after the Parties have successfully negotiated transport. In the alternative, a study group could be convened to examine the proposed transport options that wireless carriers request to determine the feasibility of such options. If a study group is convened, Petitioners request that the Commission suspend the LNP requirement until an acceptable transport option, or options, is determined through the study group process.

If the Commission does not accept Staff's recommendation, then as demonstrated by Petitioners' in their Brief, cost exhibits and testimony, the possible imposition of transport responsibility on them does nothing but further support their suspension and/or modification requests because it drives up costs, both to customers and/or the companies themselves.

The Petitioners' cost exhibits contain estimates for the recurring and non-recurring cost of transport, which essentially is the cost of installing facilities to enable calls to ported numbers to be routed as local calls. Western Wireless, and to some extent Staff, criticize the way the Petitioners assumed transport facilities would be implemented, and the resulting cost of those facilities. Western Wireless also argues that the Petitioners' cost exhibits should be rejected because they are based on the interconnection agreements and such agreements are not required.

Petitioners maintain that the criticisms are unfounded. As demonstrated, Petitioners based their transport methodologies on current network configurations and relationships and, therefore, they are reasonable. Contrary to the argument of Western Wireless, Petitioners do not maintain that interconnection agreements are required for LNP. Nor do they argue that current

interconnection agreements could not be modified (although Petitioners note that Western Wireless has not requested modification of any of the agreements it signed with Petitioners). However, the fact remains that Petitioners cannot unilaterally change the current agreements that they have with Western Wireless and other wireless carriers. Therefore, any transport scenario, such as the one proposed by Western Wireless, that does not conform to current arrangements between carriers and its associated costs, are pure speculation and cannot be the basis for a reasoned and rational decision.

Staff also comments on the number of wireless carriers for which Petitioners calculated transport costs. This is a factor in the cost of transport because every wireless carrier that requests LNP will require transport facilities and, therefore, the more wireless carriers the greater the cost of transport. What must be remembered when considering this issue, is that once a LEC is required to provide LNP, it is required to provide it to all requesting carriers (unless, of course, the Commission otherwise has modified the LEC's requirement). Therefore, the Petitioners were conservative in their estimates of transport to the extent that they were limited to wireless carriers currently operating in the LECs service area when in fact the Petitioners could face transport costs for all wireless licensees in their service area.[18]

Staff notes that Western Wireless' projected cost of transport is less than Petitioners. In addition to the other objections to Western Wireless' transport proposal (namely, Western Wireless' routing methodology does not currently exist; it involves an entity not a party to this proceeding; and it has not been shown to be feasible), Western Wireless' projected cost of the proposal does not consider the additional financial impacts that would be imposed on rural LEC op-

[18] There is a potential of eleven (11) or more CMRS providers in each geographical area consisting of 2 Cellular, 6 PCS, and 2 700 MHz, and at least 1 SMR. The Petitioner's analysis only included transport costs for carriers (like WWC, Verizon, Sprint, Nextel, and others) that have announced intentions of entering the market in the next five (5) years.

erations. Specifically, Western Wireless' proposal for transport not only would make Petitioners responsible for the costs of transport to the Qwest access tandem, but, by allowing for a bypass of the existing toll network, it also would affect Petitioners' access and toll revenues.[19]

Western Wireless suggested at the hearing that the impact of its transport proposal would be small because of the small number of expected calls to ported numbers. However, while the number of calls to ported numbers (served by wireless carriers) is expected to be small given the lack of demand for intermodal LNP, this is a fraction of the total traffic that is at stake. Thus, any decision imposing transport responsibilities on rural LECs beyond their existing network would impact all traffic—including calls to wireless users who do not have a ported number, calls to CLECs, and calls to Qwest customers.

Thus, it is clear that the transport issue not only would increase the cost of LNP, it would have a tremendous adverse impact on end-users and Petitioners. Accordingly, Petitioners request that this Commission conclude, as the Nebraska Commission recently has, that indirect connections are technically infeasible presently, and that the resulting costs "...would either be an additional significant adverse economic impact on end users or would be an economic burden on the local exchange carriers..." *Nebraska Order* at 7, 10-11.

GRANT OF THE REQUESTED SUSPENSIONS/MODIFICATIONS IS CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY

As noted in Petitioners' Brief, in addition to meeting at least one of the criteria listed in 47 U.S.C. § 251(f)(2)(A) relating to adverse economic impacts or technical infeasibility, in order for any request for suspensions and/or modification to be granted, it must be "consistent with the public interest, convenience and necessity." (47 U.S.C. § 251(f)(2)(B). As testified to by Petitioners' and SDTA's witness, Steven E. Watkins, a determination of the public interest relating

[19] Brief at 38-39, (see Tr. pp. 385, 391, 425, 399, 400, 405, 406, 413, 414, 422). (Tr. pp. 424) (Tr. pp. 204, 478). (Tr.

to the LNP suspension petitions that have been filed inherently involves a cost versus benefit analysis. (SDTA EXH 1 p. 8, TR pp. 497-505). Commission Staff in its Brief indicates agreement with this type of analysis, stating that "the Commission needs to conduct a cost versus demand analysis when considering the public interest." (Staff's Brief p. 7). With regard to the additional "public interest" criteria that must be applied, Petitioners believe that the evidence presented in this matter leaves no doubt that the public interest is, in fact, best served by granting each of the requested LNP suspensions.

Western Wireless contends in its brief that "no where within Petitioners' submitted testimony" was it shown "how providing LNP services within their service area would be inconsistent with the public interest, convenience and necessity." Petitioners find this statement incredible. There is overwhelming evidence in the record before this Commission to support an affirmative public interest finding with respect to each of the LNP suspension petitions that has been filed.

As all parties seem to agree, fundamental to any analysis of the benefits of LNP is a review of evidence relating to demand for the service. It is clear from the record in this matter that there presently is little, if any, demand for intermodal LNP within any of the Petitioners' service areas. Petitioners presented evidence from the national administrator of LNP, NeuStar, that confirms little demand for intermodal LNP even in non-rural areas. Petitioners also presented evidence that demand in rural areas is likely to be less because of the poor wireless service quality in rural areas. Petitioners also presented company specific evidence that few or no customers have requested or inquired about LNP even though it was widely reported in the press. Petitioners note that even though Western Wireless has implemented LNP, it presented no evidence concerning the number of ports it has experienced for wireless to wireless porting or for intermodal

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pp. 266, 272-274, 482).

porting. Further, even though Western Wireless operates in all of the Petitioners' service areas, it presented no evidence to indicate that any of its customers or potential customers have requested LNP in those service areas. Petitioners believe that the Commission can consider Western Wireless' failure to present contrary evidence as further proof in support of Petitioners' claims on this issue.

In addition, Petitioners presented evidence that the costs of LNP are significant and, it is apparent from the record in this matter, at the present time there are a number of substantial issues related to the provisioning of LNP that have not yet been resolved by the FCC, which will impact further LNP implementation costs. Given these unresolved issues, it is obvious that the Commission cannot at the present time even quantify the full cost of LNP implementation and, consequently, cannot evaluate what would be the full end-user and/or rural carrier impacts.

Under these circumstances, given the almost complete lack of demand for intermodal LNP in the Petitioners' service areas and taking into account the significant cost of LNP and the unresolved issues relating to LNP that will affect LNP implementation costs further, Petitioners cannot understand how this Commission could reasonably determine that granting the requested suspensions is not in the public interest. For all of the reasons set forth in Petitioners' Brief, there is good reason to conclude that granting each of the LNP suspension petitions would be consistent with the public interest standard established under the federal law.

In its brief, Western Wireless continues to suggest that this Commission in its review of the public interest must give primary emphasis to the promotion of competition. As pointed out in Petitioners Brief, although one purpose of the Telecommunications Act of 1996 was to promote competition for local exchange services, a second primary purpose was to protect universal service. Further, Congress realized that competition, as promoted by the FCC, may not be the

best course in rural areas and the provisions of Section 251(f)(2) were clearly put into the Act for this reason. State Commissions are specifically given authority under Section 251(f)(2) to suspend and/or modify any of the requirements contained in §§ 251(b) and 251(c) of the Act (including interconnection and other service requirements that were specifically imposed for the purpose of promoting local service competition). Indeed, the very purpose of the suspension and modification provisions contained in Section 251(f)(2) is to allow state commissions to override, in effect, rules related to competition. This being the case, it is obviously insufficient, for purposes of addressing Section 251(f)(2)'s public interest standard, to claim that the implementation of LNP is necessary to promote competition.

Furthermore, the claims of competitive benefits made by Western Wireless are simply not substantiated by the evidentiary record because it is clear that there is little, if any, demand for LNP in the Petitioners' service areas. If there is no demand for the service, how can it reasonably be determined that consumers would benefit by making the service available? How does diverting carrier resources in order to bring consumers a choice they do not want provide a consumer benefit?

The Nebraska Public Service Commission, in recently granting a suspension until January 20, 2006, to many of the rural local exchange carriers in that state, specifically addressed claims made by Western Wireless that LNP is necessary to provide greater consumer choice. Order Granting Suspension, Nebraska Public Service Commission (*Nebraska Order*) dated July 20, 2004, Application Nos. C-3096 *et. Seq.* The Nebraska PSC concluded, "[w]hile the Commission acknowledges that introduction of competition into telecommunications markets is a key policy of the 1996 Telecommunications Act, without any evidence that demand for intermodal

LNP exists and thus, that consumer choice is being thwarted, this Commission must assign greater weight to another Congressional policy of the Act." See, *Nebraska Order*, page 14.

In addition, the claims of Western Wireless that this Commission, in conducting its public interest analysis, must give emphasis to the competitive benefits of LNP are inconsistent with the recent letter issued by FCC Chairman Michael Powell which speaks to the state review of LNP waiver request under the provisions of 47 U.S.C. § 251(f)(2). (Venture Exh. No. 4). In that letter, directed to the Honorable Stan Wise, President National Association of Regulatory Utility Commissioners, Chairman Powell specifically referenced concerns about the possible economic burden that intermodal number porting may place on LECs that are small businesses, particularly those in rural areas; and it further urged state commissions in their review under Section 251(f)(2) to "consider the burdens on small businesses in addressing those waiver requests." Very clearly, this letter confirms that the analysis required under Section 251(f)(2) must go beyond simply considering the competitive benefits and must also focus on costs/burdens associated with providing the telecommunications service.

To support its argument that granting the requested suspensions would not be in the public interest, Western Wireless also selectively cites to decisions of the New York Public Service Commission and Michigan PUC indicating that those states have denied requested LNP suspensions on public interest grounds. As testified to by Mr. Watkins, there is LNP suspension activity in many states throughout the United States and, contrary to the perception that Western Wireless attempts to create, the majority of states have found merit in suspending LNP obligations for the smaller LECs. (SDTA Exh. No. 2, pp. 6, 7). Western Wireless conveniently fails to mention the recent Nebraska Order, where our neighboring Nebraska PSC determined that each LNP suspension applicant had met its burden of proof and shown that "suspension of the re-

quirements of the Intermodal Order is consistent with the public interest, convenience, and necessity."[20] Similarly, there is no mention of the "Finding and Order" of the Ohio Public Utilities Commission that granted a temporary waiver to the applicant rural LECs in that state "until the LNP obligations of the small, rural local telephone companies and the role of the state commissions is clarified" by the FCC. In the Matter of the Application of the Following Companies for Suspension or Modification of the Federal Communications Commission's Requirement to Implement Wireline-Wireless Number Portability Pursuant to 47 U.S.C. § 251(f)(2): Minford Telephone Company, *et. al.*, Case Nos. 04-428-TP-UNC, *et. Seq.* (*Ohio Order*). The Ohio Commission, in considering the public interest, specifically commented on all of the uncertainties presently surrounding intermodal LNP implementation, concluding that "without completing [its] financial review and without knowing whether wireline-to-wireless LNP is something which applicant's customers would find beneficial, it is hard for the Commission to judge at this point whether the benefits to be gained by applicant's customers with intermodal LNP, outweigh the potential increased rates applicants' customers will have to pay."[21] Contrary to the picture portrayed by Western Wireless, many states have already granted a waiver or suspension of the LNP requirements to rural carrier applicants operating within their jurisdictions. The NeuStar report, referenced herein, confirms this fact.

Western Wireless in its brief criticizes the testimony of Mr. Watkins as being too "broad and general." It is alleged that the testimony is "not derived from any kind of review of these Petitioners' situations or even the State of South Dakota" and argued that the testimony should be rejected by this Commission. These statements challenging the foundation and/or value of Mr. Watkins are ridiculous. First, Petitioners would note that the argument is surprising because it

[20] *Nebraska Order* at 14.
[21] *Ohio Order* at p. 16.

appears that Western Wireless is now attempting to make some foundational argument related to Mr. Watkins' testimony, yet at the hearing prior to the admission of Mr. Watkins' testimony no similar argument was presented. Western Wireless' counsel did not object to the admission of Mr. Watkins' prefiled testimony. More importantly, however, these statements simply are a misrepresentation of the record insofar as they attempt to portray Mr. Watkins as being unfamiliar with the South Dakota Petitioners' circumstances and unable to testify as to the actual impact that LNP implementation issues will have on each of their operations.

Substantial information is presented on the record as to Mr. Watkins' background as an individual whose entire career has been devoted to serving smaller telecommunications firms which provide service to small-town and rural areas. (SDTA EXH 1, Attachment A, pp. 1, 2). He has since 1996 been self employed as a consultant assisting specifically smaller, rural, independent local exchange carriers and competitive local exchange carriers in their analysis of regulatory and industry issues, including issues related to universal service mechanisms, interconnection requirements, and cost recovery. Prior to that time he was employed by the National Telecommunications Cooperative Association (NTCA) for 12 years working as Senior Industry Specialist. NTCA is a national trade association representing approximately 500 small, locally owned and operated rural telecommunications providers. Before his employment began with NTCA, Mr. Watkins worked for the consulting firm of John Staurulakis, Inc.. which also specializes in providing regulatory assistance to small local exchange carriers. Mr. Watkins' background information indicates that he has 28 years of experience in the telecommunications industry, all focused on assisting small and rural LECs. To argue as Western Wireless has that Mr. Watkins' testimony and the information and conclusions provided therein are not based sufficiently on the circumstances faced by the Petitioners in this case, ignores Mr. Watkins' extensive

experience in the rural telecommunications industry, and his familiarity gained through that experience with South Dakota's rural carriers.

In claiming that Mr. Watkins' testimony is not specific to any Petitioner, Western Wireless also claims that Mr. Watkins did no "independent evaluation" of any of the Petitioners. Apparently, Western Wireless counsel reaches this broad conclusion from the following question and answer occurring during Western Wireless' cross-examination of Mr. Watkins during the hearing:

> Q. Okay. And as I have read your testimony, nowhere in your testimony do you single out a specific Petitioner and talk about how LPN may impact it specifically financially.
>
> A. No. (TR p. 509.)

Petitioners strongly object to the claims by Western Wireless suggesting that Mr. Watkins did no evaluation, at all, concerning the South Dakota Petitioners. Western Wireless has obviously exaggerated the above cited answer given by Mr. Watkins, and has completely ignored the fact that Mr. Watkins' testimony was provided in conjunction with the testimony of other Petitioners, and that Mr. Watkins' testimony concerning specifically the costs of LNP for rural carriers in South Dakota, the consumer demand for LNP in South Dakota's rural areas, and the transport and routing issues is based on the information provided by the testimony of other Petitioner witnesses. A review of Mr. Watkins' testimony indicates very clearly that this is the case. SDTA EXH pp. 9, 10, 14, 15, 19, 20, 36, 37; TR p. 512, 518. Mr. Watkins reached his conclusions that support a finding that each LNP suspension request meets the federal standards, including the public interest standard, based not only on his general knowledge as an expert working for rural carriers across the United States, but also based on carrier-specific information provided by the other Petitioner witnesses in these proceedings. It is simply wrong for Western

Wireless to suggest that Mr. Watkins' testimony is non-specific and not based on the actual circumstances faced by the Petitioner LECs.

With regard to Staff's analysis of the public interest, convenience, and necessity standard, which is designated by Staff as the "final standard" under 47 U.S.C. §251(f)(2)(B) (Staff Brief at 6), Petitioners concur in part with Staff's analysis and disagree in part with Staff's analysis. Further, as discussed below, Petitioners concur in part with Staff's application of the public interest test, but Petitioners disagree with Staff's conclusion that some companies should not receive a suspension.

A. Cost/Benefit Analysis

Petitioners concur that this Commission must determine that a suspension or modification is consistent with the public interest, convenience, and necessity. Petitioners also concur that the public interest analysis involves a cost/benefit analysis:

> The Commission believes that its determination of the public interest in these cases inherently involves a cost versus benefit analysis. Nebraska Public Service Commission Order Granting Suspension, Page 13. (July 20, 2004) ("Nebraska Order").

> The Commission must consider the overall public interest in determining whether the requested relief should be granted . . . it is hard for the Commission to judge . . . whether the benefits to be gained by applicants' customers with intermodal LNP, outweigh the potential increased rates applicants' customers will have to pay. Public Utilities Commission of Ohio, Case Nos. 04-428-TP-UNC through 04-449-TP UNC, Finding and Order, Page 16 (July 20, 2004) ("Ohio Order").

1. Lack of Demand

Petitioners further concur with Staff that "[a] critical element in the analysis of whether LNP requirements should be suspended is whether the costs of LNP can be justified given the demand for the service." (Staff Brief at 10). "An analysis of the benefits of such implementa-

tion turns on whether there is a demand for intermodal LNP among the telecommunications users served by the applicants." (Nebraska Order at 13).

Petitioners would point out that the overwhelming evidence presented through prefiled testimony and at the hearing was that, in most cases, there is no demand for LNP.

Stockholm-Strandburg:

> Q. And have you had any demand for LNP from your customers?
>
> A. (By Ms. Nowick) No, we have not. (TR 344).

Venture:

> Q. . . . have you had very much demand for LNP?
>
> A. (By Mr. Houdek) To my knowledge, no customers have asked for wire-line-to-wireless LNP. (TR 414).

West River:

> A. (By Mr. Reisenauer) Being a cooperative or a member-owned organization, our goal is to provide those services that benefit our members. And after reviewing the LNP issues with our board of directors, we determined that the lack of request for porting of wireline number to wireless carrier, the excessive costs associated with implementing local number portability and the obvious lack of benefit to our members it was in our best interest to request a waiver . . . (TR 429).
>
> Q. Do you believe that LNP would be beneficial to your consumers at this point, your customers?
>
> A. I don't believe there's a demand for LNP and I don't believe it's beneficial at this point, no. (TR 446).

Golden West et al.:

> A. (By Mr. Law) . . . we feel that the local number portability issue in this Docket is a high-cost, low-demand avenue . . . (TR 770).

Armour et al.:

> A. (By Mr. Law) . . . Armour, Union and Bridgewater-Canistota feel that the economic burden of implementing local number portability greatly

outweighs any demand or consumer benefit for these areas . . . (TR 771).

Sioux Valley:

A. (By Mr. Law) . . . the implementation of local number portability would be an undue economic burden on the company and its consumers for virtually a minimum benefit. (TR 772).

Golden West, Armour, and Sioux Valley:

Q. What has been your experience with regard to demand by your customers for LNP?

A. (By Mr. Law) . . . I have received no requests from any customers from the affected companies for local number portability (TR 806).

Alliance – Splitrock:

A. (By Mr. Snyders) . . . we feel that because of the low customer demand and high cost of LNP we are not interested at this time in implementing LNP. (TR 814).

Q. If there were demand from your customers for LNP, you would hear about it or know about it, would you not?

A. That would be correct. (TR 822).

McCook:

A. (By Mr. Roth) I feel in the absence of customer requests for LNP, the high cost and the low demand of it, McCook Cooperative Telephone should not be required to provide intercompany LNP. (TR 825).

Kennebec:

A. (By Mr. Bowar) . . . We have conducted a survey and the results overwhelmingly indicate that a majority of my customers do not want to pay for LNP at any price . . . Bottom line, LNP implementation would have an extreme adverse impact with little or no benefit. (TR 949).

Q. (By Ms. Wiest) What do you think is the main reason for the lack of demand?

A. The coverage is not good. There's lack of coverage and lack of demand. My customers see no need for this. (TR 947).

Midstate:

A. (By Mr. Benton) I do not believe implementing wireline-to-wireless LNP is in the public interest based on the fact that Midstate has not received requests to date. The demographics of our area do not support implementation and internally we struggle with justifying the cost versus the benefit of implementing LNP to our members. (TR 969).

Q. (By Mr. Wieczorek) Do you understand that Mr. Davis has projected 60 ports a year for your company for the first five years of LNP?

A. I think he had to populate it with something. I think zero would have raised a red flag. (TR 973).

Beresford:

A. (By Mr. Hansen) Since we have received no customer requests for LNP it would seem that there is little interest, necessity or customer demand for the convenience of LNP. As such, it would seem to be in conflict with the public interest to require the implementation of LNP at this time because of the kind of costs that would be involved. (TR 982).

Q. (By Mr. Lewis) . . . you said that basically there's no customer interest for LNP, correct?

A. To the best of my knowledge, no. (TR 985).

Roberts County:

A. (By Ms. Harrington) . . . we have had no requests or demand for local number portability in our areas, and the cost of implementing it is significant and we feel that would be a detriment to our customers. (TR 1044-45).

See also Santel Ex. 1, Page 3. The managers for ITC, Swiftel, and Valley indicated their respective companies had received one or two inquires regarding wireline to wireless LNP. (TR 43, 294, 748).

While Petitioners appreciate Staff's point that "accurately estimating LNP demand, especially for wireline to wireless ports, is fairly difficult," (Staff Brief at 13), the overwhelming evi-

dence presented at the hearing by the managers who are in daily contact with their customers is that there is virtually no demand for LNP. Evidence of demand was also uncontroverted by Intervenors. WWC did not supply any company-specific empirical evidence on the issue of demand, and Midcontinent presented no evidence whatsoever on the issue.

Staff appears to ignore this plain, unrefuted evidence of clear lack of demand for LNP, which is paramount to a determination of public interest. "An analysis of the benefits of (LNP) implementation turns on whether there is a demand for intermodal LNP among the telecommunications users . . . " (Nebraska Order at Page 13, emphasis added). Thus, Staff's arrival at "a more realistic number" that "might be around one and one-half percent for the more densely populated areas that have adequate cellular coverage," is not consistent with the evidence presented at the hearing, which indicates no or minimal demand. (Staff Brief at 13, emphasis added).

2. Other Factors Affecting Public Interest

While demand for LNP by end users is paramount, other factors can affect that demand, which ultimately has an impact on application of the public interest test.

(a) Density of population in an exchange.

Petitioners concur with Staff's acknowledgment that the density of population in an exchange can affect the cost/benefit analysis of implementation of LNP (Staff Brief at Page 13). Despite this acknowledgment, however, Staff fails to consider density of population in its application of the public interest benefit. As will be discussed more fully below, the number of access lines a company has does not mean that the density per line is greater. Golden West, for example, has a high number of access lines, but very low density per line. (Golden West Ex. 1 and 2).

(b) Adequacy of cellular coverage.

Another factor that clearly impacts demand for LNP is the adequacy of cellular coverage, which Staff also acknowledges at one point in its Brief (Staff Brief at 13). In addition to the Commission's personal knowledge of the quality of cellular service in rural, low-density areas of South Dakota, there was evidence submitted at the hearing and in prefiled testimony of lack of cellular service in some of the areas and its effect on demand for LNP. For example, Marjorie Nowick from Stockholm-Strandburg testified to people making cellular calls into her service area because of "better call service" in bigger cities, while landline service is "better quality" within her service area. (TR 361). Rod Bowar from Kennebec cited lack of coverage as a reason for no demand by his customers for LNP.

> Q. (By Ms. Wiest) What do you think is the main reason for the lack of demand?
>
> A. (By Rod Bowar) The coverage is not good. There's lack of coverage and lack of demand. My customers see no need for this. (TR 947).

Additional evidence of lack of cellular coverage came from Valley's manager, Steve Oleson: "Valley's service area has approximately 25 percent or less cellular coverage . . ." (TR 740-741).

(c) Unresolved FCC issues.

It is uncontested that there are issues relating to LNP and provisioning of LNP that have not yet been resolved at the FCC level. The unresolved issues clearly impact the cost/benefits analysis. This has been recognized by other State Commissions when dealing with suspension or modification requests.

> In balancing the costs and benefits at stake in this case . . . we believe that the Applicants continue to face the technical obstacles observed by the FCC in its January 16, 2004, Order . . . by granting the suspension requested, the carriers may avoid wasting resources while the clarification necessary to effectively and efficiently implement wireline to wireless number portability is undertaken on the federal level. Nebraska

Order, Pages 13-14.

> [T]he Commission finds that the economic burden to the Independents and their respective end users is not justified until further issues resolution is forthcoming from the FCC and the courts with respect to the Independents' intermodal porting obligations. The *November 10 Intermodal Order* and the *2% Order* do not displace the need for this underlying policy consideration. Instead, the issuance of these decisions underscore the need for the Commission to determine whether the economic burden and the potential adverse economic ramifications for rural telecommunications users are outweighed by any speculative competitive public interest benefits. Mississippi Public Service Commission, 03-UA 918, Order, at ¶15 (May 24, 2004).

Clearly, the impact of future FCC decisions affects the public test, and that applies to all Petitioners.

B. Application of Public Interest Test

As noted above, Petitioners concur with some portions of Staff's Application of the public interest test, but disagree with other portions of its application of the public interest test.

Staff's analysis of demand does not take into account the clear and uncontroverted evidence presented by the managers. Instead, Staff appears to review the evidence of cost consultants and arrive at its own "guesstimate" of demand:

> A more realistic number might be around one and one-half percent for the more densely populated areas that have adequate cellular coverage. Staff would expect the percentage to be lower in less densely populated areas with less than adequate cellular coverage. (Staff Brief at 13, emphasis added).

Staff's use of the words "might be around" to describe possible number of ports clearly is speculative at best, and fails to acknowledge actual evidence presented of lack of demand.

Further, despite Staff's reference to more densely populated areas and lack of coverage, Staff appears to apply the one and one-half percentage in a straight multiplication of the number of a company's access lines. The illogical result of this methodology is that for all large compa-

nies, Staff recommends denial of suspension, for medium-sized Staff recommends shorter suspension, and for small companies, Staff recommends a longer suspension. That methodology is not a valid comparison. Spreading the costs over a larger number of subscribers is not an accurate application of the cost versus benefit analysis. Furthermore, Staff, for the most part, failed to recognize the other factors it acknowledged affected demand, such as density of population and quality of service. Finally, Staff failed to uniformly apply the unresolved FCC issues to all Petitioners, even though resolution of the issues by the FCC will affect every Petitioner.

Petitioners would submit that Staff failed to apply the public interest test uniformly and consistently to each "group" (arbitrarily assigned) of companies. All carriers clearly established lack of demand. There was no evidence presented that a continued suspension would adversely impact consumers. All carriers demonstrated that LNP is costly. The fact that carriers with larger numbers of subscribers have the ability to spread the costs to more people begs the public interest question. What is the benefit to the consumer? Whether the cost to each consumer in a small exchange computes to more and the cost to each consumer in a larger company may be less because it is spread over a larger group, the fact remains that each consumer ends up paying for a service for which the evidence in the record establishes no demand exists. As stated by one of the managers, "Some of our lower income or elderly people that don't have a cell phone, don't ever care to have a cell phone, certainly don't care to port numbers. You know, you put 25 cents on their bill, that's too much." (TR 395).

Further, Petitioners note that Staff proposes a different recommendation for companies for which LNP will impose the same per-line cost and for which Staff estimates demand at the same percentage level (i.e., Brookings and Alliance/Splitrock and Santel and Sioux Valley).

Staff also failed to acknowledge that unresolved FCC issues affect all Petitioners, including the larger carriers for whom Staff recommends no suspension. Petitioners submit that it is in the public interest for all Petitioners to be granted a suspension of the requirement to implement LNP until the FCC clarifies outstanding issues. Such action would be consistent with the Orders from other State Commissions.

> [T]he Commission finds that the economic burden to the Independents and their respective end users is not justified until further issues resolution is forthcoming from the FCC and the courts with respect to the Independents' intermodal porting obligations. (Mississippi Order, ¶15).

> [I]n light of the current uncertainty relative to the economic burden of small, rural, local exchange companies, the Commission believe that it is appropriate to grant a temporary waiver in the pending applications until the LNP obligations of the small, rural, local telephone companies and the role of the state commissions is clarified. (Ohio Order, ¶10).

All of the Petitions pending before this Commission are from "small, rural, local telephone companies." Some are smaller than others, but the "potential economic burden on [South Dakota] companies and their customers" must cause this Commission great concern. Coupled with the lack of evidence of adverse impact to customers, and evidence of lack of demand for LNP, this Commission should grant a suspension to all Petitioners.

IMPLEMENTATION TIMEFRAMES IF ANY IMPLEMENTATION OF LNP IS ORDERED AT ALL

In Petitioners' initial brief and in this reply brief, it has been demonstrated that LNP is not justified. And in their initial brief, Petitioners requested that the current suspensions remain until cost and demand are better balanced from a public interest perspective. Further, suspensions should remain until a time no earlier than the courts and the FCC resolve outstanding LNP issues, including rulemakings, and that some period of time be allowed to provision hardware and software, and administrative processes. (Petitioners also seek confirmation that, under no

circumstances will they be required to transport calls outside their local calling areas.) (Petitioners initial brief, pp. 54-55).

Both the Staff brief, and the Western Wireless brief, contain different positions as to when LNP implementations should occur – both different from Petitioners' position and different from each other. Foregoing sections of this brief support the Petitioners' suspension/modification requests. This section concerns their positions vis-à-vis the timing of any LNP implementations, should any occur at all.

In this respect, Western Wireless urges that all companies, except for three non-settling companies, be required to implement LNP within 60 days from any Order requiring LNP implementation. It says, without any elaboration, that a grant of more than 60 days would "reward" other Petitioners "who have held on to unreasonable proposals." (Western Wireless brief, p. 42). That Western Wireless' proposed 60 day rule is purely arbitrary can be seen by its inconsistent agreement, with James Valley and the Cheyenne River Sioux Tribal Authority, to LNP suspension for 90 days. (Id., p. 41) The 60 day proposal of Western Wireless thus should be rejected as having no basis in either law or fact.

In any event, Petitioners note that James Valley and CRST could implement LNP in approximately 90 days because they already had started the implementation process. For example, James Valley already had completed the necessary software upgrades to the switching equipment to provide LNP for their CLEC operations. Thus, it is clear that 90 days would not be sufficient for carriers, such as Petitioners, that have not begun the implementation process.

The staff brief takes a more logical approach than Western Wireless, assuming arguendo that any LNP implementation should be required before the events described in Petitioners' initial brief, and alluded to earlier. Specifically, staff recommends that three implementation

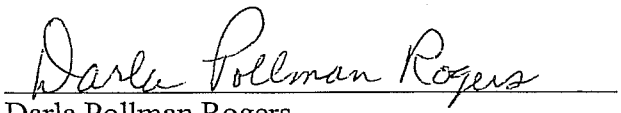
schedules obtain. For one group of companies, the implementation schedule would begin almost immediately. For another group of companies, implementation would begin May 24, 2005 -- a one year extension from the original implementation date. For the third group of companies, implementation would begin May 24, 2006. (Staff brief, pp. 15-17).

The substantive reasons for continuing the suspension of all companies, as originally requested, are discussed elsewhere in this reply brief, and are not repeated here. Assuming any implementation were to occur at all as a result of this proceeding, however, Petitioners respectfully suggest that May 24, 2006, be used as that date. This request is grounded upon the practical consequences of what is likely to happen if May 24, 2005, is used as the earliest implementation date for companies obtaining further suspensions. Assuming a written Commission decision issues in this matter during the month of September, 2004, there only will be nine months to assess whether circumstances have changed to warrant further action by the Commission. This period of time can easily be filled with assimilating the continuing fall-out from the FCC's pending rulemakings on porting intervals and wireless to wireline porting, not to mention the tasks needed to track hardware and software costs, and the further softening (or firming-up) of consumer demand for intermodal LNP. In short, the parties and the Commission are likely to become engaged in the time and resource consuming process of re-evaluation of LNP almost as soon as the ink is dry on any Commission Order. Petitioners respectfully submit that, if any implementation is ordered at all, such not occur until May 24, 2006, at the earliest, so that at least 1-1/2 years' worth of experience can be gained before this matter is re-evaluated.

CONCLUSION

For all of the foregoing reasons, Petitioners respectfully request this Commission to suspend and modify each Petitioner's obligation to implement local number portability.

RESPECTFULLY SUBMITTED this twenty-seventh day of August, 2004.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the original and ten copies of the foregoing REPLY BRIEF OF PETITIONERS AND SDTA upon:

Ms. Pamela Bonrud
Executive Director
SD Public Utilities Commission
500 East Capitol Ave.
Pierre, South Dakota 57501

and a copy upon the persons herein next designated, on the date below shown, via e-mail, and by depositing a copy thereof in the United States mail at Pierre, South Dakota, postage prepaid, in an envelope addressed to each said addressee, to-wit:

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE LOCAL NUMBER PORTABILITY SUSPENSION DOCKETS	))))))	ORDER TEMPORARILY SUSPENDING LOCAL NUMBER PORTABILITY OBLIGATIONS TC04-025, TC04-038, TC04-044-056, TC04-060-062, TC04-084

Between February 12, 2004 and April 23, 2004, petitions in the above-numbered dockets were filed by the rural local exchange carrier petitioners (Petitioners) pursuant to 47 U.S.C. Section 251(f)(2) and SDCL 49-31-80 seeking suspension or modification of their requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. The Commission issued orders granting intervention to WWC License LLC d/b/a CellularOne and the South Dakota Telecommunications Association in all of the above dockets and to Midcontinent Communications (Midco) in dockets TC04-038, TC04-044, TC04-050-051, TC04-054-056, and TC04-060-061. Midco subsequently withdrew from dockets TC04-056 and TC04-061. The Commission issued orders granting Petitioners' requests for interim suspension of their obligation to implement LNP pending final decision pursuant to 47 U.S.C. Section 251(f)(2) of the Telecommunications Act of 1996 and SDCL 49-31-80. On June 21-July 1, 2004, a hearing was held on these matters and dockets TC04-077 and TC04-085, which have been settled, in which rural LECs seek to suspend their obligations to implement LNP. On July 15, 2004, the Commission issued orders temporarily suspending the LNP obligations of Kennebec Telephone Company and Santel Communications Cooperative, Inc. until September 7, 2004, in order to accommodate the briefing and decision schedule. On August 31, 2004, the Commission voted unanimously to grant Petitioners' requests for suspension of intermodal LNP obligations until December 31, 2005, and deferred decision with respect to intramodal number portability. Commissioner Burg dissented from that part of the decision establishing a definite date for termination of the suspension.

The Commission has jurisdiction in this matter pursuant to SDCL 49-31-80, Section 251(f)(2) of the Telecommunications Act of 1996, 47 U.S.C. § 251(f)(2) and ARSD 20:10:32:39.

Pursuant to 47 U.S.C. § 251(f)(2) and SDCL 49-31-80, the Commission is required to render its decision in this matter within 180 days after the filing of the petition. The Commission has determined that it is in the public interest to grant a temporary suspension of LNP requirements to Petitioners until September 30, 2004, to enable the Commission to consider and decide the deferred issue of intramodal number portability and to provide adequate time for the writing of the numerous final decisions in these dockets. It is therefore

ORDERED, that Petitioners' obligations to implement local number portability is temporarily suspended, pursuant to 47 U.S.C. § 251(f)(2) and ARSD 20:10:32:39, until September 30, 2004, by which date the Commission will issue a final decision in these dockets.

Dated at Pierre, South Dakota, this 4th day of September, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 9/7/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

ROBERT K. SAHR, Chairman

GARY HANSON, Commissioner

JAMES A. BURG, Commissioner

RECEIVED
SEP 10 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF KENNEBEC TELEPHONE COMPANY FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-025
IN THE MATTER OF THE PETITION OF SANTEL COMMUNICATIONS COOPERATIVE, INC. FOR SUSPENSION OF INTERMODAL LOCAL NUMBER PORTABILITY OBLIGATIONS	TC04-038
IN THE MATTER OF THE PETITION OF SIOUX VALLEY TELEPHONE COMPANY FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-044
IN THE MATTER OF THE PETITION OF GOLDEN WEST TELECOMMUNICATIONS COOPERATIVE, INC., VIVIAN TELEPHONE COMPANY AND KADOKA TELEPHONE COMPANY FOR SUSPENSION OR MODIFICATION OF THE 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-045
IN THE MATTER OF THE PETITION OF ARMOUR INDEPENDENT TELEPHONE COMPANY, BRIDGEWATER-CANISTOTA INDEPENDENT TELEPHONE COMPANY AND UNION TELEPHONE COMPANY FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-046
IN THE MATTER OF THE PETITION OF BROOKINGS MUNICIPAL UTILITIES D/B/A SWIFTEL COMMUNICATIONS FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-047

ORIGINAL

IN THE MATTER OF THE PETITION OF BERESFORD MUNICIPAL TELEPHONE COMPANY FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-048
IN THE MATTER OF THE PETITION OF MCCOOK COOPERATIVE TELEPHONE COMPANY FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-049
IN THE MATTER OF THE PETITION OF VALLEY TELECOMMUNICATIONS COOPERATIVE ASSOCIATION, INC. FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-050
IN THE MATTER OF THE PETITION OF CITY OF FAITH TELEPHONE COMPANY FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-051
IN THE MATTER OF THE PETITION OF MIDSTATE COMMUNICATIONS, INC. FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-052
IN THE MATTER OF THE PETITION OF WESTERN TELEPHONE COMPANY FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-053
IN THE MATTER OF THE PETITION OF INTERSTATE TELECOMMUNICATIONS COOPERATIVE, INC. FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 521(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-054
IN THE MATTER OF THE PETITION OF ALLIANCE COMMUNICATIONS COOPERATIVE, INC. AND SPLITROCK PROPERTIES, INC. FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-055

IN THE MATTER OF THE PETITION OF RC COMMUNICATIONS, INC. AND ROBERTS COUNTY TELEPHONE COOPERATIVE ASSOCIATION FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-056
IN THE MATTER OF THE PETITION OF VENTURE COMMUNICATIONS COOPERATIVE FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-060
IN THE MATTER OF THE PETITION OF WEST RIVER COOPERATIVE TELEPHONE COMPANY FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-061
IN THE MATTER OF THE PETITION OF STOCKHOLM-STRANDBURG TELEPHONE COMPANY FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-062
IN THE MATTER OF THE PETITION OF JAMES VALLEY COOPERATIVE TELEPHONE COMPANY FOR SUSPENSION OF INTERMODAL LOCAL NUMBER PORTABILITY OBLIGATIONS	TC04-077
IN THE MATTER OF THE PETITION OF TRI-COUNTY TELCOM, INC. FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-084
IN THE MATTER OF THE PETITION OF CHEYENNE RIVER SIOUX TRIBE TELEPHONE AUTHORITY SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-085

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS: August 31, 2004
1:30 P.M.
Room 412, Capitol Building
Pierre, South Dakota

PUC COMMISSION: Robert Sahr, Chairman
Gary Hanson, Vice-Chairman
Jim Burg, Commissioner

COMMISSION STAFF: John Smith
Rolayne Ailts Wiest
Gregory Rislov
Pam Bonrud

REPORTED BY: Lori J. Grode, RPR/RMR

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Roberts County and RC, Sioux Valley,
Stockholm-Strandburg, Tri-County, Valley,
West River, and Western;

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LARSON & NIPE, Attorneys at Law, P.O. Box 277, Woonsocket, South Dakota, 57385, appearing on behalf of Santel;

ALSO APPEARING:
MARY LOHNES, Midcontinent
JIM ATKINS, Swiftel
RON WILLIAMS, Western Wireless
DOUG EIDAHL, Vantage Point

PROCEEDINGS

CHAIRMAN SAHR: Good afternoon. This is the time and place for the closing oral arguments in the LNP dockets.

We're here in Room 412, in Pierre, at the State Capitol. It is approximately 1:30 p.m. on August 31st, 2004. With me here in Pierre is Commissioner Jim Burg, and joining us on the phone line is Vice Chairman Gary Hanson. And I am Chairman Bob Sahr of the South Dakota Public Utilities Commission.

The first thing I'll do is ask the people who are on the phone line to please state your name and who you are affiliated with.

MR. DICKENS: Chairman Sahr, this is Ben Dickens and Mary Sisak. We're appearing with Darla Rogers today, and we're also appearing separately for the City of Brookings.

CHAIRMAN SAHR: Thank you.

MR. LARSON: Chairman Sahr, this is Jeff Larson, appearing on behalf of Santel.

CHAIRMAN SAHR: Thank you. Is there anyone else other than Commissioner Hanson on the phone line?

MR. WILLIAMS: Chairman Sahr, this is Ron

Williams with Western Wireless.

CHAIRMAN SAHR: Okay.

MS. LOHNES: Chairman, this is Mary Lohnes.

MR. EIDAHL: Doug Eidahl, Vantage Point.

CHAIRMAN SAHR: And was this Mary from Midcontinent?

MS. LOHNES: Yes.

CHAIRMAN SAHR: Thank you. This is Jim Atkins from the City of Brookings, Swiftel Communications.

CHAIRMAN SAHR: Is there anybody else?

All right. Let's -- we can stay on the record, but let's try to figure out what order we're going to go in. John has informed me, Darla, you're going to go first and then Ben?

MR. DICKENS: Yes, or Jeff Larson.

CHAIRMAN SAHR: Okay. Rich? Tal?

MR. WIECZOREK: Sure.

CHAIRMAN SAHR: Dave and then staff.

MS. WIEST: Sure.

CHAIRMAN SAHR: Does that work?

MS. WIEST: Works for me.

CHAIRMAN SAHR: Is there anyone else that I missed who's going to be making oral argument? If not, the floor is yours, Darla.

MS. ROGERS: Thank you very much. My name is Darla Pollman Rogers, and I represent all of the petitioners in this case, with the exception of Santel Communications, which is Docket TC 04-038, and Brookings Municipal Utilities, doing business as Swiftel Communications, which is Docket TC 04-047.

Members of the Commission: In my opening statement, given what seems like light years ago now, I refer to this entire LNP suspension modification process as "our LNP journey." Here we are a few months later, the pleadings have all been filed, the discovery has been completed, there have been a -- there has been a long series of hearings conducted, exhibits and corrected exhibits have been introduced, and the issues have been thoroughly briefed by all of the parties and by staff.

So we come to the end of this phase of the journey. And on behalf of all of the petitioners that I represent, I want to thank you for your time and your attention throughout this process that was at times arduous. There is little more, in my opinion, to be said, so I'm going to keep my comments to you today very brief.

In preparation for these closing arguments today, I went back and reviewed my notes of my opening statement, as well as the notes of staff's opening statement. And at the outset of these dockets, we, as petitioners, asked you to do several things:

We, first of all, pointed out your jurisdiction and your authority and your responsibility to suspend and/or modify LNP obligations under 47 USC 251(f)(2) and also pursuant to SDCL 49-31-80. And your authority to do so has basically not been disputed throughout this process.

We also tried to point out for you, as did the commission staff in its opening statement, some of the key issues that we would request you to focus on. The first one was the costs of LNP. And we pointed out to you that we would establish, as petitioners, that there are significant adverse economic impact -- or this is a significant adverse economic impact on subscribers.

We would also show that provisioning of LNP would be unduly economically burdensome to the companies.

The second issue we asked you to focus on was the transport and routing issues associated with LNP.

The third thing we pointed out to you was unresolved issues at the federal level.

And, finally, we asked you to look at the public interest, including a cost benefit analysis.

I'm not going to replow that ground. And I trust that you have focused on all of those factors throughout the hearing. I would, however, like to direct your attention to the three points today. The first one is the transport routing issues associated with LNP. And I would like to bring these up again and review them because of their significance to our petitioners.

The petitioners have maintained throughout this process that they have no legal obligation to transport traffic to points beyond their service territories whether the traffic is associated with ported numbers or not.

Under the provisions of 47 USC Section 251(c)(2)(b), incumbent LEC's are required to provide interconnection only at a "technically

feasible point within the carrier's network."

Staff apparently reached the same conclusion with regard to the responsibility for transport. Quoting from staff's brief, staff stated: Staff's position is that the Commission should find that an RLEC is not responsible for the cost of transporting LNP traffic outside of its exchange area and that a local exchange company shouldn't be required to transport local exchange calls beyond its local exchange area.

Petitioners concur with and support this aspect of staff's recommendation, and we would urge the Commission to modify petitioners' LNP obligations pursuant to Section 251 of the Act to clearly state that each petitioner is not required to transport calls beyond its local exchange area.

Having said that, however, I would point out that that does not resolve all of the transport and routing issues. Uncertainties still exist.

First of all, at the FCC level, the FCC has yet to address the transport and routing issues. What we have referred to as the Sprint petition is currently pending, and there are other appeals wherein the FCC may address these issues, but

that has not transpired to date.

There is Western Wireless' position. They have said that it's petitioners' responsibility for transport, and they proposed Qwest as a transiting possibility without further evidence of whether or not that is a viable option.

The staff said do not require direct connections or any specific routing methods. The RLEC and the requesting carrier can negotiate the method of transport. And, of course, the petitioners' position has been that direct connections are necessary either within each exchange or within each host and stand-alone switch exchange area.

So what is the answer? I'm not sure I can tell you the exact answer. But what I can suggest to you is that you follow the example of the Nebraska Commission in its recent ruling and conclude as the Nebraska Commission has that indirect connections are technically infeasible presently and that resulting transport costs "would indeed be a part of the costs associated with implementation of LNP and that such costs would either be an additional significant adverse economic impact on end users, or would be an

undue economic burden on the local exchange carriers." And that's from the Nebraska Order at pages seven and pages ten through eleven.

The second point I would like to make to you today is that we're at a different point in the LNP history, so to speak, than we were at the beginning of these proceedings. You, as a Commission, now have other input to consider than you had at the start of this process.

FCC Chairman Powell wrote a letter to the president of NARUC, dated June 18th of 2004. And in that letter he stated -- and I would also point out that letter is part of the record in this case -- "I urge state commissions to consider the burdens on small businesses in addressing those waiver requests and to grant the requested relief if the state commissions deem it appropriate."

In addition, there have been other decisions of the state commissions. We provided a summary of those decisions in our Reply Brief. Approximately 250 LNP suspension requests have been filed or submitted in 38 states on behalf of approximately 786 local exchange carriers, and this is as of June 2004.

The vast majority of states have granted relief of one form or another, either temporary or permanent suspension to rural LEC's. So I would submit to you that you are not plowing new ground here, so to speak. And I would also urge you as a Commission to look at what the majority of what other state commissions have done and grant the relief requested by the petitioners herein.

The third point that I would make to you concerns the public interest. Are the suspensions and modifications requested herein consistent with public interest, convenience, and necessity? And I would submit to you that the overwhelming evidence is that they are.

A determination of the public interest relating to the LNP suspension petitions involves a cost versus benefit analysis. The costs were thoroughly analyzed throughout the proceedings. Petitioners have clearly demonstrated the significant adverse impact on users and the undue economic burden on carriers. The staff apparently concurs that all petitioners have met one or both of these cost tests.

The Nebraska Commission recently stated that

an analysis of the benefits of such implementation turns on whether there is a demand for LNP among the telecommunications users served by petitioners.

The record clearly establishes that little or no demand exists. All but three of the managers who testified on behalf of the petitioners presented direct testimony that they have had no demand for LNP. Think about that. Not one request in their areas for LNP. This included some of the larger carriers as well, including Golden West, Alliance, and Venture.

Petitioners disagree with staff's conclusion that the public interest test is not met for all petitioners. There is no evidence of higher demand in the grouped three exchanges. Even assuming a 1.5 percent porting rate, which was estimated by staff and was concededly a guess, that is a very small percentage of customers sustaining a very costly luxury of LNP for only a few subscribers.

The per line impact on customers has been demonstrated to be significant for all South Dakota consumers regardless of whether their carrier is large or small even though even among

the larger companies there is no evidence of higher demand. And, in fact, the evidence establishes that some of the largest companies have the lowest densities, which even staff concedes density has an effect on demand.

The cost does not get any better for consumers of larger companies. As we pointed out in our brief, the bottom line is this: The benefit picture does not improve for customers of a large company. I would also point out to you, as was considered by the Nebraska Commission, that there was no evidence submitted that a suspension would adversely impact consumers because there hasn't been any demand.

How many more surcharges are we going to add to customers' bills for services they don't want and will never use? I would submit to you that any cost is too high for customers that -- for a service that customers do not want.

I ended my opening statement with a picture for you and that was a public interest scale. And I said it was like the Scales of Justice, or a teeter-totter, whichever you prefer to look at. Actually, the Nebraska Commission did essentially the same thing in its final analysis of the

public interest.

So if you picture our Scales of Justice -- and remember we said that the public interest element or test involves weighing the cost versus benefit analysis. And on the cost side what do we have? We have the actual costs. Implementation of LNP and those costs, even if you set aside transport for a moment -- which, of course, you can't do -- are considerable.

Number two, we have the economic obstacles that still exist.

Number three, we have the unresolved issues, including porting interval.

And, number four, and that spills over into number three, is the transport routing issues that are unresolved yet.

All of those are on the cost side. Now, what's on the benefit side? Lack of demand. That's what the evidence showed. Clearly, then, the scale, the balance of the scale, tips in favor of granting the suspensions requested.

Based on the evidence and the record before this Commission, we urge you to find, as the Nebraska Commission did, that the petitioners have sustained their burden of proof pursuant to

47 USC Section 251(f)(2)(b) that suspension and modification of the requirements of local number portability and the November 10th order of the FCC is consistent with the public interest, convenience, and necessity.

Finally, we would add, as requested in our Reply Brief, that if any implementation is ordered at all, it shouldn't occur until May 24th of 2006 at the earliest so that at least 18 months of experience can be gained before this matter is re-evaluated.

Thank you again for your attention.

CHAIRMAN SAHR: Thank you. Mr. Dickens.

MR. DICKENS: Thank you, Mr. Chairman. I'll be very, very brief.

We would concur in the remarks by Ms. Rogers. The only thing I would add is that I know your schedule here for Midco here today on intermodal LNP. We've covered that topic in our brief. We do not belief that intermodal LNP is justified from a cost benefit analysis. We discussed that, for instance, on page 12 of our Reply Brief. And we would rest on that brief, and that concludes my remarks.

CHAIRMAN SAHR: Thank you very much.

Mr. Larson.

MR. LARSON: Thank you. Also I am not going to add a great deal to what Darla has presented to the Commission.

My client's situation is obviously similar to everyone else's. I would like to point out just two very brief things: In the discussion about costs and the argument that intervenors have used showing substantially lesser costs in certain situations, I would like to point out that it has been the history of these petitioners and our desire at this time to always provide quality service.

And that I don't think we want to provide a situation or buy into a situation where we would be giving any kind of service unachieved, which suggests that the costs presented in evidence by the petitioners are the costs that need to be considered and why they therefore meet the statutory requirement.

And, lastly, that none of us -- I don't mean to be demeaning. I suggest this to myself and I advise clients, the court, or commission, we don't check our common sense at the door. There is no -- it's almost uncontroverted there is no

demand for this service. And I would suggest to you, as Darla alluded, that this is not going to change by next spring; and that therefore if anything would be granted, we would certainly ask that it be at least spring of 2006. And that's all I'd have. Thank you very much.

CHAIRMAN SAHR: Thank you very much. Mr. Coit.

MR. COIT: Thank you. I would also like to thank you, the Commission, for all of the time spent during the hearings process. And I would also like to thank you for the opportunity for these arguments today.

I also concur in Ms. Rogers' comments. SDTA presented testimony through one witness in this case, Mr. Steven Watkins. And Mr. Watkins commented on the various standards and the evidence as weighed up against those standards for judging these LNP suspensions, but his primary emphasis was on the public interest analysis. And in argument today, I would just like to focus in on, I think, a couple of the more important considerations within that analysis.

In our initial brief before the Commission,

we had set forth, I think it's pages 41 through 53, a list of the various reasons why we don't believe it is in the public -- or we do believe it is in the public interest to grant all of their requested suspensions. Staff is suggesting -- or is recommending that certain companies not receive a suspension.

We don't agree that the public interest factors or the public interest analysis is any different really in terms of the result, what the result should be. We believe that all of the companies, if you look at it, look at the standards that are there, and looking at the public interest in particular, deserve a suspension.

First -- and Ms. Rogers discussed this at length here, that the lack of demand -- Mr. Watkins, in his testimony, discussed the lack of demand and explained that at least in his opinion, you know, the reasons that you don't have any real demand for this particular service -- and speaking specifically to intermodal portability -- is the fact that the services today, anyway, are not really viewed as substitutes, but are viewed as complimentary

services.

So you just don't have much consumer interest in taking the same telephone number and moving it to the completely different service. That's not to say that doesn't happen. But there's just not that many customers that are interested in doing that. And that's borne out with respect to, you know, the nationwide numbers that were presented in some of the testimony.

And then, in addition to that, the demand, I think you can assume, is pretty minimal, very minimal because of the poor wireless coverage in South Dakota.

There are probably other reasons why there isn't much demand, but it's very clear from the record in this case that today there really isn't. There's little, if any, demand. And that, to me, is the most significant thing that sticks out in the public interest analysis.

The other thing that is an issue or a factor that I think equally has to be considered for all of the companies are the unresolved issues at the federal level. Right now we have at the federal level a number -- I know of at least two proceedings that are pending that will impact

these LNP obligations and the cost of those obligations.

You've got the FCC further notice of proposed rule making. We don't exactly know what the timeline is on that, but we know that it's there. We know that there's a rush to try to resolve some of these issues. We've got the Sprint petition proceeding that is to address the transport obligation issues.

We also have a pending appeal in the U.S. Court of Appeals that was brought by USTA, NTCA, and some other national telephone organizations. And I, as of today, don't know exactly what the timeline is for -- none of us know exactly what the timeline is for the decision in that case, but that appeal is pending.

And to the extent that certain companies are not granted a suspension, effectively they're going to be stripped of those appellate rights. You're not going to give that -- you're not going to give them a chance to wait for that decision and see exactly, you know, what their obligations are. And, clearly, that case, as well as the FCC cases that are pending, will impact LNP costs.

Staff is recommending, and we agree, that

rural LEC's are not responsible to carry traffic outside of their service areas. We don't know today, though, what the FCC's decision is going to be on the transport. And, very clearly, those decisions could impact LNP costs.

If you look at the other state decisions, Western Wireless, in its brief, had referenced a decision in New York and a decision in Michigan. There are a lot of decisions out there. As Ms. Rogers pointed out, the majority of those decisions are in favor of granting suspensions or modifications for some period of time.

I think I quoted -- we quoted in the -- mentioned in the Reply Brief that as of the end of June there were 18 states out of the 35 states that had suspensions pending or before them that 18 states already have granted some relief to rural LEC's.

I would, in particular, like to refer the Commission to the decision of the Ohio Commission, the Nebraska Commission, and the Mississippi Commission, all of whom gave weight to the fact that there were issues unresolved at the federal level. Specifically noted, that those decisions will impact LNP costs, and for

that specific reason -- or along with other reasons decided that the suspensions should be granted that were requested, or at least some level of suspension should be granted.

I think the other thing to remember is that there is an LNP surcharge that has to be established. And to the extent that the costs aren't known at the time that that LNP surcharge has to be established, companies are in the position of having to change that down the road. And if they have to change that, they actually have to get a waiver of the FCC rules to change that surcharge.

And from the research that we've done, it doesn't appear in looking at past FCC decisions that that sort of a waiver is going to be very kindly at all. That being the case viewed, you know, it really puts the companies in the position of having to determine what their LNP costs are and put it in a charge before the decisions are made at the federal level that will definitely impact those costs.

The last thing that I would like to spend a little bit of time commenting on is the transport option issue.

We spent a lot of time at the hearing discussing various transport options.

In Western Wireless, throughout the hearing, tried to portray that transport issue as being a pretty simple one. And they suggested on numerous occasions during the hearing that their proposal would be more efficient and less expensive to implement than the direct connection proposals forwarded by petitioners.

These Western Wireless claims, in our view, only look at the transport issue from Western Wireless' perspective, and they really give absolutely no consideration to the actual financial impact on the rural LEC's.

As reflected in the testimony of Mr. Houdek, Mr. DeWitt, and others, Mr. Bullock, if rural carriers with their limited service areas are ultimately forced to bear the burden of transporting landline calls to ported wireless numbers, all the way to a serving LATA tandem, and are forced to exchange these calls with Western Wireless and all other wireless carriers as local calls, the impacts will be "huge" for all the petitioners.

We commented on this in our Reply Brief, and

I'm -- just to give you an idea, I'm guessing, of the impacts. If landline carriers must consider landline calls for a ported number served by a wireless carrier as local and are also required to take on the responsibility to transport that traffic to a location outside of their existing local calling areas or service areas, there are a number of financial impacts.

Not only will there be additional direct costs associated with LNP implementation, there will be impacts on other LEC revenues. If the traffic to ported numbers is considered local, the LEC minutes flowing through the separations process that is utilized to establish federal and state access rates will be affected.

There will be a resulting increase in local traffic, and this increase will translate into a greater shift of cost recovery to the intrastate jurisdiction. This, in turn, will require higher local exchange service rates and/or intrastate access rates.

In addition, if the traffic is considered local and not subject to access charges, customers will be encouraged to bypass to an even greater extent the current landline total

networks. Increased bypass will lead to fewer access minutes and higher intraaccess state charges. The business of landline toll carriers competing will also be impacted. If landline to landline calls moving from one landline local calling area to another landline calling area are considered toll, but landline to wireless calls are not, landline long distance companies are tremendously disadvantaged, and this would undoubtedly be a negative impact on landline carriers' toll revenues.

So when you look at the transport issue, there's much more to consider than just the cost of those facilities that are established between the ILEC's and the Qwest. There's much more to it than that. There are a lot of impacts associated with the transport option.

Lastly, I would just like to comment on the last item that we had referenced in talking about the public interest. And that is the fact that we really are dealing today with a situation where it is effectively one-way porting.

Looking at that from the ILEC perspective, we have nothing to gain from this from a competitive perspective. It certainly doesn't

create a level playing field given the different calling scopes that exist between wireless and wireline companies. And I think that is something that should be kept in mind in this process.

If the FCC would have done it right, it would have gone ahead and they would have addressed the local calling scope differences, the rate center issues, before they ever ordered intramodal LNP. We can all speculate as to why they did it. I'm not sure why they did it. It has created a mess throughout the entire industry, which is illustrated by the fact that we have 250 some suspensions that are pending.

If the FCC would have done it in an appropriate way and addressed the real regulatory problems that are presented before they ordered it, I don't think we would have all of this litigation. And I think just the number of suspensions that are out there give you a pretty good indication that there are a lot of problems that need to be resolved.

We believe that the Commission should give the FCC a chance to resolve those issues, to give the courts a chance to revolve those issues

before requiring ILEC's to implement LNP. Thank you.

CHAIRMAN SAHR: Thank you very much. Mr. Wieczorek.

MR. WIECZOREK: Thank you, Chairman Sahr. Thank you, Commissioners, for your patience through all this, the two-week hearing and now granting us this chance to come in and wrap this up with some oral arguments.

I'm not going to repeat everything that was in the briefs. I think the briefs are -- our brief outlined our position fairly well. But there are some highlights that I'd like to address and then like to address some things that were contained in the Reply Brief.

First of which is, you know, it's obvious that the petitioners don't want to provide LNP, period. They see it as allowing other companies to come in and get some of their customers.

But the statutory test is fairly clear. And there are words in that test that set out that have to have meaning when you look at this and the petitioners have to pay attention to. First of all of which is that to meet the first requirement they have to show that your action is

necessary, that's necessary to avoid a technically infeasible situation.

Now, at the time of the hearing all three petitioners' cost experts said, well, this is technically feasible. It's really a cost issue. We now hear it is technically infeasible. Now the argument seems to be it's technically infeasible because it becomes technically infeasible unless you require point of interconnect.

But that totally ignores what's happened in Minnesota that was talked about at the time of the hearing. The MIC petition did not -- follows the procedure for transport that was set up and recommended by Western Wireless in this situation. To now take the position that it works in Minnesota but technically it's infeasible here makes absolutely no sense. And, frankly, they didn't provide any testimony that makes that technically infeasible.

The cost issues: Let's take transport right out of the box. That's a huge cost issue. Now, one of the issues in our brief and one of the issues I have with the way this has been presented by petitioners is they've had -- their

obligation under the statute is to show you Commissioners why your action is necessary to avoid an unduly economic requirement that's unduly economically burdensome.

However, rather than out of the box when this obligation came on and when Western Wireless contacted every one of these petitioners and said we would like to start working on porting numbers. Do you have any questions? Contact us. They sent out their cost experts. Their cost experts did one analysis, and they restricted it to interconnection agreement routing arrangements.

There's no contact with Western Wireless. And this -- in their brief -- in their Reply Brief they take the position, well, you could change those interconnection agreements, but Western Wireless has never asked us to do that.

I say that that is a misrepresentation, clearly. Ron Williams sat here and said, look, we tried to put that language in those interconnection agreements to begin with. It was taken out, not by us, but by them. And he was clearly -- there was clearly testimony that every one of these petitioners received a notice from

Western Wireless seeking some kind of dialogue.

And now to come to this Commission and say they could have provided, but they haven't bothered to ask. And to put the burden back on us is inappropriate, and it's, like I said, a misrepresentation of the facts that has been in front of the Commission and the truth.

The obligation sits on the petitioners. Western Wireless has come to this table to try to make things work. Throughout these -- throughout these proceedings Western Wireless has stepped up to try to make this work. The proceeding --

Western Wireless told this Commission, to try to eliminate some of the uncertainty, that Western Wireless would pick up the transport issues and yet until the FCC decides that final. And yet transport continues to come up saying it's in these arguments saying it can't be done.

Yet Mr. Bullock, a cost expert here, in response to Vice Chair Hanson's question says, you know, if Western Wireless is going to pay the way -- I think his phrase was, if you're going to pay the freight, you get to pick the railroad, meaning that if Western Wireless is going to pick the freight, they can make -- they can have this

delivered over the Qwest lines, they can go these routes.

So to come in and try to jack up the transport costs to legitimize and make necessary this Commission's actions is inappropriate, and I believe the facts bear out that your actions are unnecessarily unduly economically burdensome.

Really the only thing that they can prove under the first element, or arguably prove, is there are significant adverse economic impacts. And as our brief pointed out, they haven't proven it. There has been no testimony, with the exception of Kennebec, as to what the customers are willing to pay for LNP.

It is interesting to note that in our brief we discuss the Kennebec survey wherein one out of five people in Kennebec saved up 50 cents a month to have this opportunity, and 12 percent of the customers in Kennebec that responded to a survey, a mailed survey to them that they turned around and responded to would be willing to pay a dollar to have this option.

No other petitioners provided this information. And they didn't respond to it in the Reply Brief. The reason they -- that the

petitioners don't respond to it in their Reply Brief is because that supports the demand for LNP and the desire of rural customers to have LNP.

I submit if one in five people in Kennebec are willing to pay 50 cents for at least one company here, or two companies, one under 50 cents and one that hovers around 50 cents, one out of five is a significant portion of the people. To say that that now creates a significant adverse impact, economic impact on the individuals, the evidence does not exist. It isn't there. That's a very high demand for LNP.

And those areas that are even closer than Kennebec to the more urban areas of South Dakota outside of Sioux Falls, those areas with a higher demographic makeup are obviously and more mobile bedroom communities into Sioux Falls, I think the common sense -- as counsel for Santel said if you don't leave that at the door -- common sense tells you those people likely have a higher demand for LNP as they go about their business and live in one community, but work in another.

So as our brief clearly sets forth, we do not believe any of the petitioners have met their burden under the first part of the test. You

only go to the public interest if they've met one of those three factors under the first part of the test.

Public interest, they point back to Mr. Watkins. Mr. Watkins makes some very general statements. He doesn't like LNP. He doesn't like the way the FCC set it up. However, he doesn't look at any of the petitioners and say this petitioner has the following factors and that's why I don't believe it fits with their customer base.

He makes references -- and Mr. Coit repeated it -- that there's -- in some areas there's poor cellular service. And I believe the corporate representative from Valley talked about that. And that's one of the reasons staff's brief set forth that they should be one of the not immediate people to provide LNP.

However, most of the corporate representatives complain about cellular service, yet Mr. Watkins would have you believe if cellular is ubiquitous throughout the service area of one of these LEC's, the demand for LNP is equivalent to that of value. And his general testimony cannot stand for showing public

interest to grant LNP.

A couple issues on a staff's brief I'd like to address and that is some -- the first is out of their categories, why we disagree that LNP is necessary -- or suspension of LNP is necessary under the test provided under the statute.

If one were to accept the staff -- the way the staff has broken out the petitioners by category, two of the petitioners, I believe, would be -- should be moved out what they term the category two, which is an extension to May of next year and down into providing LNP immediately. Specifically, Sioux Valley, which has a low cost per line, in alliance with some of the other petitioners that staff feels should provide LNP immediately.

And staff's projections, which I can contend are low, of 84 ports a year, or seven ports a month. Sioux Valley's is located not far out of the Sioux Falls area and is probably an area that will see more active porting.

The other company that they have placed in the tier two that I believe should be moved down and providing immediately LNP based on their analysis is Santel. Santel's costs, again, are

within that range that the staff felt was acceptable and also their ports, though staff's are lower at 72.

One of the other factors out there that was testified to was affiliated or a subsidiary company of Santel is moving into as a competitive LEC into the Mitchell area so that would also provide them with additional expertise since in that competitive LEC area they're going to have to be LNP compliant.

One of the issues of the Reply Brief I have an issue with the way they try to interpret the staff's brief and there's -- it was alluded to in arguments by petitioners' counsel, and that is in their brief they have taken the position that staff's brief means for anybody who gets a suspension to May of 2005 or 2006, that they don't have to start implementing until that time period comes.

I don't read staff's brief that way. I read staff's brief -- and I'll let staff speak to it. But if staff's brief's intent was that would they have an extension to 2000 -- May of 2005 and only then do they have to start the exercising -- implementing, I would say that that would be an

inappropriate additional extension.

The petitioners -- even though petitioners who receive an extension, should the Commission grant it, can work on the preliminary work, provide LNP, and it should be a date certain for it to be LNP compliant. It makes no sense to set a date and then say, okay, now you have to start working on implementing and leave the date that they actually have to become compliant wide open to them saying, we're just starting on it, we're going to start our training program now, we're going to go through all these things, we're going to start talking to the cell companies. So I think a date certain to be LNP compliant is necessary.

The Reply Brief of petitioners talks about modifying the staff's requirement in dealing with transport to require point of interconnection, or POI's, and successfully negotiate transport. Yet their brief says we're not asking for an interconnection agreement, but we're asking for them to successfully negotiate transport.

I believe this is a red herring where they can just delay implementation of LNP. I believe for those companies that this Commission order --

and, again, Western Wireless would say except for the five that we've stipulated to should get to March 31st of next year -- should be all of them, that there shouldn't be a requirement to reach some kind of contractual agreement for transport. We, as Western Wireless, will be motivated to provide transportation in the most cost-effective manner possible.

We should not be restricted to try to come up with something short of an interconnection agreement, but come up with some contractual agreement to arrange for transport.

The other -- one of the other troubling aspects I have is how the petitioners have approached this. They group all petitioners together and they talk about needing points of interconnect and how this can't be done. Yet they make no distinctions for those companies that Western Wireless already has point of interconnect with.

Western Wireless already has point of interconnection with Golden West, Vivian, Venture, West River and Interstate. Yet petitioners would have you accept that that makes no difference at this point. They just need to

be lumped in and receive the same extension.

It's -- their argument is duplicitous in that they try to group all these petitioners together saying that points of interconnect are needed and then ignore the existing points of interconnection.

Finally, I would ask the Commission look behind the actions -- or look at the actions of the petitioners. There is a generally-accepted legal analysis which is sometimes called the clean hands doctrine. And that generally means that if you're going to ask for exceptions, if you're going to ask to fit within a rule, if you're going to ask for extensions, that you come to the tribunal or commission that you're requesting that to with clean hands to say we have attempted to resolve this in earnest. We cannot resolve this. There are things that we cannot resolve. Please give us this extension. Why we are working on the solution.

Commissioners, I submit that with the exception of James Valley and Cheyenne River Sioux Tribe, none of the petitioners come to you with clean hands. And they shouldn't be rewarded for attempting to make you act by increasing

their costs and by not attempting to resolve these issues either before they came to this Commission or during the pendency of this action.

There was -- there is an attack on Western Wireless' position when we say these people should -- these petitioners should implement LNP within 60 days. James Valley came to you and said they could do it within ninety. I will submit that James Valley had already had their software for LNP activated.

However, the testimony is, though, all the Nortel switches that come with that software only needs to be activated. James Valley hit the ground running and said we can do this in 90 days. To award more than 90 days -- and even to award 90 days awards the remaining petitioners for coming to this Commission without those clean hands. Thank you.

CHAIRMAN SAHR: Thank you. Mr. Gerdes.

MR. GERDES: Mr. Chairman, members of the Commission: I'll be brief. Midcontinent has been something like a mouse in the corner in this proceeding. I found it interesting that my good friend, Mr. Dickens, pointed out their arguments in their brief -- as nearly as I can tell, he

pointed out page 12, and as nearly as I can tell, that's the only page in a 37-page brief that Midcontinent was mentioned, which I would submit to you is about consistent or equal to the amount of attention that the petitioners have paid to the subject of intramodal LNP.

I calculate one page out of a 37-page brief to be about 2.6 percent. And I would suggest that that was about the amount of time that the petitioners paid to intramodal LNP in this proceeding, which I think proves our point.

And our point is that the law as passed in 1996 requires local number portability. The '96 Act also requires that there be competition in the local loop. There really is very little question that local number portability is necessary to inject competition into the local loop.

Given the minimal additional cost that is associated with intramodal LNP, it is our position that the petitioners have not sustained their burden of proof.

I'd like to also just give you a short analysis of the way I see the law on this. The petitioners have the burden of proof. We all

agree to that. And I think most of the briefs have covered the actual legal principle itself.

And so I would suggest to you that what 251(f)(2) says as to suspensions or modifications, that in order to override what is the statutory public interest, as embraced by the '96 Act, the petitioners have the burden of, in effect, turning the public interest around 180 degrees.

In other words, turning public interest onto its ear. Because, remember, the overarching reason for passing the '96 Act was to inject competition into the local loop. That was the reason. Competition is the alternative for regulation. That was why the '96 Act was passed.

So if you look at the structure of 251(f)(2), it says that in order for the petitioners to receive suspensions or modifications, they must show that there is no -- in order to receive the suspensions and modifications, they must show that it is necessary to avoid a significant adverse economic impact on customers, they must show that it is necessary to avoid an unduly economically burdensome requirement, or to avoid imposing a

technically infeasible requirement.

And coupled with this, there must also be finding that these suspensions and modifications are consistent with the public interest.

So what has to be done is they have to go through -- they have to turn the ladder upside-down in order to get to the point they want to get to, and that's a big burden of proof.

Now, I'm not going to comment on the wireline to wireless LNP. But I would submit to you that if you look at the evidence in this proceeding, there's absolutely no question that they have not proven that the mandate of the '96 Act should be set aside.

Let's not forget the FCC has had ample opportunity to modify the requirements of the Act, and they simply haven't done it. They have done it with respect to wireless LNP, but not local number portability, intramodal local number portability.

So we would submit that clearly there's no reason to delay and that local number portability should be ordered in the intramodal situation.

One last comment: The two things that the petitioners argue about the most, the lack of a

point of interconnection in the rate center and the cost of transport, are simply not present in wireline to wireline LNP.

Thank you very much for indulging the parties to this case in a very interesting two-week hearing and in the briefing process. As always, these proceedings are educational for all of us. Thank you.

CHAIRMAN SAHR: Thank you. Staff.

MS. WIEST: In staff's brief what we tried to do was evaluate each company and try to come up with what in staff's opinion was a reasonable recommendation.

And I think with respect to that first group, Kennebec, Faith, Tri-County, Stockholm-Strandburg and Western, I really don't think there's too much of an argument as to whether those companies should be granted some sort of a suspension. There was a question of how long it is.

Staff has, of course, proposed a two-year suspension due to those significant per line costs in those cases. We believe even with an FCC decision deciding some of the issues, that the significant adverse impact standards could

still be met.

Going to our second group of companies from for which staff recommends a one-year suspension, these do have some floor costs. In the first group we believe, in all likelihood, they will have a higher number of ports; and we believe they would benefit from a one-year suspension. Again, hopefully the FCC will inject some certainty into the proceedings.

Also some of the companies have some individual issues. For example, Armour, Bridgewater, Union has a mitel switch that will most likely need to be replaced at some point in the next couple years or the next -- or at least they have to make a decision. And Valley testified it only had 25 percent wireless coverage.

With respect to the third set of companies, I guess staff believes that at some point when you do have the cost versus demand balancing test, there is a point at which it can be in the public interest to implement LNP for these companies.

For example, when you have Golden, Qwest, Vivian, Kadoka, you have costs down to around 30

cents. And for ITC it costs around 55 cents higher access line numbers. Plus, in that case you have Midcontinent's entry into parts of ITC service area which certainly increased the porting demand.

Staff would be -- will admit that the line between the second and the third group is not nearly as clear-cut as the line between the first and the second group. And I think that ends up being a judgment call for the Commissioners to make if they choose to follow this type of situation.

Going on to the one issue about technically infeasible, I do not -- I still do not think that any of the companies can qualify under the technically infeasible standard. Based on the evidence, including evidence from the petitioners, I think it clearly showed that it is technically feasible to implement LNP.

And that brings me to my next point is how should it be implemented. As we state in our brief, we don't think the RLEC's are responsible for the costs of transporting LNP traffic outside of their exchange.

But, on the other hand, we don't think that

the Commission should go and mandate how LNP traffic should be transported in each case. I think you just to have look at James Valley and Cheyenne River to see that if you look at a company-by-company basis. And it depends. Is there direct connection in there? If there is not, I think the companies are certainly in the best position to figure out which is the most efficient and which is the most reliable method for transport.

Also, we did note in our brief if the Commission does grant suspensions for some of or all of the companies, we think the sub companies should be required to keep track of requests for LNP. We would encourage wireless companies to keep track.

And I think for some of the companies that have to do generic upgrades or switch replacements, the Commission would need more information as to those timelines that they would request additional suspensions.

But in the end, it's staff's opinion the demand for LNP will increase over time. And that's certainly a factor to be considered in the public interest balancing test.

And just going to the question of whether there was shown little demand for LNP, I think based on the evidence, it's more accurate to say that the demand is uncertain. I mean even Mr. Bullock had put in numbers that range from like six-tenths to 3 percent demand.

And Mr. Wieczorek also mentioned the Kennebec survey. But I do think that there will be some demand for LNP, but at this point I would agree that the demand is uncertain.

And with respect to Mr. Wieczorek's comment about what our suspensions or timelines mean, when we talk about a one-year suspension, we do mean that by one year that the Commission -- that they would have to have it implemented by then unless they would ask for further suspension before that time. Thank you.

CHAIRMAN SAHR: Thank you. At this point in time I will move that the Commission go into executive session to discuss the case.

COMMISSIONER BURG: Can we ask questions? Is that appropriate, I guess, is what I'm asking?

CHAIRMAN SAHR: Let's go off the record for a second.

(A DISCUSSION WAS HELD OFF THE RECORD.)

COMMISSIONER BURG: I guess I have basically just one anyway.

CHAIRMAN SAHR: First of all, let's go back on the record. At this point in time we'll see if there are questions from the Commissioners or the advisors for the Commissioners.

Commissioner Burg.

COMMISSIONER BURG: The question I have -- and I'll ask it first of Ms. Rogers and then of Mr. Wieczorek. The fact that transport -- if transport were transferred to the wireless requesting company to provide, does that make the cost of transport in any way disappear?

MS. ROGERS: No, sir.

COMMISSIONER BURG: Would it just shift it to a different group of consumers? Would that be accurate?

MS. ROGERS: I believe that what we've tried to portray is that while you can consider the actual costs of the implementation of LNP with switch upgrades and all of those types of elements, and you can consider transport, you can't ignore transport. The transport costs are not going to go away.

So one way or another they're going to have

to be borne by someone. So I think your statement is accurate.

COMMISSIONER BURG: What would be your analysis of the impact on LNP requests if that transport costs was shifted to the requesting party?

MS. ROGERS: At this point, and in accordance with the evidence as it came in in this hearing, I'm not sure that it would have -- or make a great difference. I mean we are just not seeing a demand or request for LNP.

I mean we're saying that in our -- in the exchanges that are represented here, they have not had customers that have come in and said "we want to port our numbers to a wireless carrier." And they have not been privy to these proceedings to know the costs involved. There is just not a demand for it.

COMMISSIONER BURG: I'll give you a chance to answer the same questions, Mr. Wieczorek. Does the cost merely go to a different party, the transport costs, or do some of them actually just go away in any way?

MR. WIECZOREK: What Western Wireless has proposed is pending the final decision of the

FCC, we would pay the transport costs. So to the extent, sure, there's still costs there, but they're not borne by the petitioners or the petitioners' customers.

COMMISSIONER BURG: How would you recover that transport cost?

MR. WIECZOREK: It would be part of the regular bill.

COMMISSIONER BURG: Would your marketing of LNP change if you had that additional cost?

MR. WIECZOREK: I'm not in the marketing Department of Western Wireless. I would -- so to the extent I believe it would not because they would just pick that cost up and it would be part of their internal cost structure.

To the extent that Western Wireless has available points of interconnect already, they would use those. Otherwise, they would use the existing infrastructure either through SDTA or Qwest, as discussed by Mr. Williams. And those costs would just be part of the costs that they would pay if it's a cellular customer calling in that area.

COMMISSIONER BURG: Because my concern is that we have right now, of course, there's no

reason not to promote and advertise and try to get LNP customers because there's actually no cost to the requesting wireless party.

And my concern is that where we already have, from the evidence in the record at least, very low take on local number portability, if there were additional costs to be added to the person asking to port their number through their wireless company, that that desirability, both on the part of the wireless company and the consumer to pay the extra costs for the purpose of LNP might even reduce that more. That's kind of where I'm coming from.

MR. WIECZOREK: I do not envision that Western -- it would cause Western Wireless to stop any marketing. They would plan on doing an LNP if the Commission would make the petitioners become LNP. And I do not envision -- and, of course, I'm the attorney, not the engineer, but I do not envision that it would increase the baseline costs of what Western Wireless would charge its customer base.

CHAIRMAN SAHR: Off the record.

(A DISCUSSION WAS HELD OFF THE RECORD.).

CHAIRMAN SAHR: I do have a couple questions

since we're taking the time for that.

One of the things that came up is the -- from staff is the request that if waivers are granted, then the LNP request be tracked. Ms. Rogers, do you know if that's something that's acceptable to your clients?

MS. ROGERS: To my knowledge, yes, that would be acceptable to my clients.

CHAIRMAN SAHR: And if a waiver were to be granted, one of the issues would be is this something that would be open-ended, or would there be a date certain? And I think implicit with that date certain would be the thought that obviously the Act does have a preference for LNP with state oversight.

What would you say to the argument of setting dates as opposed to being open-ended when it comes to the issue of making sure that all involved are moving towards taking appropriate steps to put in new technology that it makes it easier to do LNP and more cost effective and that negotiations continue on in good faith going forward?

How would you deal with the issue of whether or not to leave this open-ended or set a date

certain? Because I think the idea of the date certain is that it will give impetus to people to try to move towards LNP even if it currently is something that they feel is costly.

MS. ROGERS: I believe in the materials that we've presented to the Commission and also in the -- in some of the other decisions that we have referenced and, in particular, Nebraska, Nebraska did set basically the date of January of 2006, which is like an 18-month period, to kind of see what the resolution is going to be of some of the unresolved issues, whether our costs are going to be greater, because they could be depending on what happens at the FCC level, and also where the demand goes as time progresses.

And so that's why in our Reply Brief we had also suggested instead of, you know, instead of January 1st of 2006, instead, you know, January -- June 26th of 2006.

I'm not -- I think that it depends on the circumstances of some of the companies. And I think that we would not have -- we would not be adverse to a date certain such as Nebraska has implemented as long as there is still enough flexibility so that if there are circumstances

within an individual company that would put them in a position where they would need to apply for an additional extension or an extension of that time, that there would be enough flexibility and ability for that particular company or whichever ones it might be, to come back before this Commission and request an extension of that date.

CHAIRMAN SAHR: And then a question that relates to the ITC and Midco situation -- and this would be for either you or Mr. Coit -- Midco has made the argument that when we look at intramodal LNP, that we have more certainty and that -- although I don't know if Mr. Gerdes made the argument here, I certainly think there might be some feelings that perhaps ITC opened the door for some competition by offering cable services -- there have been some questions about who would bear the cost of LNP in those situations.

I think, Mr. Coit, you or maybe it was Ms. Rogers in the brief had made the point that you felt it would be the Webster and Waubay consumers that would bear that. And I guess I would imagine Midcontinent's response would be, well, you opened the door.

How would you have the Commission deal with

that situation, which, I mean, I think is significantly different than the -- than the intermodal LNP.

MS. ROGERS: If I could, Commission, I would like to defer that question to Ben Dickens. I think he was a little bit more involved in that other docket than I was. So I would like to defer that to him if you would allow me to do so.

CHAIRMAN SAHR: That would be fine. Mr. Dickens.

MR. DICKENS: Well, Ms. Sisak is with me, and she's going to speak to that.

CHAIRMAN SAHR: You guys are running out of attorneys.

MR. DICKENS: I won't defer to anybody else.

MS. SISAK: I'm prepared to answer. I think part of the problem with the Midcontinent example, you are correct that the unresolved issues are not -- maybe not of concern, or maybe not as great a concern for intramodal LNP. For example, transport shouldn't be a significant issue and, obviously, wireless to wireline porting is not an issue.

The problem is the way Midcontinent has requested LNP, which is on an exchange-by-

exchange basis. Now, for ITC it's two exchanges. And so when you look at what ITC would have to do to become LNP capable for those two exchanges, they would, in essence, have to incur almost all of the costs of LNP other than the transport costs that are in their cost exhibit. But they'd only be able to spread that over the few customers in those two exchanges.

And so on the one hand I do not disagree that some of the issues on intramodal porting are fewer, but on the other hand the way Midcontinent has requested LNP makes the costs really significant.

CHAIRMAN SAHR: Thank you. And I'll ask the follow-up question you're probably already anticipating. If that is the situation, didn't ITC open up the door for that result when it went into the cable business?

MS. SISAK: Well, I'm going to have to say I don't know if ITC only offers cable service in a couple of exchanges. So I guess I can't fully answer the question. I don't think they've opened the door.

I think the situation may be quite different if Midcontinent, for example, came in and

requested LNP for all ITC exchanges. The cost analysis would be different.

MS. SMITH: Ms. Sisak, this is John Smith. When you say the costs in those two exchanges can only be spread over those two exchanges, do you mean that any surcharge the company imposed could only be imposed in those two exchanges? Or are you just stating that costs that have a company-wide level of cost incurrences are only going to benefit those two exchanges, but those surcharges would be borne by all of the customers in the company?

MS. SISAK: The answer is it's our understanding of the FCC rules that the federal surcharge could only be applied to the customers in those two exchanges. And the second part of your question, though, is also true. Only the customers in those two exchanges could benefit from LNP. That's all of the other ITC customers for LNP would be inequitable from that standpoint as well.

COMMISSIONER BURG: Can I ask a follow-up question? The question I'd have to Ms. Sisak would even all the people in those exchanges be able to benefit, or are they only going to offer

it into the urban area where they have cable, or do they offer cable in the entire exchange?

I mean we even narrow it down to even fewer people because we're asking all the people in those exchanges to pay for services that can only benefit that metropolitan area, I'm guessing.

MR. SMITH: They're only certified in the towns.

COMMISSIONER BURG: Yeah. So then even if we tie it to those two exchanges, we're having a lot of people pay for it that aren't -- it isn't even available to, is the only challenge that I see.

CHAIRMAN SAHR: Although the provider that made the conscious decision to open themselves up to this form of competition could also bear the cost and they don't have to pass on to the consumer. And it's a little bit different than the people who are operating their businesses and have somebody else come into the market without the converse of that happening.

I would give Mr. Gerdes a chance to add anything he wants to.

MR. GERDES: First thing I'd observe, Commissioners, is we're getting pretty far

outside the evidentiary record of the proceeding. And so I hesitate to go where I need to go to answer one question.

Our evidence is that ITC is building out their cable and it's not in all of the exchanges at this point. They're in the process of building it out. That's what we understand from their web site.

As far as the rest of it is concerned, our point is as stated, and that is that this is a competitive entry. I mean, I don't -- Midcontinent has to come in -- has to compete. And if ITC is going to go into Midcontinent's business, then Midcontinent has the ability to go into ITC's business, we would submit, so we can offer the same packages. I mean, it's a competitive situation.

As far as spreading the costs are concerned, I'd agree with what Chairman Sahr suggested would be one of our arguments and that is, well, they should have thought of that before they went into the business.

But the other part of it is regardless of what the FCC requirements are, if in fact, the cable business gets spread out all through the

ITC exchanges, eventually then you will end up having those costs all spread through the ITC exchanges. So it's a gradual thing rather than an instantaneous thing.

But, again, it's simply a matter of leveling the playing field in a competitive situation. And it gets a little bit far away from the philosophical aspect of local number portability, quite frankly, because, quite frankly, again, we would submit that there is no comparison between intramodal and intermodal LNP.

And that if you look at the law on intramodal LNP, there is -- there isn't any qualification to the obligation of a carrier to provide it as in the law. There's none. And so they have to. I mean, that's the bottom line. Now, and I guess that's the end of what I have to say.

CHAIRMAN SAHR: Well, and there certainly is a case that could be made saying when you're dealing with intramodal LNP, that there's much -- well, there's -- there may more likely be a cost benefit in lower rates to consumers when you're dealing with services that are a direct substitute for one another as opposed to -- we

don't need to re-argue this whether or not you consider cellular service a substitute or compliment to wireline. I think you more than likely in those exchanges, if, at least in theory, it should work that you would get lower rates, so an additional cost might be made up for in the competition between the two parties all offering substitute services.

MR. GERDES: Because you are doing, in fact, what the '96 Act contemplates and that is putting true competition into the loop. I mean that's what that does. So, theoretically, it will keep prices as low as they can go.

MR. SMITH: Can I ask a follow-up for maybe Sisak and Dave? Is under the cable exemption, you know, when you give up your exemption when you get into cable business, does the Commission yet retain after that its authority under 251(F)(2) to suspend? Is that still in existence after that?

MS. SISAK: Excuse me?

MR. SMITH: Do we still even have the ability to suspend once they've lost their rural exemption through the cable -- entering the cable business?

MS. SISAK: Yes, you do. Two different sections and two different exemptions.

MR. GERDES: I think that's right.

MS. SISAK: You specifically retain that authority. And I would further point out that although this might seem a little bit unfair to the cable competitors and even the CLEC competitors, the reality is Congress only thought to give some form of protection to ILEC's when it implemented 251.

MR. SMITH: Follow-up question maybe for Mr. Wieczorek on that. Let me ask you this with ITC then: If we were to not grant the suspension because of the issue with respect to the intramodal porting, effectively, is there any -- what are the additional cost considerations, then, with respect to going to wireless?

MR. WIECZOREK: The only additional cost considerations that I would see would be the need to activate LNP for those switches that were not part of the exchange that they already have with Midco. They do have some of their switches -- already have the software activated, but they do have some switches, and I'm not sure the switches they would have. That would be in Midco's area.

But, I mean, that's what I envision being an additional cost.

MR. SMITH: I mean there would be additional cost. It would not be de minimis.

MR. WIECZOREK: Well, I would guess I would argue what the definition of de minimis might be. But there would be additional cost to become LNP compliant beyond the Midco because I think it's a fair statement that they have switches outside of Midco that aren't LNP compliant yet.

MR. COIT: If I could comment on that briefly. I agree there would be additional costs. Obviously, you have the transport issue that is involved with the intermodal that you don't have, as we all know; and that can generate additional cost depending exactly how that is ultimately distributed in terms of the burden.

The other thing that I think to keep in mind with respect to intermodal portability is not just the direct cost of implementing the LNP. As I had mentioned earlier, there are significant other financial impacts associated with intermodal LNP as a result of the difference between the calling scopes between wireless and wireline.

So I would just encourage the -- or urge the Commission to not -- when you're looking at intramodal LNP, just don't think about the direct cost of providing the LNP service. There are other financial impacts that I think the LEC is going to experience as a result.

MR. SMITH: I just have one last thing, Mr. Wieczorek. You mentioned some of the exchanges on this list that already had direct connections, and I didn't catch all those companies as you were breezing through that.

MR. WIECZOREK: We have existing POI's with Golden West, Vivian --

MR. SMITH: Hang on a second.

MR. WIECZOREK: Vivian, Venture, West River, and Interstate. And I believe and for some of those we have more than one existing POI due to their system. I know for sure that's true with Interstate. I believe that's true for Venture. And the others I couldn't say for certain.

MR. SMITH: You don't with Brookings, though, huh?

MR. WIECZOREK: They're not on my list.

MR. COIT: And I think the West River you mentioned would be the West River out of Hazen,

North Dakota? Is it West River Telephone Co-op or West River Telephone Communications Cooperative?

MR. WIECZOREK: I believe it is the Mobridge branch.

MR. SMITH: They're not requesting the waiver.

MR. SMITH: Cross them out.

MS. SISAK: And I would like to just offer one reminder. Although Western Wireless has direct connect with the companies mentioned, the other wireless carriers operating in the area do not or may not. I'm not positive, but that is -- I think we need to remember that there are other wireless carriers that will impact the cost of LNP and will be impacted by these decisions.

CHAIRMAN SAHR: Thank you. Any other questions from Commissioners or advisors? Seeing none, I move that we go into executive session.

Why don't we do this: And this can be back on the record. It's about 3:00 o'clock right now. So that we can give everybody here in Pierre and on line a little bit of certainty, we will shoot for 3:30 to come back upstairs. And at least that gives you the minimum amount of

time that you have or perhaps if you look at it the other way, the maximum, but it at least gives us a target. And realize the Commission may end up having to take longer, but everyone knows they have half an hour to check their messages and do whatever else they need to do.

(COMMISSION IN EXECUTIVE SESSION, AND HEARING RECONVENED AT 4:00 PM.)

CHAIRMAN SAHR: Let's go back on the record.

We are -- we've come out of executive session, and we're prepared to make a couple of motions.

I'd like to say at the outset that LNP clearly comes with a cost associated with that. And I think the Act contemplates the commissions reviewing that and looking at not only those costs, but also the public interest test. And that's what we attempted to do here.

Under these circumstances, that cost, when coupled with the uncertain demand, makes it extremely difficult to ask our state's consumers to bear the cost of intermodal LNP at this time.

And certainly another factor that I think all the Commissioners felt was out there is a current uncertainty. We have pending FCC

proceedings. We have pending court cases. And it really would be prudent to see how these cases proceed so we have more certainty as to the effect of requiring LNP. We also may have the ability to look and see what happens in other cases as well and see how those LNP matters proceed.

With that in mind, I'm going to make the first motion, which will be relating to intermodal LNP, or wireline to wireless LNP.

And I would move that we grant the request for suspensions until December 31, 2005.

COMMISSIONER HANSON: Second.

CHAIRMAN SAHR: And we have a second from Hanson. And I have an additional comment, but I will go ahead and let --

COMMISSIONER BURG: One comment first.

CHAIRMAN SAHR: The one thing I would say is we will work out some of the details on how the December 31st, 2005, time frame will be -- how that particular date will work as far as the procedures for how it will be -- how people can file to continue suspensions, or to have that reviewed if they feel it's necessary.

So although the suspension is granted until

December 31st, 2005, it doesn't limit the ability of the Commission to grant a further suspension from 2005, from the December 31st, 2005, on. I think that's something we'll look at in the future to see if the carriers affected would file for suspension, additional suspension.

One of the things I would add is I think we saw that during the hearing we had some very good negotiations take place, and I would urge people to continue looking into that and urge the parties to continue to take steps to try to move towards LNP.

Because no matter what the feelings of this Commission may be one way or the other, there's certainly a chance there may be ultimately an LNP obligation, and there is without a doubt some consumer benefit to LNP.

So I would strongly urge everyone to continue to work on these issues and to see if you can't come up with a mutually-acceptable solution without having the PUC being involved.

And then I think the final thing I would add is just thank you, the PUC staff. They did a great job. And I think the brief and the analysis supplied by PUC staff were excellent.

And although we did not follow their recommendations to a T, we certainly appreciated the analysis; and it gave us a really, I think, balanced view of the issues.

COMMISSIONER BURG: Gary, did you have any comments you wanted to make, Gary, before I make mine?

COMMISSIONER HANSON: Go ahead, Jim.

COMMISSIONER BURG: I will concur in part and dissent in part with that motion. I concur that we grant suspension to all petitioners. I feel they met the requirement approving the necessity of suspension -- they met the requirement of proving the necessity of suspension to avoid significant adverse economic impact on users of telecommunications generally.

I also feel they met the burden to avoid imposing a requirement that is unduly economically burdensome. I don't think the key is to what it costs per customer. I think the key is what the total cost is. Because the only way that you get lower per customer is by having a lot of customers, not that it's any cheaper to provide that service.

And I think -- and later on I'll mention

that I think it can be used to better use. I believe all parties accepted the fact that LNP could be technically feasible. I don't think that was an issue. I don't believe the LNP is right for application in rural areas at this time.

Several discussions -- decisions, several decisions need to be made by the FCC and numerous states have granted suspended waivers because of that and other reasons, and I agree with those.

My threshold for significant economic impact and undue economic burden is quite low. I do not see public benefit due to the low estimated LNP interest and the unavailability of LNP at all in vast areas of the state. So why should those consumers bear any additional cost to provide LNP to others when very few people are going to benefit?

I would further argue that the per line cost is not the proper indicator, but the total cost when you consider adverse economic impact. Total cost is a public interest economic impact. This is money not available for higher telephone communications usage, both by wireline and wireless companies.

The fact that transport could be paid by the wireless companies does not make those costs disappear. The money spent for transport by wireless providers is money, I feel, could better be spent for better and wider wireless services. If I had my preference -- and I believe a mistake was made in requiring wireline to wireless portability at all. I don't think -- I think it's proven to not be that desirable.

And so now I concurred in that part of the motion. I dissent in the part of the setting a date specific. I think it just puts us through this exercise again. I think that even the desire for LNP is actually going to wane, not grow. However, my preference would be that a review is granted on suspension based on evidence of requests for LNP as a percentage of the customers in an exchange.

If we took that approach and showed that the actual desirability is out there, that's what I think should trigger whether we do additional review or not, rather than just a date certain down the road on a product that I don't think is going to be taken and I think is expensive in general.

So with that, that's where I stand on that motion.

CHAIRMAN SAHR: Okay. So that resolved the issue of the intermodal LNP. We still have the issue of the LNP for intramodal purposes, which would be the ITC request for suspension; is that correct?

MR. SMITH: That's right.

CHAIRMAN SAHR: And I would move that we take that under advisement. I think all along we acknowledged that while there are similarities in these cases, that the ITC and Midco case involved some dynamics that aren't in the other cases. And I think it's appropriate at this time to take them under advisement and issue an opinion at a later date.

COMMISSIONER BURG: I would second that.

COMMISSIONER HANSON: Hanson concurs.

COMMISSIONER BURG: And I'd just like to add I think that there are some reasons to look at that request for intramodal LNP; however, at this point it's not nearly clear enough to me as to how those costs would be distributed. And I can't imagine that entire cost on those two counts and not finding a better way to mitigate

that. I think with we need to take it under advisement and investigate that a little bit farther.

CHAIRMAN SAHR: With that, the hearing will be concluded. And I do want to thank all involved for their professionalism and input. It was a long process, but I think it was something that was a great learning process for everyone. Thank you.

(The hearing concluded at 4:10 p.m.)

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
:SS
COUNTY OF STANLEY) SIXTH JUDICIAL CIRCUIT

I, Lori J. Grode, Registered Merit Reporter and Registered Professional Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that the above hearing pages 1 through 73, inclusive, was recorded stenographically by me and reduced to typewriting.

I FURTHER CERTIFY that the foregoing transcript of the said hearing is a true and correct transcript of the stenographic notes at the time and place specified hereinbefore.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Ft. Pierre, South Dakota, this 2nd day of September, 2004.

Lori J. Grode RMR/RPR
Notary Public
My Commission Expires 08-01-07

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF BROOKINGS MUNICIPAL UTILITIES d/b/a SWIFTEL COMMUNICATIONS FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. § 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	)))))	**FINAL DECISION AND ORDER; NOTICE OF ENTRY** **TC04-047**

PROCEDURAL HISTORY

On March 11, 2004, Brookings Municipal Utilities d/b/a Swiftel Communications (Brookings, Swiftel or Petitioner) filed a petition (Petition) pursuant to 47 U.S.C. Section 251(f)(2) and SDCL 49-31-80 seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. From February 12 to April 23, 2004, twenty other rural local exchange carriers filed similar petitions seeking the same relief (two of these later-filed petitions, TC04-077 and TC04-085, were subsequently settled) (excluding settling petitioners, collectively, Petitioners). On April 19, 2004, the Commission issued an order granting Brookings's request for interim suspension of its obligation to implement LNP pending final decision pursuant to 47 U.S.C. Section 251(f)(2) of the Telecommunications Act of 1996 and SDCL 49-31-80 and granting intervention to WWC License LLC d/b/a CellularOne (WWC) and the South Dakota Telecommunications Association (SDTA).

On May 4, 2004, the Commission issued an Order for and Notice of Procedural Schedule and Hearing and of Intent to Take Judicial Notice. On June 16, 2004, the Commission issued a Supplemental Order for and Notice of Hearing establishing the schedule for presentation of general and company-specific testimony in this and the other LNP dockets. On June 21-July 1, 2004, a hearing was held on this matter and the other dockets in which Petitioners seek to suspend their obligations to implement LNP. The company-specific hearing on this matter was held on June 22 2004. On July 13, 2004, the Commission issued an Order Establishing Briefing and Decision Schedule setting this matter for oral argument and decision on August 31, 2004. On July 15, 2004, the Commission issued an Order Temporarily Suspending Local Number Portability Obligations suspending Brookings's LNP obligations until September 7, 2004, in order to accommodate the briefing and decision schedule in the case. On August 31, 2004, the Commission heard oral arguments from the parties in this and the other LNP dockets. Following oral argument, the Commission voted unanimously to suspend Petitioners' obligations to implement local number portability pursuant to 47 U.S.C. §251(b)(2) and SDCL 49-31-81. A majority of the Commission voted to suspend Petitioners' intermodal LNP obligations until December 31, 2005. Commissioner Burg dissented from this portion of the decision, indicating that he supported an indefinite suspension of intermodal LNP obligations for all Petitioners requesting suspension of LNP obligations. The Commission voted unanimously to defer decision regarding intramodal number portability requirements without specifying whether the deferral applied to all LNP dockets or just those in which Midcontinent Communications had intervened and objected to suspending intramodal LNP requirements. On September 4, 2004, the Commission issued an order temporarily suspending all LNP requirements for all petitioners until September 30, 2004, in order to provide sufficient time for the finalization of the findings of fact and conclusions of law and to render a final decision regarding intramodal LNP. On September 22, 2004, the Commission voted unanimously to suspend intramodal LNP obligations for all Petitioners until December 31, 2005, with special conditions for those dockets in which Midcontinent remains an intervening party.

Having considered the evidence of record and applicable law, the Commission makes the following Findings of Fact, Conclusions of Law and Final Decision and Order:

FINDINGS OF FACT

"TR" refers to the Transcript of Proceedings of the hearing held on June 21-July 1, 2004, in this docket and the other LNP suspension dockets. References will be to TR and page number(s). "Ex" refers to exhibit.

1. Brookings filed the Petition on March 11, 2004. On March 18, 2004, the Commission electronically transmitted notice of the filing and the intervention deadline of April 2, 2004, to interested individuals and entities. WWC filed to intervene on March 30, 2004. SDTA filed to intervene on March 31, 2004. On April 19, 2004, the Commission issued an order granting intervention to WWC and SDTA.

2. By its May 4, 2004 Order for and Notice of Procedural Schedule and Notice of Intent to Take Judicial Notice and June 16, 2004 Supplemental Order for and Notice of Hearing, this matter was duly noticed for hearing on June 21-July 1, 2004, with the company-specific hearing on this matter to be held on June 22, 2004. The hearing was held as scheduled.

3. On September 4, 2004, the Commission issued an Order Temporarily Suspending Local Number Portability Obligations suspending Brookings's LNP obligations until September 30, 2004, in order to provide sufficient time for the finalization of the findings of fact and conclusions of law and to render a final decision regarding intramodal LNP.

4. The Federal Communications Act of 1934 as amended by the Telecommunications Act of 1996, 47 U.S.C. chapter 5 (the "Act") requires local exchange carriers "to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the [Federal Communications] Commission." 47 U.S.C. § 251(b)(2). In *Matter of Telephone Number Portability*, CC Docket 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 03-284 (November 10, 2003) (the "*Intermodal Order*"), the Federal Communications Commission (FCC) required local exchange carriers that are located outside of the top 100 metropolitan statistical areas to provide LNP and to port numbers to wireless carriers. Pursuant to this order, local exchange carriers were required to provide LNP by the later of May 24, 2004, or six months after the date that the local exchange carrier received a bona fide request.

5. 47 U.S.C. §153(30) defines "number portability" as follows:

> The term "number portability" means the ability of users of telecommunications 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.

In the *Intramodal Order*, ¶¶ 25 and 28, the FCC addressed the question of "at the same location" as follows:

> [W]e find that . . . LECs must port numbers to wireless carriers where the requesting carrier's coverage area overlaps the geographic location of the rate center to which the number is assigned. . . . We conclude that porting from a wireline to a wireless carrier that does not have a point of interconnection or numbering

resources in the same rate center does not, in and of itself, constitute location portability, because the rating of calls to the ported number stays the same.

The term "intramodal number portability" as it applies to the Petition refers to the ability to port a number from a wireline carrier, such as Petitioner, to another wireline carrier. The term "intermodal number portability" as it applies to the Petition refers to the ability to port a number from a wireline carrier, such as Petitioner, to a wireless carrier. The Petition seeks suspension of both intermodal and intramodal number portability obligations. No wireline carrier other than Petitioner is a party to this docket.

6. The determinations that the Commission must make before suspending or modifying an RLEC's obligation to provide LNP to requesting carriers are set forth in SDCL 49-31-80 which reads as follows:

> Consistent with 47 U.S.C. § 251(f)(2) as of January 1, 1998, the commission may grant a suspension or modification of any of the interconnection or other requirements set forth in 47 U.S.C. §§ 251(b) and 251(c), as of January 1, 1998, to any local exchange carrier which serves fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide. Any such carrier shall petition the commission for the suspension or modification. The commission shall grant the petition to the extent that, and for such duration as, the commission determines that the requested suspension or modification is consistent with the public interest, convenience, and necessity and is necessary:
>
> (1) To avoid a significant adverse economic impact on users of telecommunications services generally;
>
> (2) To avoid imposing a requirement that is unduly economically burdensome; or
>
> (3) To avoid imposing a requirement that is technically infeasible.
>
> The commission may suspend enforcement of the requirement or requirements identified in the petition pending final action on the requested suspension or modification.

The language and substance of SDCL 49-31-80 and 47 U.S.C. § 251(f)(2) are essentially the same.

7. By its Order for and Notice of Procedural Schedule and Hearing and of Intent to Take Judicial Notice issued on May 4, 2004, the Commission gave the following notice of intent to take judicial notice:

> The Commission hereby gives notice pursuant to SDCL 1-26-19(3) that it intends to take judicial notice of the fact that Petitioner is a local exchange carrier with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide. Any party objecting to this taking of judicial notice shall serve notice of such objection on the Commission and the parties prior to the hearing.

No party to the docket served notice of objection or otherwise noted any objection to this taking of judicial notice. Accordingly, the Commission takes judicial notice of the fact and finds that Brookings is a local exchange carrier with fewer that 2 percent of the nation's subscriber lines installed in the aggregate nationwide pursuant to SDCL 49-31-80 and 47 U.S.C. §251(f)(2).

8. Brookings is a municipal local exchange carrier (RLEC) that provides local exchange and exchange access services to 14,150 access lines, including an average of 435 Lifeline lines. Brookings Ex 1 at 1.

9. WWC and one other wireless carrier have made bona fide requests for LNP from Brookings. No wireline carrier has made a bona fide request for LNP. Ex 1 at 3.

10. Under SDCL 49-31-80, the Commission is required to determine the extent to which the requested suspension or modification is consistent with the public interest, convenience and necessity and whether the suspension or modification is necessary to avoid at least one of the three adverse effects set forth in subdivisions (1), (2) and (3) of the statute.

11. There was essentially no disagreement by any of the experts who testified on behalf of Petitioners that LNP is technically feasible. TR 175, 997. The testimony of Petitioners' witnesses to the effect that LNP was not technically feasible was based upon the present absence of the necessary switch upgrades and direct trunk connections with requesting carriers conforming to existing interconnection agreements. We find that this does not establish technical infeasibility, although the Commission recognizes that Petitioner would require a period of time to install and implement the necessary technology. The switch upgrade and interconnection facilities assumed by Petitioners' witnesses to establish their transport costs demonstrate that LNP is technically feasible. According to several of the Petitioners' manager witnesses, LNP is technically feasible. Bryan Roth, manager for McCook, agreed that LNP was technically feasible. TR. at 829. Pamela Harrington, general manger of Roberts County and RC, stated that LNP is technically feasible with the proper upgrades. TR. at 1049. Dennis Law, Golden West's manager, stated that his companies are technically able to connect to the Qwest tandem. TR. at 791-792. It is technically feasible for each of the Petitioners to implement LNP. It would take action on Petitioners' parts and would cost Petitioners money in varying levels to implement LNP, but the technology and network facilities exist for it to be implemented. The decisions in each of Petitioners' cases must therefore turn upon the two economic standards and the public interest determination.

12. The Commission finds that granting a suspension of Brookings's local number portability obligations under 47 U.S.C. §251(b)(2) until December 31, 2005, is consistent with the public interest, convenience and necessity. The Commission further finds that at the present time, granting a suspension to Brookings is necessary to avoid a significant adverse economic impact on Brookings's users of telecommunications services generally and to avoid imposing a requirement that is unduly economically burdensome on Brookings. These findings are based upon the specific findings set forth below.

13. In a June 18 letter to the President of the National Association of Regulatory Utility Commissioners (NARUC), the Chairman of the FCC, Michael Powell, recognized the potential burden of LNP implementation on small businesses, particularly rural local exchange carriers, and encouraged state commissions to exercise their authority under 47 U.S.C. §251(f)(2) to grant the requested relief if the State Commissions deem it appropriate. TR 566-568; Venture Ex 4. Chairman Powell directed "State Commissions to consider the burdens on small businesses in addressing those waiver requests and to grant the requested relief if the State Commissions deem it appropriate." Venture Ex 4.

14. At least part of the determination of whether a suspension of a Petitioner's LNP requirements is consistent with the public interest, convenience and necessity involves weighing the costs to the LEC and/or its users against the benefits to be derived from the incurrence of such

costs. *Order Granting Suspension, Applications Nos. C-3096, et seq.*, Nebraska Public Service Commission (July 20, 2004). As discussed in detail below, the Commission finds that at this time, the benefits to consumers from LNP in the rural areas served by Petitioners simply have not been sufficiently demonstrated to outweigh the burden that imposing LNP implementation at this time will place on Petitioners and the rural citizens who rely on Petitioners for essential, provider-of-last-resort telephone service.

15. Another factor that we find is highly relevant to our determination of whether the granting of the requested suspension at this time is in the public interest involves the significant level of uncertainty that currently exists concerning (i) the appropriate technical solution for transport of calls to ported numbers in rural areas, (ii) the respective responsibilities, and attendant costs, of providing transport for calls to ported numbers outside the local calling area of Petitioners, (iii) the routing and rating of calls to ported numbers, (iv) the porting interval, (v) the demand for number porting, particularly in the areas where signal coverage is spotty or non-existent and (vi) the extent to which the presence of LNP is a marginal factor in the consumer's purchasing decision for alternative services such as wireless service. Suspending Petitioners' LNP obligations until December 31, 2005, will enable the unresolved issues concerning transport, routing and rating and porting interval to be addressed in the proceedings pending before the FCC, and will provide a period of time for (vii) the Petitioners and intervenors to continue to investigate, negotiate and hopefully resolve many of the interconnection, transport and routing and rating issues between them, (viii) wireless carriers to continue their build-outs of facilities to provide more extensive and reliable signal coverage throughout Petitioners' service territories and (ix) for the accumulation of data concerning the deployment of LNP in other areas and concerning the benefits of LNP -- particularly whether demand for LNP in fact materializes and is in fact demonstrated to be of material significance in the consumer's purchasing decision for alternative services.

16. A final factor that we believe is appropriate to consider in any public interest decision involving rural local exchange carriers is reflected in one of the central policy objectives of the Act and SDCL Chapter 49-31 - the duty to provide and preserve universal service. 47 U.S.C. §§ 214(e) and 254; SDCL 49-31-76 and 49-31-78 through 49-31-81. Petitioners, all of whom are the incumbent local exchange carriers and eligible telecommunications carriers under the Act, shoulder the responsibility for providing essential telecommunications to all persons within their service territories as carriers of last resort.

17. The record amply demonstrates that the costs to Brookings to implement number portability will be significant. These costs fall into three general categories: switch upgrade, transport and recurring operational costs. The evidence addressing Brookings's costs of implementing LNP was conflicting. Brookings's cost witness projected the non-recurring cost for Brookings to implement LNP to be $291,600 excluding transport and $311,600 including transport. He estimated the recurring monthly costs for Brookings to be $3,858 excluding transport and $7,051 including transport. Brookings's cost witness projected that these costs would translate into an LNP cost of $0.83 per line per month excluding transport and $1.12 including transport. WWC Ex 9. WWC's witness projected a non-recurring cost of $290,600 excluding transport and $291,400 including transport. WWC Ex 9. WWC's cost witness projected recurring monthly cost for Brookings at $2,979 excluding transport and $5,419 including transport. WWC Ex 9. WWC projected these costs would translate into an LNP cost of $0.76 cost per line per month excluding transport and $0.96 including transport. WWC Ex 9.

18. There was not a huge disparity in the cost estimates between Brookings and WWC. The most significant area of disagreement regarding the costs of implementing LNP for Brookings was transport, but the difference was not as significant in comparison with the switch upgrade and other implementation costs as with most other Petitioners. Brookings proposed a transport method using

a DS1 (T1) circuit installed between the Brookings exchange to each wireless carrier that is currently providing service in Brookings's territory that does not already have a direct trunk into Brookings's network. TR. at 480.

19. By contrast, WWC's routing method was based on converting the existing one-way, incoming trunk from the Qwest tandem, used to deliver Qwest traffic to Brookings's customers via Brookings's host switch, into a two-way trunk and using Qwest as a transit carrier. According to WWC's witness, this routing method would result in a significantly lower estimated initial non-recurring cost outlay - $20,000 as calculated by Brookings's witness vs. $800 as estimated by WWC's witness and a somewhat lower estimated monthly recurring cost for transport for Brookings - $3,193 per month as calculated by Brookings's witness vs. $2,440 per month as calculated by WWC's witness. WWC Ex 9.

20. The basis for the routing methodology proposed by DeWitte, Brookings's cost witness was:

> In order to maintain the proper routing for the wireless calls and local rating for calls to wireless numbers, the Petitioner assumed that direct Type 2B connections would be deployed in each exchange for each CMRS carrier. Brookings Ex 4, p. 3.
>
> While there may be more efficient network trunking configurations that could be implemented as Mr. Williams asserts in his direct testimony, there are no Interconnection Agreements. Brookings Ex 4, p. 5; TR 175, 480.

21. In the *Intramodal Order*, the FCC stated in ¶ 1:

> [W]e clarify that nothing in the Commission's rules limits porting between wireline and wireless carriers to require the wireless carrier to have a physical point of interconnection or numbering resources in the rate center where the number is assigned. . . . In addition, . . . we clarify that wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting between the carriers.

22. The FCC left open the unanswered questions presented by this holding with respect to how carriers are to handle routing and transport of calls to ported numbers in the absence of points of interconnection between the LEC and the wireless carrier. The FCC stated as follows with respect to this issue in Footnote 75 at ¶ 28 and in ¶ 40 of the *Intramodal Order*:

> [75]As noted in paras. 39-40 below, there is a dispute as to which carrier is responsible for transport costs when the routing point for the wireless carrier's switch is located outside the wireline local calling area in which the number is rated. See Sprint Petition for Declaratory Ruling. The existence of this dispute over transport costs does not, however, provide a reason to delay or limit the availability of porting from wireline to wireless carriers.
>
> We make no determination, however, with respect to the routing of ported numbers, because the requirements of our LNP rules do not vary depending on how calls to the number will be routed after the port occurs. Moreover, as CTIA notes, the rating and routing issues raised by the rural wireline carriers have been raised in the context of non-ported numbers and are before the Commission in other proceedings.

> Therefore, without prejudging the outcome of any other proceeding, we decline to address these issues at this time as they relate to intermodal LNP.

The FCC is considering this issue in a pending docket. *See In the Matter of Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs*, CC-Docket 01-92, Petition of Sprint, May 9, 2002.

23. WWC produced evidence through its cost witness, Mr. Williams, that its suggested transport method of adding a bi-directional capability to the trunk currently carrying Qwest traffic into Brookings's switch from the Qwest tandem in Sioux Falls was technically feasible and was proposed as a transport mechanism, subject to resolution of transport rate issues with Qwest, by certain ILEC members of the Minnesota Independent Coalition before the Minnesota PUC in *Matter of the Petition by the Minnesota Independent Coalition for Suspension or Modification of Local Number Portability Obligations Pursuant to 47 U.S.C. §251(f)(2)*, Docket No. P-et al/M-04-707. TR 579-582, 587-589; WWC Ex 6. A temporary suspension of LNP obligations was ultimately granted by the Minnesota PUC in this docket on July 8, 2004. As of the decision date, however, the transport pricing issues between the petitioning MIC members and Qwest had still not been resolved, and in its Order Granting Suspension, the MPUC was required to provide a 90 day period for negotiation after which the matter would come back to the commission for arbitration.

24. Mr. Williams's belief that the Minnesota Qwest tandem solution was available to Petitioners was based upon his prior experience with Qwest's provisioning of services, his review of Qwest's Statement of Generally Available Terms and Conditions (SGAT) and tariffs. TR 552. Mr. Williams further testified:

> "There are Interconnection Agreements available today in South Dakota that can be opted into within a matter of days, and Western Wireless has such an agreement. That agreement calls for transit at three-tenths of a cent, and there's nothing to prevent any carrier from opting into that agreement. TR 734.

Based upon this, Mr. Williams testified that he estimated the cost to Petitioners of transport provided by Qwest to be .3 cents per minute. TR 552, 734.

25. WWC's witness also testified, however, that he had not in fact discussed this proposal with Qwest. TR 932. Furthermore, WWC did not make reference to the specific tariff or SGAT provisions or rate schedules upon which he based these conclusions, and the Commission has been unable to determine from a review of the Qwest tariffs and SGAT alone whether WWC's proposed transport mechanism would in fact be available to Brookings for the purpose of transporting calls to ported numbers outside the local exchange area as local calls or, if so, what the actual pricing and terms of such service would be.

26. With respect to the existing Type 2 Wireless Interconnection Agreement between U S West Communications, Inc. and WWC License, L.L.C. for the State of South Dakota, it is not obvious that Brookings would be able to opt into the agreement. The agreement is a comprehensive wireless to wireline interconnection agreement specifically designed for the situation where one party is a wireless carrier. In *Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Second Report and Order, FCC04-164 (rel. July 13, 2004), the FCC took away the right of carriers to opt into only selected terms of Section 251 interconnection agreements, stating in ¶ 1:

> In this Order, we adopt a different rule in place of the current pick-and-choose rule. Specifically, we adopt an "all-or-nothing rule" that requires a requesting carrier seeking to avail itself of terms in an interconnection agreement to adopt the agreement in its entirety, taking all rates, terms, and conditions from the adopted agreement.

We accordingly do not find that Brookings could necessarily simply opt into WWC's interconnection agreement with Qwest either in its entirety or as to only one particular provision.

27. WWC stated at the hearing that WWC would pay for transport on an interim basis, until the final FCC decision on transport, provided the Qwest tandem-based routing method was used. TR. at 939. The Commission finds, however, that this temporary commitment could leave Brookings with the burden of paying the costs of transport outside of its service area in the future, that there is no certainty at this time as to what those costs would be and that Brookings would then have been compelled to incur the substantial switch upgrade and other non-transport costs of LNP implementation.

28. Lastly, as to this issue of transport, we note the testimony of Mr. Bullock, cost witness for several of Petitioners, who stated:

> In telephone toll traffic there's a considerable track record of interexchange carriers providing toll service, and I think it's safe to assume that the bugs have been worked out of the interfaces that are required between local exchange access service providers such as the local exchange companies we're talking about here today and interexchange carriers such as AT&T and Sprint that reliably pass information back and forth to enable the proper routing and rating of calls and the proper rating and identity of the calling party.
>
> In terms of the exchange of local traffic through an intermediate tandem service provider, I'm not so sure that's a safe assumption to make. TR 879-880.

29. Other factors that influenced the differences between Brookings's and WWC's estimates of the cost of LNP implementation were minor and involved the ability of Brookings to reduce administrative mobilization costs through sharing with other RLECs.

30. Although there was evidence in the record that Petitioners', including Brookings, could include at least some costs of implementing LNP in the Petitioners' applications for universal service support funds from the Universal Service Administration Company, TR 954, the FCC, in two recent orders and the Federal-State Joint Board on Universal Service have recently recognized the increasing cost of providing universal service support in a competitive environment and recognized the propriety of both the FCC and state commissions considering the impact on the universal service fund in their public interest determinations. *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the State of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338, ¶ 4 (rel. Jan. 22, 2004) (*"Virginia Cellular Order"*); *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37, ¶ 4 (rel. April 12, 2004); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 04J-1 (re. February 27, 2004).

31. We find that implementing LNP at this time could cost Brookings or its users as much as from $0.76 to $0.83 per line per month excluding transport and that the costs of transport, if ultimately held to be Brookings's responsibility, could raise that monthly cost to $1.00 or higher.

32. All Petitioners, WWC and SDTA presented evidence of demand for LNP or the lack thereof. Demand for LNP has relevance both to the costs to be incurred by Petitioners to provide LNP and to the benefit side of a cost-benefit analysis for both the public interest and adverse economic effect analyses. In the case of many of the Petitioners, differences in estimated ports produced differences in recurring costs, but in Brookings's case, both Brookings's and WWC's cost witnesses used the same estimated porting number to derive estimated costs.

33. Davis, the cost witness for Beresford, Kennebec, Midstate, Roberts County/RC, and Western, used porting estimates when he calculated the cost to implement LNP. However, at the hearing, he stated that his porting numbers should not be taken as "any sort of estimate for demand" and that he did not do any type of empirical analysis. TR. at 1009-10. He just picked a number to "show a relationship between a specific demand level and what the resulting costs would be." TR. at 1009.

34. Brookings's manager testified that Brookings had received two requests for LNP from its customers. TR 294. Brookings did not conduct a formal customer survey.

35. Steven Watkins, a witness for the Petitioners, stated that NeuStar reported that "95% of wireless ports have been from one wireless carrier to another and only 5% of wireless ports were between wireline and wireless carriers." SDTA Exhibit 1 at 11. He noted that these numbers were based on wireless to wireline reporting in more urban areas and expected that interest in rural areas would be even less. Id. He stated that in rural areas "the public does not recognize wireless service as an absolute substitute for wireline service" due to reliability and that "demand for wireless service is more for its mobile capability[.]" Id. at 12. He further stated that even for customers who decide to give up their wireline service for wireless generally will try wireless service first and then drop their wireline service. Id. Thus, there would not be a need to port numbers in that case. Id.

36. Bullock, the cost witness for Alliance/Splitrock, Armour/Bridgewater/Union, Faith, Golden West/Vivian/Kadoka, McCook, Sioux Valley, Tri-County, and Valley, stated that he assumed that if LNP were required, the wireless companies would begin an aggressive marketing campaign which may generate some porting activity. TR. at 890. He also assumed that some of the customers would port back to the wireline carrier. Id. He stated that he did not do a scientific analysis since there is no track record for number porting in rural areas. Id. He also stated that his porting estimates were not based on the number of wireless carriers operating in any particular area. Id. at 891. Bullock's estimated number of ports were higher than DeWitte's and ranged from 0.694% to 3.061% of a company's access lines per year.

37. WWC's witness, Williams, stated that WWC's porting estimates were "based on what we thought we would be able to obtain as a result of both our coverage and our view of what their demographics represented." TR. at 1031. His estimates for ports, based on each company's number of access lines, ranged from a low of 2.743% for Golden West to a high of 3.528% for Brookings. WWC Ex 9, 15, 18, 19. Williams further stated that, for most of the companies, the numbers are close to what WWC would expect in WWC's rural areas, which is approximately 15 percent intermodal porting over a five year period. TR. at 1031. He assumed that WWC would have about 45% of the total estimated ports. TR. at 690. Williams stated that there has not yet been any experience in intermodal porting in rural service areas so far. Id. He went on to state that there is

a track record for wireline to wireline portability and that has resulted in an annual migration of 3.5% to 4.5%. Id. at 1033. He also stated that he would not expect wireline to wireless migration to be that high. Id.

38. The demand for porting will likely fall somewhere in between the numbers as forecasted by the Petitioners and those set forth by WWC. WWC's estimates are probably too high based on a number of factors. First, according to Williams' own testimony, wireline to wireline portability on a national basis has only resulted in porting percentages of 3.5% to 4.5%. TR. at 1033. Moreover, a survey regarding wireless porting showed that only 5% of wireless ports nationwide were between wireline and wireless carriers. SDTA Ex 1 at 11. On the other hand, DeWitte's estimates that averaged less than two tenths of one percent appear to be somewhat low. For example, in Kennebec, 12% of the survey respondents stated they would be willing to pay a dollar a month in order to have the ability to port their wireline numbers to their wireless carrier. TR. at 965. In addition, one of the cost witnesses, Bullock, used estimates that ranged from 0.694% to 3.061%.

39. The "benefit" to be derived from LNP for a given company's customers is in part dependent on demand. The uncertainty concerning the number of ports to be expected does interject an additional element of uncertainty into the recurring costs for Petitioners to provide LNP. To the extent that the number of ports increases, however, and thereby increases the costs of providing LNP, this increase in costs due to greater demand could be argued to be balanced, in terms of cost-benefit analysis by the greater benefit to be received by Petitioners' customers.

40. In *Matter of Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, ¶ 29 (1996) (*First Report and Order*), the FCC found that local number portability was a significant factor limiting a customer's decision to switch telecommunications service providers. In the *Intramodal Order*, the FCC extended this reasoning to intermodal portability. However, the FCC in *Virginia Cellular* and again in *Highland Cellular* recently emphasized that competition *per se* is not a sufficient basis upon which Commissions should base public interest decisions involving rural, high cost service areas. Although WWC presented evidence as to the number of ports it expected to obtain, TR 1033, no empirical evidence was introduced to demonstrate that LNP would materially increase the number of customers subscribing to wireless service within Petitioners' service areas or, stated conversely, that the inability to port landline phone numbers to a wireless phone within Petitioners' service areas is a significant negative factor influencing potential customers for wireless service to forego purchasing WWC's service. Petitioners provided evidence that WWC is successfully competing for customers within Petitioners' service territories without intermodal LNP. TR 312. WWC itself introduced a survey that demonstrated that wireless market penetration would be significant. The survey results were not dependent on LNP. TR 645-646. WWC Ex 11. Brookings's Manager testified that as a result of migration of customers, primarily college students, from landline to totally wireless, Brookings had lost 1,200 access lines over the past 3 years. TR 311. He further testified, "[W]e have pretty fair competition without local number portability. . . . [I]n an environment where competition is being served, the customers are, in fact, migrating as they desire form wireline to wireless." TR 312. Midstate's manager testified that in its CLEC operation in Chamberlain/Oacoma LNP had not been a significant competitive driver in the intramodal arena. Out of Midstate's 787 customers, only 8 were ported numbers. TR 976.

41. There are presently at least three sources of significant uncertainty concerning the obligations and resulting costs to Petitioners and their customers to implement LNP in their rural service areas. These three sources of significant uncertainty are: (i) the pending appeal of the *Intramodal LNP Order* in *United States Telecom Assn. v. FCC*, Cases No. 03-1414 and 03-1443

(D.C. Cir.); (ii) the unresolved apportionment of interconnection and transport obligations of the RLEC and the requesting wireless carrier; and (iii) the porting interval that the RLEC must meet. The latter two of these uncertainties arise from the language in paragraph 1 of the *Intermodal Order* in which the FCC stated:

> [W]e clarify that nothing in the Commission's rules limits porting between wireline and wireless carriers to require that wireless carrier to have a physical point of interconnection or numbering resources in the rate center where the number is assigned. . . . In addition, . . . we clarify that wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting between the carriers. We also decline to adopt a mandatory porting interval for wireline-to-wireless ports at the present time, but we seek comment on the issue as noted below.

Proceedings are currently pending before the FCC to address these unresolved issues.

42. Given the projected significant costs of providing LNP, the limited demonstrated present demand for LNP and the uncertainties currently attending LNP implementation and provision in Petitioners' territories, the Commission finds that the cost-benefit equation weighs in favor of suspending Brookings's LNP obligations for a period of time within which some of the uncertainties might be resolved. Brookings would benefit from additional certainty which will result from the FCC's acting on issues such as porting intervals and transport and routing issues. After the FCC decisions are issued, Petitioners and the Commission should have a clearer picture of what costs must be incurred to implement LNP. The decisions may result in lower projected costs or higher projected costs, but either way, there should be more certainty. Further, the additional time should result in the ability to more accurately predict demand based on what has occurred in other rural areas. Depending on the demand that is experienced in other rural areas where LNP has been implemented and the more certain cost inputs, it is possible that a further suspension might be justified. On the other hand, if substantial demand or other demonstration of marginal benefit is demonstrated, then the Commission may decide to deny further suspension requests.

43. The Commission accordingly finds that it is consistent with the public interest convenience and necessity to suspend Brookings's obligations under 47 U.S.C. §251(b)(2) and SDCL 49-31-81 to provide local number portability to requesting carriers until December 31, 2005.

44. With respect to the additional standards set forth in SDCL 49-31-80 and 47 U.S.C. §251(f)(2), the Commission finds that the first two standards, subdivisions (1) and (2), focus on economic impacts. The first standard is centered on users, i.e. customers. This requires the Commission to make a judgment as to what level of adverse economic impact on customers renders the impact "significant." The judgment of whether an impact is significant is in turn influenced by what benefits flow to the customers from imposition of the impact.

45. The second standard requires the Commission to look at whether implementation of LNP would impose a requirement that is unduly economically burdensome. The statutory language does not specify as to whom the level of burdensomeness is to be assessed. The Commission concludes that this standard should be applied to assess the burdensomeness of the requirement on both the consumer and the company. Since the company is the petitioner, it seems probable that in the absence of language to the contrary, the language refers to the petitioner. Other reasons for treating this criterion as applicable to both company and customers include the uncertainties surrounding how the costs of LNP will be distributed between the company and its consumers and the difficulty,

at this point, of determining with any degree of certainty the surcharge amount that could be charged by the company to its customers.

46. Given the significant costs of implementing and providing LNP services in the Brookings area, the current absence of customer requests for LNP, the apparent low demand for the availability of LNP and the absence of any alternative wireline service in the Brookings area, the Commission finds that suspending Brookings's LNP obligations until December 31, 2005, is necessary to avoid a significant adverse economic impact on the users of Brookings's telecommunications services generally.

47. Based upon the same findings, the Commission further finds that suspending Brookings's LNP obligations until December 31, 2005 is necessary to avoid imposing a requirement that is unduly economically burdensome on Brookings.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction, pursuant to SDCL 49-31-80, 47 U.S.C. § 251(f)(2) and ARSD 20:10:32:39, to hear and decide the Petition and to issue an order suspending or modifying Brookings's obligations to implement local number portability pursuant to 47 U.S.C. §251(b)(2) and SDCL 49-31-81. The Commission had authority pursuant to SDCL 49-31-80 and 47 U.S.C. §251(f)(2) to issue a suspension of Brookings's LNP obligations pending final action on Brookings's requested suspension and to issue a temporary suspension to September 30, 2004.

2. SDCL 49-31-80 and 47 U.S.C. §§251(f)(2) give the Commission authority to grant a suspension or modification of local number portability obligations if the local exchange carrier has fewer than two percent of subscriber lines nationwide and the commission determines that the requested suspension or modification is consistent with the public interest, convenience, and necessity and is necessary:

(1) To avoid a significant adverse economic impact on users of telecommunications services generally;

(2) To avoid imposing a requirement that is unduly economically burdensome; or

(3) To avoid imposing a requirement that is technically infeasible.

The commission may suspend enforcement of the requirement or requirements identified in the petition pending final action on the requested suspension or modification.

3. In *Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325, 11 FCC Rcd 15499 (1996), the FCC adopted the rule codified at 47 U.S.C. §51.405(d), which reads as follows:

> (d) In order to justify a suspension or modification under section 251(f)(2) of the Act, a LEC must offer evidence that the application of section 251(b) or section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

This rule was vacated by the Eighth Circuit Court of Appeals in *Iowa Utils. Bd. v. F.C.C.*, 219 F.3d 744 (8th Cir. 2000). The Commission accordingly concludes that this standard and rule does not bind the Commission's discretion in this case.

4. Brookings is a local exchange carrier serving fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide. Brookings is accordingly entitled to petition for suspension of its obligations to provide local number portability.

5. The first two standards, subdivisions (1) and (2), focus on economic impacts. The first standard is centered on users, i.e. customers. This requires the Commission to make a judgment as to what level of adverse economic impact on customers renders the impact "significant." The judgment of whether an impact is significant is in turn influenced by what benefits flow to the customers from imposition of the impact.

6. The second standard requires the Commission to look at whether implementation of LNP would impose a requirement that is unduly economically burdensome. The statutory language does not specify as to whom the level of burdensomeness is to be assessed. The Commission concludes that this standard should be applied to assess the burdensomeness of the requirement on both the consumer and the company.

7. Granting a suspension to Brookings of the requirements to provide local number portability, both intermodal and intramodal, imposed by 47 U.S.C. §251(b)(2), SDCL 49-31-81 and the rules and orders of the FCC is in the public interest.

8. Granting a suspension of Brookings's LNP obligations, both intermodal and intramodal, until December 31, 2005, is necessary to avoid a significant adverse economic impact on the users of Brookings's telecommunications services generally.

9. Granting a suspension of Brookings's LNP obligations, both intermodal and intramodal, until December 31, 2005, is necessary to avoid imposing a requirement that is unduly economically burdensome on Brookings.

10. The suspension granted herein does not relieve Brookings of its obligation to properly route calls to numbers ported between other carriers, including wireless carriers.

It is therefore

ORDERED, that Brookings's obligation to implement local number portability imposed by 47 U.S.C. §251(b)(2), SDCL 49-31-81 and the rules and orders of the FCC is hereby suspended pursuant to 47 U.S.C. § 251(f)(2), SDCL 49-31-80 and ARSD 20:10:32:39, until December 30, 2005; and it is further

ORDERED, that should Brookings desire to continue the suspension following December 31, 2005, the company shall file its petition for suspension on or before October 1, 2005; and it is further

ORDERED, that the suspension granted herein does not relieve Brookings of its obligation to properly route calls to numbers ported between other carriers, including wireless carriers.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 30th day of September, 2004. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 30th day of September, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaina Kalbo

Date: 9/30/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner

GUNDERSON, PALMER, GOODSELL & NELSON, LLP

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October 29, 2004

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

FAX Received OCT 29 2004

NEXT DAY DELIVERY
And via fax at: 605-773-3809
Pamela Bonrud
Executive Director
SD Public Utilities Commission
500 E Capitol Avenue
Pierre SD 57501

RE: WWC's Petitions to Reconsider Final Decision and Order and Brief in Support of Petitions to Reconsider Final Decision and Order (LNPs)
GPGN File. No. 5925.040157

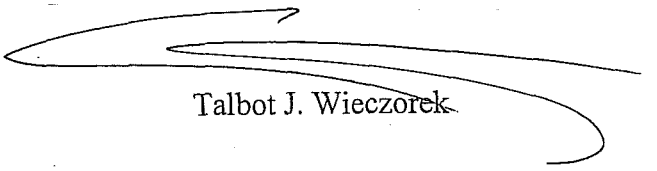
Dear Ms. Bonrud:

Enclosed for filing please find the original and ten copies of WWC's Petitions for Reconsideration of Final Decision and Order and Brief in Support of Petitions to Reconsider in the following local number portability dockets:

TC04-038	Santel Communications Cooperative, Inc.
TC04-044	Sioux Valley Telephone Company
TC04-045	Golden West Telecommunications Cooperative, Inc., Vivian Telephone Company and Kadoka Telephone Company
TC04-046	Armour Independent Telephone Company, Bridgewater-Canistota Independent Telephone Company and Union Telephone Company
TC04-047	Brookings Municipal Utilities d/b/a Swiftel Communications
TC04-048	Beresford Municipal Telephone Company
TC04-049	McCook Cooperative Telephone Company
TC04-050	Valley Telecommunications Cooperative Association, Inc.
TC04-052	Midstate Communications, Inc.
TC04-054	Interstate Telecommunications Cooperative, Inc.
TC04-055	Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc.
TC04-056	RC Communications, Inc. and Roberts County Telephone Cooperative Association
TC04-060	Venture Communications Cooperative
TC04-061	West River Cooperative Telephone Company

If you have any questions, please call me.

Sincerely,



Talbot J. Wieczorek

TJW:klw
Enclosures
c: Western Wireless, Inc.
Richard Coit
Darla Pollman Rogers
Jeff Larson
David Gerdes
Richard Helsper
Ben Dickens

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NOV 0 1 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITIONS	)	
BROOKINGS MUNICIPAL UTILITIES	)	
D/B/A SWIFTEL COMMUNICATIONS	)	**Docket No. TC04-047**
FOR SUSPENSION OR	)	
MODIFICATION OF 47 U.S.C. §	)	
251(b)(2) OF THE COMMUNICATIONS	)	
ACT OF 1934 AS AMENDED	)	

FAX Received OCT 29 2004

PETITION FOR RECONSIDERATION BY WWC LICENSE, LLC

Intervenor, WWC License LLC, by and through its attorney, Talbot J. Wieczorek, of Gunderson, Palmer, Goodsell & Nelson, LLP, hereby submits this Petition for Reconsideration of Final Decision and Order; Notice of Entry.

On September 30, 2004, the Public Utilities Commission of the State of South Dakota ("Commission") entered its "Final Decision and Order; Notice of Entry" concerning Brookings Municipal Utilities d/b/a Swiftel Communications. Petitioner WWC License, LLC, ("Western Wireless") seeks reconsideration of the Final Decision and Order pursuant to S.D. Admin. R. 20:10:01:29. A Brief in Support of Petition for Reconsideration setting forth arguments and authorities is incorporated herein by this reference.

Reconsideration of the Commission's Final Decision is appropriate for several reasons:

1) the Commission inappropriately interpreted 47 USC § 251(f)(2) in a manner which is inconsistent with the statutory construction and congressional intent by improperly blending the public interest prong with the economic elements of the necessity prong and by failing to perform the analysis it deemed appropriate to support a finding of adverse economic impact and undue economic burden;

2) the Commission's analysis improperly assessed the burden upon each individual petitioner by effectively considering all petitioners as one collective group and placing a burden upon a non-petitioning party to demonstrate demand;

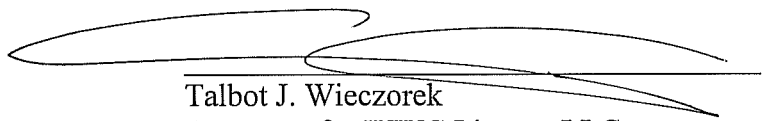
3) the Commission made erroneous findings regarding transport costs; and

4) the Public Interest Analysis performed by the Commission is not consistent with the facts before and findings made by the Commission.

For the above reasons, Western Wireless challenges the following Findings of Fact: Paragraphs 12, 14, 15, 17-28, 31, 32, 33, 35, 38, 40-47, and any other findings relying on those findings Western Wireless further challenges the following Conclusions: Paragraphs 5, 6, 7, 8 and 9. Western Wireless reserves the right to challenge any additional Findings or Conclusions related to the arguments and authorities set forth in the brief in support of the Petition to Reconsider the Final Decision and Order. Western Wireless requests the Commission reconsider its final order and decision and order immediate implementation of LNP. This petition also relies on the joint brief submitted in support of Petitions for Reconsideration, which is incorporated herein by this reference, and the record in the above matter.

Dated this 29th day of October, 2004.

GUNDERSON, PALMER, GOODSELL & NELSON, LLP



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Rapid City SD 57709
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Fax: 605-342-0480

CERTIFICATE OF SERVICE

The undersigned certifies that on the 29th day of October, 2004, I served a true and correct copy of the foregoing **PETITION FOR RECONSIDERATION BY WWC LICENSE, LLC** by NEXT DAY DELIVERY to:

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Golden West, Vivian Telephone Co and
Kadoka Armour, Bridgewater-Canistota Tele Co
and Union Tele Company
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McCook Cooperative Telephone Company
Valley Telecommunications Cooperative Association, Inc.
City of Faith Telephone Company
Midstate Communications, Inc.
Western Telephone Company
Interstate Telecommunications Cooperative, Inc.
Alliance Communications Inc. and Splitrock Properties
RC Communications, Inc., and Roberts County Telephone Cooperative Assn.
Venture Communications Cooperative
West River Cooperative Telephone Company
Stockholm-Strandburg Telephone Company
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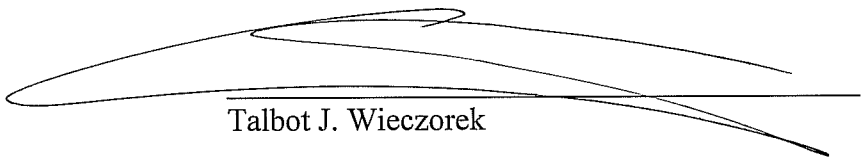
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And

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Talbot J. Wieczorek

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITIONS FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. § 251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	)))))	**WWC LICENSE LLC's BRIEF IN SUPPORT OF PETITIONS TO RECONSIDER FINAL DECISION AND ORDER**

DOCKET NUMBERS:

FAX Received OCT 29 2004

TC04-038	Santel Communications Cooperative, Inc.
TC04-044	Sioux Valley Telephone Company
TC04-045	Golden West Telecommunications Cooperative, Inc., Vivian Telephone Company and Kadoka Telephone Company
TC04-046	Armour Independent Telephone Company, Bridgewater-Canistota Independent Telephone Company and Union Telephone Company
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TC04-056	RC Communications, Inc. and Roberts County Telephone Cooperative Association
TC04-060	Venture Communications Cooperative
TC04-061	West River Cooperative Telephone Company

Intervenor, WWC License LLC ("Western Wireless"), by and through its attorney, Talbot J. Wieczorek, of Gunderson, Palmer, Goodsell & Nelson, LLP, hereby submits this brief in support of the Petitions to Reconsider Final Decision and Order.

INTRODUCTION

Reconsideration of the Commission's final order is appropriate for several reasons. First, the Commission's interpretation of 47 U.S.C. § 251(f)(2) is inconsistent with the statutory

construction and congressional intent. It is inconsistent because it fails to maintain the separate and distinct nature of the economic elements contained in the necessity prong, found under 47 U.S.C. § 251(f)(2)(A) from the public interest prong, 47 U.S.C. § 251(f)(2)(B). This faulty interpretation resulted in a failure to properly analyze adverse economic impact upon users and undue economic burden. Second, the Commission inappropriately placed burden under § 251(f)(2) upon a non-petitioning party and upon all petitioners as a whole instead of upon each individual petitioner. The Commission's unified consideration is readily apparent by the fact that the Commission ordered the exact same suspension date for every Petitioner. In addition, the Commission failed to properly address transport costs under the burden imported by § 251(f)(2). Lastly, the public interest analysis performed by the Commission and the conclusion is inconsistent with the facts before the Commission.

The substance of this brief should not be interpreted as a waiver of any arguments Western Wireless raised in its hearing brief. For clarification purposes, Western Wireless is not requesting reconsideration of the Commission's findings regarding technical feasibility. Therefore, this brief in support of the petitions for reconsideration concerns only the two economic elements of the necessity prong and the public interest prong contained in § 251(f)(2).

For discussion purposes, due to the similarity in the final orders issued for each individual petitioner, the order for Sioux Valley Telephone Company is utilized below for discussion purposes. Any reference made to a finding in the Sioux Valley Telephone Company Order is paralleled in the orders issued for all other petitioners.

ARGUMENT

I. Reconsideration Is Appropriate Because The Commission Inappropriately Interpreted 47 U.S.C. § 251(f)(2) In A Manner Inconsistent With The Statutory Construction And Congressional Intent By Improperly Blending The Public Interest Prong With The Economic Elements Of The Necessity Prong.

The Commission must not interpret 47 U.S.C. § 251(f)(2) in a manner which is inconsistent with Congress' intent supporting the promulgation of the statute. Indiana Bell Telephone Company Incorporated, 31 F.Supp.2d at 636-37 (*citing* Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 138 (1990)). In discerning intent, it is proper to consider the statutory framework as a whole and the objectives of the statute. Indiana Bell Telephone Company Incorporated, 31 F.Supp.2d at 637 (*citing* Crandon v. U.S., 494 U.S. 152, 158 (1990)). Both the statutory framework and objectives indicate that the two prongs, and the individual elements contained in the necessity prong, are intended to be separate and distinct factors.

The statutory framework demonstrates Congress explicitly created a two-part test which governs the consideration of a RLEC's petition for suspension or modification. Section 251(f)(2) provides local exchange carriers with fewer than two percent of the Nation's subscriber lines the ability to petition the State Commission for a suspension or modification of the LNP requirements found in § 251(b). It states,

> 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.

47 U.S.C. § 251(f)(2); *See Also* S.D.C.L. § 49-31-80. Under the aforementioned test, suspension or modification is inappropriate unless the PUC finds the individual Petitioner met its burden of establishing (1) at least one of the elements delineated under the necessity prong; and (2) the public interest prong. Iowa Utilities Board v. Federal Communications Commission, 219 F.3d 744, 761 (8th Cir. 2000), *reversed in part on other grounds by*, Verizon Communications Inc. v. Fed'l Communications Comm'n, 535 U.S. 467 (2002); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, first Report and Order, 11 F.C.C.R. 15499, 15518, FCC 96-325 (1996).

The statute plainly requires the finding of both the necessity prong and the public interest prong. First, the Commission must find that it is necessary to grant a modification or suspension to avoid one of the three factors enumerated under 47 U.S.C. § 251(f)(2)(A). Necessity can be established by demonstrating any one of the three individual factors delineated under the necessity prong. 47 U.S.C. § 251(f)(2)(A). As the three factors were listed separately, a logical reading of the statute indicates each factor is to be considered separate and distinct from the two alternate factors. Moreover, the statute was drafted with public interest as a completely separate prong of the test. 47 U.S.C. § 251(f)(2)(B). Any interpretation of the statute which acts to blend individual elements or prongs is inconsistent with the statutory framework and therefore inappropriate.

Had Congress intended that the factors or prongs be considered jointly, it certainly could have drafted statutory language which combined the factors. It didn't. Instead, Congress explicitly drafted statutory language that provides three separate basis that could individually support a finding of the necessity element. Likewise, it drafted a public interest prong separate

and distinct from the necessity prong and only considered if the necessity prong was first met. Suspension or modification is not appropriate unless the individual Petitioner has established both necessity and consistency with public interest. 47 U.S.C. § 251(f)(2); *See Also* Final Decision and Order; Notice of Entry for Sioux Valley Telephone Company, TC04-044, ¶ 10, p. 4 (September 30, 2004) (acknowledging both prongs must be found to justify a suspension or modification); all other petitioning parties ¶ 10, p. 4, with the exception of Interstate Telecommunications Cooperative, Inc., TC04-054, ¶ 19, p. 5. As the aforementioned concerns distinct elements of the statute, a statutory interpretation blurring the distinct nature of the elements is inconsistent with the statutory framework and, therefore, improper.

a. The Commission inappropriately adopted an interpretation of § 251(f)(2) which rendered the two-part multi-faceted test Congress envisioned into a single one-part test.

The Commission arguably properly performed a cost-benefit analysis in consideration of the public interest prong of the § 251(f)(2) test. Specifically, it stated,

> Given the projected significant costs of providing LNP, the limited demonstrated present demand for LNP, the poorly developed wireless coverage in Sioux Valley's territory and the uncertainties currently attending LNP implementation and provision in petitioners' territories, the *Commission finds that the cost-benefit equation weighs in favor of suspending* Sioux Valley's LNP obligations for a period of time within which some of the uncertainties might be resolved. ...

See Final Decision and Order; Notice of Entry for Sioux Valley Telephone Company, TC04-044, ¶ 42, p. 11(*emphasis added*); Santel, TC04-038, ¶ 43, p. 11; Golden West/Vivian/Kadoka, TC04-045, ¶ 42, p. 11; Armour/Bridgewater-Canistota/Union, TC04-046, ¶ 43, p. 11; Brookings, TC04-047, ¶ 42, p. 11; Beresford, TC04-048, ¶ 41, p. 11; McCook, TC04-049, ¶ 42, p. 11; Valley, TC04-50, ¶ 44, p.11; Midstate, TC04-052, ¶ 44, pp. 11-12; ITC, TC04-054, ¶ 51, p. 13; Alliance/Splitrock, TC04-55, ¶ 43, p. 11; RC/Roberts County, TC04-056, ¶ 42, p. 11; Venture, TC04-060, ¶ 42, p. 11; and West River, TC04-061, ¶ 46, p. 11. The above language reflects the

findings the Commission felt were relevant to the cost-benefit analysis it performed. Id. In each final order, the Commission concluded that based upon findings identical to the above, all Petitioners met their burden of establishing suspension is consistent with public interest. Id. at ¶ 44. Based on these findings, the Commission discerned the public interest prong of the test to have been met by all Petitioners. Id.

With respect to the necessity prong, the Commission applied an improper analysis of the elements contained in the statute. It effectively combined the elements of the necessity prong and the public interest prong into a single test. It inappropriately interjected the same cost-benefit analysis it utilized to determine public interest into its consideration of the two economic elements delineated under the necessity prong. With respect to the significant adverse economic impact upon user consideration, the Commission concluded the following,

> With respect to the additional standards set forth in SDCL 49-31-80 and 47 U.S.C. § 251(f)(2), the Commission finds that the first two standards, subdivision (1) and (2), focus on economic impacts. The first standard is centered on users, i.e. customers. This requires the Commission to make a judgment as to what level of adverse economic impact on customers renders the impact "significant." *The judgment of whether an impact is significant is in turn influenced by what benefits flow to the customers from imposition of the impact.*

See Final Decision and Order; Notice of Entry for Sioux Valley Telephone Company, TC04-044, ¶ 44, p. 11 (*emphasis added*); Santel, TC04-038, ¶ 45, p. 11; Golden West/Vivian/Kadoka, TC04-045, ¶ 44, p. 12; Armour /Bridgewater/Union, TC04-046, ¶ 45, p. 12; Brookings, TC04-047, ¶ 44, p. 11; Beresford, TC04-048, ¶ 43, p. 11; McCook, TC04-049, ¶ 44, p. 11; Valley, TC04-50, ¶ 46, p. 11; Midstate, TC04-052, ¶ 48, p. 12; ITC, TC04-054, ¶ 53, p. 13; Alliance/Splitrock, TC04-55, ¶ 45, pp. 11-12; RC/Roberts County, TC04-056, ¶ 44, p. 11; Venture, TC04-060, ¶ 44, p. 11; and West River, TC04-061, ¶ 48, p. 12.

The emphasized text indicates the Commission's intent to base any finding of this element upon a cost-benefit analysis. As further illustration, the Commission continued with,

> Given the significant costs of implementing and providing LNP services in the Sioux Valley area, the current absence of customer requests for LNP, the apparent low demand for the availability of LNP, the poor wireless coverage and the absence of any alternative wireline service in the Sioux Valley area at this time, the Commission finds that suspending Sioux Valley's LNP obligations until December 31, 2005, is necessary to avoid a significant adverse economic impact on the users of Sioux Valley's telecommunications services generally.

Id. at ¶ 46, p. 12. The findings upon which the Commission relies to determine adverse economic impact mirror the cost-benefit analysis the Commission relied upon to find suspension consistent with public interest. The Commission improperly blended the adverse economic impact element with the public interest prong, or, simply used a public interest analysis to reach a finding of economic impact.

Not only did the Commission improperly commingle the adverse economic impact element with the public interest prong, it performed the exact same analysis for the undue economic burden element. Specifically, it found,

> Based upon the same findings, the Commission further finds that suspending Sioux Valley's LNP obligations until December 31, 2005, is necessary to avoid imposing a requirement that is unduly economically burdensome on Sioux Valley.

Id. at ¶ 47, p. 12. The exact same cost-benefit analysis was performed for the public interest prong, the adverse economic impact upon users element, and the undue economic burden element. Because the exact same analysis was performed, the Commission's interpretation effectively combines the intended multi-prong, multi-faceted test into to a single one part test.

Congress intended consistency with public interest to be a separate and distinct prong of the test found in § 251(f)(2). The Commission's interpretation of the statute completely negates the existence of differing elements and prongs. If the Commission's interpretation is correct, it

effectively suggests that if a cost-benefit analysis weighs in favor of a suspension or modification, such suspension or modification should be granted. Such an interpretation is not consistent with congressional intent. Congress required both necessity to avoid an economic harm and consistency with public interest before a suspension or modification could be granted. 47 U.S.C. § 251(f)(2). Adherence to the Commission's interpretation of the statute is in direct conflict with the construction of the statutory language and is therefore inappropriate.

b. The Commission's improper interpretation of § 251(f)(2) resulted in an erroneous finding of adverse economic impact upon users.

The Commission's finding of adverse economic impact is erroneous because the Commission failed to make any findings regarding what constitutes "significant." The first element under the test allows the Petitioner to establish necessity if it demonstrates suspension or modification is necessary, "...to avoid a significant adverse economic impact on users of telecommunications services generally;...." *See* § 251(f)(2)(A)(i). Under its analysis of adverse economic impact, the Commission specifically stated, "This *requires* the Commission to make a judgment as to what level of adverse economic impact on customers renders the impact "significant." *See* Final Decision and Order; Notice of Entry for Sioux Valley Telecommunications Cooperative Association, Inc., TC04-044, ¶ 44, p. 11 (*emphasis added*); Santel, TC04-038, ¶ 45, p. 11; Golden West/Vivian/Kadoka, TC04-045, ¶ 44, p. 12; Armour /Bridgewater/Union, TC04-046, ¶ 45, p. 12; Brookings, TC04-047, ¶ 44, p. 11; Beresford, TC04-048, ¶ 43, p. 11; McCook, TC04-049, ¶ 44, p. 11; Valley, TC04-50, ¶ 46, p. 11; Midstate, TC04-052, ¶ 48, p. 12; ITC, TC04-054, ¶ 53, p. 13; Alliance/Splitrock, TC04-55, ¶ 45, pp. 11-12; RC/Roberts County, TC04-056, ¶ 44, p. 11; Venture, TC04-060, ¶ 44, p. 11; and West River, TC04-061, ¶ 48, p. 12. Notably, the Commission never made such a finding.

Although the Commission indicated it was required to determine at what level the economic impact becomes significant, it failed to do so. The Commission was presented varying consumer costs for LNP. It made a specific finding of the user LNP implementation cost for each Petitioner except Venture and ITC. *See* Id. at ¶ 31, p. 9. After finding the cost to users, the Commission then failed to complete the analysis of this element. It never determined the level at which the economic impact becomes significant. Rather, it flatly disregarded the Congressional mandate and justified a finding of adverse economic impact upon the same cost-benefit analysis it performed under the public interest prong. Consequently, any findings or conclusions the Commission made regarding adverse economic impact are clearly erroneous. *See* Id. at ¶¶ 12, 48, pp. 4, 12.

c. The Commission's improper interpretation of § 251(f)(2) resulted in an erroneous finding of undue economic burden.

Similarly, the Commission failed to properly perform a complete analysis for the undue economic burden element. The second element under the test allows the Petitioner to establish necessity if it demonstrates suspension or modification is necessary, "...to avoid imposing a requirement that is unduly economically burdensome;...." § 251(f)(2)(A)(ii). The Commission indicated the following for the undue economic burden element,

> The second standard requires the Commission to look at whether implementation of LNP would impose a requirement that is unduly economically burdensome. The statutory language does not specify as to whom the level of burdensomeness is to be assessed. The Commission concludes that this standard should be applied to assess the burdensomeness of the requirement on both the consumer and the company. Since the company is the petitioner, it seems probable that in the absence of language to the contrary, the language refers to the petitioner. Other reasons for treating this criterion as applicable to both company and customers include the uncertainties surrounding how the costs of LNP will be distributed between the company and its consumers and the difficulty, at this point, of determining with any degree of certainty the surcharge amount that could be charged by the company to its customers.

See Final Decision and Order; Notice of Entry for Sioux Valley Telephone Company, TC04-044, ¶ 45, p. 12, Santel, TC04-038, ¶ 46, pp. 11-12; Golden West/Vivian/Kadoka, TC04-045, ¶ 45, p. 12; Armour /Bridgewater/Union, TC04-046, ¶ 46, p. 12; Brookings, TC04-047, ¶ 45, pp. 11-12; Beresford, TC04-048, ¶ 44, p. 11; McCook, TC04-049, ¶ 45, p. 12; Valley, TC04-50, ¶ 47, p. 12; Midstate, TC04-052, ¶ 49, p. 12; ITC, TC04-054, ¶ 54, p. 13; Alliance/Splitrock, TC04-55, ¶ 46, p. 12; RC/Roberts County, TC04-056, ¶ 45, p. 11; Venture, TC04-060, ¶ 45, p. 11; and West River, TC04-061, ¶ 49, p. 12. The element found under 47 U.S.C. § 251(f)(2)(A)(ii) is properly considered with respect to the Petitioner only. Otherwise, elements one and two simply run into one test.

Even under the Commission's analysis, it neglected to perform a proper determination under this element. It never delineated a threshold for determining what constitutes undue economic burden. It found all Petitioners will incur undue economic burden by implementation of LNP, regardless of the actual financial impact each individual Petitioner will experience. It noted that it was *required* to determine that costs would create an undue economic burden. Id. The Commission then disregarded its own mandate. Rather, it shifted and improperly justified a finding of undue economic burden upon the same cost benefit analysis it performed under the public interest prong and the adverse economic impact element. *See* Final Decision and Order; Notice of Entry for Sioux Valley, TC04-044, ¶ 47, p. 12; Santel, TC04-038, ¶ 48, p. 12; Golden West/Vivian/Kadoka, TC04-045, ¶ 47, p. 12; Armour/Bridgewater/Union, TC04-046, ¶ 48, p. 12; Brookings, TC04-047, ¶ 47, p. 12; Beresford, TC04-048, ¶ 46, p. 12; McCook, TC04-049, ¶ 47, p. 12; Valley, TC04-50, ¶ 49, p. 12; Midstate, TC04-52, ¶ 51, p. 12; ITC, TC04-054, ¶ 56, p. 14; Alliance/Splitrock, TC04-55, ¶ 48, p. 12; RC/Roberts County, TC04-056, ¶ 47, p. 11; Venture, TC04-060, ¶ 47, p. 12; and West River, TC04-061, ¶ 51, p. 12.

Moreover, after the Commission suggests this element applies to both users and the petitioners, it fails to make any finding regarding the users. It finds suspension is necessary, "...to avoid imposing a requirement that is unduly economically burdensome *on Sioux Valley.*" Id. at ¶¶ 12, 49 (*emphasis added*). A similar finding was never made regarding the users. Therefore, even under the Commission's interpretation regarding what is required to satisfy this element, it failed to adhere to its own mandate. As a result, any finding made by the Commission regarding undue economic burden is erroneous. *See* Id. at ¶¶ 12, 17, 49, pp. 4, 12.

II. Reconsideration Is Proper Because The Commission's Analysis Improperly Assessed The Burden Upon Each Individual Petitioner By Effectively Considering All Petitioners As One Collective Group, Accepting Joint Filings As Sufficient Evidence To Meet The Requisite Burden, and Placing A Burden Upon A Non-petitioning Party To Demonstrate Demand.

Failure to assess the burden upon each individual petitioner is inconsistent with the statutory framework of 47 U.S.C. § 251(f)(2). In determining whether a petitioner has met its burden of establishing the need for a suspension or modification under 47 U.S.C. § 251(f)(2), the Commission must examine each Petitioner's case individually. The text of § 251(f)(2) refers to, "A local exchange carrier...." Thus, the plain meaning of the statute requires that each individual Petitioner demonstrate the existence of the above factors before a suspension or modification can be granted under § 251(f)(2).

a. The Commission improperly grouped all petitioning entities as one collective group in contravention of the statutory requirements.

Review of all the final orders demonstrates the Commission failed to properly assess the requisite burden upon each individual petitioner. A review of each of the final orders demonstrates the Commission made, for the most part, exactly the same findings with each individual petitioner. Not only were the findings the same, the Commission granted every single petitioning entity an identical suspension until December 30, 2005. *See* Final Decision and

Order; Notice of Entry for Sioux Valley, TC04-044, ¶ 47, p. 12; Santel, TC04-038, ¶ 48, p. 12; Golden West/Vivian/Kadoka, TC04-045, ¶ 47, p. 12; Armour /Bridgewater/Union Telephone Company, TC04-046, ¶ 48, p. 12; Brookings, TC04-047, ¶ 47, p. 12; Beresford, TC04-048, ¶ 46, p. 12; McCook, TC04-049, ¶ 47, p. 12; Valley, TC04-50, ¶ 49, p. 12; Midstate, TC04-052, ¶ 51, p. 12; ITC, TC04-054, ¶ 56, p. 14; Alliance/Splitrock, TC04-55, ¶ 48, p. 12; RC/Roberts County, TC04-056, ¶ 47, p. 11; Venture, TC04-060, ¶ 47, p. 12; and West River, TC04-061, ¶ 51, p. 12. Such a result is wholly inconsistent with the varying testimony provided by each Petitioner.

On the other hand, Staff recommended individualized findings to the extent that it grouped the petitioners into three categories. *See* Staff's Brief, p. 14-30, (August 20, 2004). In the first category, Staff recommended that for some of the very high cost companies a two year suspension through May 24, 2006. Id. at p. 14. For the companies which experience what the Staff classified as considerable costs, it recommended a one year suspension until May 24, 2005. Id. at p. 15. Staff justified the two classifications by noting that the second grouping has estimated costs that are lower and a higher number of monthly ports. Id. Finally, with the third grouping, Staff recommended denial of the suspension. Id. at 16. It concluded denial was appropriate because the petitioners in this group failed to meet the public interest standard. Id.

In its analysis, Staff did determine threshold costs for impact upon users. It determined high adverse economic impact to be experienced in a range of $3.03 to $5.58 per line per month. Id. at 16-21. Adverse economic impact sufficient to warrant a one-year suspension was found by Staff to be in the range of $0.66 to $1.66 per line per month. Id. at 21-28. Based upon a higher level of demand, Staff found Brookings ($0.83 per line per month); ITC ($0.61 per line per month); Venture ($0.61 per line per month); Golden West/Vivian/Kadoka ($0.32 per line per

month); and Alliance/Splitrock ($0.79 per line per month) failed to demonstrate suspension as consistent with public interest. Id. at 28-30.

Conversely, the Commission made no parallel finding regarding the threshold at which the economic impact becomes significant. Nor did it vary its findings regarding the cost benefit analysis. Instead, the Commission issued a blanket order with similar findings and a joint extension deadline of December 30, 2005 for all Petitioners. It is readily apparent that the Commission failed to consider each Petitioner individually. The resultant collective order should be reconsidered because such joint consideration is contrary to congressional intent.

b. The Commission inappropriately accepted joint filings as sufficient evidence for each individual petitioner.

In conformance with the plain meaning of the § 251(f)(2), the North Carolina Utilities Commission has indicated joint submissions may be insufficient. In the Matter of Petition by the Alliance of North Carolina Independent Telephone Companies for Limited Modification of the Requirement to Provide Number Portability, Docket No. P-100, Sub 133r, State of North Carolina Utilities Commission Raleigh, (2003). It noted,

> While the Commission knows of no problem with the Alliance bringing these claims on behalf of its members, it would appear necessary for each *individual company* in the Alliance which wishes to benefit from this exemption to provide data showing that in fact the exemption is necessary for it to avoid significant adverse economic impact on users generally, to avoid imposing a requirement that is unduly economically burdensome, or to avoid imposing a requirement that is technically infeasible. Unfortunately, the Alliance's Petition contained no such individual data; instead the Alliance appears to argue that *any* imposition of what it believes to be a wrongful obligation *ipso facto* meets those tests. The Commission believes that Section 251(f)(2) requires more than this, especially since the proceeding must be concluded within 180 days of receiving the Petition.

Id. (*emphasis in original*). Consequently, under the plain meaning of § 251(f)(2), the Commission should analyze all joint petitions while keeping in mind that each individual Petitioner bears the burden of demonstrating suspension or modification in appropriate.

In contravention of individualized consideration, the Commission considered general testimony in its evaluation of each individual Petitioner. It noted,

> All Petitioners, WWC and SDTA presented evidence of demand for LNP or the lack thereof. Demand for LNP has relevance both to the costs to be incurred by Petitioners to provide LNP and to the benefit side of a cost-benefit analysis for both the public interest and adverse economic effect analyses. In the case of many of the Petitioners, differences in estimated ports produced differences in recurring costs.

See Final Decision and Order; Notice of Entry for Sioux Valley, TC04-044, ¶ 32, p. 9; Santel, TC04-038, ¶ 33, p. 9; Golden West/Vivian/Kadoka, TC04-045, ¶ 32, p. 9; Armour/Bridgewater/Union, TC04-046, ¶ 33, p. 12; Brookings, TC04-047, ¶ 32 p. 9; Beresford, TC04-048, ¶ 31, p. 9; McCook, TC04-049, ¶ 32, p. 9; Valley, TC04-50, ¶ 33, p. 9; Midstate, TC04-052, ¶ 35, p. 9; ITC, TC04-054, ¶ 41, pp. 10-11; Alliance/Splitrock s, TC04-55, ¶ 33, p. 9; RC/Roberts, TC04-056, ¶ 32, p. 8; Venture, TC04-060, ¶ 32, p. 9; and West River, TC04-061, ¶ 35, p. 9. It then acknowledged the testimony provided by Davis, witness for Beresford, Kennebec, Midstate, Roberts County/RC, and Western in its analysis of Sioux Valley. Id. at ¶ 33. The Commission concludes, "*The demand for porting* will likely fall somewhere in between the numbers forecasted *by the Petitioners* and those set forth by WWC." Id. at ¶ 38 (*emphasis added*). The Commission found a general demand for all petitioning parties, and thereby failed to consider demand for each individual company. Such a collective finding of demand is inconsistent with the statute and consequently erroneous.

Testimony considered by the Commission was similarly introduced in a joint manner. For example, Mr. Bullock did not provide individual cost testimony for each Petitioner he represented. Rather, Mr. Bullock provided combined financial information for various companies. Specifically, Armour Independent Telephone Company, Bridgewater-Canistota Independent Telephone Company and Union Telephone Company applied for suspension or

modification in one petition.[1] Bullock then provided the financial information in one document incorporating all three companies together. *See* Bullock Prefiled Rebuttal Testimony, Exhibit R-1-TB. Bullock merged all of their financial information together and provided one set of numbers. Id. No breakdown for these individual companies was provided at the hearing nor does it appear in the record. Similarly, Golden West Telecommunications Cooperative, Inc., Vivian Telephone Company and Kadoka Telephone Company filed a joint petition and only one set of numbers.[2]

Commission staff inquired why the companies did not file separate studies as required by the Commission at its April 6, 2004 meeting. TR, Page 791, Lines 2-5. In response to staff's question, the corporate representative acknowledged that nothing in the record shows separate costs for any of these companies. TR, Page 792, Lines 17-19. Further, no evidence presented by any of the Petitioners that any of the policy testimony being presented by Petitioners was unique to any Petitioners. Rather, the policy arguments are a general argument against LNP. TR, Page 557, Lines 1-7.

The Commission did not appear to have the same concerns as the Staff regarding joint filings. Rather, the Commission utilized testimony provided by alternate Petitioners in its analysis of each individual Petitioner. Such a joint consideration is contrary to the burden set forth in § 251(f)(2). Therefore, the Petitioners testimony that originates from joint filings should properly be considered bearing in mind the individual burden placed upon each Petitioner. Had the Commission performed such an analysis, the joint Petitioners would have failed to meet the burden of establishing necessity of a suspension to avoid an economic burden based on these Petitioners' failure to provide any individual evidence.

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[1] USAC public filings show Armour and Union have different study area numbers.

[2] USAC public records show all three companies have different study area numbers, Golden West – 391659, Vivian – 391686 and Kennebec – 391668.

c. The Commission failed to appropriately place the burden on the petitioning party by placing the burden upon a non-petitioning party to establish demand and increased competition.

Placing the burden of proof regarding demand upon a non-petitioning party is inconsistent with the burden requirements applicable under § 251(f)(2). Under § 251(f)(2), each individual Petitioner bears the burden of establishing (1) at least one of the elements delineated under the necessity prong; and (2) the public interest prong. Iowa Utilities Board, 219 F.3d at 761, *reversed in part on other grounds by*, Verizon Communications Inc., 535 U.S. 467 (2002); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, first Report and Order, 11 F.C.C.R. 15499, 15518, FCC 96-325 (1996). Any assessment of burden upon a non-petitioning party is inconsistent with the existing legal precedent regarding burden.

The Commission appears to have placed the burden for establishing demand upon the non-petitioning party. It stated,

> ... As discussed in detail below, the Commission finds that at this time, the benefits to consumers from LNP in the rural areas served by Petitioners *simply have not be sufficiently demonstrated to outweigh the burden* that imposing LNP implementation at this time will place on Petitioners and the rural citizens who rely on Petitioners for essential, provider-of-last-resort telephone service.

See Final Decision and Order; Notice of Entry for Sioux Valley, TC04-044, ¶ 14, pp. 4-5 (*emphasis added*); Santel, TC04-038, ¶ 14, p. 5; Golden West/Vivian/Kadoka, TC04-045, ¶ 14, p. 5; Armour/Bridgewater/Union, TC04-046, ¶ 14, p. 5; Brookings, TC04-047, ¶ 14, pp. 4-5; Beresford, TC04-048, ¶ 14, pp. 4-5; McCook, TC04-049, ¶ 14, p. 4-5; Valley, TC04-50, ¶ 14, p. 4; Midstate, TC04-052, ¶ 14, pp. 4-5; ITC, TC04-054, ¶ 24, p. 6; Alliance/Splitrock, TC04-55, ¶ 14, pp. 4-5; RC/Roberts County, TC04-056, ¶ 14, pp. 4-5; Venture, TC04-060, ¶ 14, pp. 4-5; and West River, TC04-061, ¶ 14, pp. 4-5. However, there is no authority to support such a

burden shifting exercise. Rather, the burden is upon the petitioning party to establish that suspension or modification is consistent with public interest. Subsequently, such a burden shift is an incorrect reflection of law. Furthermore, any finding made consistent with such a shift is erroneous.

Placing a burden of proof regarding potential increase in competition upon a non-petitioning party is likewise inconsistent with the burden requirements applicable under § 251(f)(2). The petitioning party bears the burden of establishing suspension or modification is consistent with public interest. However, the Commission seems to have placed a burden upon Western Wireless to establish that LNP would increase competition. It stated,

> ...Although WWC presented evidence as to the number of ports it expected to obtain, TR 103, no empirical evidence was introduced to demonstrate that LNP would materially increase the number of customers subscribing to wireless service within Petitioners' serve areas or, stated conversely, that the inability to port landline phone numbers to a wireless phone within Petitioners' service areas is a significant negative factor influencing potential customers for wireless service to forego purchasing WWC's service. Petitioners provided evidence that WWC is successfully competing for customers within Petitioners' service areas without intermodal LNP. TR 312. ...

See Final Decision and Order; Notice of Entry for Sioux Valley, TC04-044, ¶ 40, p. 10; Santel, TC04-038, ¶ 41, p. 10; Golden West/Vivian/Kadoka, TC04-045, ¶ 40, pp. 10-11; Armour/Bridgewater/Union, TC04-046, ¶ 41, pp. 10-11; Brookings, TC04-047, ¶ 40, p. 10; Beresford, TC04-048, ¶ 39, p. 10; McCook, TC04-049, ¶ 40, pp. 10-11; Valley, TC04-50, ¶ 41, p. 10; Midstate, TC04-052, ¶ 43, p. 10-11; ITC, TC04-054, ¶ 49, p. 12; Alliance/Splitrock, TC04-55, ¶ 41, pp. 10-11; RC/Roberts County, TC04-056, ¶ 40, p. 10; Venture, TC04-060, ¶ 40, p. 10; and West River, TC04-061, ¶ 43, pp. 10-11.

There exists no authority placing a burden upon Western Wireless to prove that LNP would increase competition. The Commission's application of such a burden is a misstatement

of the applicable law. Hence, any findings or rulings made consistent with this misstatement of law are erroneous.

III. Transport cost.

A considerable amount of the Commission's final order addressed transport cost. *See* Final Decision and Order; Notice of Entry for Sioux Valley, TC04-044, ¶¶ 15, 17-28, pp. 5-8; Santel, TC04-038, ¶¶ 15, 17-28, pp. 5-8; Golden West/Vivian/Kadoka, TC04-045, ¶¶ 15, 17-28, pp. 5-9; Armour/Bridgewater/Union, TC04-046, ¶¶ 15, 17-28, pp. 5-8; Brookings, TC04-047, ¶¶ 15, 17-28, pp. 5-8; Beresford, TC04-048, ¶¶ 15, 17-27, pp. 5-8; McCook, TC04-049, ¶¶ 15, 17-28, pp. 5-8; Valley, TC04-50, ¶¶ 15, 17-28, pp. 5-8; Midstate, TC04-052, ¶¶ 15, 17-29, pp. 5-8; ITC, TC04-054, ¶¶ 25, 27-37, pp. 7-10; Alliance/Splitrock, TC04-55, ¶¶ 15, 17-29, pp. 5-8; RC/Roberts County, TC04-056, ¶¶ 15, 17-29, pp. 5-8; Venture, TC04-060, ¶¶ 15, 17-28, pp. 5-8; and West River, TC04-061, ¶¶ 15, 17-28, pp. 5-8. The issue of transport cost is a proverbial red-herring with respect to the issues properly before the Commission. None of the Petitioners provided a single valid reason why they can not transport under a similar framework as that which has been implemented in Minnesota. Petitioner bears the burden under § 251(f)(2). Rather, they simply never bothered to investigate this option. Blanket assertions regarding perceived inabilities should be analyzed with the requisite burden that it is the Petitioners' obligation to prove economic harm in mind.

While the Petitioners did not bother to do an analysis of transport costs under the mechanism that the Minnesota Independent Coalition has adopted for providing for LNP, Western Wireless did perform such a task. Western Wireless' undisputed analysis shows a transport cost under a mechanism such as the Minnesota RLECs have adopted would only

increase costs by pennies per month per line. This minor amount does not constitute an economic burden on the Petitioners or consumers.

IV. The Public Interest Analysis Performed By The Commission Is Not Consistent With The Facts Before And Findings Made By The Commission.

Western Wireless does not challenge the appropriateness of performing a cost-benefit analysis to ascertain consistency with public interest. However, rather than doing a thorough cost benefit analysis for each company, the Commission performed a single generalized approach. It then applied this general cost benefit analysis to all Petitioners rather than performing a specific cost benefit cost analysis by company. The Commission did this even though the testimony for each company varies greatly. Specifically, in the Orders the Commission notes,

> ...Brookings' Manager testified that as a result of migration of customers, primarily college students, from landline to totally wireless, Brookings had lost 1,200 access lines over the past 3 years. TR 311. He further testified, "[W]e have pretty fair competition without local number portability.... In an environment where competition is being served, the customers are, in fact, migrating as they desire form wireline to wireless." TR 312. Midstate's manager testified that in its CLEC operation in Chamberlain/Oacoma LNP had not been a significant competitive driver in the intramodal area. Out of Midstate's 787 customers, only 8 were ported numbers.

See, for example, Final Decision and Order; Notice of Entry for Sioux Valley, TC04-044, ¶ 40, p. 10; Santel, TC04-038, ¶ 41, p. 10; Golden West/Vivian/Kadoka, TC04-045, ¶ 40, pp. 10-11; Armour/Bridgewater/Union, TC04-046, ¶ 41, pp. 10-11; Brookings, TC04-047, ¶ 40, p. 10; Beresford, TC04-048, ¶ 39, p. 10; McCook, TC04-049, ¶ 40, pp. 10-11; Valley, TC04-50, ¶ 41, p. 10; Midstate, TC04-052, ¶ 43, p. 10-11; ITC, TC04-054, ¶ 49, p. 12; Alliance/Splitrock, TC04-55, ¶ 41, pp. 10-11; RC/Roberts County, TC04-056, ¶ 40, p. 10; Venture, TC04-060, ¶ 40, p. 10; and West River, TC04-061, ¶ 43, pp. 10-11.

In addition, in Mr. Bowar's prefiled direct testimony, he provided some information regarding a survey they had conducted on Kennebec's customer base. In that survey, Kennebec mailed out surveys to their customer base. It was left to the recipient's discretion to return the completed survey. Bower Direct Page 2, Lines 12-15. Of the surveys mailed back, over one-fifth of Kennebec's customers said they would be willing to pay a surcharge of $.50 per month to have an option for LNP. At $1.00 per month, the demand was just short of twelve percent. No feedback was solicited regarding a rate of $1.50. However, even at a surcharge of $3 there were still 1.6 percent of the responding customers willing to pay for a LNP service. Bower Direct, Page 3, Lines 6-12.

As to the demographic information, Mr. Bowers testified that one in five residents of Kennebec and Presho are 65 years of age or older according to the 2000 U.S. Census. He compared this to one in eight or 12.4 percent of the United States. Bower Prefiled Direct, Page 5, Lines 3-6. The Kennebec interest is gauged at a lower income demographic in South Dakota. It is logical that if 12 percent of the customer base is willing to pay $1 per month in a community such as Kennebec, then Petitioners with higher demographics and those closer to metropolitan areas would have increased interests and increased tolerance for these rate increases.

No demographic information was provided by most Petitioners. Hence, the Commission had no demographic information to perform a cost benefit analysis for each Petitioner. Obviously, the benefit to consumers in Sioux Valley, an RLEC located in bedroom communities outside of Sioux Falls, versus Kennebec, are extremely different. In those cases, Petitioners failed to provide this type of information. Instead, they simply generally testified there was not enough benefit. The failure to provide this information renders the Commission's cost benefit analysis erroneous.

CONCLUSION

Reconsideration of the final order is appropriate. The order is based upon a statutory interpretation and a burden shifting exercise that is wholly inconsistent with congressional intent. The subject inconsistent interpretation resulted in multiple erroneous findings. In addition, as is evidenced by the unilateral suspension date granted to all Petitioners, it is apparent the Commission improperly considered the Petitioners jointly as one entity. Such a consideration is in direct contradiction with the statutory burden requirements placed upon each individual petitioner. The joint considerations likewise resulted in numerous erroneous findings.

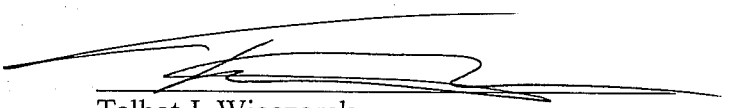
The South Dakota Public Utilities Commission's staff recommended that Brookings, ITC, Venture, Golden West/Vivian/Kadoka and Alliance/Splitrock be denied suspension. While Western Wireless believes all Petitioners failed to meet their standards, Western Wireless agrees with staff's position that these companies should clearly be denied based on a proper review of the evidence regarding these companies and the tests set forth under the statute.

Staff recommended that the companies Armour/Bridgewater/Union, Roberts County/RC, Beresford, McCook, West River, Valley, Midstate, Sioux Valley and Santel be granted a suspension until May 24, 2005. While Western Wireless believes that these companies should not be allowed a suspension, the Staff's position at a minimum should be adopted for these companies.

Based upon the above arguments and authorities, Western Wireless respectfully requests the Commission reconsider the final decision and order issued with respect to all Petitioners reflected in the caption of this petition.

Dated this 29 day of October, 2004.

GUNDERSON, PALMER, GOODSELL
& NELSON, LLP



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CERTIFICATE OF SERVICE

The undersigned certifies that on the 29 day of October, 2004, I served a true and correct copy of the foregoing **WESTERN WIRELESS, LLC's BRIEF IN SUPPORT OF PETITIONS TO RECONSIDER FINAL DECISION AND ORDER** by NEXT DAY DELIVERY to:

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McCook Cooperative Telephone Company
Valley Telecommunications Cooperative Association, Inc.
Midstate Communications, Inc.
Interstate Telecommunications Cooperative, Inc.
Alliance Communications Inc. and Splitrock Properties
RC Communications, Inc., and Roberts County Telephone Cooperative Assn.
Venture Communications Cooperative
West River Cooperative Telephone Company

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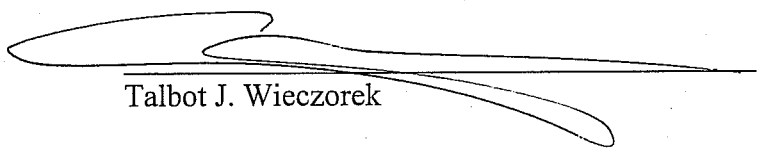
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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF BROOKINGS MUNICIPAL UTILITIES d/b/a SWIFTEL COMMUNICATIONS FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. §251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	DOCKET NUMBER TC04-047 OPPOSITION TO THE PETITION TO RECONSIDER FINAL DECISION AND ORDER

Brookings Municipal Utilities d/b/a Swiftel Communications (Petitioner), by its attorneys, hereby oppose the Petition for Reconsideration of Final Decision and Order and Notice of Entry filed by WWC License, LLC (Western Wireless) in the above-captioned proceeding. A Joint Brief in support of this Opposition, filed simultaneously herewith, is incorporated herein by this reference.

Western Wireless seeks reconsideration of the Commission's Final Decision arguing that:

1) the Commission inappropriately interpreted 47 USC § 251(f)(2) in a manner that is inconsistent with the statutory construction and congressional intent by improperly blending the public interest prong with the economic elements of the necessity prong and by failing to perform the analysis it deemed appropriate to support a finding of adverse economic impact and undue economic burden;

2) the Commission's analysis improperly assessed the burden upon each individual petitioner by effectively considering all petitioners as one collective group and placing a burden upon a non-petitioning party to demonstrate demand;

3) the Commission made erroneous findings regarding transport costs; and

4) the Public Interest Analysis performed by the Commission is not consistent with the facts before and findings made by the Commission.

Western Wireless Petition at 1-2.

Accordingly, Western Wireless argues that the Findings of Fact in various paragraphs of the Order are incorrect. Western Wireless also argues that the Conclusions of Law in various paragraphs of the Order are incorrect. Western Wireless requests that the Commission reconsider its Order and require the immediate implementation of LNP.

Petitioner opposes Western Wireless' Petition because all of its allegations are incorrect. Specifically, the Commission's Order complies with Section 251 of the Act; the Commission considered each Petitioner's case separately; the Commission did not make erroneous findings regarding transport costs; and the public interest finding is consistent with the facts and findings of the Commission. The Joint Brief, submitted simultaneously herewith, supports each of Petitioner's contentions.

Dated this twenty-second day of November, 2004.

Richard J. Helsper by Darla Pollman Rogers

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the OPPOSITION TO THE PETITION TO RECONSIDER FINAL DECISION AND ORDER was served via the method(s) indicated below, on the twenty-second day of November, 2004, addressed to:

Talbot J. Wieczorek	(X)	First Class Mail
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Dated this twenty-second day of November, 2004.

Darla Pollman Rogers

Darla Pollman Rogers

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITIONS FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. §251(b)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	TC04-038 SANTEL TC04-044 SIOUX VALLEY TC04-045 GOLDEN WEST ET AL TC04-046 ARMOUR ET AL TC04-047 SWIFTEL TC04-048 BERESFORD MUNICIPAL TC04-049 McCOOK COOPERATIVE TC04-050 VALLEY TELECOM TC04-052 MIDSTATE TC04-054 INTERSTATE TC04-055 ALLIANCE; SPLITROCK TC04-056 ROBERTS COUNTY TC04-060 VENTURE TC04-061 WEST RIVER COOP.

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UTILITIES COMMISSION

BRIEF OF PETITIONERS IN SUPPORT OF OPPOSITIONS TO THE PETITION FOR RECONSIDERATION BY WWC LICENSE, LLC

The Petitioners in the above-captioned cases and the South Dakota Telecommunications Association (SDTA) (hereafter jointly referred to as "Petitioners"), by and through their attorneys, hereby submit this Brief in support of the Answer filed by Santel and the Oppositions to the Petitions to Reconsider Final Decision and Order filed by all other Petitioners, all in opposition to the Petitions to Reconsider Final Decision and Order ("Petitions for Reconsideration") filed by WWC License LLC ("Western Wireless").

INTRODUCTION

In the Petitions for Reconsideration, Western Wireless alleges that the Commission's Final Decisions in the above-captioned cases must be reconsidered because the Commission: 1) inappropriately interpreted 47 USC § 251(f)(2) by improperly blending the public interest prong with the economic elements of the necessity prong and by failing to perform the analysis it

deemed appropriate to support a finding of adverse economic impact and undue economic burden; 2) improperly assessed the burden upon each petitioner by considering all petitioners as one collective group and placing a burden upon a non-petitioning party to demonstrate demand; 3) made erroneous findings regarding transport costs; and 4) performed a public interest analysis that is not consistent with the facts before and findings made by the Commission. For certain Petitioners, Western Wireless also alleges that the Commission improperly considered joint filings made by Petitioners. As demonstrated below, Western Wireless' allegations are not supported by the facts or the law and are without merit. Accordingly, Petitioners urge the Commission to reject Western Wireless' Petitions for Reconsideration in all respects.

ARGUMENT

I. The Commission's Orders Comply with Section 251 of the Act.

Western Wireless alleges that the Commission inappropriately interpreted section 251(f)(2) in a manner inconsistent with the statutory construction and congressional intent by blending the public interest prong with the economic elements of the necessity prong. Western Wireless argues that "the statutory framework and objectives indicate that the two prongs, and the individual elements contained in the necessity prong, are intended to be separate and distinct factors."[1] Western Wireless argues that the Commission applied "the same cost-benefit analysis it utilized to determine public interest into its consideration of the two economic elements delineated under the necessity prong."[2] Therefore, Western Wireless concludes that the Commission did not do a separate analysis of the various elements of Section 251 as required by the Act.

Western Wireless' assessment is incorrect. First, the statute does not require the Commission to perform any specific analysis in assessing whether the elements of Section 251 have

[1] Western Wireless Brief at 3.
[2] Id. at 6.

been met. The Commission, accordingly, has broad latitude in analyzing whether the elements have been met based on the facts before it and its expertise.[3]

Second, the Orders show that the Commission clearly did consider each element of Section 251 separately and reached a conclusion as to whether each element was met based on the facts and its expertise. With respect to the first element of the Section 251 necessity test, namely, whether LNP would impose a significant adverse economic impact on users of telecommunications services generally, the Commission analyzed the cost information presented by each Petitioner and Western Wireless. The Commission then found the range of LNP cost for each Petitioner, with the exception of Venture and ITC.[4] (To remedy this oversight, the Commission should clarify that the cost of LNP for Venture or its users is between approximately $0.59 and $0.63 per month per line, excluding transport, and that the cost of transport could raise that monthly cost to $0.76 or up to approximately $20.00. The Commission should clarify that the cost of LNP for ITC or its users could be as much as $0.62 per month per line, excluding transport, and that the cost of transport could raise that monthly cost to $0.80 or up to approximately $14.00.) Based on this cost, the Commission found that the cost of implementing and providing LNP services for each Petitioner is significant.[5] This finding is sufficient for the Commission to conclude that LNP would impose a significant adverse economic impact on users of telecommunications services generally.

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[3] See 64 AmJur 2d, Public Utilities §201 ("A public utilities commission's construction of its own rules, regulations, and orders and of the statutes regulating utilities is entitled to great weight or deference . . . ."); Application of Svoboda, 54 NW 2d 325 (SD 1952) ("A court, in judicial review of Public Utilities Commission's action, cannot supplant Commission's discretionary authority. . . .").

[4] See Brookings, Santel, Sioux Valley, Golden West, McCook, Valley, Midstate, Roberts County/RC, and West River Orders, Finding of Fact §31; Armour and Alliance/Splitrock Orders, Finding of Fact §32; and Beresford Order, Finding of Fact §30.

[5] See Brookings, Venture, Sioux Valley, Golden West, McCook, Midstate, and Roberts County/RC Orders, Findings of Fact §§17 and 42; Santel, Armour, Alliance/Splitrock, and West River Orders, Findings of Fact §§17 and 43; Beresford Order, Findings of Fact §§17 and 41; Valley Order, Findings of Fact §§17 and 44; ITC Order, Findings of Fact §§27 and 55.

The Commission, however, considered an additional factor, demand, in its analysis. The Commission found that a suspension of the Petitioners' LNP obligations until December 31, 2005, is necessary to avoid a significant adverse economic impact on the users of the Petitioners' telecommunications services generally, given the significant costs of implementing and providing LNP services in the Petitioners' areas, and "the current absence of customer requests for LNP, the apparent low demand for the availability of LNP and the absence of any alternative wireline service" in the Petitioners' areas.[6] Thus, the Commission's analysis and "test" is more stringent than that which the statute requires. Moreover, in light of the Commission's findings on the issue of demand, namely, that there is an absence of demand, it appears that the Commission's consideration of demand in these cases does not change the conclusion that LNP would impose a significant adverse impact on users of telecommunications services generally.

Third, although the Commission considered demand in its analysis of Section 251(f)(A) and (B), its cost-benefit analysis performed in connection with Section 251(f)(B) included more than an analysis of demand to determine the benefit of LNP. For example, to determine the benefit of LNP, the Commission considered the uncertainties concerning the obligations and cost to implement LNP, such as the porting interval. The Commission also found that the duty to provide and preserve universal service is appropriate to consider in any public interest decision involving rural local exchange carriers. Therefore, the Commission did not apply the same test in its findings with respect Section 251(f)(A) and (B), as alleged by Western Wireless.

Western Wireless alleges that the Commission's findings of adverse economic impact were erroneous because the Commission failed to make a finding regarding what constitutes "significant" under the statute. This simply is not true, as discussed above, as the Commission

[6] See Brookings, Venture, Sioux Valley, Golden West, McCook, Midstate, and Roberts County/RC Orders, Finding of Fact §46; Santel, Armour, Alliance/Splitrock, and West River Orders, Finding of Fact §47; Beresford Order,

clearly found that the implementation of LNP would impose a significant adverse economic impact on the users of telecommunications services generally.[7]

Western Wireless alleges that the Commission failed to satisfy its own standard for the second element of the necessity test, namely, that a suspension is necessary to avoid imposing a requirement that is unduly economically burdensome. According to Western Wireless, the Commission found that this element applies to both customers and the company, however the Orders only find an economic burden for the companies.

This assertion is not true. According to the Commission's Orders, the second element should be treated as applicable to both company and customers because: 1) the statute does not specify as to whom the level of burdensomeness is to be assessed; 2) the uncertainties surrounding how the costs of LNP will be distributed between the company and its customers; and 3) the difficulty at this point of determining the surcharge amount that could be charged by the company to its customers. The Commission concludes that this element is met based upon its finding that implementing and providing LNP will require "significant costs"; the absence of customer requests for LNP; the apparent low demand for the availability of LNP; and the absence of any alternative wireline service.[8] The whole of the Commission's Orders makes clear that LNP is unduly economically burdensome to the companies and customers. However, to remove any doubt, the Commission could clarify its Orders by stating that it finds that suspending the Peti-

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Finding of Fact §45; Valley Order, Finding of Fact §48; and ITC Order, Finding of Fact §55.

[7] See Brookings, Venture, Sioux Valley, Golden West, McCook, Midstate, and Roberts County/RC Orders, Findings of Fact §§44 and 46; Santel, Armour, Alliance/Splitrock, and West River Orders, Findings of Fact §§45 and 47; Beresford Order, Findings of Fact §§43 and 45; Valley Order, Findings of Fact §§46 and 48; and ITC Order, Findings of Fact §§53 and 55.

[8] See Brookings, Venture, Sioux Valley, Golden West, McCook, Midstate, and Roberts County/RC Orders, Finding of Fact §47; Santel, Armour, Alliance/Splitrock, and West River Orders, Finding of Fact §48; Beresford Order, Finding of Fact §46; Valley Order, Finding of Fact §49; and ITC Order, Finding of Fact §56.

tioners' LNP obligations until December 31, 2005 is necessary to avoid imposing a requirement that is unduly economically burdensome on Petitioners and their customers.

II. The Commission considered each Petitioner's case separately.

A. No Improper Grouping of Petitioning Entities by Commission.

Western Wireless alleges that the Commission did not consider each Petition separately because it made the same findings for each and granted an identical suspension for all Petitioners. This is plainly contradicted by the separate analysis and Order rendered for each Petitioner based on the evidence presented by each Petitioner. Although the evidence demonstrated that there are similarities in the cost elements that all Petitioners would incur in the provision of LNP and that all Petitioners face the same unresolved issues, the fact remains that each Petitioner made a separate showing concerning the cost of and demand for LNP. Further, the fact that the Commission applied its analysis consistently among Petitioners based on the facts is not evidence that the Commission did not consider each Petition separately. On the contrary, it would be arbitrary and capricious for the Commission to treat similarly situated Petitioners differently without factual distinctions that would support different treatment.[9]

Western Wireless' allegation that the Commission improperly shifted the burden of proof to Western Wireless concerning the demand for LNP also is wholly without merit and contradicted by the plain language of the Orders. Contrary to Western Wireless' allegation, the Petitioners made the initial showing concerning demand by presenting specific evidence on whether any inquiries or requests for LNP were made by their respective customers and by providing evidence concerning the demand for LNP nationwide. The Petitioners also presented estimates of demand in their cost exhibits. Western Wireless presented information concerning its projec-

[9] See SDCL 1-26-36 and Matter of Northern States Power Co., 489 NW 2d 365 (SD 1992).

tions for demand. Based on the evidence presented by both parties, the Commission found that the Petitioners' estimates were likely too low and that Western Wireless' estimates were likely too high.[10] In fact, the Commission found that Western Wireless' estimates were contradicted by other information submitted by Western Wireless on the record. Therefore, the Commission found that demand would be in between the estimates of Petitioners and Western Wireless.[11] Thus, the Commission clearly did not improperly shift the burden of proof to Western Wireless concerning demand.

B. Joint Filings by Some Petitioners Properly Accepted by Commission

As a subpart of Western Wireless' argument that the Commission failed to assess the burden of proof upon each petitioner by considering all petitions as one collective group, Western Wireless argues that the Commission improperly accepted joint filings as sufficient evidence for each individual petitioner. In particular, Western Wireless suggests that the petitions of Armour, Union, and Bridgewater-Canistota (Docket TC04-046) and Golden West, Vivian and Kadoka (Docket TC04-045) should be reconsidered because one set of financial information was provided in each of these two dockets at the hearing.[12]

As possible support for its position, Western Wireless directs the Commission's attention to the North Carolina Utilities Commission, which has indicated that "joint submissions may be insufficient."[13] The North Carolina filing for modification of LNP requirements is clearly distin-

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[10] See Brookings, Venture, Sioux Valley, Golden West, McCook, Midstate, and Roberts County/RC Orders, Finding of Fact §38; Santel, Armour, Valley, Alliance/Splitrock, and West River Orders, Finding of Fact §39; Beresford Order, Finding of Fact §37; and ITC Order, Finding of Fact §47.

[11] Id.

[12] Interestingly enough, there were two other dockets where subsidiary companies filed one petition (Alliance/Splitrock, TC04-055; and Roberts County/RC Communications, TC04-056), but for some reason known only to Western Wireless, it does not appear that Western Wireless objects to other joint filings. In addition, the record clearly indicates that in the Armour et al docket and in the Golden West et al docket, financial breakdowns for each individual company were provided pursuant to request in the discovery process. (TR 792).

[13] Western Wireless Brief at 13, emphasis added.

guishable. In North Carolina, a trade association of independent telephone companies ("Alliance") petitioned for modification, but none of the companies filed cost data. The fact that there was no cost evidence to support the petition and that the Alliance argued that any imposition of a wrongful obligation *ipso facto* met the requirement for suspension imposed by §251(f)(2) of the Act were the issues that the North Carolina Commission found troublesome. In the current dockets, each petitioner provided supporting cost data to meet the economic tests of §251(f)(2). Therefore, the North Carolina LNP proceeding does not support Western Wireless' argument for reconsideration on the issue of joint submissions.

Nothing in §251(f)(2) precludes petitions that include more than one exchange:

> 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) to telephone exchange service facilities specified in such petition. (§251 (f)(2), emphasis added).

Clearly, one petition can encompass more than one telephone exchange service facility. The petitions of Armour, Bridgewater-Canistota, and Union and of Golden West, Vivian and Kadoka specifically and concisely established the criteria for filing: each of the local exchange carriers in those petitions was petitioning the Commission for suspension, and each local exchange carrier has fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide.

A careful review of §251(f)(2) also shows that there is no requirement of a separate set of cost figures for each company. Thus, the Commission was clearly acting within the guidelines of §251(f)(2) and SDCL 49-31-81 when it considered the cost data as submitted in the petitions, whether presented on behalf of one company or two or more companies and/or subsidiaries.

Evidence at the hearing supported the Commission's consideration and Orders with regard to the jointly filed petitions. The evidence showed that for the petitions filed on behalf of more than one telephone exchange, this was the way LNP would be provisioned, so the cost data submitted more accurately reflected what LNP would cost than would cost data for each individual company within the joint filings.

> Q. (by Ms. Wiest): And why were the companies consolidated for LNP cost purposes? Could you explain the economics of scale that you believe are involved?
>
> A. (by Mr. Law): Sure. The companies are grouped together in a variety of methods, both involving switching technologies and platforms. For example, in the Golden West Vivian Kadoka environment all of those companies use Nortel DMS switches.
>
> Another reason those were grouped together was from a – outside of the common platform, the geographic scope, the customer service areas, all of those reasons, but primarily from a switching platform they were lumped together. And in addition it actually drove our costs to provide LNP down probably. From a cost perspective in the software that we purchased from our vendor they allowed us to lump those companies together for the purchase at one time. That would be for Golden West Vivian and Kadoka.
>
> In terms of Union, Armour, Bridgewater-Canistota, it's somewhat similar. Those three companies use the same switching platform, which is the Mytel Switches, which has some separate issues all of their own. But it uses the Mytel switches. At the same time, customer service, currently all of the customer service for the Union, Armour, and Bridgewater-Canistota operating companies all occur out of the Hartford office. So it just made sense to consolidate all of those together.
>
> Probably finally in terms of Union, Armour, and Bridgewater-Canistota hypothetically one domino tips it over, which is if the Commission were to hypothetically order Armour Independent Telephone Company to implement local number portability, it would require all three of those companies due to their switching architecture today to purchase the hardware and software necessary to provide LNP, even if hypothetically Union and Bridgewater-Canistota were not ordered to provide it. (TR 792-794).

This evidence shows that the joint filings reflect the reality of implementation of LNP in those areas, and Western Wireless can point to nothing in state statute or the Act that precludes presentation of cost data in such a manner.

In its final Order, the Commission made specific findings of fact and conclusions of law with regard to the Golden West, Vivian and Kadoka Petition, all of which are supported by the evidence:

> Golden West Companies is a local exchange carrier serving fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide. Golden West Companies is accordingly entitled to petition for suspension of its obligations to provide local number portability.[14]
>
> The record amply demonstrates that the costs to Golden West Companies to implement number portability will be significant.[15]
>
> Granting a suspension of Golden West Companies' intramodal and intermodal LNP obligations until December 31, 2005, is necessary to avoid a significant adverse economic impact on the users of Golden West Companies' telecommunications services generally.[16]
>
> Granting a suspension of Golden West Companies' intramodal and intermodal LNP obligations until December 31, 2005, is necessary to avoid imposing a requirement that is unduly economically burdensome on Golden West Companies.[17]
>
> Granting a suspension to Golden West Companies of the requirement to provide local number portability, both intramodal and intermodal, imposed by 47 U.S.C. §251(b)(2), SDCL 49-31-81 and the rules and orders of the FCC is in the public interest.[18]

Similar findings were made in the Armour, Bridgewater-Canistota, and Union docket.[19]

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[14] Golden West Order at Conclusion of Law §4.
[15] Id. at Finding of Fact §17.
[16] Id. at Conclusion of Law §8.
[17] Id. at §9.
[18] Id. at §7.

[19] The corresponding Findings and Conclusions in the Armour, Bridgewater-Canistota, and Union Order are as follows: Conclusion of Law §4, Finding of Fact §17, Conclusions of Law §8, §9, and §7.

The Commission correctly considered the petitions as filed, and the Orders of Suspension in each docket are supported by the evidence.

III. The Commission did not make erroneous findings regarding transport costs.

Western Wireless alleges that the Commission made erroneous findings concerning transport costs because the minor amount of transport costs as calculated by Western Wireless based on the framework used in Minnesota does not constitute an economic burden on the Petitioners or consumers. As an initial matter, Western Wireless' projected cost of transport only reflects the alleged direct cost of using the Qwest tandem and it does not consider the additional financial impacts that would be imposed on rural LEC operations, such as reduced access and toll revenues. In any event, Western Wireless' allegation misconstrues the Commission's Orders. The range of LNP costs found by the Commission to be significant is based on the cost of LNP without transport as calculated by Petitioners and Western Wireless. And, when the cost of transport is included, the Commission has found that the cost of LNP could be substantially higher.[20] Moreover, contrary to Western Wireless' assertion, its analysis on transport was disputed by each of the Petitioners and, more importantly, the Commission has found that Western Wireless' analysis is flawed for a number of reasons.[21] Accordingly, Western Wireless' characterization of the Orders on this point is simply not true and should be rejected.

IV. The public interest finding is consistent with the facts and findings of the Commission.

Western Wireless alleges that the public interest finding is not consistent with the facts and findings made by the Commission and that the Commission's cost-benefit analysis is a general analysis. Western Wireless also complains that the Petitioners did not provide demographic

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[20] Id.

[21] See Brookings, Venture, Santel, Sioux Valley, Golden West, Armour, McCook, Valley, Midstate, Roberts County/RC, and West River Orders, Findings of Fact §§23-26; Beresford Order, Findings of Fact §22-25; Alliance/Splitrock Order, Findings of Fact §§24-27; and ITC Order, Findings of Fact §§32-35.

information necessary to perform a cost-benefit analysis and, therefore, the Commission's analysis is erroneous.

It is clear that Western Wireless' criticism of the Orders is misguided as the Commission performed a thorough public interest analysis based on the evidence presented on the record which included 1) a thorough analysis of the LNP cost information presented by all Parties; and 2) a thorough analysis of the demand information presented by all Parties. The Commission also analyzed other factors that should be considered in assessing the "benefits" of LNP. For example, the Commission found no evidence to demonstrate that LNP would increase the number of wireless customers and the Commission found that the Petitioners and Western Wireless presented evidence demonstrating that Western Wireless is able to compete for customers even without LNP. In conclusion, the Commission found that given the significant costs of LNP, the limited demand, and the uncertainties still outstanding concerning the provision of LNP, the cost-benefit analysis weighs in favor of suspending the LNP requirement of Petitioners.

The only specific criticism made by Western Wireless with respect to the public interest analysis is that the Petitioners did not provide demographic information that, according to Western Wireless, is necessary to perform a cost-benefit analysis. On this point, however, Western Wireless simply is incorrect, as the plain language of section 251 does not require a demographic analysis when considering the public interest. Accordingly, the Commission's public interest conclusions are both consistent with the facts and findings made by the Commission and its cost-benefit analysis is specific as to each Petitioner.

CONCLUSION

Based on the foregoing, Petitioners request that the Commission deny the Petitions for Reconsideration filed by Westen Wireless.

Respectfully submitted this twenty-second day of November, 2004.

Darla Pollman Rogers

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the BRIEF OF PETITIONERS IN SUPPORT OF OPPOSITINS TO THE PETITION FOR RECONSIDERATION BY WWC LICENSE, LLC was served via the method(s) indicated below, on the twenty-second day of November, 2004, addressed to:

Talbot J. Wieczorek	(X)	First Class Mail
Gunderson, Palmer, Goodsell & Nelson, LLP	( )	Hand Delivery
P. O. Box 8045	( )	Facsimile
Rapid City, South Dakota 57709	( )	Overnight Delivery
	(X)	E-Mail
Richard J. Helsper	(X)	First Class Mail
Glover, Helsper and Rasmussen, P.C.	( )	Hand Delivery
100 Twenty-Second Avenue, Suite 200	( )	Facsimile
Brookings, South Dakota 57006	( )	Overnight Delivery
	( )	E-Mail
Richard D. Coit, Executive Director	(X)	First Class Mail
South Dakota Telecommunications Ass'n	( )	Hand Delivery
P. O. Box 57	( )	Facsimile
Pierre, South Dakota 57501	( )	Overnight Delivery
	(X)	E-Mail
Mary J. Sisak	(X)	First Class Mail
Benjamin H. Dickens, Jr.	( )	Hand Delivery
Blooston, Mordkofsky, Dickens, Duffy & Prendergast	( )	Facsimile
2120 L. Street NW #300	( )	Overnight Delivery
Washington, DC 20037	( )	E-Mail
David A. Gerdes	(X)	First Class Mail
May, Adam, Gerdes & Thompson	( )	Hand Delivery
503 S. Pierre Street	( )	Facsimile
P. O. Box 160	( )	Overnight Delivery
Pierre, South Dakota 57501	( )	E-Mail
Jeffrey D. Larson	(X)	First Class Mail
Larson and Nipe	( )	Hand Delivery
P. O. Box 277	( )	Facsimile
Woonsocket, South Dakota 57385-0277	( )	Overnight Delivery
	( )	E-Mail

Dated this twenty-second day of November, 2004.

Darla Pollman Rogers

Darla Pollman Rogers

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF BROOKINGS MUNICIPAL UTILITIES D/B/A SWIFTEL COMMUNICATIONS FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. § 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	))))))	ORDER DENYING PETITION FOR RECONSIDERATION TC04-047

On March 11, 2004, Brookings Municipal Utilities d/b/a Swiftel Communications (Brookings, Swiftel or Petitioner) filed a petition (Petition) pursuant to 47 U.S.C. Section 251(f)(2) and SDCL 49-31-80 seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. From February 12 to April 23, 2004, twenty other rural local exchange carriers filed similar petitions seeking the same relief (two of these later-filed petitions, TC04-077 and TC04-085, were subsequently settled) (excluding settling petitioners, collectively, Petitioners). On April 19, 2004, the Commission issued an order granting Brookings's request for interim suspension of its obligation to implement LNP pending final decision pursuant to 47 U.S.C. Section 251(f)(2) of the Telecommunications Act of 1996 and SDCL 49-31-80 and granting intervention to WWC License LLC d/b/a CellularOne (WWC) and the South Dakota Telecommunications Association (SDTA).

On May 4, 2004, the Commission issued an Order for and Notice of Procedural Schedule and Hearing and of Intent to Take Judicial Notice. On June 16, 2004, the Commission issued a Supplemental Order for and Notice of Hearing establishing the schedule for presentation of general and company-specific testimony in this and the other LNP dockets. On June 21-July 1, 2004, a hearing was held on this matter and the other dockets in which Petitioners seek to suspend their obligations to implement LNP. The company-specific hearing on this matter was held on June 22 2004. On July 13, 2004, the Commission issued an Order Establishing Briefing and Decision Schedule setting this matter for oral argument and decision on August 31, 2004. On July 15, 2004, the Commission issued an Order Temporarily Suspending Local Number Portability Obligations suspending Brookings's LNP obligations until September 7, 2004, in order to accommodate the briefing and decision schedule in the case. On August 31, 2004, the Commission heard oral arguments from the parties in this and the other LNP dockets. Following oral argument, the Commission voted unanimously to suspend Petitioners' obligations to implement local number portability pursuant to 47 U.S.C. §251(b)(2) and SDCL 49-31-81. A majority of the Commission voted to suspend Petitioners' intermodal LNP obligations until December 31, 2005. Commissioner Burg dissented from this portion of the decision, indicating that he supported an indefinite suspension of intermodal LNP obligations for all Petitioners requesting suspension of LNP obligations. The Commission voted unanimously to defer decision regarding intramodal number portability requirements without specifying whether the deferral applied to all LNP dockets or just those in which Midcontinent Communications had intervened and objected to suspending intramodal LNP requirements. On September 4, 2004, the Commission issued an order temporarily suspending all LNP requirements for all petitioners until September 30, 2004, in order to provide sufficient time for the finalization of the findings of fact and conclusions of law and to render a final decision regarding intramodal LNP. On September 22, 2004, the Commission voted unanimously to suspend intramodal LNP obligations for all Petitioners until December 31, 2005, with special conditions for those dockets in which Midcontinent remains an intervening party.

On September 30, 2004, the Commission issued its Final Decision and Order; Notice of Entry of Order.

On October 29, 2004, the Commission received a Petition for Reconsideration by WWC License, LLC and Brief in Support of Petitions to Reconsider Final Decision and Order. On November 22, 2004, the Commission received an Opposition to the Petition to Reconsider Final Decision and Order from Petitioner and a Brief of Petitioners in Support of Opposition to the Petition for Reconsideration by WWC License, LLC.

The Commission has jurisdiction in this matter pursuant to SDCL 49-31-80, Section 251(f)(2) of the Telecommunications Act of 1996, 47 U.S.C. Section 251(f)(2), and ARSD 20:10:32:39.

At its December 28, 2004, meeting, the Commission considered this matter. The Commission voted unanimously to deny the Petition for Reconsideration, except for amendments to clarify the Commission's findings and conclusions relative to SDCL 49-31-80(2), which are set forth in a separate Amended Final Decision and Order; Notice of Entry. It is therefore

ORDERED, that the Petition for Reconsideration is hereby denied, except for amendments to clarify the Commission's findings and conclusions relative to SDCL 49-31-80(2), which are set forth in a separate Amended Final Decision and Order; Notice of Entry.

Dated at Pierre, South Dakota, this 30th day of December, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 12/30/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF BROOKINGS MUNICIPAL UTILITIES D/B/A SWIFTEL COMMUNICATIONS FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. § 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	))))))	AMENDED FINAL DECISION AND ORDER; NOTICE OF ENTRY TC04-047

PROCEDURAL HISTORY

On March 11, 2004, Brookings Municipal Utilities d/b/a Swiftel Communications (Brookings, Swiftel or Petitioner) filed a petition (Petition) pursuant to 47 U.S.C. Section 251(f)(2) and SDCL 49-31-80 seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. From February 12 to April 23, 2004, twenty other rural local exchange carriers filed similar petitions seeking the same relief (two of these later-filed petitions, TC04-077 and TC04-085, were subsequently settled) (excluding settling petitioners, collectively, Petitioners). On April 19, 2004, the Commission issued an order granting Brookings's request for interim suspension of its obligation to implement LNP pending final decision pursuant to 47 U.S.C. Section 251(f)(2) of the Telecommunications Act of 1996 and SDCL 49-31-80 and granting intervention to WWC License LLC d/b/a CellularOne (WWC) and the South Dakota Telecommunications Association (SDTA).

On May 4, 2004, the Commission issued an Order for and Notice of Procedural Schedule and Hearing and of Intent to Take Judicial Notice. On June 16, 2004, the Commission issued a Supplemental Order for and Notice of Hearing establishing the schedule for presentation of general and company-specific testimony in this and the other LNP dockets. On June 21-July 1, 2004, a hearing was held on this matter and the other dockets in which Petitioners seek to suspend their obligations to implement LNP. The company-specific hearing on this matter was held on June 22 2004. On July 13, 2004, the Commission issued an Order Establishing Briefing and Decision Schedule setting this matter for oral argument and decision on August 31, 2004. On July 15, 2004, the Commission issued an Order Temporarily Suspending Local Number Portability Obligations suspending Brookings's LNP obligations until September 7, 2004, in order to accommodate the briefing and decision schedule in the case. On August 31, 2004, the Commission heard oral arguments from the parties in this and the other LNP dockets. Following oral argument, the Commission voted unanimously to suspend Petitioners' obligations to implement local number portability pursuant to 47 U.S.C. §251(b)(2) and SDCL 49-31-81. A majority of the Commission voted to suspend Petitioners' intermodal LNP obligations until December 31, 2005. Commissioner Burg dissented from this portion of the decision, indicating that he supported an indefinite suspension of intermodal LNP obligations for all Petitioners requesting suspension of LNP obligations. The Commission voted unanimously to defer decision regarding intramodal number portability requirements without specifying whether the deferral applied to all LNP dockets or just those in which Midcontinent Communications had intervened and objected to suspending intramodal LNP requirements. On September 4, 2004, the Commission issued an order temporarily suspending all LNP requirements for all petitioners until September 30, 2004, in order to provide sufficient time for the finalization of the findings of fact and conclusions of law and to render a final decision regarding intramodal LNP. On September 22, 2004, the Commission voted unanimously to suspend intramodal LNP obligations for all Petitioners until December 31, 2005, with special conditions for those dockets in which Midcontinent remains an intervening party.

Having considered the evidence of record and applicable law, the Commission makes the following Findings of Fact, Conclusions of Law and Final Decision and Order:

FINDINGS OF FACT

"TR" refers to the Transcript of Proceedings of the hearing held on June 21-July 1, 2004, in this docket and the other LNP suspension dockets. References will be to TR and page number(s). "Ex" refers to exhibit.

1. Brookings filed the Petition on March 11, 2004. On March 18, 2004, the Commission electronically transmitted notice of the filing and the intervention deadline of April 2, 2004, to interested individuals and entities. WWC filed to intervene on March 30, 2004. SDTA filed to intervene on March 31, 2004. On April 19, 2004, the Commission issued an order granting intervention to WWC and SDTA.

2. By its May 4, 2004 Order for and Notice of Procedural Schedule and Notice of Intent to Take Judicial Notice and June 16, 2004 Supplemental Order for and Notice of Hearing, this matter was duly noticed for hearing on June 21-July 1, 2004, with the company-specific hearing on this matter to be held on June 22, 2004. The hearing was held as scheduled.

3. On September 4, 2004, the Commission issued an Order Temporarily Suspending Local Number Portability Obligations suspending Brookings's LNP obligations until September 30, 2004, in order to provide sufficient time for the finalization of the findings of fact and conclusions of law and to render a final decision regarding intramodal LNP.

4. The Federal Communications Act of 1934 as amended by the Telecommunications Act of 1996, 47 U.S.C. chapter 5 (the "Act") requires local exchange carriers "to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the [Federal Communications] Commission." 47 U.S.C. § 251(b)(2). In *Matter of Telephone Number Portability*, CC Docket 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 03-284 (November 10, 2003) (the "*Intermodal Order*"), the Federal Communications Commission (FCC) required local exchange carriers that are located outside of the top 100 metropolitan statistical areas to provide LNP and to port numbers to wireless carriers. Pursuant to this order, local exchange carriers were required to provide LNP by the later of May 24, 2004, or six months after the date that the local exchange carrier received a bona fide request.

5. 47 U.S.C. §153(30) defines "number portability" as follows:

> The term "number portability" means the ability of users of telecommunications 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.

In the *Intramodal Order*, ¶¶ 25 and 28, the FCC addressed the question of "at the same location" as follows:

> [W]e find that . . . LECs must port numbers to wireless carriers where the requesting carrier's coverage area overlaps the geographic location of the rate center to which the number is assigned. . . . We conclude that porting from a wireline to a wireless carrier that does not have a point of interconnection or numbering

resources in the same rate center does not, in and of itself, constitute location portability, because the rating of calls to the ported number stays the same.

The term "intramodal number portability" as it applies to the Petition refers to the ability to port a number from a wireline carrier, such as Petitioner, to another wireline carrier. The term "intermodal number portability" as it applies to the Petition refers to the ability to port a number from a wireline carrier, such as Petitioner, to a wireless carrier. The Petition seeks suspension of both intermodal and intramodal number portability obligations. No wireline carrier other than Petitioner is a party to this docket.

6. The determinations that the Commission must make before suspending or modifying an RLEC's obligation to provide LNP to requesting carriers are set forth in SDCL 49-31-80 which reads as follows:

> Consistent with 47 U.S.C. § 251(f)(2) as of January 1, 1998, the commission may grant a suspension or modification of any of the interconnection or other requirements set forth in 47 U.S.C. §§ 251(b) and 251(c), as of January 1, 1998, to any local exchange carrier which serves fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide. Any such carrier shall petition the commission for the suspension or modification. The commission shall grant the petition to the extent that, and for such duration as, the commission determines that the requested suspension or modification is consistent with the public interest, convenience, and necessity and is necessary:
>
> (1) To avoid a significant adverse economic impact on users of telecommunications services generally;
>
> (2) To avoid imposing a requirement that is unduly economically burdensome; or
>
> (3) To avoid imposing a requirement that is technically infeasible.
>
> The commission may suspend enforcement of the requirement or requirements identified in the petition pending final action on the requested suspension or modification.

The language and substance of SDCL 49-31-80 and 47 U.S.C. § 251(f)(2) are essentially the same.

7. By its Order for and Notice of Procedural Schedule and Hearing and of Intent to Take Judicial Notice issued on May 4, 2004, the Commission gave the following notice of intent to take judicial notice:

> The Commission hereby gives notice pursuant to SDCL 1-26-19(3) that it intends to take judicial notice of the fact that Petitioner is a local exchange carrier with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide. Any party objecting to this taking of judicial notice shall serve notice of such objection on the Commission and the parties prior to the hearing.

No party to the docket served notice of objection or otherwise noted any objection to this taking of judicial notice. Accordingly, the Commission takes judicial notice of the fact and finds that Brookings is a local exchange carrier with fewer that 2 percent of the nation's subscriber lines installed in the aggregate nationwide pursuant to SDCL 49-31-80 and 47 U.S.C. §251(f)(2).

8. Brookings is a municipal local exchange carrier (RLEC) that provides local exchange and exchange access services to 14,150 access lines, including an average of 435 Lifeline lines. Brookings Ex 1 at 1.

9. WWC and one other wireless carrier have made bona fide requests for LNP from Brookings. No wireline carrier has made a bona fide request for LNP. Ex 1 at 3.

10. Under SDCL 49-31-80, the Commission is required to determine the extent to which the requested suspension or modification is consistent with the public interest, convenience and necessity and whether the suspension or modification is necessary to avoid at least one of the three adverse effects set forth in subdivisions (1), (2) and (3) of the statute.

11. There was essentially no disagreement by any of the experts who testified on behalf of Petitioners that LNP is technically feasible. TR 175, 997. The testimony of Petitioners' witnesses to the effect that LNP was not technically feasible was based upon the present absence of the necessary switch upgrades and direct trunk connections with requesting carriers conforming to existing interconnection agreements. We find that this does not establish technical infeasibility, although the Commission recognizes that Petitioner would require a period of time to install and implement the necessary technology. The switch upgrade and interconnection facilities assumed by Petitioners' witnesses to establish their transport costs demonstrate that LNP is technically feasible. According to several of the Petitioners' manager witnesses, LNP is technically feasible. Bryan Roth, manager for McCook, agreed that LNP was technically feasible. TR. at 829. Pamela Harrington, general manger of Roberts County and RC, stated that LNP is technically feasible with the proper upgrades. TR. at 1049. Dennis Law, Golden West's manager, stated that his companies are technically able to connect to the Qwest tandem. TR. at 791-792. It is technically feasible for each of the Petitioners to implement LNP. It would take action on Petitioners' parts and would cost Petitioners money in varying levels to implement LNP, but the technology and network facilities exist for it to be implemented. The decisions in each of Petitioners' cases must therefore turn upon the two economic standards and the public interest determination.

12. The Commission finds that granting a suspension of Brookings's local number portability obligations under 47 U.S.C. §251(b)(2) until December 31, 2005, is consistent with the public interest, convenience and necessity. The Commission further finds that at the present time, granting a suspension to Brookings is necessary to avoid a significant adverse economic impact on Brookings's users of telecommunications services generally and to avoid imposing a requirement that is unduly economically burdensome on Brookings. These findings are based upon the specific findings set forth below.

13. In a June 18 letter to the President of the National Association of Regulatory Utility Commissioners (NARUC), the Chairman of the FCC, Michael Powell, recognized the potential burden of LNP implementation on small businesses, particularly rural local exchange carriers, and encouraged state commissions to exercise their authority under 47 U.S.C. §251(f)(2) to grant the requested relief if the State Commissions deem it appropriate. TR 566-568; Venture Ex 4. Chairman Powell directed "State Commissions to consider the burdens on small businesses in addressing those waiver requests and to grant the requested relief if the State Commissions deem it appropriate." Venture Ex 4.

14. At least part of the determination of whether a suspension of a Petitioner's LNP requirements is consistent with the public interest, convenience and necessity involves weighing the costs to the LEC and/or its users against the benefits to be derived from the incurrence of such

costs. *Order Granting Suspension, Applications Nos. C-3096, et seq.*, Nebraska Public Service Commission (July 20, 2004). As discussed in detail below, the Commission finds that at this time, the benefits to consumers from LNP in the rural areas served by Petitioners simply have not been sufficiently demonstrated to outweigh the burden that imposing LNP implementation at this time will place on Petitioners and the rural citizens who rely on Petitioners for essential, provider-of-last-resort telephone service.

15. Another factor that we find is highly relevant to our determination of whether the granting of the requested suspension at this time is in the public interest involves the significant level of uncertainty that currently exists concerning (i) the appropriate technical solution for transport of calls to ported numbers in rural areas, (ii) the respective responsibilities, and attendant costs, of providing transport for calls to ported numbers outside the local calling area of Petitioners, (iii) the routing and rating of calls to ported numbers, (iv) the porting interval, (v) the demand for number porting, particularly in the areas where signal coverage is spotty or non-existent and (vi) the extent to which the presence of LNP is a marginal factor in the consumer's purchasing decision for alternative services such as wireless service. Suspending Petitioners' LNP obligations until December 31, 2005, will enable the unresolved issues concerning transport, routing and rating and porting interval to be addressed in the proceedings pending before the FCC, and will provide a period of time for (vii) the Petitioners and intervenors to continue to investigate, negotiate and hopefully resolve many of the interconnection, transport and routing and rating issues between them, (viii) wireless carriers to continue their build-outs of facilities to provide more extensive and reliable signal coverage throughout Petitioners' service territories and (ix) for the accumulation of data concerning the deployment of LNP in other areas and concerning the benefits of LNP -- particularly whether demand for LNP in fact materializes and is in fact demonstrated to be of material significance in the consumer's purchasing decision for alternative services.

16. A final factor that we believe is appropriate to consider in any public interest decision involving rural local exchange carriers is reflected in one of the central policy objectives of the Act and SDCL Chapter 49-31 - the duty to provide and preserve universal service. 47 U.S.C. §§ 214(e) and 254; SDCL 49-31-76 and 49-31-78 through 49-31-81. Petitioners, all of whom are the incumbent local exchange carriers and eligible telecommunications carriers under the Act, shoulder the responsibility for providing essential telecommunications to all persons within their service territories as carriers of last resort.

17. The record amply demonstrates that the costs to Brookings to implement number portability will be significant. These costs fall into three general categories: switch upgrade, transport and recurring operational costs. The evidence addressing Brookings's costs of implementing LNP was conflicting. Brookings's cost witness projected the non-recurring cost for Brookings to implement LNP to be $291,600 excluding transport and $311,600 including transport. He estimated the recurring monthly costs for Brookings to be $3,858 excluding transport and $7,051 including transport. Brookings's cost witness projected that these costs would translate into an LNP cost of $0.83 per line per month excluding transport and $1.12 including transport. WWC Ex 9. WWC's witness projected a non-recurring cost of $290,600 excluding transport and $291,400 including transport. WWC Ex 9. WWC's cost witness projected recurring monthly cost for Brookings at $2,979 excluding transport and $5,419 including transport. WWC Ex 9. WWC projected these costs would translate into an LNP cost of $0.76 cost per line per month excluding transport and $0.96 including transport. WWC Ex 9.

18. There was not a huge disparity in the cost estimates between Brookings and WWC. The most significant area of disagreement regarding the costs of implementing LNP for Brookings was transport, but the difference was not as significant in comparison with the switch upgrade and other implementation costs as with most other Petitioners. Brookings proposed a transport method using

a DS1 (T1) circuit installed between the Brookings exchange to each wireless carrier that is currently providing service in Brookings's territory that does not already have a direct trunk into Brookings's network. TR. at 480.

19. By contrast, WWC's routing method was based on converting the existing one-way, incoming trunk from the Qwest tandem, used to deliver Qwest traffic to Brookings's customers via Brookings's host switch, into a two-way trunk and using Qwest as a transit carrier. According to WWC's witness, this routing method would result in a significantly lower estimated initial non-recurring cost outlay - $20,000 as calculated by Brookings's witness vs. $800 as estimated by WWC's witness and a somewhat lower estimated monthly recurring cost for transport for Brookings - $3,193 per month as calculated by Brookings's witness vs. $2,440 per month as calculated by WWC's witness. WWC Ex 9.

20. The basis for the routing methodology proposed by DeWitte, Brookings's cost witness was:

> In order to maintain the proper routing for the wireless calls and local rating for calls to wireless numbers, the Petitioner assumed that direct Type 2B connections would be deployed in each exchange for each CMRS carrier. Brookings Ex 4, p. 3.
>
> While there may be more efficient network trunking configurations that could be implemented as Mr. Williams asserts in his direct testimony, there are no Interconnection Agreements. Brookings Ex 4, p. 5; TR 175, 480.

21. In the *Intramodal Order*, the FCC stated in ¶ 1:

> [W]e clarify that nothing in the Commission's rules limits porting between wireline and wireless carriers to require the wireless carrier to have a physical point of interconnection or numbering resources in the rate center where the number is assigned. . . . In addition, . . . we clarify that wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting between the carriers.

22. The FCC left open the unanswered questions presented by this holding with respect to how carriers are to handle routing and transport of calls to ported numbers in the absence of points of interconnection between the LEC and the wireless carrier. The FCC stated as follows with respect to this issue in Footnote 75 at ¶ 28 and in ¶ 40 of the *Intramodal Order*:

> [75]As noted in paras. 39-40 below, there is a dispute as to which carrier is responsible for transport costs when the routing point for the wireless carrier's switch is located outside the wireline local calling area in which the number is rated. See Sprint Petition for Declaratory Ruling. The existence of this dispute over transport costs does not, however, provide a reason to delay or limit the availability of porting from wireline to wireless carriers.
>
> We make no determination, however, with respect to the routing of ported numbers, because the requirements of our LNP rules do not vary depending on how calls to the number will be routed after the port occurs. Moreover, as CTIA notes, the rating and routing issues raised by the rural wireline carriers have been raised in the context of non-ported numbers and are before the Commission in other proceedings.

> Therefore, without prejudging the outcome of any other proceeding, we decline to address these issues at this time as they relate to intermodal LNP.

The FCC is considering this issue in a pending docket. *See In the Matter of Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs*, CC-Docket 01-92, Petition of Sprint, May 9, 2002.

23. WWC produced evidence through its cost witness, Mr. Williams, that its suggested transport method of adding a bi-directional capability to the trunk currently carrying Qwest traffic into Brookings's switch from the Qwest tandem in Sioux Falls was technically feasible and was proposed as a transport mechanism, subject to resolution of transport rate issues with Qwest, by certain ILEC members of the Minnesota Independent Coalition before the Minnesota PUC in *Matter of the Petition by the Minnesota Independent Coalition for Suspension or Modification of Local Number Portability Obligations Pursuant to 47 U.S.C. §251(f)(2)*, Docket No. P-et al/M-04-707. TR 579-582, 587-589; WWC Ex 6. A temporary suspension of LNP obligations was ultimately granted by the Minnesota PUC in this docket on July 8, 2004. As of the decision date, however, the transport pricing issues between the petitioning MIC members and Qwest had still not been resolved, and in its Order Granting Suspension, the MPUC was required to provide a 90 day period for negotiation after which the matter would come back to the commission for arbitration.

24. Mr. Williams's belief that the Minnesota Qwest tandem solution was available to Petitioners was based upon his prior experience with Qwest's provisioning of services, his review of Qwest's Statement of Generally Available Terms and Conditions (SGAT) and tariffs. TR 552. Mr. Williams further testified:

> "There are Interconnection Agreements available today in South Dakota that can be opted into within a matter of days, and Western Wireless has such an agreement. That agreement calls for transit at three-tenths of a cent, and there's nothing to prevent any carrier from opting into that agreement. TR 734.

Based upon this, Mr. Williams testified that he estimated the cost to Petitioners of transport provided by Qwest to be .3 cents per minute. TR 552, 734.

25. WWC's witness also testified, however, that he had not in fact discussed this proposal with Qwest. TR 932. Furthermore, WWC did not make reference to the specific tariff or SGAT provisions or rate schedules upon which he based these conclusions, and the Commission has been unable to determine from a review of the Qwest tariffs and SGAT alone whether WWC's proposed transport mechanism would in fact be available to Brookings for the purpose of transporting calls to ported numbers outside the local exchange area as local calls or, if so, what the actual pricing and terms of such service would be.

26. With respect to the existing Type 2 Wireless Interconnection Agreement between U S West Communications, Inc. and WWC License, L.L.C. for the State of South Dakota, it is not obvious that Brookings would be able to opt into the agreement. The agreement is a comprehensive wireless to wireline interconnection agreement specifically designed for the situation where one party is a wireless carrier. In *Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Second Report and Order, FCC04-164 (rel. July 13, 2004), the FCC took away the right of carriers to opt into only selected terms of Section 251 interconnection agreements, stating in ¶ 1:

> In this Order, we adopt a different rule in place of the current pick-and-choose rule. Specifically, we adopt an "all-or-nothing rule" that requires a requesting carrier seeking to avail itself of terms in an interconnection agreement to adopt the agreement in its entirety, taking all rates, terms, and conditions from the adopted agreement.

We accordingly do not find that Brookings could necessarily simply opt into WWC's interconnection agreement with Qwest either in its entirety or as to only one particular provision.

27. WWC stated at the hearing that WWC would pay for transport on an interim basis, until the final FCC decision on transport, provided the Qwest tandem-based routing method was used. TR. at 939. The Commission finds, however, that this temporary commitment could leave Brookings with the burden of paying the costs of transport outside of its service area in the future, that there is no certainty at this time as to what those costs would be and that Brookings would then have been compelled to incur the substantial switch upgrade and other non-transport costs of LNP implementation.

28. Lastly, as to this issue of transport, we note the testimony of Mr. Bullock, cost witness for several of Petitioners, who stated:

> In telephone toll traffic there's a considerable track record of interexchange carriers providing toll service, and I think it's safe to assume that the bugs have been worked out of the interfaces that are required between local exchange access service providers such as the local exchange companies we're talking about here today and interexchange carriers such as AT&T and Sprint that reliably pass information back and forth to enable the proper routing and rating of calls and the proper rating and identity of the calling party.
>
> In terms of the exchange of local traffic through an intermediate tandem service provider, I'm not so sure that's a safe assumption to make. TR 879-880.

29. Other factors that influenced the differences between Brookings's and WWC's estimates of the cost of LNP implementation were minor and involved the ability of Brookings to reduce administrative mobilization costs through sharing with other RLECs.

30. Although there was evidence in the record that Petitioners', including Brookings, could include at least some costs of implementing LNP in the Petitioners' applications for universal service support funds from the Universal Service Administration Company, TR 954, the FCC, in two recent orders and the Federal-State Joint Board on Universal Service have recently recognized the increasing cost of providing universal service support in a competitive environment and recognized the propriety of both the FCC and state commissions considering the impact on the universal service fund in their public interest determinations. *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the State of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338, ¶ 4 (rel. Jan. 22, 2004) ("*Virginia Cellular Order*"); *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37, ¶ 4 (rel. April 12, 2004); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 04J-1 (re. February 27, 2004).

31. We find that implementing LNP at this time could cost Brookings or its users as much as from $0.76 to $0.83 per line per month excluding transport and that the costs of transport, if ultimately held to be Brookings's responsibility, could raise that monthly cost to $1.00 or higher.

32. All Petitioners, WWC and SDTA presented evidence of demand for LNP or the lack thereof. Demand for LNP has relevance both to the costs to be incurred by Petitioners to provide LNP and to the benefit side of a cost-benefit analysis for both the public interest and adverse economic effect analyses. In the case of many of the Petitioners, differences in estimated ports produced differences in recurring costs, but in Brookings's case, both Brookings's and WWC's cost witnesses used the same estimated porting number to derive estimated costs.

33. Davis, the cost witness for Beresford, Kennebec, Midstate, Roberts County/RC, and Western, used porting estimates when he calculated the cost to implement LNP. However, at the hearing, he stated that his porting numbers should not be taken as "any sort of estimate for demand" and that he did not do any type of empirical analysis. TR. at 1009-10. He just picked a number to "show a relationship between a specific demand level and what the resulting costs would be." TR. at 1009.

34. Brookings's manager testified that Brookings had received two requests for LNP from its customers. TR 294. Brookings did not conduct a formal customer survey.

35. Steven Watkins, a witness for the Petitioners, stated that NeuStar reported that "95% of wireless ports have been from one wireless carrier to another and only 5% of wireless ports were between wireline and wireless carriers." SDTA Exhibit 1 at 11. He noted that these numbers were based on wireless to wireline reporting in more urban areas and expected that interest in rural areas would be even less. Id. He stated that in rural areas "the public does not recognize wireless service as an absolute substitute for wireline service" due to reliability and that "demand for wireless service is more for its mobile capability[.]" Id. at 12. He further stated that even for customers who decide to give up their wireline service for wireless generally will try wireless service first and then drop their wireline service. Id. Thus, there would not be a need to port numbers in that case. Id.

36. Bullock, the cost witness for Alliance/Splitrock, Armour/Bridgewater/Union, Faith, Golden West/Vivian/Kadoka, McCook, Sioux Valley, Tri-County, and Valley, stated that he assumed that if LNP were required, the wireless companies would begin an aggressive marketing campaign which may generate some porting activity. TR. at 890. He also assumed that some of the customers would port back to the wireline carrier. Id. He stated that he did not do a scientific analysis since there is no track record for number porting in rural areas. Id. He also stated that his porting estimates were not based on the number of wireless carriers operating in any particular area. Id. at 891. Bullock's estimated number of ports were higher than DeWitte's and ranged from 0.694% to 3.061% of a company's access lines per year.

37. WWC's witness, Williams, stated that WWC's porting estimates were "based on what we thought we would be able to obtain as a result of both our coverage and our view of what their demographics represented." TR. at 1031. His estimates for ports, based on each company's number of access lines, ranged from a low of 2.743% for Golden West to a high of 3.528% for Brookings. WWC Ex 9, 15, 18, 19. Williams further stated that, for most of the companies, the numbers are close to what WWC would expect in WWC's rural areas, which is approximately 15 percent intermodal porting over a five year period. TR. at 1031. He assumed that WWC would have about 45% of the total estimated ports. TR. at 690. Williams stated that there has not yet been any experience in intermodal porting in rural service areas so far. Id. He went on to state that there is

a track record for wireline to wireline portability and that has resulted in an annual migration of 3.5% to 4.5%. Id. at 1033. He also stated that he would not expect wireline to wireless migration to be that high. Id.

38. The demand for porting will likely fall somewhere in between the numbers as forecasted by the Petitioners and those set forth by WWC. WWC's estimates are probably too high based on a number of factors. First, according to Williams' own testimony, wireline to wireline portability on a national basis has only resulted in porting percentages of 3.5% to 4.5%. TR. at 1033. Moreover, a survey regarding wireless porting showed that only 5% of wireless ports nationwide were between wireline and wireless carriers. SDTA Ex 1 at 11. On the other hand, DeWitte's estimates that averaged less than two tenths of one percent appear to be somewhat low. For example, in Kennebec, 12% of the survey respondents stated they would be willing to pay a dollar a month in order to have the ability to port their wireline numbers to their wireless carrier. TR. at 965. In addition, one of the cost witnesses, Bullock, used estimates that ranged from 0.694% to 3.061%.

39. The "benefit" to be derived from LNP for a given company's customers is in part dependent on demand. The uncertainty concerning the number of ports to be expected does interject an additional element of uncertainty into the recurring costs for Petitioners to provide LNP. To the extent that the number of ports increases, however, and thereby increases the costs of providing LNP, this increase in costs due to greater demand could be argued to be balanced, in terms of cost-benefit analysis by the greater benefit to be received by Petitioners' customers.

40. In *Matter of Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, ¶ 29 (1996) (*First Report and Order*), the FCC found that local number portability was a significant factor limiting a customer's decision to switch telecommunications service providers. In the *Intramodal Order*, the FCC extended this reasoning to intermodal portability. However, the FCC in *Virginia Cellular* and again in *Highland Cellular* recently emphasized that competition *per se* is not a sufficient basis upon which Commissions should base public interest decisions involving rural, high cost service areas. Although WWC presented evidence as to the number of ports it expected to obtain, TR 1033, no empirical evidence was introduced to demonstrate that LNP would materially increase the number of customers subscribing to wireless service within Petitioners' service areas or, stated conversely, that the inability to port landline phone numbers to a wireless phone within Petitioners' service areas is a significant negative factor influencing potential customers for wireless service to forego purchasing WWC's service. Petitioners provided evidence that WWC is successfully competing for customers within Petitioners' service territories without intermodal LNP. TR 312. WWC itself introduced a survey that demonstrated that wireless market penetration would be significant. The survey results were not dependent on LNP. TR 645-646. WWC Ex 11. Brookings's Manager testified that as a result of migration of customers, primarily college students, from landline to totally wireless, Brookings had lost 1,200 access lines over the past 3 years. TR 311. He further testified, "[W]e have pretty fair competition without local number portability. . . . [I]n an environment where competition is being served, the customers are, in fact, migrating as they desire form wireline to wireless." TR 312. Midstate's manager testified that in its CLEC operation in Chamberlain/Oacoma LNP had not been a significant competitive driver in the intramodal arena. Out of Midstate's 787 customers, only 8 were ported numbers. TR 976.

41. There are presently at least three sources of significant uncertainty concerning the obligations and resulting costs to Petitioners and their customers to implement LNP in their rural service areas. These three sources of significant uncertainty are: (i) the pending appeal of the *Intramodal LNP Order* in *United States Telecom Assn. v. FCC*, Cases No. 03-1414 and 03-1443

(D.C. Cir.); (ii) the unresolved apportionment of interconnection and transport obligations of the RLEC and the requesting wireless carrier; and (iii) the porting interval that the RLEC must meet. The latter two of these uncertainties arise from the language in paragraph 1 of the *Intermodal Order* in which the FCC stated:

> [W]e clarify that nothing in the Commission's rules limits porting between wireline and wireless carriers to require that wireless carrier to have a physical point of interconnection or numbering resources in the rate center where the number is assigned. . . . In addition, . . . we clarify that wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting between the carriers. We also decline to adopt a mandatory porting interval for wireline-to-wireless ports at the present time, but we seek comment on the issue as noted below.

Proceedings are currently pending before the FCC to address these unresolved issues.

42. Given the projected significant costs of providing LNP, the limited demonstrated present demand for LNP and the uncertainties currently attending LNP implementation and provision in Petitioners' territories, the Commission finds that the cost-benefit equation weighs in favor of suspending Brookings's LNP obligations for a period of time within which some of the uncertainties might be resolved. Brookings would benefit from additional certainty which will result from the FCC's acting on issues such as porting intervals and transport and routing issues. After the FCC decisions are issued, Petitioners and the Commission should have a clearer picture of what costs must be incurred to implement LNP. The decisions may result in lower projected costs or higher projected costs, but either way, there should be more certainty. Further, the additional time should result in the ability to more accurately predict demand based on what has occurred in other rural areas. Depending on the demand that is experienced in other rural areas where LNP has been implemented and the more certain cost inputs, it is possible that a further suspension might be justified. On the other hand, if substantial demand or other demonstration of marginal benefit is demonstrated, then the Commission may decide to deny further suspension requests.

43. The Commission accordingly finds that it is consistent with the public interest convenience and necessity to suspend Brookings's obligations under 47 U.S.C. §251(b)(2) and SDCL 49-31-81 to provide local number portability to requesting carriers until December 31, 2005.

44. With respect to the additional standards set forth in SDCL 49-31-80 and 47 U.S.C. §251(f)(2), the Commission finds that the first two standards, subdivisions (1) and (2), focus on economic impacts. The first standard is centered on users, i.e. customers. This requires the Commission to make a judgment as to what level of adverse economic impact on customers renders the impact "significant." The judgment of whether an impact is significant is in turn influenced by what benefits flow to the customers from imposition of the impact.

45. The second standard requires the Commission to look at whether implementation of LNP would impose a requirement that is unduly economically burdensome. The statutory language does not specify as to whom the level of burdensomeness is to be assessed. The Commission concludes that this standard should be applied to assess the burdensomeness of the requirement on both the consumer and the company. Since the company is the petitioner, it seems probable that in the absence of language to the contrary, the language refers to the petitioner. Other reasons for treating this criterion as applicable to both company and customers include the uncertainties surrounding how the costs of LNP will be distributed between the company and its consumers and the difficulty,

at this point, of determining with any degree of certainty the surcharge amount that could be charged by the company to its customers.

46. Given the significant costs of implementing and providing LNP services in the Brookings area, the current absence of customer requests for LNP, the apparent low demand for the availability of LNP and the absence of any alternative wireline service in the Brookings area, the Commission finds that suspending Brookings's LNP obligations until December 31, 2005, is necessary to avoid a significant adverse economic impact on the users of Brookings's telecommunications services generally.

47. Based upon the same findings, the Commission further finds that suspending Brookings's LNP obligations until December 31, 2005 is necessary to avoid imposing a requirement that is unduly economically burdensome on Brookings and its/their customers.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction, pursuant to SDCL 49-31-80, 47 U.S.C. § 251(f)(2) and ARSD 20:10:32:39, to hear and decide the Petition and to issue an order suspending or modifying Brookings's obligations to implement local number portability pursuant to 47 U.S.C. §251(b)(2) and SDCL 49-31-81. The Commission had authority pursuant to SDCL 49-31-80 and 47 U.S.C. §251(f)(2) to issue a suspension of Brookings's LNP obligations pending final action on Brookings's requested suspension and to issue a temporary suspension to September 30, 2004.

2. SDCL 49-31-80 and 47 U.S.C. §§251(f)(2) give the Commission authority to grant a suspension or modification of local number portability obligations if the local exchange carrier has fewer than two percent of subscriber lines nationwide and the commission determines that the requested suspension or modification is consistent with the public interest, convenience, and necessity and is necessary:

(1) To avoid a significant adverse economic impact on users of telecommunications services generally;

(2) To avoid imposing a requirement that is unduly economically burdensome; or

(3) To avoid imposing a requirement that is technically infeasible.

The commission may suspend enforcement of the requirement or requirements identified in the petition pending final action on the requested suspension or modification.

3. In *Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325, 11 FCC Rcd 15499 (1996), the FCC adopted the rule codified at 47 U.S.C. §51.405(d), which reads as follows:

> (d) In order to justify a suspension or modification under section 251(f)(2) of the Act, a LEC must offer evidence that the application of section 251(b) or section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

This rule was vacated by the Eighth Circuit Court of Appeals in *Iowa Utils. Bd. v. F.C.C.*, 219 F.3d 744 (8th Cir. 2000). The Commission accordingly concludes that this standard and rule does not bind the Commission's discretion in this case.

4. Brookings is a local exchange carrier serving fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide. Brookings is accordingly entitled to petition for suspension of its obligations to provide local number portability.

5. The first two standards, subdivisions (1) and (2), focus on economic impacts. The first standard is centered on users, i.e. customers. This requires the Commission to make a judgment as to what level of adverse economic impact on customers renders the impact "significant." The judgment of whether an impact is significant is in turn influenced by what benefits flow to the customers from imposition of the impact.

6. The second standard requires the Commission to look at whether implementation of LNP would impose a requirement that is unduly economically burdensome. The statutory language does not specify as to whom the level of burdensomeness is to be assessed. The Commission concludes that this standard should be applied to assess the burdensomeness of the requirement on both the consumer and the company.

7. Granting a suspension to Brookings of the requirements to provide local number portability, both intermodal and intramodal, imposed by 47 U.S.C. §251(b)(2), SDCL 49-31-81 and the rules and orders of the FCC is in the public interest.

8. Granting a suspension of Brookings's LNP obligations, both intermodal and intramodal, until December 31, 2005, is necessary to avoid a significant adverse economic impact on the users of Brookings's telecommunications services generally.

9. Granting a suspension of Brookings's LNP obligations, both intermodal and intramodal, until December 31, 2005, is necessary to avoid imposing a requirement that is unduly economically burdensome on Brookings and its/their customers.

10. The suspension granted herein does not relieve Brookings of its obligation to properly route calls to numbers ported between other carriers, including wireless carriers.

It is therefore

ORDERED, that Brookings's obligation to implement local number portability imposed by 47 U.S.C. §251(b)(2), SDCL 49-31-81 and the rules and orders of the FCC is hereby suspended pursuant to 47 U.S.C. § 251(f)(2), SDCL 49-31-80 and ARSD 20:10:32:39, until December 30, 2005; and it is further

ORDERED, that should Brookings desire to continue the suspension following December 31, 2005, the company shall file its petition for suspension on or before October 1, 2005; and it is further

ORDERED, that the suspension granted herein does not relieve Brookings of its obligation to properly route calls to numbers ported between other carriers, including wireless carriers.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 3rd day of January, 2005. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 3rd day of January, 2005.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Melissa Kalbe

Date: 1/5/05

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner