

In the Matter of **IN THE MATTER OF THE PETITION OF
ALLIANCE COMMUNICATIONS
COOPERATIVE, INC. AND SPLITROCK
PROPERTIES, INC. 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
3/15 04	Filed and Docketed;
3/18 04	Weekly Filing;
3/24 04	Petitioner's Intervenor (Midcontinental);
3/30 04	Petition to Intervene by WWC License LLC;
3/31 04	Petition to Intervene (SDTA);
4/19 04	Order Granting Intervenor Suspension Pending Final Decision and Order Granting Intervention;
5/4 04	Notice and Notice of Proposed Hearing and of Intent to take Judicial Notice;
5/14 04	Direct testimony of Steven E. Mathers;
5/17 04	Direct testimony of Tom Bulluck on behalf of Alliance and Splitrock ^{Specific Cost Data;} regarding Company;
5/17 04	Direct Pre-Filed testimony of Don Snyder;
5/17 04	Introductory testimony of Tom Bulluck on behalf of the above-named Companies;
6/1 04	Testimony of Don Williams on behalf of WWC License L.L.C.;
6/11 04	Intervenors' Motion to Compel Discovery or in the alternative to Strike Petitioner's ^{Pre-Filed Testimony Regarding Costs;} _{Petitioner's Pre-Filed Testimony Regarding Rates;}
6/11 04	Brief in Support of Intervenors' Motion to Compel Discovery or in the alternative to Strike
6/14 04	Rebuttal testimony of Steven E. Mathers;
6/15 04	Rebuttal testimony of Don Snyder on behalf of Alliance and Splitrock;
6/16 04	Rebuttal testimony of Tom Bulluck;
6/16 04	Supplemental Order for and Notice of Hearing;
6/18 04	Notice for and Notice of Hearing on Motion to Compel;
6/18 04	Petitioner's Response to Intervenors' Motion to Compel Discovery or in the alternative ^{to Strike Petitioner's Pre-Filed Testimony Regarding Costs;} _{to Strike Petitioner's Pre-Filed Testimony Regarding Rates;}
6/18 04	Certificate of Admission (Paul A. Lewis, Intervenor);
6/23 04	Order Admitting Benjamin L. Dickens, Jr. and Mary J. Nisak;
7/7 04	LRP transcripts in Docket TC04-055;

7/13/04 Order Establishing Briefing and Decision Schedule;
8/5/04 Post-Hearing Brief of Petitioners and SDTA;
8/20/04 Staff's Brief;
8/20/04 Third Circuit's Post-Hearing 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 Availability Obligations;
9/30/04 Final Decision and Order; Notice of Entry;
9/30/04 Rocket 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 Rocket Closed.

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March 15, 2004

RECEIVED

MAR 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: IN THE MATTER OF THE PETITION OF ALLIANCE COMMUNICATIONS
COOPERATIVE, INC. AND SPLITROCK PROPERTIES, INC. FOR SUS-
PENSION OR MODIFICATION OF § 251(b)(2) OF THE COMMUNICA-
TIONS ACT OF 1934 AS AMENDED; and

IN THE MATTER OF THE PETITION OF ROBERTS COUNTY TELE-
PHONE COOPERATIVE ASSN. AND RC COMMUNICATIONS, INC. FOR
SUSPENSION OR MODIFICATION OF § 251(b)(2) OF THE COMMUNICA-
TIONS ACT OF 1934 AS AMENDED

Dear Pam:

Enclosed herein for filing are the original and ten copies of each of the above Petitions.

Sincerely yours,



Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION
OF ALLIANCE COMMUNICATIONS
COOPERATIVE, INC. AND SPLITROCK
PROPERTIES, INC. FOR SUSPENSION
OR MODIFICATION OF § 251(b)(2) OF
THE COMMUNICATIONS ACT OF 1934
AS AMENDED

Docket No. _____

PETITION

RECEIVED

MAR 15 2004

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

I. INTRODUCTION

Pursuant to Section 251(f)(2) of the Communications Act of 1934, as amended (“the Act”), 47 U.S.C. § 251(f)(2), South Dakota Codified Laws § 49-31-80, and ARSD § 20:10:32:39, Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc. (hereinafter collectively “Petitioner”) hereby respectfully petitions the South Dakota Public Utilities Commission (the “Commission”) for a suspension or modification of the number portability requirement in Section 251(b)(2) of the Act.¹ Petitioner 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 [Federal Communications] Commission.”² The Federal

¹ Splitrock is a wholly-owned subsidiary of Alliance. The petitioning companies are filing jointly because they share operating systems and support, technology platforms, and office personnel. Additional costs pertaining to the shared operating systems and support, technology platforms, and office personnel will be incurred if either of the petitioning companies implements LNP.

² 47 U.S.C. §251(b)(2).

Communications Commission (“FCC”) established rules to implement local number portability (LNP) by wireline carriers.³ Pursuant to those rules, portability between wireline carriers was limited to the LEC rate center. In a Memorandum Opinion and Order and Further Notice of Proposed Rulemaking released on November 10, 2003,⁴ 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. ARSD 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 Petitioners are Alliance Communications Cooperative, Inc. (“Alliance”), 612 3rd Street, P. O. Box 349, Garretson, South Dakota 57030, telephone (605) 594-6776; and Splitrock Properties, Inc. (“Splitrock”), 612 3rd Street, P. O. Box 349, Garretson, South Dakota 57030, telephone (605) 594-6776. The designated contacts are:

Don Snyders, General Manager, and

Darla Pollman Rogers, LLP
Riter, Rogers, Wattier & Brown
P. O. Box 280
Pierre, South Dakota 57501
Telephone (605) 224-7889

³ 47 C.F.R. § 52.20 - § 52.33.

⁴ 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”).

(2) As of 2003, Alliance had 8,460 subscriber lines nationwide and Splitrock had 1,509 subscriber lines nationwide.

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

(4) Petitioner 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, Petitioner 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*⁵ and the porting interval and wireless to wireline porting in its pending FNPRM, at which time Petitioner may need to seek further Section 251(f)(2) relief based upon the economic impact of these decisions.

Petitioner 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) Petitioner requests that the suspension of Section 251(b)(2) be effective no later than May 24, 2004. Petitioner requests that the temporary suspension of Section 251(b)(2) be effective immediately and in any event, no later than March 23, 2004.

(6) The information supporting this petition is contained on pages 4 through 17 of this Petition.

⁵ *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) Petitioner 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 the Order, Petitioner respectfully submits that:

1. Petitioner is a South Dakota corporation with its principal office located at 612 Third Street, Garretson, South Dakota 57030. Petitioner is engaged in the provision of general telecommunications services in the State of South Dakota subject to the jurisdiction of this Commission. Alliance Communications Cooperative, Inc. currently provides basic local exchange service in six exchanges in South Dakota and, as of December 1, 2003, had 8,333 access lines in service. Splitrock Properties, Inc. currently provides basic local exchange service in two exchanges in South Dakota and, as of December 1, 2003, had 1,509 access lines in service. A list of Petitioner's switches for which a suspension of LNP is requested is attached as Exhibit 1A.

2. Petitioner has received requests to deploy LNP from Cellco Partnership (dba Verizon Wireless), Western Wireless Corporation (dba CellularOne), and Midwest Wireless Holdings L.L.C. (dba Midwest Wireless). None of these carriers has a point of interconnection or telephone numbers in Petitioner's rate centers.

3. Petitioner is a rural telephone company as defined in 47 U.S.C. § 153(37) and provides telephone exchange service, including exchange access, to fewer than 50,000 access lines, and serves a study area of fewer than 100,000 access lines. Section 251(f)(2) of the Act allows a rural local exchange carrier 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).

4. According to the provisions of 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.

5. Pursuant to the above, the Commission must grant a petition for suspension or modification if the Commission finds that any one 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.

6. Section 251(f)(2) of the Act requires the Commission to take final action on this Petition within 180 days after receipt. Pending such action, pursuant to both federal and state law, the Commission is given express authorization to “suspend or stay enforcement of the requirement or requirements to which the petition applies with respect to

⁶ See “Federal Communications Commission Releases Study on Telephone Trends,” FCC News Release (rel. Aug. 7, 2003).

the petitioning carrier or carriers.” 47 U.S.C. § 251(f)(2) and SDCL 49-31-80. The provisions of ARSD § 20:10:32:39 reference the Commission’s authority under state statute and specifically contemplate that the Commission may grant a “temporary stay” of the “obligations the carrier seeks to suspend or modify” while its proceedings are pending.⁷ Suspension of enforcement while the petition is pending allows for rational public policy decision-making. In addition, future FCC Orders regarding wireless-to-wireline LNP addressing issues described in the FNPRM will allow the Commission and Petitioner to assess the full impact (economic and technical) of implementing LNP.

7. The Order does not address issues relating to the routing of calls to ported numbers in those cases in which no direct connections exist between carriers. In light of current routing arrangements, Petitioner contends that it is infeasible to complete such calls on a local, seven-digit dialed basis because Petitioner routes calls terminating outside its service territory, including calls to wireless carriers, to interexchange carriers. In addition, when the Commission considers the initial and ongoing costs of LNP, Petitioner believes the Commission will determine that such costs create an adverse economic impact on telecommunications users and a requirement that is unduly economically burdensome. The economic impact may be even more detrimental to Petitioner or its end users if the FCC shortens the porting interval and/or forces LECs to absorb additional network costs as contemplated by the FCC in its FNPRM. Absent full consideration of the afore-

⁷ The Nebraska Public Service Commission granted a Motion for Interim Relief *In the Matter of the Application of Great Plains Communications, Inc., Blair, for Suspension or Modification of the Federal Communications Commission Requirement to Implement Wireline-Wireless Number Portability Pursuant to 47 U.S.C. § 251(f)(2)*, Docket C-3096. The Hearing Officer found that “the 180-day timeframe in which the Commission must render its decision, and because of the number of applications filed with the Commission seeking suspension under 47 U.S.C. § 251(f)(2), it would be difficult for the Commission to hold an evidentiary hearing and make its ruling on this and every application for suspension or modification of the

mentioned issues, Petitioner contends that it is not consistent with the public interest, convenience and necessity to expend the significant investment necessary to deploy LNP. Grant of this petition will permit the Commission to ensure that the public interest, convenience and necessity are not undermined as a result of unanswered implementation issues associated with the provision of LNP.

IV. ARGUMENT

A. LNP Will Cause Significant Adverse Economic Impact on Users of Petitioner's Telecommunications Services.

8. Section 251(f)(2) of the Act provides this Commission with the authority to ensure that the uncertain state of federal law, with respect to LNP, does not have a significant adverse economic impact on users of telecommunications services in the State of South Dakota. The Act vests this Commission with authority to balance the requests for LNP with the potential economic harm to telecommunication users. It is the Commission's responsibility to determine whether implementation of LNP by Petitioner would impose a significant adverse economic impact on telecommunication users in Petitioner's service area.

9. Petitioner requests suspension of the LNP requirement in Section 251(b)(2) of the Act because, as shown in Exhibit 1, implementation of LNP would impose a significant adverse economic impact on users of telecommunications services generally. FCC rules allow recovery of certain LNP costs from carriers or from end users through a monthly surcharge imposed over a five-year recovery period.⁸ Certain costs

dentiary hearing and make its ruling on this and every application for suspension or modification of the LNP requirement filed with the Commission prior to the May 24, 2004, deadline."

⁸ 47.C.F.R. § 52.33.

associated with LNP cannot be recovered through the end user LNP surcharge or carrier charges. In addition, there will be significant recurring costs after the five-year period. These costs must be recovered, if at all, through the LEC's general rates and charges.

10. Petitioner estimates that in order to implement LNP it will have recurring and non-recurring costs as set forth in Exhibit 1 attached hereto and incorporated herein by reference. Based on the projected implementation costs, Petitioner estimates that the increase in a subscriber's local service cost that would result from LNP implementation would equal \$0.59 per month for five years,⁹ an increase of between 3.75% and 7.4% based upon the current residential rate range of \$8.00 per line per month to \$15.70 per line per month. This estimated increase in the local service cost does not include any cost associated with the provision of transporting calls to ported numbers outside of Petitioner's local service areas. Petitioner estimates that if it is required to absorb transport costs to wireless carriers whose point of interconnection is located somewhere outside of Petitioner's service area, the total increase in a subscriber's local service cost would equal \$2.38 per month for five years,¹⁰ an increase of between 15.2% and 29.75% over the current monthly residential rate range of \$8.00 per line to \$15.70 per line. This cost recovery will have a significant adverse economic impact on users of telecommunications service in Petitioner's service area.

⁹ The Applicant is reviewing these cost estimates and reserves the right to amend these estimates in the future.

¹⁰ The FCC stated in footnote 75 of the Order, that 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 does not provide a reason to delay porting from wireline to wireless carriers.

11. Petitioner believes that the construction of transport facilities is not cost-justified based on the potential traffic between Petitioner 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 Petitioner as they have in other areas of the country. 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. 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 carriers like Petitioner, in part, because they are inefficient.¹¹ It would be ironic if Petitioner is forced to prop up Western Wireless and other wireless carriers by subsidizing facilities that these carriers have refused to pay for themselves.

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, Petitioner should not be required to provide LNP until six months after the FCC releases its decision on the *Sprint Petition*. This would allow Petitioner 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.

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.

12. Additional unknown costs of LNP could increase the financial burden. The costs as set forth in Exhibit 1 do not include any cost associated with reducing the porting interval as contemplated by the FCC in its FNPRM. Such reductions of the porting interval may require Petitioner to make significant changes to its operations thereby increasing the cost to provide LNP.¹² The costs as set forth in Exhibit 1 do not include other costs that may be imposed on Petitioner as a result of other rulings by the FCC in its FNPRM. The FCC has sought 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.¹³ The FCC sought 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 has with the wireless service provider. The FCC further sought comment on whether LECs should be required to provide LNP through foreign exchange (“FX”) and “virtual FX” service.¹⁴ These proposals also would increase the cost of LNP, however, it is not clear to what extent.

13. Thus, until the FCC has released a final Order regarding the issues in its FNPRM, Petitioner is unable to make a determination of its total costs to implement and to provide LNP and is unable to determine the total economic impact on the users of telecommunications service in its service area.

¹² FNPRM, para 45.

¹³ Id at para 42.

¹⁴ It is not clear what “virtual FX” service would entail as the FCC did not define it and Petitioner offers no such service.

B. LNP Would Be Unduly Economically Burdensome for Petitioner

14. Implementation of wireline-to-wireless LNP, under the current guidance provided by the FCC, will be unduly economically burdensome for Petitioner. Any cost not recovered through the end user LNP charge or carrier charge may have to be borne by Petitioner. Granting Petitioner a suspension of the requirements of 47 U.S.C. § 251(b)(2) pursuant to Section 251(f)(2) of the Act will avoid the imposition of a requirement upon Petitioner that is unduly economically burdensome.

15. The estimated costs of LNP, set forth in Exhibit 1, are presented on a per line basis. However, there is no certainty that LNP costs will be paid by current Petitioner subscribers. For example, there are potential issues concerning which costs will be borne directly by the customer and which costs will be borne by Petitioner. Further, based upon the substantial increase in the cost per line per month caused by LNP, there is no guarantee that all such costs would ultimately be passed on to the end user in the form of a rate increase. The potential costs that may be incurred by Petitioner would be unduly economically burdensome.

16. As shown, LNP implementation could result in the assessment of a new LNP surcharge on Petitioner's telephone subscribers and could increase local rates. These actions would make Petitioner'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 service even less competitive with wireless service.

17. If the costs were assigned completely to Petitioner's subscribers, the large size of the surcharge may cause a segment of Petitioner's customers to discontinue service. The reduction in line count would not allow for the full recovery of LNP costs, causing a negative impact on Petitioner's revenue and laying the foundation for an ever-escalating burden on the remaining network users to fund common network costs.

18. 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 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. Thus the current porting requirement is a one-way requirement – Petitioner can lose customers through porting to the wireless carriers, but it cannot gain customers from them.

19. In light of these implementation costs and the unresolved issues still pending before the FCC, the Commission's suspension of the requirement on Petitioner to provide wireline-to-wireless LNP is consistent with Section 251(f)(2)(A)(ii) of the Act.

C. LNP is Currently Infeasible.

20. Although the FCC stated in the Order that it found no persuasive evidence in the record indicating that significant technical difficulties exist that would prohibit a wireline carrier from porting a number to a wireless carrier that does not have a point of interconnection in the same rate center as the ported number, the FCC delayed its decision regarding the routing of calls to ported numbers where no direct connections existed

until its decision in the *Sprint Petition*.¹⁵ The FCC recognized that issues exist with respect to call routing in those instances of porting numbers from a wireline carrier to a wireless carrier where no direct connection exists between the carriers. The FCC however, made no determination as to the proper routing of such calls.¹⁶

21. The current technical issues with wireline-to-wireless LNP implementation will lead to user confusion. If a Petitioner telephone number is ported to a wireless carrier, a Petitioner end user originating a local exchange service call to the ported number will continue to dial such number on a seven-digit basis. The Petitioner switch will perform a database dip and determine that the number has been ported to a wireless carrier. The switch will search for a trunk over which to route the call. If a direct trunk group has not been established with the wireless provider, the switch will be unable to find a trunk for such routing. In such a case, the party placing the call 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. Confusion among telephone users will occur since calls, dialed on a seven-digit basis prior to the number being ported, may be required to be dialed on a 1+ toll basis for which a toll charged is assessed by the calling party's preferred interexchange carrier.

22. Since Petitioner is an Incumbent Local Exchange Carrier, it does not carry local traffic to points of interconnection beyond its local exchange. In those exchanges where a wireless provider has not deployed a direct facility and does not have a point of

¹⁵ *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").

¹⁶ Order, para. 40.

interconnection within that exchange, it is infeasible for Petitioner to route a call to the wireless provider on a local, seven-digit dialed basis because Petitioner routes calls terminating outside its service territory to interexchange carriers.

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

23. 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 implementation and use. Central to this evaluation is the level of demand that exists for LNP in Petitioner's service area and the costs of implementation and use.

24. Petitioner believes that the current demand for LNP is very small or non-existent. As of the date of this filing, no Petitioner customer has ever made an inquiry to Petitioner 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.¹⁷ Wireline-to-wireless porting appears to be a small fraction of wireless porting in general.¹⁸ No public benefit will be derived from LNP absent demand for such service in Petitioner's service area. Even if some level of LNP demand develops in the future, Petitioner contends the costs that would be incurred by all subscribers and Petitioner to implement and maintain LNP would not be consistent with the public inter-

¹⁷ 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."

¹⁸ 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.

est, convenience and necessity. Petitioner should not expend its available resources on an investment that has few, if any, benefits.

25. Notwithstanding the costs of LNP implementation, absence of demand for such service and in light of the routing issues that exist regarding such implementation, Petitioner has received LNP requests from wireless carriers that have not deployed direct connection facilities to Petitioner's exchanges. Without the proper infrastructure in place to route a call to a ported number on a seven-digit basis, calls cannot be completed as dialed. The porting of numbers from Petitioner to wireless carriers that do not have direct connections with Petitioner will not benefit consumers of telecommunications since, as described above, calls will not be completed as dialed. For this further reason, granting of the requested suspension is consistent with the public interest, convenience and necessity.

26. The rating, routing and consumer confusion issues associated with wireline-to-wireless portability as currently ordered by the FCC are contrary to the public interest.

27. In its FNPRM, the FCC sought comment on whether the benefits associated with offering wireless-to-wireline porting would outweigh the costs associated with making the necessary upgrades. The FCC also sought comment on the expected demand for wireless-to-wireline porting. The FCC did not seek comment on whether the benefits associated with offering wireline-to-wireless porting would outweigh the costs nor did it seek comment on the expected level of demand. The Commission, pursuant to Section 251(f)(2)(B) may make such determination. Petitioner requests that the Commission, af-

ter reviewing the costs associated with making the necessary upgrades along with the expected level of demand, conclude that suspending the requirement to implement wireline-to-wireless LNP is consistent with the public interest, convenience, and necessity.

V. IMMEDIATE TEMPORARY SUSPENSION REQUESTED

28. Pursuant to section 251(f)(2) and SDCL 49-31-80, Petitioner 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 Petitioner does not have to continue incurring LNP implementation costs until after the Commission acts on the petition. Without immediate suspension pending this proceeding, Petitioner must start ordering switch upgrades and other LNP arrangements in March of 2004, in order to meet a May 24, 2004, implementation date.

VI. CONCLUSION

29. As demonstrated, Petitioner 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. Petitioner 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 months following the FCC's full and final disposition of the issues in the FNPRM such as the porting interval and wireless-to-wireline porting and in the *Sprint Petition* concerning the routing of calls between wireline and wireless

providers, at which time Petitioner may need to seek further § 251(f)(2) relief based upon the economic impact of these decisions.

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

WHEREFORE, Petitioner respectfully requests the Commission to:

(A) 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;

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

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

Dated this 15th day of March, 2004.

ALLIANCE TELEPHONE COMPANY, Petitioner:
SPLITROCK PROPERTIES, INC. Petitioner

By: *Darla Pollman Rogers*
Darla Pollman Rogers
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Pierre, South Dakota 57501
Telephone (605) 224-7889
Attorneys for Petitioner

Exhibit 1A

Alliance and Splitrock switches for which suspension of LNP requirements is requested

Exhibit 1A

Alliance Communications Coop., Inc.

Crooks, S.D.	CRKSSDXADSO
Baltic, S.D.	BLTCSDXADSO
Alcester, S.D.	ALCSDXADSO
Hudson, S.D.	HDSNSDXADS1
Garretson, S.D.	GRSNSDXA59G
Brandon, S.D.	BRNDSDXA582

Splitrock Properties, Inc.

Howard, S.D.	HWRDSDXADSO
Oldham/Ramona, S.D.	OLHMSDXADSO

Exhibit 1

Alliance & Splitrock merged operation
Total Estimated LNP Non-recurring and Recurring Costs

		With Surcharges & Taxes
LNP Non-recurring Costs		
Switch Upgrade Costs	\$ 97,248	
Internal Business Procedure Changes	\$ 21,344	
Intercarrier Testing	\$ 2,350	
Other Internal Costs	\$ 33,532	
LNP Query set up	\$ -	
SOA Non-recurring set up charge	\$ 3,800	
Customer Notification Costs	\$ 4,301	
Total Non-recurring Costs excluding transport	\$ 162,575	
Non recurring transport charges	\$ 9,783	
Total Non-recurring Costs including transport	\$ 172,358	
LNP Monthly Recurring Costs		
SOA Monthly Charge	\$ 800	
LNP Query Costs per month	\$ 800	
Switch Maintenance Costs per month	\$ -	
Other Monthly Costs	\$ -	
Total Recurring Monthly Costs excluding Transport	\$ 1,600	
Transport	\$ 15,469	
Total Recurring Monthly Costs including Transport	\$ 17,069	
Monthly Cost Calculations per line		
Total Nonrecurring cost per month excluding transport amortized over five years	\$ 3,555	
Total Nonrecurring cost per month including transport amortized over five years	\$ 3,769	
Total cost per month excluding transport	\$ 5,155	
Total cost per month including transport	\$ 20,838	
Access Lines excluding Lifeline	9,820	
LNP cost per line per month excluding transport	\$ 0.52	\$ 0.59
LNP cost per line per month including transport	\$ 2.12	\$ 2.38

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 Celco 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 Celco 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 Celco 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 Celco 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 Celco 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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March 24, 2004

OF COUNSEL
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KARL GOLDSMITH 1885-1966

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605 224-6289

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dag@magt.com

HAND DELIVERED

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

RECEIVED
MAR 24 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: IN THE MATTER OF THE PETITION OF ALLIANCE COMMUNICATIONS
COOPERATIVE, INC. AND SPLITROCK PROPERTIES, INC. FOR
SUSPENSION OR MODIFICATION OF 41 U.S.C. § 251(b)(2) OF
THE COMMUNICATIONS ACT OF 1943 AS AMENDED

Docket TC04-055

Our file: 0053


Dear Pam:

Enclosed are original and ten copies of Midcontinent's
Petition to Intervene with Certificate of Service. Please
file the enclosure.

With a copy of this letter, service by mailing is made upon
the service list. Thank you.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP


DAVID A. GERDES

DAG:mw

Enclosures

cc/enc: Service List

Tom Simmons

Nancy Vogel

Mary Lohnes

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

MAR 24 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITION) DOCKET TC04-055
OF ALLIANCE COMMUNICATIONS)
COOPERATIVE, INC. AND SPLITROCK)
PROPERTIES, INC., FOR SUSPENSION) PETITION TO
OR MODIFICATION OF 47 U.S.C.) INTERVENE
SECTION 251(b)(2) OF THE)
COMMUNICATIONS ACT OF 1934)
AS AMENDED.)

Pursuant to ARSD 20:10:01:15.01 Midcontinent Communications ("Midcontinent") by its undersigned counsel petitions the Commission to intervene, as follows:

1. Midcontinent is a certificated telecommunications carrier under the jurisdiction of the Commission.

2. Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc., ("Alliance and Splitrock") have filed a petition requesting the Commission to grant suspensions or modifications of the requirement to implement local number portability pursuant to Section 251(b)(2) of the 1996 Telecommunications Act. As a local exchange carrier in both US West and rural exchanges in this state, Midcontinent has an interest in preserving and maintaining local number portability.

3. Midcontinent has a direct interest in the outcome of this proceeding. As a local exchange carrier any action by the Commission dealing with local number portability will potentially have a direct financial impact upon Midcontinent and its ability to do business in this state, as well as affecting the viability of competition in local exchanges.

WHEREFORE Midcontinent prays that the Commission permit its intervention and participation in this proceeding, to examine and cross-examine witnesses and offer evidence on its own behalf.

Dated this 24 day of March, 2004.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAVID A. GERDES
Attorneys for Midcontinent
P.O. Box 160
Pierre, South Dakota 57501-0160
Telephone: (605)224-8803
Telefax: (605)224-6289

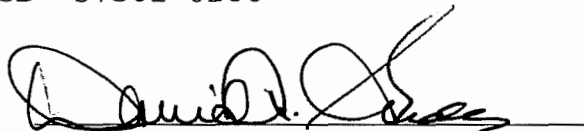
CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 24 day of March, 2004, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

Harlan Best
Staff Analyst
Public Utilities Commission
500 East Capitol
Pierre, SD 57501

Karen Cremer
Staff Attorney
Public Utilities Commission
500 East Capitol
Pierre, SD 57501

Darla Rogers
Riter, Rogers, Wattier & Brown
P.O. Box 280
Pierre, SD 57501-0280



David A. Gerdes

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

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Writer's Email Address:
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March 29, 2004

BY UPS NEXT DAY AIR

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

RECEIVED

MAR 30 2004

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

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.

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

Ms. Pam Bonrud
Page 2
March 29, 2004

If you have any questions, please call me.

Sincerely,



Talbot J. Wiczorek

TJW:drp

Enclosures

c w/encs: Clients

RECEIVED

MAR 30 2004

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

In the Matter of the Petition of Alliance Communications Inc. and Splitrock Properties, Inc. for Suspension or Modification of 47 U.S.C. Section 251 (b)(2) of the Communication Act of 1934 as Amended	Docket No. TC 04-055 PETITION TO INTERVENE BY WWC LICENSE LLC
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Pursuant to ARSD 20:10:01:15.02, WWC License LLC, doing business as CellularOne, (hereinafter "Western Wireless"), petitions to intervene in Docket TC 04-055 for the following reasons:

1. Western Wireless is a cellular service provider in areas served by Alliance Communications Inc. and Splitrock Properties, Inc. (hereinafter "Rural Companies"), who have requested suspension on their local number portability obligations at issue in this proceeding. Western Wireless sent both Rural Companies a bonafide request ("BFR") to implement local number portability on November 18, 2003 and both responded on February 2, 2004, implicitly acknowledging their obligation to implement local number portability by the deadline. 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 the Rural Companies is feasible and appropriate and no suspension of providing LNP should be allowed.

3. The petition filed by the Rural Companies is inadequate and incorrectly pools all costs and expenses of all the companies into one report and then uses those numbers to support a claim for suspension or modification. This approach conflicts with 47 U.S.C. § 251(f)(2) as the statute specifically requires a showing by each local exchange carrier that it meets the requirements in the statute.

4. To suspend the obligations to deploy local number portability would be against public interest.

5. Western Wireless also contests the 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 the request for local number portability suspension.

6. 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 they deploy local number portability.

WHEREFORE, Western Wireless respectfully requests:

1. That its Petition to Intervene be granted;
2. That the request for immediate suspension be denied; and
3. That the request to suspend deploying LNP be denied.

Dated this 29th day of March 2004.

GUNDERSON, PALMER, GOODSSELL
& NELSON, LLP

By 

Talbot J. Wiecezorek
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:

Ms. Darla Pollman Rogers
Riter, Rogers, Wattier & Brown
P.O. Box 280
Pierre, SD 57501

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

GUNDERSON, PALMER, GOODSSELL
& NELSON, LLP

By 

Talbot J. Wiecezorek
P.O. Box 8045
Rapid City, SD 57709-8045



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

Rural roots, global connections

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 TC04-055, Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc. 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 Alliance and Splitrock.

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

Sincerely,

Richard D. Coit
Executive Director and General Counsel
SDTA

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE PETITION OF)
ALLIANCE COMMUNICATIONS)
COOPERATIVE, INC. AND SPLITROCK)
PROPERTIES, INC. FOR SUSPENSION OR)
MODIFICATION OF § 251(b)(2) OF THE)
COMMUNICATIONS ACT OF 1934, AS)
AMENDED**

**DOCKET TC04-055
PETITION TO INTERVENE
RECEIVED**

MAR 31 2004

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

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 15, 2004, Alliance Communications Cooperative, Inc. (Alliance) and Splitrock Properties, Inc. (Splitrock) jointly 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 the petition filed by the companies, both Alliance and Splitrock are rural telephone companies as defined in 47 U.S.C. § 153(37). As of 2003, Alliance was providing its local exchange services to 8,460 subscribers and Splitrock was providing its local exchange services to 1,509 subscribers. 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. Its membership includes not only Alliance and Splitrock, 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 Alliance and Splitrock, as the petitioning parties 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.

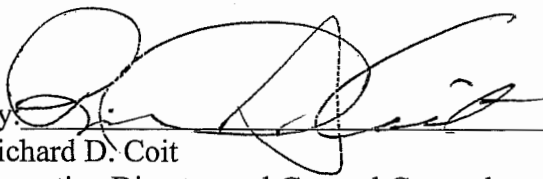
7. SDTA supports the Alliance and Splitrock request for suspension or modification of the federal LNP requirements for all those reasons set forth in their petition filed in this matter, and strongly urges the Commission to grant the relief requested.

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

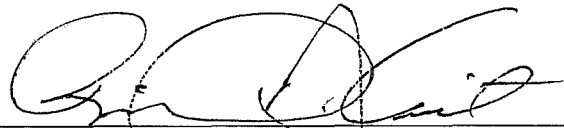
I hereby certify that an original and ten (10) copies of the foregoing document were hand-delivered on April 1, 2004 to:

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 )	)	ORDER GRANTING INTERIM
ALLIANCE COMMUNICATIONS )	)	SUSPENSION PENDING
COOPERATIVE, INC. AND SPLITROCK )	)	FINAL DECISION AND
PROPERTIES, INC. FOR SUSPENSION OR )	)	ORDER GRANTING
MODIFICATION OF 47 U.S.C. § 251(B)(2) OF )	)	INTERVENTION
THE COMMUNICATIONS ACT OF 1934 AS))	
AMENDED )	)	TC04-055

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."

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. Midcontinent Communications (Midcontinent) filed to intervene on March 24, 2004, 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 Petitioner, Midcontinent, Western Wireless and SDTA regarding Petitioner'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. Petitioner opposed the intervention of Midcontinent. Following argument by the parties, 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 Midcontinent, Western Wireless and SDTA are hereby granted.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF)	ORDER FOR AND NOTICE
ALLIANCE COMMUNICATIONS)	OF PROCEDURAL
COOPERATIVE, INC. AND SPLITROCK)	SCHEDULE AND HEARING
PROPERTIES, INC. FOR SUSPENSION OR)	AND OF INTENT TO TAKE
MODIFICATION OF 47 U.S.C. § 251(B)(2) OF)	JUDICIAL NOTICE
THE COMMUNICATIONS ACT OF 1934 AS)	TC04-055
AMENDED)	

On March 15, 2004, Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc. (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 Petitioner's obligation to implement LNP until conditions are met as described in the petition; and (2) grant Petitioner 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, Midcontinent Communications and the South Dakota Telecommunications Association and granting Petitioner'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: <u><i>Delaine Kalbo</i></u>
Date: <u>5/5/04</u>
(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



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

Rural roots, global connections

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,

A handwritten signature in black ink, appearing to read "R. D. Coit". The signature is fluid and cursive, with the first name "Richard" and last name "Coit" clearly distinguishable.

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 Wiczorek
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
Bridgewater-Canistota Independent Telephone Company
Union Telephone Company
- TC04-047 - Brookings Municipal Utilities d/b/a Swiftel Communications
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- 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

DIRECT TESTIMONY OF

STEVEN E. WATKINS

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

1 **I. INTRODUCTION**

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

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

5 **Q2: What is your current position?**

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

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

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

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

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

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

9 **Q5: What is Local Number Portability?**

10 **A:** Local Number Portability (“LNP”) is defined in Section 153 of the Act as:

11
12 The term “number portability” means the ability of users of telecommunications
13 services to retain, at the same location, existing telecommunications numbers
14 without impairment of quality, reliability, or convenience when switching from
15 one telecommunications carrier to another.

16
17 This type of number portability is referred to as “Service Provider Portability.”

18 **Q6: What is meant by intermodal porting?**

19 **A:** The term is meant to signify LNP where the number is ported from its prior use by
20 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
21 wireless carrier in the provision of mobile service, and vice versa.
22

23 **Q7: What is meant by intramodal porting?**

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

4 **Q8: Is number porting a “function” or a “service?”**

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

15

16 **II. PURPOSE OF THIS TESTIMONY**

17 **Q9: On whose behalf are you testifying?**

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

21 **Q10: What is the purpose of your testimony?**

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

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

3 Consistent with 47 U.S.C. § 251(f)(2)(A)(I), grant of the petitions is necessary to
4 avoid a significant adverse economic impact on the end users of the Petitioners. As will
5 be demonstrated, the cost to implement LNP in the rural exchanges of the Petitioners is
6 significant and would lead to explicit surcharges and other potential rate increases to the
7 rural users beyond that which would be balanced with any benefit to be derived by the
8 small number, if any, of users that may actually seek to port their wireline service
9 telephone numbers. Accordingly, suspension of the LNP requirements would avoid these
10 burdens consistent with the public interest, convenience, and necessity. *See* 47 U.S.C. §
11 251(f)(2)(B).

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

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

9
10 **III. RELIEF REQUESTED**

11 **Q11: What relief is appropriate for the Petitioners?**

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

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

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

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

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

1 **IV. BALANCING COSTS AND POTENTIAL BENEFITS WITH THE PUBLIC**
2 **INTEREST**

3 **Q12: What should the “public interest” determination entail?**

4 **A:** The determination of the “public interest” should involve an evaluation of the
5 costs of LNP implementation and operation compared to the benefits that LNP
6 implementation would present for consumers.

7

8 **A. THE COSTS OF LNP ARE SUBSTANTIAL.**

9 **Q13: Are the costs of LNP significant?**

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

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

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

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

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

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

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

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

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

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

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

6
7 **B. THERE IS A LACK OF DEMAND FOR PORTING.**

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

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

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

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

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

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

17 While these anecdotes are representative of the experience in the more urban, top
18 100 MSAs, I would expect the interest in rural areas to be even less. Wireless service is
19 less ubiquitous in rural areas, and landline users would be more reluctant to abandon
20 dependable wireline service for a wireless service of less certainty. Generally, for
21 obvious reasons, users do not abandon their wireline service, in any event, upon their first
22 use of wireless service in rural areas.

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

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

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

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

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

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

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

7
8 only a small percent of wireless customers use their wireless phones as their only
9 phone, and that relatively few wireless customers have "cut the cord" in the sense
10 of canceling their subscription to wireline telephone service.

11
12 *Eighth Report*, In the Matter of Implementation of Section 6002(b) of the Omnibus
13 Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market
14 Conditions With Respect to Commercial Mobile Services, released July 14, 2003, at para.
15 102.

16 Moreover, the FCC concluded in August 2003 that:

17
18 . . . despite evidence demonstrating that narrowband local services are widely
19 available through [Commercial Mobile Radio Service or "CMRS"] providers,
20 wireless is not yet a suitable substitute for local circuit switching. In particular,
21 only about three to five percent of CMRS subscribers use their service as a
22 replacement for primary fixed voice wireline service Lastly, the record
23 demonstrates that wireless CMRS connections in general do not yet equal

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

2
3 *See Report and Order and Order on Remand and Further Notice of Proposed*
4 *Rulemaking, Review of the Section 251 Unbundling Obligations of Incumbent Local*
5 *Exchange Carriers; Implementation of the Local Competition Provisions of the*
6 *Telecommunications Act of 1996; and Deployment of Wireline Service Offering*
7 *Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, and 98-147,*
8 *FCC 03-36, released August 21, 2003, at para. 445.*

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

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

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

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

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

6
7 **V. OTHER UNRESOLVED IMPLEMENTATION ISSUES RELATED TO THE**
8 **PUBLIC INTEREST EVALUATION.**

9 **Q22: Are there additional reasons why LNP is not in the public interest?**

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

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

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

1 in place “at the same location” (which is the situation confronting most of the
2 Petitioners), the obvious “location portability” aspect of mobile service, or the remaining
3 rate center disparity issues articulated by the industry workgroup discussed below. Many
4 of the FCC’s statements in its recent orders on number portability with respect to service
5 locations of wireline LECs, rate center areas, the geographic scope of the operations and
6 service offerings of wireless carriers, and mobile users are inexplicably inconsistent with
7 the facts confronting the Petitioners, previous FCC conclusions, and existing regulation.
8

9 **A. ROUTING ISSUES**

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

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

17 **Q25: What are the so-called “routing” issues?**

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

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

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

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

15
16 . . . [P]etitioners assert that there is no established method for routing and billing
17 calls ported outside of the local exchange. We note that today, in the absence of
18 wireline-to-wireless LNP, calls are routed outside of local exchanges and routed
19 and billed correctly.

20
21 What the FCC fails to understand in this statement is that calls routed outside of the
22 Petitioners' local exchanges are routed to interexchange carriers (IXCs). Therefore, they
23 are routed and billed correctly as interexchange calls. The Petitioners do not have any

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

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

1 interconnection points beyond the local exchange and service area of a Petitioner are both
2 “routed” and “rated” by the customer’s chosen IXC.

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

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

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

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

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

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

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

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

5
6 . . . We make no determination, however, with respect to the routing of ported
7 numbers [T]he rating and routing issues raised by the rural wireline
8 carriers have been raised in the context of non-ported numbers and are before the
9 [FCC] in other proceedings. Therefore, without prejudging the outcome of any
10 other proceeding, we decline to address these issues at this time as they relate to
11 intermodal LNP.

12
13 *Nov. 10 Order*, para. 40, footnotes omitted.

14
15 **B. OTHER UNRESOLVED AND UNEXPLAINED ISSUES**

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

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

22
23

1 1. **BACKGROUND: NUMBER PORTABILITY CONCEPTS**

2 **Q31: Are there other “types” of number portability other than Service Provider**
3 **Portability that you discussed earlier in this testimony?**

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

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

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

16 **Q33: Has the FCC adopted requirements for Location Portability?**

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

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

3
4 **2. SERVICE “AT THE SAME LOCATION” ISSUES**

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

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

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

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

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

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

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

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

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

12
13 **3. THERE HAS BEEN NO RECOMMENDATION FOR**
14 **INTERMODAL LNP.**

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

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

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

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

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

17 **A:** No.

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

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

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

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

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

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

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

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

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

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

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

19 **Q44: What is the status of these proceedings?**

20 **A:** All of these matters await substantive action.

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

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

1 effort to make a good faith effort to implement LNP when their requirements are unclear.

2 Magnifying this problem, my understanding is that no, or very few, wireline customers of
3 the Petitioners have requested to port a number for wireless use. The real world concern
4 is that these costs could be incurred and would be reflected in end user rates without any
5 real purpose or potential benefit that would be afforded to customers. Moreover, after
6 these issues are resolved, Petitioners may find that they would be required to modify their
7 previous implementation activity at additional cost.

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

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

1 **4. LACK OF ANY LOGICAL APPLICATION OF THE “RATE CENTER**
2 **AREA” CONCEPT TO MOBILE USERS.**

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

5 **A:** Yes.

6 **Q47: What is a rate center area?**

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

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

21 The concept of “rate center areas” was developed originally for purposes of
22 calculating charges for interexchange services where the rates were based on mileage.

23 Almost no calling services today depend on mileage. Some carriers’ billing and service

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

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

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

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

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

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

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

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

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

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

9 **A:** Yes. My views are exactly consistent with the FCC’s conclusions. In its October
10 7, 2003 number portability order related to wireless-wireless porting, the FCC concluded
11 (at para. 22) that “[b]ecause wireless service is *spectrum-based and mobile in nature,*
12 *wireless carriers do not utilize or depend on the wireline rate center structure to provide*
13 *service:* wireless licensing and service areas are typically much larger than wireline rate
14 center boundaries, and wireless carriers typically charge their subscribers based on
15 minutes of use rather than location or distance.” (emphasis added). The FCC’s
16 conclusion confirms that the specific geographic areas known as rate center areas for
17 wireline LECs have no relevance to the services offered to, or provided to, the typical
18 mobile user of the large wireless carriers.

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

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

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

5
6 **V. CONCLUSION**

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

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

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

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

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

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

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

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

16 **Q53: Does this end your testimony?**

17 **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

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

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MAY 17 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: Docket Number TC04-055 (Alliance)

Dear Pam:

Enclosed herein are the original and ten copies of the PRE-FILED TESTIMONY OF TOM BULLOCK and the PRE-FILED TESTIMONY OF DON SNYDERS which are filed on behalf of ALLIANCE COMMUNICATIONS, INC AND SPLITROCK PROPERTIES, INC.

Sincerely yours,



Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

CC: Tom Bullock (letter only)
CC: Talbot Wieczorek
CC: David Gerdes
CC: Don Snyders

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BEFORE THE PUBLIC UTILITIES COMMISSION

MAY 17 2004

OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITION
OF ALLIANCE COMMUNICATIONS
COOP., INC. AND SPLITROCK PROP-
ERTIES, INC. FOR SUSPENSION OR
MODIFICATION OF § 251(b)(2) OF THE
COMMUNICATIONS ACT OF 1934 AS
AMENDED

Docket No. TC04-055

**DIRECT TESTIMONY OF TOM BULLOCK
ON BEHALF OF ALLIANCE COMMUNICATIONS COOP., INC.
AND SPLITROCK PROPERTIES, INC.
REGARDING COMPANY-SPECIFIC COST DATA**

May 14, 2004

**DIRECT TESTIMONY OF TOM BULLOCK
ON BEHALF OF ALLIANCE COMMUNICATIONS COOP., INC.
AND SPLITROCK PROPERTIES, INC.
REGARDING COMPANY-SPECIFIC COST DATA**

Q1. Please State your name, Employer, Business Address and Telephone Number.

A. My name is Tom Bullock. I am employed with TELEC Consulting Resources Inc. My business address is 233 South 13th Street, Suite 1225, Lincoln Nebraska, 68508. My telephone number is (402) 441-4315.

Q2. On whose behalf are you testifying?

A. I am testifying on behalf of the Company identified in the caption of the docket set out above. I will refer to this Company as the "RLEC".

Q3. Have you provided your background information and an explanation of your role in this Docket in the "companion" testimony that has been offered in this Docket?

A. Yes, I have.

Q4. Did you prepare Exhibit 1 to the Petition of the RLEC filed in this Docket?

A. Yes, in conjunction with members of the professional staff of TELEC, I was responsible for the preparation of Exhibit 1 as was attached to the Petition and I was also responsible for the preparation of supporting information prepared in connection with the responses to the discovery requests of Western Wireless. I was also responsible for the preparation of Exhibit 2 that is attached to this testimony.

Q5. In your "introductory" testimony you have explained the line items that comprise Exhibit 2 and the process used to compile the data that was used to

develop the cost as shown on Exhibit 2. Please discuss where in your “introductory” testimony you describe this process.

A. The process that was used to compile and develop the cost per line in Exhibit 2 is described on pages six through twenty-one in my “introductory” testimony.

Q6. What was the source of the data?

A. The data was derived from the books, financial records and managers of the RLEC. Data was also obtained from switch vendors, engineering consultants, tariffs, service order administration service bureaus, the number portability administration center, a number portability database provider, and my professional experience.

Q7. What was the purpose of obtaining that particular data?

A. To assist me in preparing an estimate of the costs to implement LNP for the RLEC.

Q8. Is this the type of data that experts in your field would ordinarily review in formulating an opinion concerning the costs of LNP?

A. Yes.

Q9. What use did you make of the data after you received it from the RLEC?

A. I have explained the use of the data on pages eleven through twenty-one of my “introductory” testimony.

Q10. Have you reached an opinion with a reasonable degree of professional certainty as to the total non-recurring costs, excluding transport, to implement LNP that you have calculated for the RLEC that will be recovered over a 5-year recovery period through an end user surcharge?

A. Yes. My opinion is that the total non-recurring costs, excluding transport, is \$186,895. Such costs were amortized over a recovery period of 60 months using a rate of return of 11.25%. The total nonrecurring costs per month, excluding transport, amortized over five years is \$4,087.

Q11. Have you reached an opinion with a reasonable degree of professional certainty as to the total recurring costs, excluding transport, to implement LNP that you have calculated for the RLEC and that will be recovered from end users on an ongoing monthly charge basis?

A. Yes. The amount is shown on Exhibit 2, and is calculated to be \$3,668 per month.

Q12. Have you reached an opinion with a reasonable degree of professional certainty as to the total cost, excluding transport, per line per month that would be charged to end-users if LNP were to be implemented by the RLEC?

A. Yes, The amount is shown on Exhibit 2. This amount was calculated by adding the total nonrecurring costs per month amortized over five years to the total recurring costs per month, both amounts excluding transport costs, and dividing this sum by the RLEC's total access lines. The resulting cost per line per month was calculated to be \$0.91.

Q13. Have you reached an opinion with a reasonable degree of professional certainty as to the total LNP costs and the monthly amount recovered from each end-user if the FCC determines that transport costs should be included in the LNP costs recovered from end-users?

A. Yes, These amounts are shown on Exhibit 2. The total nonrecurring and recurring costs, including transport costs, were calculated to be \$23,515 per month. The resulting LNP cost per line, per month, including transport, was calculated to be \$2.75.

Q14. If FCC determines that transport costs should not be included in the end-user surcharge, will the transport cost still be incurred and who will pay these costs?

A. Transport costs will have to be incurred to transport calls outside of the RLEC's service area. If the cost is not recovered through an end-user surcharge, and if these costs are not recovered from the wireless carrier, then the only party to pay these costs would be the RLEC.

Q15. Is it your opinion that the calculations that you have just described fairly and reasonably describe the non-recurring and recurring costs for the RLEC to implement LNP and the end user charges to recover such costs?

A. Yes.

Q16. Does this conclude your testimony?

A. Yes, it does.

Alliance Merged**Total Estimated LNP Non-recurring and Recurring Costs****Exhibit 2**With
Surcharges
& Taxes**LNP Non-recurring Costs**

Switch Upgrade Costs	\$ 122,848
Internal Business Procedure Changes	\$ 21,344
Intercarrier Testing	\$ 2,350
Other Internal Costs	\$ 33,532
LNP Query set up	\$ 1,520
SOA Non-recurring set up charge	\$ 1,000
Customer Notification Costs	\$ 4,301
Total Non-recurring Costs excluding transport	\$ 186,895
Non recurring transport charges	\$ 11,789
Total Non-recurring Costs including transport	\$ 198,684

LNP Monthly Recurring Costs

SOA Monthly Charge	\$ 400
LNP Query Costs per month	\$ 1,200
Switch Maintenance Costs per month	\$ -
Other Monthly Costs	\$ 2,068
Total Recurring Monthly Costs excluding Transport	\$ 3,668
Transport	\$ 15,502
Total Recurring Monthly Costs including Transport	\$ 19,170

Monthly Cost Calculations per line

Total Nonrecurring cost per month excluding transport amortized over five years	\$ 4,087
Total Nonrecurring cost per month including transport amortized over five years	\$ 4,345
Total cost per month excluding transport	\$ 7,755
Total cost per month including transport	\$ 23,515

Access Lines excluding Lifeline 9,820

LNP cost per line per month excluding transport	\$ 0.79	\$ 0.91
LNP cost per line per month Including transport	\$ 2.39	\$ 2.75

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MAY 17 2004

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITION
OF ALLIANCE COMMUNICATIONS
COOPERATIVE, INC. AND SPLITROCK
PROPERTIES, INC. FOR SUSPENSION
OR MODIFICATION OF § 251(b)(2) OF
THE COMMUNICATIONS ACT OF 1934
AS AMENDED

Docket No. TC04-055

DIRECT PRE-FILED TESTIMONY OF

DON SNYDERS

May 14, 2004

Q: Please state your business name and address?

A: My name is Don Snyders, General Manager of Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc. My business address is 612 3rd, PO Box 349, Garretson, SD 57030. My business phone number is 605-594-3411.

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

A: I am the General Manager of Alliance Communications Cooperative, Inc. (Alliance) and its wholly owned subsidiary company of Splitrock Properties, Inc. (Splitrock). Alliance and Splitrock are rural independent local exchange carriers that provide local exchange, exchange access and other telecommunications services to 9851 access lines within its South Dakota service area, which include the exchanges of Garretson, Brandon, Baltic, Crooks, Alcester, Hudson, Howard and Oldham/Ramona.

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: No.

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

A: Wireless service areas are much more extensive.

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

A: Alliance and Splitrock have points of interconnection (POI) with SDN and Quest. The SDN connection is for toll completion and toll termination for InterLATA and

Intra LATA traffic. The Qwest POI is a terminating trunk, only for Qwest IntraLATA traffic.

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

A: There have been no subscriber requests for local number portability to be offered by Alliance Communications and/or Splitrock Properties.

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

A: No.

Q: Have any wireless carriers requested LNP?

A: Yes, from Western Wireless, Verizon, and Midwest Wireless.

Q: How much time would be required for your company to provide LNP, if ordered by the Commission?

A: We have not completed a specific implementation time line yet, but implementation will take a considerable amount of time.

Q: In your experience as the general manager of Alliance and Splitrock, have you seen increases or additions to the itemized fees on your customer's telephone bills?

A: Yes.

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

A: I would expect the reaction to be very negative.

Q: Is the public interest, convenience, and necessity served by requiring your company to implement LNP at this time?

A, No. The current demand for LNP appears to be non-existent, as no customers have requested LNP and the cost of LNP is significant.

Q: Does this conclude your direct testimony?

A: Yes.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

MAY 17 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITION
OF ALLIANCE COMMUNICATIONS
COOPERATIVE, INC. AND SPLITROCK
PROPERTIES, INC. FOR SUSPENSION
OR MODIFICATION OF § 251(b)(2) OF
THE COMMUNICATIONS ACT OF 1934
AS AMENDED

Docket No. TC04-055

CERTIFICATE OF SERVICE

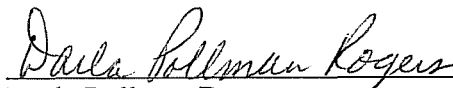
The undersigned hereby certifies that she served a copy of the **DIRECT PRE-FILED TESTIMONY OF TOM BULLOCK** and the **DIRECT PRE-FILED TESTIMONY OF DON SNYDERS** upon the persons herein next designated, on the date below shown, by depositing a copy thereof in the United States mail at Pierre, South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

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richcoit@sdtsonline.com
Director of Industry Affairs
South Dakota Telecommunications Association
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Pierre, South Dakota 57501

Talbot J. Wiczorek
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Dated this fourteenth day of May, 2004.



Darla Pollman Rogers
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May 14, 2004

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

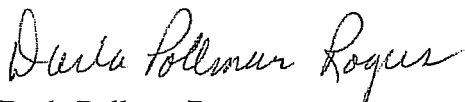
RECEIVED
MAY 17 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: Docket Number TC04-055 (Alliance Communications, Inc.)
Docket Number TC04-046 (Armour, Union, Bridgewater-Canistota)
Docket Number TC04-048 (Beresford)
Docket Number TC04-051 (Faith)
Docket Number TC04-045 (Golden West, Vivian, Kadoka)
Docket Number TC04-025 (Kennebec)
Docket Number TC04-049 (McCook)
Docket Number TC04-052 (Midstate)
Docket Number TC04-056 (Roberts County and RC Communications)
Docket Number TC04-044 (Sioux Valley)
Docket Number TC04-084 (Tri-County)
Docket Number TC04-050 (Valley)
Docket Number TC04-053 (Western)

Dear Pam:

Enclosed herein are the original and ten copies of the PRE-FILED DIRECT TESTIMONY OF TOM BULLOCK, and the PRE-FILED DIRECT TESTIMONY OF DAN DAVIS, which is filed on behalf of all of the above-listed companies. The majority of the Exhibits in support of this testimony will be filed under separate cover. Because of some proprietary issues that need to be resolved between the parties, these Exhibits will be filed next week.

Sincerely yours,



Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

CC: Tom Bullock (letter only)

CC: Dan Davis (letter only)

CC: Talbot Wieczorek

CC: David Gerdes

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

MAY 17 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITIONS
OF SIOUX VALLEY TELEPHONE
COMPANY; GOLDEN WEST TELE-
COMMUNICATIONS COOPERATIVE,
INC., VIVIAN TELEPHONE COMPANY
AND KADOKA TELEPHONE COM-
PANY; ARMOUR INDEPENDENT
TELEPHONE COMPANY, BRIDGE-
WATER CANISTOTA TELEPHONE
COMPANY AND UNION TELEPHONE
COMPANY; MCCOOK COOPERATIVE
TELEPHONE COMPANY; VALLEY
TELECOMMUNICATIONS COOPERA-
TIVE ASSOCIATION, INC.; FAITH
MUNICIPAL TELEPHONE COMPANY;
ALLIANCE COMMUNICATIONS
COOP., INC. AND SPLITROCK PROP-
ERTIES, INC.; AND TRI COUNTY
TELECOM INC. FOR SUSPENSION OR
MODIFICATION OF § 251(b)(2) OF THE
COMMUNICATIONS ACT OF 1934 AS
AMENDED

Docket No. TC04-044
Docket No. TC04-045
Docket No. TC04-046
Docket No. TC04-049
Docket No. TC04-050
Docket No. TC04-051
Docket No. TC04-055
Docket No. TC04-084

**INTRODUCTORY TESTIMONY OF TOM BULLOCK
ON BEHALF OF THE ABOVE-NAMED COMPANIES**

May 14, 2004

1
2 **IDENTIFICATION OF WITNESS, FACTUAL BACKGROUND**
3 **AND PURPOSE OF TESTIMONY**
4

5 A. Witness Background
6

7 Q. **What is your Name, Employer, Business Address and Telephone Number?**
8

9 A. My name is Tom Bullock. I am employed with TELECOM Consulting Resources,
10 Inc. My business address is 233 South 13th Street, Suite 1225, Lincoln, Nebraska
11 68508. My telephone number is (402) 441-4315.

12 Q. **On whose behalf are you testifying?**
13

14 A. I am testifying on behalf of the Companies identified in Exhibit A attached to this
15 testimony. I will refer to the Companies listed on Exhibit A as the "RLECs."
16 Each of the RLECs provides local telephone exchange service and exchange ac-
17 cess services in rural areas of South Dakota. Each of the RLECs is engaged in the
18 provision of general telecommunications services in the State of South Dakota.

19 Q. **What is your current position?**
20

21 A. I am a consultant at TELECOM Consulting Resources, Inc.
22

23 Q. **What are your duties and responsibilities at TELECOM Consulting Resources?**
24

25 A. I am responsible for consulting with clients regarding technical and regulatory
26 issues and for analyzing and modeling various kinds of costs related to telecom-
27 munications.

28 Q. **What was your professional experience prior to your current position?**
29

30 A. Prior to my current position I worked in the telecommunications industry for 19
31 years. I served at Aliant Communications (later merged with ALLTEL) in its En-

1 gineering, Network Operations, Marketing and Information Systems departments,
2 and held a variety of technical and management positions.

3 Q. **What is your educational background?**

4
5 A. I hold a Master of Science degree in physics from the University of Nebraska-
6 Lincoln and a Bachelor of Science degree in physics from the University of
7 Michigan-Ann Arbor. I also attended Nebraska Wesleyan University for two
8 years prior to transferring to the University of Michigan.

9 Q. **What is the purpose of your testimony?**

10
11 A. The purpose of my testimony is to offer support for the estimate of costs accom-
12 panying the Petition that each of the RLECs filed pursuant to Section 251(f)(2) of
13 the Telecommunications Act of 1934 as amended (“the Act”) and South Dakota
14 Codified Laws SDCL § 49-31-80, amended as shown on Exhibit 2 attached to this
15 testimony. This cost estimate constitutes the basis for each RLEC’s contention
16 that a suspension or modification of the Local Number Portability (“LNP”) re-
17 quirement is necessary, pursuant to Section 251(f)(2)(A)(i) of the Act, to avoid a
18 significant adverse economic impact on telecommunications users generally or,
19 pursuant to Section 251(f)(2)(A)(ii), to avoid imposing a requirement that is un-
20 duly economically burdensome. This cost estimate represents the collection of
21 those costs that would be incurred in the provision of LNP. I will explain the
22 manner in which these cost estimates were developed.

23 Q. **What aspects of your professional experience did you use in preparing your**
24 **testimony today?**

25
26 A. During my career with Aliant Communications, I served with a small group of
27 individuals responsible for creating and developing a new data communications

1 business unit within the larger corporation. My seven years with this data com-
2 munications division, during which it grew from three to over fifteen people,
3 gave me extensive personal experience in conceptualizing, developing and im-
4 plementing new business procedures for a small organization in which I had direct
5 management duties. I held the positions of Data Communications Engineer, En-
6 gineering & Operations Supervisor and Manager within the division. At a later
7 stage in my career, I assisted Aliant's Engineering and Network Operations de-
8 partments in adapting several of its information systems to newly designed busi-
9 ness processes, as part of the company's "Business Process Re-engineering" pro-
10 gram, intended to streamline Aliant's internal operations. Toward the end of my
11 career at Aliant, I developed and utilized software to automatically extract data
12 from one type of telephone switch, convert its format, and load it into a different
13 type of switch, in connection with a series of major central office conversion pro-
14 jects the company had undertaken. More recently, as a consultant, I have com-
15 piled and analyzed the cost data necessary to file tariffs at both the state and fed-
16 eral levels on behalf of small telephone companies. I participated with other
17 TELECOM staff in the collection and analysis of data necessary to develop each
18 RLEC's estimates of the cost of implementing LNP. As part of this analysis, I
19 developed mathematical functions to model certain categories of costs associated
20 with LNP implementation.

21 **OVERVIEW OF LNP PROCESSES AND METHODS OF ESTIMATING COSTS**

22 Q. **Can you provide a general overview of the network interconnections re-**
23 **quired for LNP and some of the processes involved with porting a telephone**
24 **number?**
25

1 A. Yes. Exhibit B, attached to this testimony, is a pictorial representation of the
2 principal network architectural features required for LNP. This sketch shows two
3 service providers and the LNP-related interfaces each must establish in order to
4 port a telephone number from one (the “Old SP” - oval on the left) to the other
5 (the “New SP” – oval on the right). The process of porting a number begins when
6 a customer of the Old SP, represented by the telephone set near the middle of the
7 figure, contacts the New SP and asks to have his telephone number ported to the
8 New SP. (In the case of wireline-to-wireless porting, the customer’s wireline
9 number would be ported to a wireless handset served by the wireless carrier -
10 large “TN port” arrow from telephone set to wireless handset). The New SP will
11 then send a Local Service Request (“LSR”) to the Old SP, typically via fax trans-
12 mission, requesting that the customer’s number be ported. The Old SP validates
13 the information on the LSR, responds to the New SP with a Firm Order Confirma-
14 tion (“FOC”) and executes a transaction with its contracted LNP Service Order
15 Administrator (“SOA”), who in turn updates the appropriate regional database
16 operated by the Number Portability Administration Center (“NPAC”), thereby es-
17 tablishing an initial pending record (called a “subscription version”) in the master
18 database shared by all carriers in the region. All carriers participating in LNP
19 must either utilize the services of an NPAC-certified SOA, or establish their own
20 NPAC-certified SOA function internally. After the New SP receives the FOC, it
21 will perform a similar function (likely using a SOA different from that used by the
22 Old SP) to update the same regional NPAC database. If there is any material dis-
23 crepancy between the records submitted by the two SPs, the NPAC’s Service

1 Management System (“SMS”) will not allow the port to proceed until the discrep-
2 ancy is resolved. On the due date, the New SP will send another message to the
3 NPAC to request that the port be “activated.” If no errors or discrepancies exist
4 among the NPAC records associated with the porting request, the NPAC will ac-
5 tivate the port by sending a message to all the contracted LNP Query service pro-
6 viders in the region, causing them to establish a new record in their databases that
7 associates the ported telephone number with the New SP. More precisely, the
8 new record in these databases associates the ported number with the Location
9 Routing Number (“LRN”) of the New SP’s switch that now serves the number,
10 which may have now become a wireless number. During call processing in a
11 switch that has been made LNP-capable, the switch must launch LNP queries to
12 such a database to retrieve the LRN for any ported number. The LRN is used by
13 all switches in the call train in place of the dialed digits to route the call to the
14 proper terminating switch. Finally, the diagram on Exhibit B shows trunk links
15 required to transport such calls from carrier to carrier. Solid lines represent trunks
16 in place today that carry toll traffic. The dotted line connecting the two ovals
17 represents a direct trunk link that may or may not be in place between the Old SP
18 and the New SP.

19 **Q. What process did you use to prepare the cost estimates shown in Exhibit 1 as**
20 **filed for each of the RLECs and those estimates shown in Exhibit 2, attached**
21 **to your testimony?**
22

23 **A.** There were four stages of activity involved in preparing the cost estimates shown
24 in Exhibit 1, and a fifth stage involved in preparing the Exhibit 2 estimates. First,
25 shortly after the FCC released its November 10, 2003 Order on wireline to wire-

1 less LNP, TELEC Consulting staff, together with management personnel of sev-
2 eral small rural telephone companies, began to analyze the effect that the provi-
3 sion of wireline to wireless LNP would have on such a company's internal opera-
4 tions and to identify the kinds of new costs that would arise from LNP implemen-
5 tation. We specifically discussed and analyzed LNP network architecture issues,
6 switch software and technical network interface requirements, administrative re-
7 quirements of the NPAC, SOA service bureau options, internal provisioning proc-
8 esses, LNP database query services and cost recovery issues including the LNP
9 End User charge. In addition, we analyzed various call flow scenarios in a num-
10 ber porting environment and recognized that certain transport facilities must also
11 be in place to fully support wireline to wireless LNP. Second, TELEC asked rep-
12 resentatives of this group of telephone companies to estimate their costs for im-
13 plementing the capabilities and performing the activities required for LNP that we
14 had identified at that time. Our analysis of the responses suggested that costs in
15 some categories could be reasonably represented as functions of company size.
16 Third, using these company-provided estimates as a guide, TELEC developed a
17 model to calculate estimates for those cost categories, derived from basic com-
18 pany facts, such as number of customers, number of employees and wage rates,
19 and using a common set of methods applied to all companies. We also developed
20 a data request form that could be used as a source of input data for the model. A
21 paper copy of that form, the Excel workbook **LNPCostDataRequest.xls**, is at-
22 tached to this testimony as Exhibit C1; its accompanying instructions are attached
23 as Exhibit C2. Fourth, TELEC obtained from each of the RLECs a copy of the

1 **LNPCostDataRequest.xls** form, filled in with the company's own data. In those
2 cases where a group of operating companies elected to jointly file a petition with
3 this Commission, data from the companies was merged into a single Excel file for
4 the group. Using this data as input, the output from TELEC's cost model consti-
5 tuted the cost estimates shown on Exhibit 1 as filed with the RLECs' petitions.
6 Fifth, and following the filing of the petitions, TELEC made several refinements
7 to our cost estimates in several categories. We investigated the LNP software
8 pricing policies applied by the vendors of the switches used in the RLECs' net-
9 works – namely, the Nortel DMS-10, the Siemens DCO and the Mitel GX-5000.
10 We adjusted downward our estimates of SOA costs to account for lower cost
11 SOA options that we investigated after the filing of the petitions. We verified cir-
12 cuit mileages, applicable tariffs and connectivity requirements in our estimates of
13 transport costs. We corrected estimates of database query costs. We made ex-
14 plicit assumptions about the quantity of telephone numbers that each RLEC
15 would port out each month, based on the number of the RLEC's access lines,
16 which led to a specific choice of SOA option and SOA cost estimates for each
17 RLEC, and to an estimate of monthly expense incurred to port these telephone
18 numbers to a competing wireless carrier. The results of these adjustments are re-
19 flected in the cost estimates shown on Exhibit 2, attached to this testimony.

20 Q. **What information did TELEC collect from each RLEC using the Excel file**
21 **LNPCostDataRequest.xls?**

22
23 A. TELEC asked each RLEC to obtain from its switch vendor or engineering con-
24 sultant a price quote for LNP capability in each of its switches, and to provide
25 TELEC with information from that price quote. TELEC asked each company to

1 estimate the increase in annual switch maintenance expense it would incur as a
2 consequence of having installed LNP capability in its switches. TELECOM also
3 asked each company to also provide the following general information about its
4 operations and its neighboring wireless competitors. Regarding its own opera-
5 tions, we asked for:

- 6 1. Number of access lines in service;
- 7 2. Number of Lifeline customers;
- 8 3. Number of employees having certain job titles that would be involved
9 with LNP implementation;
- 10 4. Average loaded wage rates, including benefits and overheads, for em-
11 ployees in those job titles.

12 Regarding neighboring wireless competitors, we asked for:

- 13 5. Identity of wireless carriers that have sent the company a request for
14 LNP;
- 15 6. Identity of other wireless carriers with coverage in the company's ser-
16 vice area;
- 17 7. Identity of wireless carriers with existing direct trunks connecting to
18 the company's switching network.

19 And to allow us to estimate transport costs, we asked for:

- 20 8. Airline mileage from the company's switches to the nearest LATA
21 tandem location.

22 **Q. What is the common set of methods applied to all companies that you re-**
23 **ferred to earlier?**
24

1 A. TELEC used two sets of methods: one set for the cost estimates filed with each of
2 the RLEC's petitions as Exhibit 1, and a different set for the cost estimates at-
3 tached to this testimony as Exhibit 2. In each case, the methods fall into ten cate-
4 gories, corresponding to individual line items on Exhibit 1 and Exhibit 2. These
5 categories are as follows:

- 6 1. Switch Upgrade Costs
- 7 2. Internal Business Procedure Changes
- 8 3. Intercarrier Testing
- 9 4. Other Internal Costs
- 10 5. LNP query services, including:
 - 11 a. LNP Query set up
 - 12 b. LNP Query Costs per month
- 13 6. SOA services, including:
 - 14 a. SOA Non-recurring set up charge
 - 15 b. SOA Monthly Charge
- 16 7. Customer Notification Costs
- 17 8. Switch Maintenance Costs per month
- 18 9. Other Monthly Costs
- 19 10. Transport costs, including:
 - 20 a. Non recurring transport charges
 - 21 b. Transport (i.e. monthly recurring transport charges)

22 **CATEGORIES OF ESTIMATED COSTS**

23 Q. **What costs are included in the "Switch Upgrade Costs" category?**
24

1 A. In order for a telephone number to be ported out of one service provider's switch
2 to a different service provider's switch, both switches must be capable of execut-
3 ing a number of functions that are essential to the proper routing of calls to ported
4 numbers. These functions include (1) querying an internal database to determine
5 whether a locally dialed number belongs to a ported NPA-NXX; (2) launching an
6 SS7 Transaction Capabilities Application Part ("TCAP") query to a provider of
7 LNP database query services, to retrieve the LRN of the new service provider's
8 switch; (3) manipulation of the SS7 ISDN User Part ("ISUP") message, sent to es-
9 tablish trunking resources for the call - in order that downstream switches are
10 made aware of the fact that a query has already been performed and so that the
11 new service provider's switch can properly terminate the call to the originally di-
12 aled number; and (4) routing the call from the originating switch to the correct
13 outgoing trunk group for the specific LRN associated with the new service pro-
14 vider's switch. The first three of these functions are provided through the installa-
15 tion of LNP software that switch manufacturers have made available to their cus-
16 tomers, including the RLECs. The fourth function is provided through manual
17 updates to internal switch translation tables that control the routing of telephone
18 numbers to outgoing trunk facilities. The "Switch Upgrade Costs" category in-
19 cludes both the cost of installing the manufacturer's LNP software, and of per-
20 forming the necessary translation changes, in each RLEC's Host and Stand-Alone
21 switches. Translations for Remote switches must be performed in the controlling
22 Host.

23 Q. **What method did TELEC use to estimate the "Switch Upgrade Costs" cate-**
24 **gory, for Exhibit 1 and for Exhibit 2?**

1
2 A. For Exhibit 1, TELEC obtained from each company an estimate of the cost of
3 purchasing and installing the necessary hardware and/or software to provide LNP
4 capability and of performing the necessary switch translation table changes
5 needed to route calls to ported numbers. We used the data that each company
6 provided on the **Switch&Transport** sheet of **LNPCostDataRequest.xls**, simply
7 totaling the dollar amounts in the two columns labeled “Vendor upgrade price for
8 LNP capability” and “LNP Installation Costs (internal and/or external)” to pro-
9 duce a total “Switch Upgrade Cost.” For Exhibit 2, we investigated the LNP pric-
10 ing policy used by the manufacturer of each RLEC’s switches and asked each
11 company to provide us with the company-specific information needed to apply
12 those policies, such as a count of equipped lines or switch ports, and whether the
13 RLEC participates in the manufacturer’s annual-fee software maintenance pro-
14 gram. We also verified whether or not each RLEC already had LNP capability in
15 some or all of its switches. We then determined that the Switch Upgrade Cost in-
16 curred for providing LNP should be the sum of the following items:

- 17 1. Either:
 - 18 a. The amount shown on a vendor price quotation provided to the RLEC,
19 if that quotation clearly indicated that only LNP capability was being
20 provided for in the quotation; or, otherwise,
 - 21 b. The result of a straightforward application of the switch manufac-
22 turer’s LNP pricing policy for the RLEC in question; and
- 23 2. A uniform cost for having switch translations performed by an outside en-
24 gineering firm; and

1 3. A uniform cost for the company's own technicians' participation in the
2 translations work.

3 Q. **What costs are represented by the "Internal Business Procedure Changes"**
4 **category?**

5
6 A. These are the costs associated with modifying an RLEC's internal business pro-
7 cedures so that the RLEC can respond in a timely and reliable manner to a request
8 from a competing service provider to port an individual telephone number.

9
10 Q. **What method did TELEC use to estimate the "Internal Business Procedure**
11 **Changes" category, for Exhibit 1 and for Exhibit 2?**

12
13 A. TELEC used the same method for Exhibit 1 and Exhibit 2. TELEC organized
14 these costs into ten subcategories and determined that the costs in each subcate-
15 gory could be reasonably estimated using mathematical functions of three kinds
16 of variables: (1) an RLEC's count of access lines, (2) the quantities of personnel
17 the RLEC employs with certain job titles, and (3) the wage rates of those employ-
18 ees.

19
20 TELEC identified four general types of routine activity associated with porting a
21 number for which an RLEC would need to develop new internal business proce-
22 dures:

- 23 1. receiving an LSR from the competing carrier and responding with an
24 FOC;
- 25 2. interfacing with a SOA for entry of data into the NPAC's regional number
26 portability database;

- 1 3. performing switch updates, such as applying an unconditional 10-digit
- 2 trigger, for the ported number; and
- 3 4. maintaining historical records, such as a database of all numbers that have
- 4 been ported out to other carriers.

5 The costs estimated here are those costs associated with planning for and estab-
6 lishing the procedures to be followed in performing these activities – not the costs
7 of actually performing them on a routine basis.

8
9 TELEC also identified five types of preparatory activity needed to formulate an
10 overall company plan for LNP implementation, to train personnel in the number
11 porting procedures described above, and to put into place various information
12 management tools. These preparatory activities are:

- 13 1. general initial process planning;
- 14 2. training of technicians;
- 15 3. training of customer service representatives;
- 16 4. modification of the company's billing system to add an LNP End User
- 17 Charge; and
- 18 5. other computer programming.

19
20 Finally, TELEC recognized that time would be needed to establish procedures for
21 resolution of problems that occur after a port has been completed and tested, such
22 as network routing problems that are unrelated to an individual customer's num-
23 ber porting event, but which affect ported numbers, either predominantly or ex-
24 clusively. We labeled this activity "set up troubleshooting procedures."

1
2 TELEEC associated each of these ten activities with the job titles typically held in a
3 small telephone company, and estimated the minimum number of hours that a
4 person holding a specific job title would need to spend working on that activity -
5 in a very small organization with no overhead costs of supervision or interper-
6 sonal communications, and with minimum complexity.

7
8 The job titles TELEEC associated with these activities are: General Manager, Cus-
9 tomer Service Supervisor, Engineering Supervisor, Operations Supervisor, Office
10 Manager, Switch Engineer, Switch Technician, Computer Programmer, Customer
11 Service Representative and Office Assistant. TELEEC requested that each com-
12 pany provide quantities of employees holding each of these job titles and the av-
13 erage loaded wage rate for each job title on the **StaffInfo** sheet of **LNPCostDa-**
14 **taRequest.xls**.

15
16 We then assigned a logarithmic, “company-size” scale-up coefficient to each ac-
17 tivity to represent the degree to which employees of a larger company would
18 spend more time on that activity than employees of a smaller company would
19 spend. These coefficients account for the additional overhead associated with
20 management, supervision and interpersonal communications, and the greater ad-
21 ministrative complexity, associated with larger organizations when implementing
22 and adapting to new procedures. This coefficient was multiplied by the base-ten
23 logarithm of the company’s number of access lines to produce a company-specific
24 scale-up factor for each activity, according to the following formula:

$$F_A = 1 + C_A * \log_{10}(L)$$

1
2 where:

3 F_A is the scale-up factor for activity A;

4 C_A is the scale-up coefficient for activity A;

5 $\log_{10}(x)$ is the base-ten logarithm of x;

6 L is the number of the company's access lines.
7

8 Exhibit D, attached to this testimony, shows, for each activity, the scale-up coeffi-
9 cients and, for each activity and job title, the estimated minimum hours spent on
10 that activity by a person with that job title.

11
12 For each activity, the estimated actual time spent on that activity by each person
13 holding a particular job title is the product of the estimated minimum time for that
14 activity and job title with the scale-up factor for that activity. The contribution of
15 a particular job title toward the cost of each activity is the product of the follow-
16 ing three factors: the estimated actual time spent per person on that activity, the
17 number of people holding that job title, and that job title's average loaded wage
18 rate. The total cost of each activity is the sum of the contributions of all job titles.

19
20 The total cost of Internal Business Procedure Changes is the sum of the costs of
21 all activities.

22
23 **Q. What costs are included in the "Intercarrier Testing" category?**

24
25 **A.** The costs included in this category are labor costs incurred to test all of the port-
26 ing processes prior to processing the first porting request and to troubleshoot any
27 problems that may occur during the initial phases of LNP implementation. Dan
28 Davis has described in his testimony the need for intercarrier testing.

29 **Q. What method did TELEC use to estimate the "Intercarrier Testing" cate-**
30 **gory, for Exhibit 1 and for Exhibit 2?**

1
2 A. TELEC estimated, for both Exhibits, that each RLEC would need to devote 120
3 man-hours to this activity. For most RLECs, we assumed that forty hours would
4 be spent by the Customer Services Supervisor, forty man-hours by one or more
5 switch technicians and forty man-hours by one or more Customer Service Repre-
6 sentatives. For RLECs that lack one or more of these job titles, we assigned this
7 activity to a different job title that the RLEC does use. We applied the wage rates
8 that each RLEC reported to us to calculate a total cost for this activity.

9
10 Q. **What costs are included in the “Other Internal Costs” category?**

11
12 A. The costs that are included in this category are regulatory, consulting, and legal
13 costs. These are costs that are incurred to negotiate and establish agreements with
14 the NPAC, with each RLEC's selected SOA service bureau and LNP Query ser-
15 vice provider, and with service providers requesting LNP. Also included in this
16 category are costs associated with completing intercarrier porting forms and trad-
17 ing partner profile forms with service providers requesting LNP; developing cost
18 support for, writing and filing with the FCC a tariff for the LNP End User charge;
19 and general education of the company's management regarding LNP implementa-
20 tion.

21 Q. **What method did TELEC use to estimate the “Other Internal Costs” cate-**
22 **gory, for Exhibit 1 and for Exhibit 2?**

23
24 A. TELEC determined, for both Exhibits, that each RLEC's General Manager would
25 need to devote a certain number of hours to these activities and that each RLEC
26 would also hire outside engineers and/or regulatory consultants as well as attor-
27 neys to assist with this work. The specific number of man-hours we estimated

1 would be required for each activity are summarized in Exhibit E, attached to this
2 testimony.

3 Q. **What costs are included in the “LNP Query set up” and “LNP Query Costs**
4 **per month” categories?**

5
6 A. These are the initial and ongoing monthly fees paid to a provider of LNP Query
7 services. As I explained earlier, one of the architectural requirements of LNP is
8 that switches must be able to launch queries over the SS7 network for retrieval of
9 the LRN of a ported number, in order to properly route a call to such a ported
10 number to its correct terminating switch.

11 Q. **What method did TELEC use to estimate the “LNP Query set up” and “LNP**
12 **Query Costs per month” categories, for Exhibit 1 and for Exhibit 2?**

13
14 A. TELEC contacted several providers of LNP Query services to learn about their
15 pricing policies. In general, LNP Query services include a set-up fee and recur-
16 ring monthly charges. The recurring charges are priced at a small fraction of a
17 cent per query, for a unique Originating Point Code, meaning that costs are in-
18 curred separately for each Host switch and each Stand-Alone switch in an RLEC's
19 network.. Also typical of LNP Query service pricing is that there is a minimum
20 monthly charge per Originating Point Code. Rather than try to estimate the quan-
21 tities of queries that each switch would launch, TELEC used the monthly mini-
22 mum charge of a well established service provider to estimate these costs. For
23 Exhibit 1, we failed to account for the fact that the service provider would charge
24 this minimum for each switch, assuming that the monthly minimum applied to the
25 company as a whole. This error was corrected in Exhibit 2.

26

1 Q. **What costs are included in the “SOA Non-recurring set-up charge” and**
2 **“SOA Monthly Charge” categories?**

3
4 A. These are the initial and ongoing monthly fees paid to a provider of LNP SOA
5 services. As I explained earlier, all carriers participating in LNP must either util-
6 ize the services of an NPAC-certified SOA, or establish their own NPAC-certified
7 SOA function internally.

8 Q. **What method did TELECOM use to estimate the “SOA Non-recurring set-up**
9 **charge” and “SOA Monthly Charge” categories, for Exhibit 1 and for Ex-**
10 **hibit 2?**

11
12 A. TELECOM assumed that none of the RLECs would implement its own SOA and
13 would therefore need to utilize a SOA service bureau. For Exhibit 1, we used the
14 average of the SOA fees charged by two well established SOA service bureaus.
15 For Exhibit 2, we used two lower-cost options, referred to below as "SOA Option
16 A" and "SOA Option B," offered by a third service bureau, designed expressly for
17 small telephone companies. We assumed that the smallest RLECs would use
18 SOA Option A and that larger RLECs would use SOA Option B. The monthly
19 cost of SOA Option A varies with the quantity of number porting transactions
20 performed each month. We estimated that each number porting event would re-
21 quire three such transactions to complete the port. We assumed that RLECs with
22 more access lines would port more numbers each month than would those with
23 fewer access lines. Our assumptions about which SOA Option - A or B - that an
24 RLEC would utilize, and the quantity of number porting events it would execute
25 each month, are summarized in Exhibit F, attached to this testimony.

26 Q. **What costs are included in the “Customer Notification Costs” category?**
27

1 A. These are costs that will be incurred to notify each customer of the LNP End User
2 charge that will be assessed on his monthly bill as well as any other line item on
3 the bill that may increase as the result of LNP implementation.

4 Q. **What method did TELEC use to estimate the “Customer Notification Costs”**
5 **category, for Exhibit 1 and for Exhibit 2?**
6

7 A. TELEC determined, for both Exhibits, that this cost could be reasonably esti-
8 mated using a mathematical function of the quantity of access lines served by the
9 RLEC. The function that TELEC used to estimate this cost is:

$$\$500 + [\$0.37 \times (\text{Lines})] + [\text{SQRT}(\text{Lines}) \times \$2.50]$$

10
11

12 Q. **What costs are included in the “Switch Maintenance Costs per month” cate-**
13 **gory?**
14

15 A. These are additional fees that a switch manufacturer would charge for software
16 maintenance and technical support, due to the addition of LNP capability in each
17 switch.

18 Q. **What method did TELEC use to estimate the “Switch Maintenance Costs per**
19 **month” category, for Exhibit 1 and for Exhibit 2?**
20

21 A. For Exhibit 1, TELEC obtained from each company an estimate of the increase in
22 its switch maintenance costs due to the addition of LNP capability in its switches.
23 During our discussions with representatives of the three switch manufacturers that
24 provide the RLECs’ switching equipment, we learned that none of them would
25 increase the fees charged for software maintenance and technical support as a
26 consequence of having LNP capability installed. For Exhibit 2, we set these costs
27 to zero.

28 Q. **What costs are included in the “Other Monthly Costs” category?**
29

1 A. These are labor costs associated with performing the work necessary to port indi-
2 vidual telephone numbers on a routine basis.

3 Q. **What method did TELEC use to estimate the “Other Monthly Costs” cate-**
4 **gory, for Exhibit 1 and for Exhibit 2?**

5
6 A. For Exhibit 1, TELEC did not include any costs in this category. For Exhibit 2,
7 we assumed that each RLEC would port a certain quantity of numbers each
8 month, based on its count of access lines, as explained earlier for the “SOA
9 Monthly Charge” category. We determined that, for each number porting service
10 order, five man-hours at the RLEC’s Customer Service Representative wage rate
11 is a reasonable estimate of these labor costs.

12 Q. **What costs are included in the “Non-recurring transport charges” and**
13 **“Transport” categories?**

14
15 A. These are the non-recurring and monthly recurring costs associated with establish-
16 ing a T1 circuit to carry trunk groups to a point of interconnection (“POI”) in the
17 RLEC’s LATA of each wireless carrier providing coverage in the RLEC’s service
18 area. If a wireless carrier has not established a direct connection within an RLEC
19 exchange in which it requests LNP, and if the FCC would require at some date in
20 the future that the RLEC is responsible for the costs of such facilities, these facili-
21 ties would need to be provisioned by the RLEC to ensure that calls to ported
22 numbers can be properly delivered to the correct terminating switch.

23 Q. **What method did TELEC use to estimate the “Non-recurring transport**
24 **charges” and “Transport” categories, for Exhibit 1 and for Exhibit 2?**

25
26 A. For both Exhibits, TELEC estimated that one T1 circuit would be required be-
27 tween each Host or Stand-Alone switch operated by an RLEC and the nearest POI
28 of each wireless carrier with coverage in the RLEC’s service area. We assumed

1 that each wireless carrier's nearest POI is at the same location as the LATA tan-
2 dem nearest to the RLEC's service area. In those few cases where a wireless car-
3 rier already has a direct connection to an RLEC's switch, we assumed that the ex-
4 isting connection could carry the traffic generated by local calls to numbers that
5 have been ported from that RLEC switch to that wireless carrier, and that no new
6 T1 circuit need be established. As I explained earlier, after Exhibit 1 was submit-
7 ted with the RLECs' petitions, we verified circuit mileages, applicable tariffs and
8 connectivity requirements in our estimates of transport costs for Exhibit 2.

9 Q. **Why are these costs included in the cost analysis?**

10
11 A. Costs to transport local calls to ported numbers to a wireless carrier's POI have
12 been included in our analyses to demonstrate the potential impact that transport
13 costs would have on the RLECs' end-users if the RLEC must arrange for the
14 transport to accommodate LNP.

15 **DERIVED MONTHLY COSTS**

16
17 Q. **How are the "Monthly Cost calculations per line" amounts calculated?**

18
19 A. There are four lines of cost derived under the heading "Monthly Cost Calculations
20 per line". The first line involves the calculation of the total nonrecurring cost per
21 line per month excluding the cost of transport. The cost on this line is calculated
22 by amortizing the amount on the line titled "Total Non-recurring Costs excluding
23 transport" over a 60-month period at the current rate of return of 11.25% as pre-
24 scribed pursuant to Part 65 of the FCC rules.

25 The second line involves the calculation of the total nonrecurring cost per line per
26 month including the cost of transport. The cost on this line is calculated by amor-

1 tizing the amount on the line titled “Total Non-recurring Costs including trans-
2 port” over a 60-month period at the current rate of return of 11.25% as prescribed
3 pursuant to Part 65 of the FCC rules.

4 The third line involves the calculation of the total cost per line excluding trans-
5 port. The cost on this line is calculated by adding the amount as shown on the
6 “Total Nonrecurring cost per month excluding transport” line with the amount as
7 shown on the “Total Recurring Monthly Cost excluding Transport” line.

8 The fourth line involves the calculation of the total cost per line including trans-
9 port. The cost on this line is calculated by adding the amount as shown on the
10 “Total Nonrecurring cost per month including transport” line with the amount as
11 shown on the “Total Recurring Monthly Cost including Transport” line.

12 **Q. How is the LNP cost per line per month calculated?**

13 A. The total cost per month excluding transport is divided by the access lines to de-
14 rive the LNP cost per line per month excluding transport amount. The total cost
15 per month including transport is divided by the access lines to derive the LNP cost
16 per line per month including transport amount.

17 **Q. Has the FCC created a mechanism for carriers to recover carrier-specific**
18 **costs directly related to providing LNP from end-users?**

19 A. Yes, it has.

21 **Q. Does this conclude your testimony?**

22 A. No, it does not. I will also offer company-specific testimony for each of the
23 RLECs that will address issues specific to them.

Exhibit 2

Golden West GWVK Merged
Total Estimated LNP Non-recurring and Recurring Costs

Exhibit 2

		With Surcharges & Taxes
LNP Non-recurring Costs		
Switch Upgrade Costs	\$ 145,757	
Internal Business Procedure Changes	\$ 40,265	
Intercarrier Testing	\$ 4,754	
Other Internal Costs	\$ 25,109	
LNP Query set up	\$ 2,090	
SOA Non-recurring set up charge	\$ 1,000	
Customer Notification Costs	\$ 15,367	
Total Non-recurring Costs excluding transport	\$ 234,342	
Non recurring transport charges	\$ 23,809	
Total Non-recurring Costs including transport	\$ 258,150	
LNP Monthly Recurring Costs		
SOA Monthly Charge	\$ 400	
LNP Query Costs per month	\$ 1,650	
Switch Maintenance Costs per month	\$ 3,827	
Other Monthly Costs	\$ 3,350	
Total Recurring Monthly Costs excluding Transport	\$ 9,227	
Transport	\$ 54,036	
Total Recurring Monthly Costs including Transport	\$ 63,263	
Monthly Cost Calculations per line		
Total Nonrecurring cost per month excluding transport amortized over five years	\$ 5,124	
Total Nonrecurring cost per month including transport amortized over five years	\$ 5,645	
Total cost per month excluding transport	\$ 14,352	
Total cost per month including transport	\$ 68,908	
Access Lines excluding Lifeline	34,566	
LNP cost per line per month excluding transport	\$ 0.42	\$ 0.48
LNP cost per line per month including transport	\$ 1.99	\$ 2.29

**Golden West ABU Merged
Total Estimated LNP Non-recurring and Recurring Costs**

Exhibit 2

With
Surcharges
& Taxes

LNP Non-recurring Costs		
Switch Upgrade Costs	\$	76,075
Internal Business Procedure Changes	\$	6,675
Inter-carrier Testing	\$	1,228
Other Internal Costs	\$	35,152
LNP Query set up	\$	950
SOA Non-recurring set up charge	\$	-
Customer Notification Costs	\$	1,196
Total Non-recurring Costs excluding transport	\$	121,277
Non recurring transport charges	\$	18,207
Total Non-recurring Costs including transport	\$	139,483
LNP Monthly Recurring Costs		
SOA Monthly Charge	\$	225
LNP Query Costs per month	\$	750
Switch Maintenance Costs per month	\$	-
Other Monthly Costs	\$	616
Total Recurring Monthly Costs excluding Transport	\$	1,591
Transport	\$	23,011
Total Recurring Monthly Costs including Transport	\$	24,603
Monthly Cost Calculations per line		
Total Nonrecurring cost per month excluding transport amortized over five years	\$	2,652
Total Nonrecurring cost per month including transport amortized over five years	\$	3,050
Total cost per month excluding transport	\$	4,243
Total cost per month including transport	\$	27,653
Access Lines excluding Lifeline		2,948
LNP cost per line per month excluding transport	\$	1.44
LNP cost per line per month including transport	\$	9.38

\$	1.44	\$	1.66
\$	9.38	\$	10.79

Alliance Merged**Exhibit 2****Total Estimated LNP Non-recurring and Recurring Costs**

With
 Surcharges
 & Taxes

LNP Non-recurring Costs

Switch Upgrade Costs	\$	122,848
Internal Business Procedure Changes	\$	21,344
Intercarrier Testing	\$	2,350
Other Internal Costs	\$	33,532
LNP Query set up	\$	1,520
SOA Non-recurring set up charge	\$	1,000
Customer Notification Costs	\$	4,301
Total Non-recurring Costs excluding transport	\$	186,895

Non recurring transport charges	\$	11,789
---------------------------------	----	--------

Total Non-recurring Costs including transport	\$	198,684
--	-----------	----------------

LNP Monthly Recurring Costs

SOA Monthly Charge	\$	400
LNP Query Costs per month	\$	1,200
Switch Maintenance Costs per month	\$	-
Other Monthly Costs	\$	2,068
Total Recurring Monthly Costs excluding Transport	\$	3,668

Transport	\$	15,502
-----------	----	--------

Total Recurring Monthly Costs including Transport	\$	19,170
--	-----------	---------------

Monthly Cost Calculations per line

Total Nonrecurring cost per month excluding transport amortized over five years	\$	4,087
Total Nonrecurring cost per month including transport amortized over five years	\$	4,346

Total cost per month excluding transport	\$	7,755
Total cost per month including transport	\$	23,515

Access Lines excluding Lifeline		9,820
---------------------------------	--	-------

LNP cost per line per month excluding transport	\$	0.79	\$	0.91
LNP cost per line per month including transport	\$	2.39	\$	2.75

Tri County Telecom Inc.
Total Estimated LNP Non-recurring and Recurring Costs

Exhibit 2

		With Surcharges & Taxes		
LNP Non-recurring Costs				
Switch Upgrade Costs	\$ 10,640			
Internal Business Procedure Changes	\$ 4,656			
Inter-carrier Testing	\$ 3,170			
Other Internal Costs	\$ 20,790			
LNP Query set up	\$ 380			
SOA Non-recurring set up charge	\$ -			
Customer Notification Costs	\$ 718			
Total Non-recurring Costs excluding transport	<u>\$ 40,354</u>			
Non recurring transport charges	\$ 1,903			
Total Non-recurring Costs including transport	<u>\$ 42,257</u>			
LNP Monthly Recurring Costs				
SOA Monthly Charge	\$ 45			
LNP Query Costs per month	\$ 300			
Switch Maintenance Costs per month	\$ -			
Other Monthly Costs	\$ 422			
Total Recurring Monthly Costs excluding Transport	<u>\$ 767</u>			
Transport	\$ 2,526			
Total Recurring Monthly Costs including Transport	<u>\$ 3,293</u>			
Monthly Cost Calculations per line				
Total Nonrecurring cost per month excluding transport amortized over five years	\$ 882			
Total Nonrecurring cost per month including transport amortized over five years	\$ 924			
Total cost per month excluding transport	\$ 1,649			
Total cost per month including transport	\$ 4,217			
Access Lines excluding Lifeline	433			
LNP cost per line per month excluding transport	<table border="1" style="display: inline-table;"><tr><td>\$ 3.81</td><td>\$ 4.38</td></tr></table>	\$ 3.81	\$ 4.38	
\$ 3.81	\$ 4.38			
LNP cost per line per month including transport	<table border="1" style="display: inline-table;"><tr><td>\$ 9.74</td><td>\$ 11.20</td></tr></table>	\$ 9.74	\$ 11.20	
\$ 9.74	\$ 11.20			

McCook Cooperative Telephone Company
Total Estimated LNP Non-recurring and Recurring Costs

Exhibit 2

With
 Surcharges
 & Taxes

LNP Non-recurring Costs

Switch Upgrade Costs	\$	26,400
Internal Business Procedure Changes	\$	15,625
Intercarrier Testing	\$	2,212
Other Internal Costs	\$	41,316
LNP Query set up	\$	1,140
SOA Non-recurring set up charge	\$	-
Customer Notification Costs	\$	1,410
Total Non-recurring Costs excluding transport	\$	88,103

Non recurring transport charges \$ 8,310

Total Non-recurring Costs including transport **\$ 96,413**

LNP Monthly Recurring Costs

SOA Monthly Charge	\$	180
LNP Query Costs per month	\$	900
Switch Maintenance Costs per month	\$	-
Other Monthly Costs	\$	422
Total Recurring Monthly Costs excluding Transport	\$	1,502

Transport \$ 11,405

Total Recurring Monthly Costs including Transport **\$ 12,907**

Monthly Cost Calculations per line

Total Nonrecurring cost per month excluding transport amortized over five years	\$	1,927
Total Nonrecurring cost per month including transport amortized over five years	\$	2,108

Total cost per month excluding transport \$ 3,429

Total cost per month including transport \$ 15,016

Access Lines excluding Lifeline 2,061

LNP cost per line per month excluding transport	\$	1.66	\$	1.91
LNP cost per line per month including transport	\$	7.29	\$	8.38

Sioux Valley Telephone Company
Total Estimated LNP Non-recurring and Recurring Costs

Exhibit 2

With
 Surcharges
 & Taxes

LNP Non-recurring Costs

Switch Upgrade Costs	\$	63,114
Internal Business Procedure Changes	\$	17,815
Intercarrier Testing	\$	3,939
Other Internal Costs	\$	15,065
LNP Query set up	\$	380
SOA Non-recurring set up charge	\$	1,000
Customer Notification Costs	\$	2,358
Total Non-recurring Costs excluding transport	\$	103,671

Non recurring transport charges \$ 8,403

Total Non-recurring Costs including transport **\$ 112,074**

LNP Monthly Recurring Costs

SOA Monthly Charge	\$	400
LNP Query Costs per month	\$	300
Switch Maintenance Costs per month	\$	-
Other Monthly Costs	\$	1,233
Total Recurring Monthly Costs excluding Transport	\$	1,933

Transport \$ 12,704

Total Recurring Monthly Costs including Transport **\$ 14,637**

Monthly Cost Calculations per line

Total Nonrecurring cost per month excluding transport amortized over five years	\$	2,267
Total Nonrecurring cost per month including transport amortized over five years	\$	2,451

Total cost per month excluding transport \$ 4,200

Total cost per month including transport \$ 17,088

Access Lines excluding Lifeline 5,944

LNP cost per line per month excluding transport

\$	0.71	\$	0.81
----	------	----	------

LNP cost per line per month including transport

\$	2.87	\$	3.31
----	------	----	------

Valley Telecommunications Cooperative Association, Inc.
Total Estimated LNP Non-recurring and Recurring Costs

Exhibit 2

With
 Surcharges
 & Taxes

LNP Non-recurring Costs

Switch Upgrade Costs	\$	21,216	
Internal Business Procedure Changes	\$	15,455	
Intercarrier Testing	\$	3,216	
Other Internal Costs	\$	22,479	
LNP Query set up	\$	190	
SOA Non-recurring set up charge	\$	-	
Customer Notification Costs	\$	1,978	
Total Non-recurring Costs excluding transport	\$	64,535	
Non recurring transport charges	\$	1,401	
Total Non-recurring Costs including transport	\$	65,935	

LNP Monthly Recurring Costs

SOA Monthly Charge	\$	225	
LNP Query Costs per month	\$	150	
Switch Maintenance Costs per month	\$	-	
Other Monthly Costs	\$	422	
Total Recurring Monthly Costs excluding Transport	\$	797	
Transport	\$	6,425	
Total Recurring Monthly Costs including Transport	\$	7,222	

Monthly Cost Calculations per line

Total Nonrecurring cost per month excluding transport amortized over five years	\$	1,411	
Total Nonrecurring cost per month including transport amortized over five years	\$	1,442	
Total cost per month excluding transport	\$	2,208	
Total cost per month including transport	\$	8,664	
Access Lines excluding Lifeline		3,461	

LNP cost per line per month excluding transport
 LNP cost per line per month including transport

\$	0.64	\$	0.71
\$	2.50	\$	2.80

Faith Municipal Telephone Company

Exhibit 2

With
 Surcharges
 & Taxes

LNP Non-recurring Costs

Switch Upgrade Costs	\$	14,668
Internal Business Procedure Changes	\$	4,324
Intercarrier Testing	\$	2,760
Other Internal Costs	\$	19,925
LNP Query set up	\$	190
SOA Non-recurring set up charge	\$	-
Customer Notification Costs	\$	698
Total Non-recurring Costs excluding transport	\$	42,564

Non recurring transport charges \$ 1,401

Total Non-recurring Costs including transport **\$ 43,965**

LNP Monthly Recurring Costs

SOA Monthly Charge	\$	45
LNP Query Costs per month	\$	150
Switch Maintenance Costs per month	\$	-
Other Monthly Costs	\$	90
Total Recurring Monthly Costs excluding Transport	\$	285

Transport \$ 4,052

Total Recurring Monthly Costs including Transport **\$ 4,337**

Monthly Cost Calculations per line

Total Nonrecurring cost per month excluding transport amortized over five years	\$	931
Total Nonrecurring cost per month including transport amortized over five years	\$	961

Total cost per month excluding transport \$ 1,216

Total cost per month including transport \$ 5,299

Access Lines excluding Lifeline 392

LNP cost per line per month excluding transport	\$	3.10	\$	3.57
LNP cost per line per month including transport	\$	13.52	\$	15.54

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May 17, 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

OF COUNSEL:
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TELEPHONE
605-224-5825
FAX
605-224-7102

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

Re: Docket Number TC04-055 (Alliance and Splitrock)
Docket Number TC04-046 (Armour, Union, Bridgewater-Canistota)
Docket Number TC04-051 (Faith Municipal Telephone)
Docket Number TC04-045 (Golden West, Vivian, Kadoka)
Docket Number TC04-049 (McCook)
Docket Number TC04-044 (Sioux Valley)
Docket Number TC04-084 (Tri-County Telcom)
Docket Number TC04-050 (Valley Telecom)

Dear Pam:

Enclosed are the Exhibits referenced in my enclosure letter on Friday, May 14, that are to be attached to Tom Bullock's Direct Pre-Filed Testimony pertaining to the above-named dockets.

Sincerely yours,



Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

CC: Tom Bullock
Rich Coit (with enclosure)
Talbot J. Wiczorek (with enclosure)
Dave Gerdes (with enclosure)

Exhibit A

Exhibit A

Rural Exchange Carriers included in testimony of Tom Bullock

<u>PUC Docket</u>	<u>Operating company</u>
TC04-044	Sioux Valley Telephone Company
TC04-045	Golden West Telecommunications Cooperative, Inc.
TC04-045	Vivian Telephone Company
TC04-045	Kadoka Telephone Company
TC04-046	Union Telephone Company
TC04-046	Armour Independent Telephone Company
TC04-046	Bridgewater Canistota Telephone Company
TC04-049	McCook Cooperative Telephone Company
TC04-050	Valley Telecommunications Cooperative Association, Inc.
TC04-051	Faith Municipal Telephone Company
TC04-055	Alliance Communications Coop., Inc.
TC04-055	Splitrock Properties, Inc.
TC04-084	Tri County Telecom Inc.

Exhibit B

Overview of LNP Network Architecture & Processes

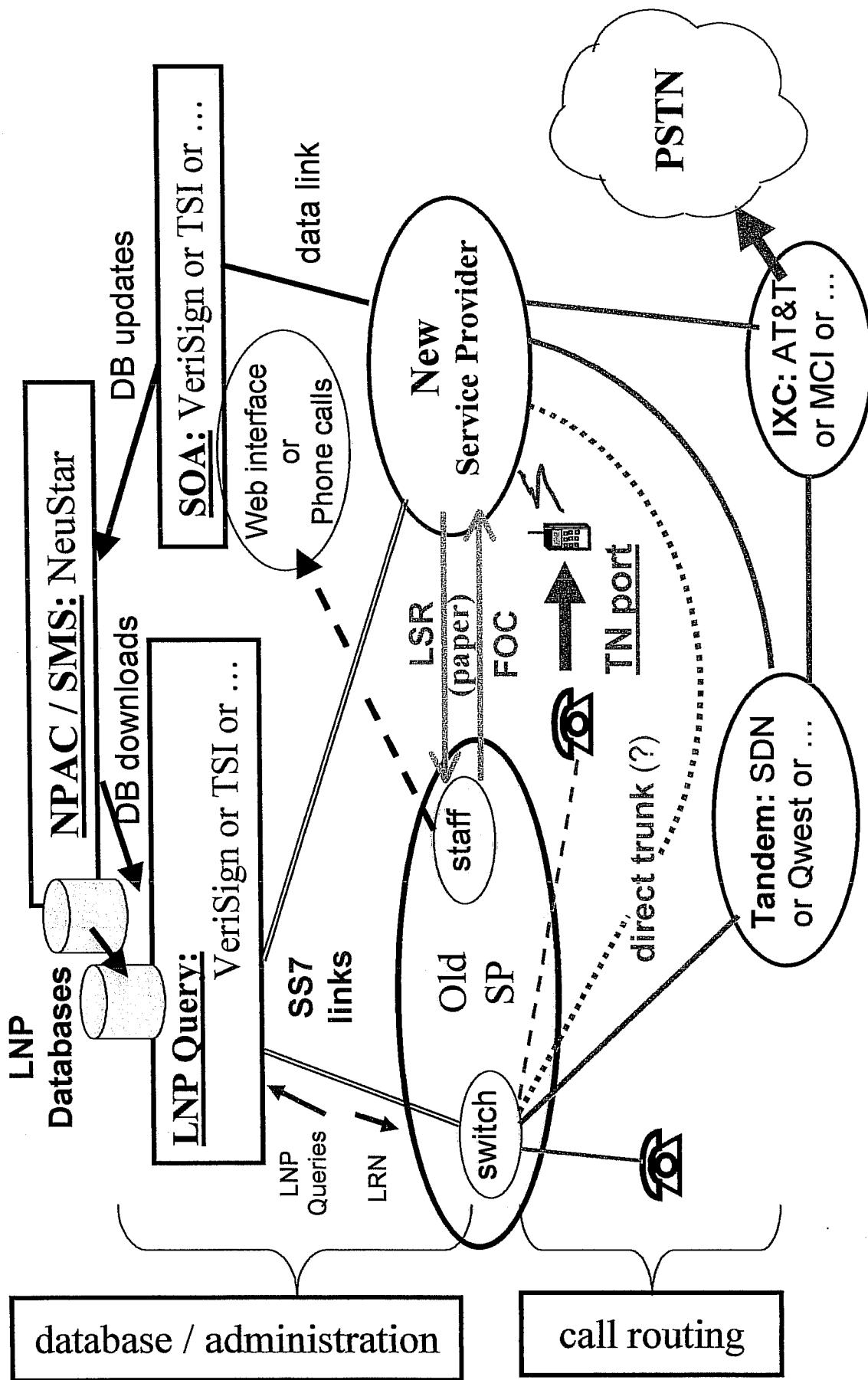


Exhibit C-1

Company Information & General LNP Cost Information

Please see the "Instructions for LNP Cost Data Request" document accompanying this workbook.

Please use a separate copy of this workbook file for each individual Operating Company, if you have more than one.

	<u>Primary Data</u>	<u>Supplemental Data</u>
<u>General Company Information</u>		
1 Company name:	<input type="text"/>	
2 Company OCN:	<input type="text"/>	
3 Contact name:	<input type="text"/>	<input type="text"/>
4 Contact email address:	<input type="text"/>	<input type="text"/>
5 Contact telephone number:	<input type="text"/>	<input type="text"/>
6 Number of Access Lines: (Dec. 31, 2003)	<input type="text"/>	<input type="text"/>
7 Number of LifeLine Access Lines: (Dec. 31, 2003)	<input type="text"/>	<input type="text"/>
8 Number of Lines charged for LNP (Lifeline customers are not charged for LNP.)	0	
9 Number of Employees	<input type="text"/>	
<u>Wireless Carriers</u>		
10 Wireless carriers requesting LNP	<input type="text"/>	<input type="text"/>
11 Other wireless carriers operating in your area	<input type="text"/>	<input type="text"/>
12 Wireless carriers with direct trunking into your network	<input type="text"/>	<input type="text"/>
<u>Customer Notification</u>		
13 We estimate your cost to be:		
14 Is the amount shown a reasonable cost estimate? (YES or NO)	<input type="text"/>	<input type="text"/>

Staff Information

Enter job titles, quantities and loaded hourly wage rates for key LNP-related positions in your company.

<u>Job Title</u>	<u>Loaded Hourly Wage Rate</u>	<u>Quantity</u>
<u>Management & Supervisory</u>		
General Manager		
Customer Service Supervisor		
Engineering Supervisor		
Operations Supervisor		
Office Manager		
<u>Technical</u>		
Switch Engineer		
Switch Technician		
Computer Programmer		
<u>Clerical</u>		
Customer Service Rep.		
Office Assistant		

Exhibit C-2

Instructions for LNP Cost Data Request

TELEC Consulting Resources, Inc.

February 10, 2004

This document accompanies an Excel workbook named LNPCostDataRequest.xls. Please rely on these instructions as you fill in the blanks in the Excel workbook. We will schedule a conference call in the near future to discuss any questions or concerns you may have about the workbook. If you have questions following the conference call, you may contact Tom Bullock (tbullock@teleconsulting.com) or Dan Davis (ddavis@teleconsulting.com).

We will use the data you provide, together with some assumptions of our own, to estimate your total cost for implementation of LNP capability and your total ongoing cost of providing LNP. We will also estimate the monthly LNP End User Charge each of your customers (excluding LifeLine customers) would pay over a five-year period, and the additional LNP-related costs - beyond those recoverable through the LNP End User Charge - that you would incur. **If you decide to have TELEC proceed with a Petition to your state commission for relief from LNP requirements, a summary of this cost information will be filed as an Exhibit accompanying the Petition we will prepare on your behalf for filing with the state commission for suspension of your requirement to provide LNP, pursuant to Section 251(f)(2) of the Telecommunications Act.**

We tentatively plan to file these Petitions with your state commission by Friday, February 27, 2004. Please provide us with your cost data as early as you possibly can, but no later than Friday, February 20. Fill in the LNPCostDataRequest.xls workbook, according to the instructions on the following pages, and send it as an email attachment to Charley Ogden (cogden@teleconsulting.com).

Costs of implementing Local Number Portability (LNP) are of several different kinds. For example, your switches must be upgraded with LNP capability; you must develop procedures to handle a variety of new order forms and train staff on LNP processes; you must subscribe to the services of a certified LNP Service Order Administrator (SOA) and an LNP Query Service vendor; you must provide information to, and enter into agreements with, the carriers that request number porting from you; you must test the entire number porting process; you will most likely want to file an FCC tariff, either directly or through NECA, for an LNP End User Charge to recover eligible costs from your end user customers (collectable over a five-year period); you may be required to notify customers of LNP availability and of the End User Charge; and you may need to establish trunking between your switches and the other carriers' switches to handle local calls to ported numbers.

LNP implementation costs in a few of these categories can be estimated with no input from you. Others require basic information such as line counts, or the quantities of your Host, Remote and Stand-Alone switches and mileages from each to the nearest LATA tandem. Some will require that you consult with your engineers to determine switch upgrade costs. And some we will estimate, based on data from you concerning staff size and wage rates.

We emphasize that the cost information that will be filed as an Exhibit with the Petition for suspension forms much of the basis for your case before your state commission. Cost estimates should be neither minimized nor exaggerated, but should be reasonable and able to withstand critical scrutiny in a legal proceeding.

LNPCostDataRequest.xls workbook

If you are providing data for more than one Operating Company, **please make a separate copy of the workbook for each Company.**

When you have completed your workbook(s), send it (or them) as an **email attachment** (or attachments) to **Charley Ogden (cogden@telec-consulting.com).**

The LNPCostDataRequest workbook contains three sheets, named General, StaffInfo and Switch&Transport.

General sheet - General Company Information

The **General** sheet asks for general company information and for other information that will allow us to estimate certain LNP implementation costs.

Enter your information in the column labeled "Primary Data." For some items, you may want or need to also enter information in the "Supplemental Data" column.

General Company Information

- | | | |
|---|---|--|
| 1 | Company name | Enter the name of your Operating Company. |
| 2 | Company OCN | Enter your company's Operating Company Number. |
| 3 | Contact name | Enter the name, email address and telephone number of the individual we should contact if we have questions about your company's LNP cost information. You may enter data for a second contact person under Supplemental Data. |
| 4 | Contact email address | |
| 5 | Contact telephone number | |
| 6 | Total Number of Access Lines (Dec. 31, 2003) | Enter the number of your company's total access lines in service as of Dec. 31, 2003, if that number is available. If that number is not available, enter the number of access lines for a different date, and show that date in the Supplemental Data column. |
| 7 | Number of Lifeline Access Lines (Dec. 31, 2003) | Number of Lifeline customers as of Dec. 31, 2003. Enter date information as in line 6. |
| 8 | Number of Lines charged for LNP | Do not enter a number here. This is the number of access lines that will be assessed the monthly LNP End User Charge. (Lifeline customers are not charged for LNP.) |
| 9 | Number of Employees | Total number of people employed by your company today. An approximation within 10% is fine. |

Wireless Carriers

- | | | |
|----|---|--|
| 10 | Wireless carriers requesting LNP | Enter, under Primary Data, the number of wireless carriers from whom you have received requests for LNP. Please name these carriers in the Supplemental Data column. |
| 11 | Other wireless carriers operating in your area | Enter, under Primary Data, the quantity of other wireless carriers (those not included in line 10) providing service in the area served by your company. Please name them in the Supplemental Data column. |

12	Wireless carriers with direct trunking into your network	Enter, under Primary Data, the number of wireless carriers that have established direct trunking into at least one of your switches. Please name them in the Supplemental Data column.
----	--	--

Customer Notification

13	We estimate your cost to be:	This is our estimate of your cost to notify customers about LNP, based on your line counts. (See line 14.)
14	Is the amount shown a reasonable cost estimate? (YES or NO)	If the amount shown in line 13 is a reasonable estimate of your costs to notify customers about LNP, enter "YES." Otherwise, enter "NO" and we will contact you to discuss this item in more detail. You may add comments under Supplemental Data.

StaffInfo sheet - Company Staff Information

The **StaffInfo** sheet asks for information about your management, supervisory, technical and clerical staff. We will use this information to estimate costs of various activities your company will need to undertake to implement LNP capability.

These activities include:

- Order Processing - which includes:
 - receipt of Local Service Requests and generation of Firm Order Confirmations, to port individual telephone numbers;
 - submitting database updates to your Service Order Administrator (SOA);
 - switch updates to invoke a temporary "unconditional 10-digit trigger" for a ported number;
 - management of a database of numbers that have been ported out of your switches;
 - resolution of Order conflicts;
- Testing of all LNP processes, including Order Processing, call routing to a ported number, and rating of calls to and from a ported number;
- Investigation and resolution of network routing and rating problems;
- Adding the flat monthly LNP End User Charge to your customers' bills.

We ask you to identify the job classifications (and their fully loaded hourly wage rates) that are involved with *planning for* as well as *performing* these activities. Based on the number of your employees and the staff sizes involved with LNP-related activity, we will calculate estimates of your costs of undertaking these activities.

We have grouped the job titles into three groups - (1) Management & Supervisory, (2) Technical and (3) Clerical.

Although the job titles shown may not match your company's job titles, please do your best to map your job titles into those shown on this sheet. For example, if you have a single individual acting as an "Engineering and Operations Supervisor," enter data for either "Engineering Supervisor" or for "Operations Supervisor" and leave the other blank. If our list of job titles is really not adequate for your company, extra lines are available for you to add more job titles if necessary.

For each job title and wage rate, show the number of employees who have that title and rate.

Switch&Transport sheet - Switch and Transport Information

The **Switch&Transport** sheet asks for information about your switching network and for V&H airline mileages from your Host and Stand-Alone switches to the nearest LATA tandem. These mileages will allow us to determine the cost of trunks you may need to install to handle local calls to numbers that have been ported to wireless carriers. (We are assuming that wireless carriers' Points of Interconnection are at the nearest LATA tandem.)

If you have Host-Remote complexes, for each complex list the Host switch first, then list all its Remotes on the lines immediately below the Host. Since Remote switches do not have trunks, there is no need for you to show mileages for your Remotes. But it is important for us to know how many Remotes "belong to" each Host.

Obtain from your switch vendor a price quote for upgrading each switch for LNP capability and for any installation fees your switch vendor charges for the upgrade. We will estimate additional internal costs, such as engineer and technician wages, associated with these upgrades. Also show the **increase in annual** switch maintenance expense you will incur as a result of the LNP feature in each switch.

Exhibit D

Exhibit D

Company Size Coefficients and Estimated Minimum Hours Spent on LNP Procedure Activities

Company Size Coefficient	Estimated Minimum Hours Per Person in Job Title for Each Activity									
	General Manager	Customer Service Supervisor	Engineering Supervisor	Operations Supervisor	Office Manager	Switch Engineer	Switch Technician	Computer Programmer	Customer Service Rep.	Office Assistant

Activity

Set up LSR/FOC Processes	0.5	12	12		4					
Set up SOA Processes	0.25	8	4		2					
Set up Switch Trigger Procedures	0.1	2		2	2		2	2	1	
Set up database of ported TNs	0.1	1	1	1	1	1	1	1	1	1
Initial Planning	0.3	32	8	8	8	8				
Train Technicians	0.3	2		4	4		4	2		
Train CSRs	0.3	4	8			8			4	2
Add EU Charge to Billing System	0.4	4	2			2				
Computer Programming	0.8							30		
Set up Troubleshooting Procedures	0.5	6	4	4	4	3	2	2	1	1

Exhibit E

Exhibit E

Estimated Hours Spent on Other Internal LNP Activities

General Manager	Engineer / Consultant	Attorney
--------------------	--------------------------	----------

Activity

Establish agreement with SOA	2	10	
Prepare & file FCC Tariff for End User charge	2		20
Research technical & operational requirements of LNP	115	20	8

For each carrier requesting LNP:

Negotiate Service Level Agreement	2	25	10
Complete intercarrier porting form(s)	5	5	0

Exhibit F

Exhibit F

LNP SOA Costs

Access Lines	Ports per month	SOA Type	Porting Transactions per month	SOA Cost per Month	SOA Non-recurring Cost	
0 to	500	1	Option A	3	\$45	\$0
501 to	1000	2	Option A	6	\$90	\$0
1001 to	2000	3	Option A	9	\$135	\$0
2001 to	3000	4	Option A	12	\$180	\$0
3001 to	4000	5	Option A	15	\$225	\$0
4001 to	5000	6	Option A	18	\$270	\$0
5001 to	10000	10	Option B	n/a	\$400	\$1,000
10001 to	20000	15	Option B	n/a	\$400	\$1,000
20001 to	40000	20	Option B	n/a	\$400	\$1,000

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 COMMUNICA-
TIONS ACT OF 1934 AS AMENDED

Docket Number TC04-055
Docket Number TC04-046
Docket Number TC04-051
Docket Number TC04-045
Docket Number TC04-049
Docket Number TC04-044
Docket Number TC04-084
Docket Number TC04-050

CERTIFICATE OF SERVICE

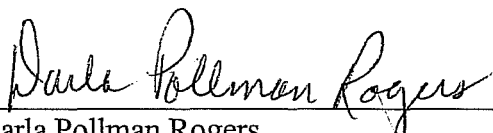
The undersigned hereby certifies that she served a copy of the **EXHIBITS** to be attached to the **DIRECT PRE-FILED TESTIMONY OF Tom Bullock** in the above-named dockets, upon the persons herein next designated, on the date below shown, by depositing a copy thereof in the United States mail at Pierre, 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

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

David A. Gerdes
MAY, ADAM, GERDES & THOMPSON
P. O. Box 160
Pierre, South Dakota 57501

Dated this seventeenth day of May, 2004.



Darla Pollman Rogers
Riter, Rogers, Wattier & Brown
P. O. Box 280
Pierre, South Dakota 57501

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

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ATTORNEYS LICENSED TO PRACTICE IN
SOUTH DAKOTA, NORTH DAKOTA, NEBRASKA
COLORADO, MONTANA, WYOMING & MINNESOTA

May 28, 2004

RECEIVED

JUN 01 2004

**NEXT DAY DELIVERY
CONFIDENTIAL INFORMATION
ENCLOSED**

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

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

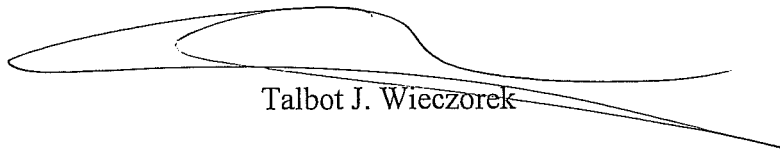
RE: In the Matter of Local Number Portability Obligations Docket No. TC 04-025;
TC04-038; TC04-044 through TC04-056; TC04-060 through TC04-062;
TC04-077; TC04-084 and TC04-085

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. Wiczorek

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

RECEIVED

JUN 01 2004

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

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

DOCKET TC04-025 et al

TESTIMONY OF RON WILLIAMS ON BEHALF OF WESTERN WIRELESS

I. QUALIFICATIONS AND PURPOSE OF TESTIMONY

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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

DOCKET TC04-025 et al

TESTIMONY OF RON WILLIAMS ON BEHALF OF WESTERN WIRELESS

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

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

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

9 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

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

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

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

DOCKET TC04-025 et al

TESTIMONY OF RON WILLIAMS ON BEHALF OF WESTERN WIRELESS

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

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

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

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

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

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

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*")

DOCKET TC04-025 et al

TESTIMONY OF RON WILLIAMS ON BEHALF OF WESTERN WIRELESS

1 A. Yes. Within the last couple of weeks the FCC issued two orders denying LNP
2 implementation suspensions for rural wireless and rural wireline carriers. In an order
3 released May 10, 2004 the FCC denied waiver and extension requests for three rural
4 wireless carriers who had claimed they did not receive sufficient notice to implement
5 and their rural status constituted special circumstances.² Similarly, on May 13, 2004
6 the FCC denied a waiver petition for temporary suspension made by North-Eastern
7 Pennsylvania Telephone Company (NEP); a rural LEC with eight exchanges.³ NEP
8 is planning to implement LNP in conjunction with a switch replacement and argued
9 that “it did not anticipate that intermodal porting would be an “imminent”
10 requirement until the Commission’s Intermodal LNP Order released in November
11 2003.” NEP also stated that service feature issues arose during implementation
12 planning that would mean that NEP would not meet the May 24, 2004 deadline for
13 LNP implementation. In denying NEP request, the FCC responded:

14 “We are not persuaded by NEP’s claims that special circumstances exist
15 warranting a waiver of the May 24, 2004 porting deadline in order to
16 accommodate NEP’s switch delivery and deployment schedule, and
17 provide additional time to resolve any service feature issues. We find
18 that NEP has not presented “extraordinary circumstances beyond its
19 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).

DOCKET TC04-025 et al

TESTIMONY OF RON WILLIAMS ON BEHALF OF WESTERN WIRELESS

1 challenges it may face are different from those faced by similarly
2 situated carriers who are able to comply. Generalized references to
3 limited resources and implementation problems do not constitute
4 substantial, credible evidence justifying an exemption from the porting
5 requirements. NEP has known since 1996 that it would need to support
6 LNP within six months of a request from a competing carrier. Although
7 wireless LNP was delayed, all carriers have been on notice since July
8 2002 that wireless and intermodal LNP would become available
9 beginning in November 2003. Thus, NEP has had sufficient time to
10 follow through with these mandates and prepare for LNP.”⁴

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

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

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

21 **A.** Yes. All LECs have known since 1996 that they would be required to provide LNP.
22 Section 251(b)(3) of the Communications Act of 1934, as amended (“Act”), requires
23 all LECs to provide LNP.⁵ In its rules implementing the LNP requirements of the
24 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).

DOCKET TC04-025 et al

TESTIMONY OF RON WILLIAMS ON BEHALF OF WESTERN WIRELESS

1 to implement LNP in all areas, but conditioned the requirement to implement LNP in
2 rural areas on a carrier receiving a bona fide request (“BFR”) from another carrier.⁶

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

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

11 **Q. WHAT IS THE STANDARD FOR GRANTING THE PETITIONERS’ REQUEST FOR A**
12 **SUSPENSION OF THEIR LNP OBLIGATIONS?**

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

16 to the extent that, and for such duration as, the State commission
17 determines that such suspension or modification —
18 (A) is necessary: (i) to avoid significant adverse impact on users of
19 telecommunications services generally; (ii) to avoid imposing a
20 requirement that is unduly economically burdensome; or (iii) to
21 avoid imposing a requirement that is technically infeasible; and
22 (B) is consistent with the public interest, convenience, and
23 necessity.⁸
24

⁶ 47 C.F.R. § 52.26.

⁷ Exhibit Williams’ Direct -3

⁸ 47 U.S.C. § 251(f)(2).

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TESTIMONY OF RON WILLIAMS ON BEHALF OF WESTERN WIRELESS

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

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

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

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

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

24 From the exhibits provided with the Petitions, it is apparent that most ILEC networks
25 require only switch software upgrades and table translations to make them LNP
26 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.

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1 completed within 60 days. Local Number Portability requirements were established
2 for all LECs in Section 251(b)(3) of the Telecom Act in 1996¹¹. Specific to the
3 Petitioners in this case, the FCC conditioned the requirement to implement LNP in
4 rural areas on a carrier receiving a BFR from another carrier.¹² While a rural carrier
5 has six months from receipt of a BFR to implement LNP, the FCC guidelines for
6 switch preparation indicate a much shorter time may be necessary.¹³

7 After the deadline for deployment of number portability in an MSA in
8 the 100 largest MSAs, according to the deployment schedule set forth
9 in the appendix to this part, a LEC must deploy number portability in
10 that MSA in additional switches upon request within the following
11 time frames:

- 12 (A) For remote switches supported by a host switch equipped for
13 portability (“Equipped Remote Switches”), within 30 days;
14 (B) For switches that require software but not hardware changes to
15 provide portability (“Hardware Capable Switches”), within 60
16 days;
17 (C) For switches that require hardware changes to provide
18 portability (“Capable Switches Requiring Hardware”), within
19 180 days;
20 (D) For switches not capable of portability that must be replaced
21 (“Non Capable Switches), within 180 days.

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

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).

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1 The FCC reiterated this rule with respect to intermodal LNP on November 10, 2003

2 (Attached as Exhibit Williams' Direct -4):

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

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

10 "Accordingly, IT IS ORDERED that, pursuant to authority contained
11 in sections 1, 4(i), 251, and 332 of the Communications Act of 1934,
12 as amended, 47 U.S.C. §§ 151, 154(i), 251, 332, we GRANT a limited
13 waiver of the wireline-to-wireless porting requirement, until May 24,
14 2004, for local exchange carriers with fewer than two percent of the
15 nation's subscriber lines in the aggregate nationwide that operate in the
16 top 100 Metropolitan Statistical Areas and have not received a request
17 for local number porting from either a wireline carrier prior to May 24,
18 2003 or a wireless carrier that has a point of interconnection or
19 numbering resources in the rate center where the customer's wireline
20 number is provisioned."¹⁵

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

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)

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

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

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

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

16 **A.** Yes. I am not familiar with all state commissions, but I do understand that the
17 Pennsylvania Commission concluded that “rural residents have as much right to
18 competitive choices as their more numerous urban counterparts” and that as a result,
19 rural LEC suspension Petitioners “must present competent evidence that such relief is
20 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).

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

5 “The Commission is unconvinced that the burdens will
6 disproportionately affect the Petitioners as compared with other
7 carriers. Indeed, the Petitioners have been on notice since 1996 to
8 prepare for implementation of LNP and replacement of new switches
9 should have been completed prior to the implementation date Any
10 deferment of the FCC’s number portability requirements beyond that
11 time [May 24, 2004] would be anti-competitive and anti-consumer.”¹⁸

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

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

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.)

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1 A. Yes. Texas is a good example. The Texas Commission Staff was actively involved
2 in negotiating with rural telephone companies to shorten or withdraw their suspension
3 requests. The Staff was successful in resolving all ten original petitions¹⁹ but not
4 before they submitted the following testimony in the docket:

5 "I recommend the denial of the petitions of Valor and KTC to suspend
6 implementation until March 15, 2005 of the FCC's Intermodal Order ...
7 I have determined that the Companies have failed to provide sufficient
8 information and demonstrate the stated factors pursuant to FTA
9 §251(f)(2) to justify an extension ... The Companies further failed to
10 demonstrate that implementation of intermodal LNP prior to March 15,
11 2005 would be inconsistent with the public interest, convenience and
12 necessity of Texas customers. I further conclude that the Companies
13 have failed to take steps to comply with the Intermodal Order in a timely
14 manner after receiving bona fide requests (BFR) for intermodal porting.
15 As a consequence I recommend that the Companies be held accountable
16 for non-compliance with FTA § 251(f)(2), if they are not LNP capable
17 by May 24, 2004. Thus, the Companies would be subject to applicable
18 FCC enforcement proceedings and/or state commission enforcement
19 action, if applicable.²⁰

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

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

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

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.

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- 1 ▪ The deadlines imposed for LNP implementation do not provide enough
2 time to implement number portability under the FCC rules.
- 3 ▪ Routing local traffic to numbers that have been ported to wireless carriers
4 (which has been mischaracterized as ‘location portability’) when there is
5 no direct connection between the Petitioner network and the wireless
6 carrier.
- 7 ▪ Uncertainty associated with obligations of intermodal LNP

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

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

14 **Q. WHAT ABOUT THE TECHNICALLY INFEASIBLE CLAIM?**

15 A. Other rural telephone companies do not concur in this: In recent testimony
16 concerning an LNP suspension petition in New Mexico, Steven D. Metts, a witness
17 co-sponsored by the New Mexico Exchange Carriers Group made the following
18 responsive statement²¹:

19 Q. “Is it your contention that suspension of the FCC requirements is based
20 upon technological incapability for any of your companies?”

21 A. “No.”

22 Some of the Petitioner’s also concur that the implementation of LNP is not infeasible.
23 Beresford Telephone, in response to Western’s Discovery Request 9 made this
24 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

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

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

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

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

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

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

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

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

²² Watkins' Direct p24 lines 5-7.

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

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

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

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

12 A. No. While there is some uncertainty in what the FCC will do in the future regarding
13 compensation matters, there is no uncertainty about the rating and routing obligations
14 relative to LNP. All carriers face these same hurdles: The rating of calls to a ported
15 number must remain as they were prior to the number being ported. And, it is the
16 originating carrier's responsibility to properly route traffic to a ported number. The
17 FCC didn't mandate a method to accomplish these obligations because there is not
18 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.

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

4 **Q. WHAT IS THE STANDARD FOR ESTABLISHING AN “UNDUE ECONOMIC BURDEN”?**

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

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

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

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

20 A. The cost projections provided by the Petitioners grossly overstate the implementation
21 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.

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

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

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

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

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

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

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

6 A. Yes. For example, Beresford Telephone has claimed a non-recurring charge of
7 \$1,800 and a monthly recurring charge of \$1,200 for Service Order Administration
8 (SOA) functionality. Beresford is claiming a total first year cost of \$30,600 for SOA.
9 In response to discovery, Beresford estimated 24 ports per year. Beresford can utilize
10 the Number Portability Administration Center (NPAC) Help Desk to perform the
11 SOA function for these 24 ports for a total of \$360. Beresford has overstated first
12 year SOA costs by more than 80 fold. This single cost overstatement results in an
13 almost a dollar (\$.85) of claimed LNP cost per line per month. Most of the other
14 Petitioners have similarly forecasted low porting volumes that do not justify an
15 automated SOA interface and high minimum monthly recurring charges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **V. WHAT IS THE ECONOMIC IMPACT OF DELAYING PETITIONERS'**
2 **IMPLEMENTATION OF NUMBER PORTABILITY?**

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

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

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

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

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

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

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

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

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

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

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

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

20 A. Yes. Since the beginning of the wireless industry, wireless carriers have used number
21 assigned to them by LECs. These numbers appear in industry routing guides as if
22 they were affiliated with the LEC switch instead of the wireless carrier's switch. In
23 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.

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

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

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

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

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

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

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

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1 compliance so that customers of these carriers will not be forever
2 denied the rights their fellow consumers enjoy.”²⁷

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

6 **A. No.**

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

9 **A. Yes, many industry watchers are projecting that intermodal number portability will**
10 **open the door to increased competition and accelerated substitution of wireless for**
11 **wireline services. Here are some excerpts of a Cato Industry report summarizing the**
12 **impact of wireless substitution²⁸: “Wired Magazine recently reported that roughly**
13 **3% of homes have dropped their landlines and 8% are expected to follow suit in the**
14 **next five years.” “A more recent study by PriMetrica, Inc. suggested that roughly**
15 **half of U.S. households would be willing to dump wireline for cellular ...”. “And**
16 **now comes the number portability decision, which adds more fuel to the VoIP and**
17 **wireless substitution fire. I think it will certainly increase the move toward**
18 **substituting wireless for wire-line phones’ notes Rebecca Arbogast, an analyst with**
19 **Legg Mason.” Finally, common sense tells us that demand for a service greatly**
20 **increases once the service becomes available.**

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

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.

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

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

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

20 Section 251(b)(2) removes a significant barrier to completion by
21 ensuring that consumers can change carriers without forfeiting their
22 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)

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

8 **Q. IS THE PETITIONERS' THREAT OF "CUSTOMER CONFUSION"³¹ AMONG TELEPHONE USERS A**
9 **REALISTIC CONCERN?**

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

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

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

18 "The ability of users of telecommunications services to retain, at the
19 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.

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

3 **Q.** ARE THE PETITIONERS’ CLAIMS CONSISTENT WITH FCC POLICY?

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

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

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

22 **Q.** WHAT STANCE HAS THE FCC STAFF TAKEN WITH RESPECT TO PETITIONERS’ POSITIONS?

³³ 47 U.S.C. § 153(30)

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1 A. Speaking at a forum on LNP issues, Wireless Bureau Assistant Chief David Firth said
2 that the volume of actual number porting would not be the measure of success, but
3 giving customers the option to port was most important. He indicated that carriers
4 outside of the 100 largest MSA's should be testing and preparing for the May 24,
5 2004 LNP deadline. Responding to questions, Mr. Firth indicated that rating and
6 routing issues between carriers are not porting issues and are therefore not a valid
7 reason for refusing to port.³⁴

8 **VII. CONCLUSION**

9 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

10 Petitioners have not provided evidence or otherwise demonstrated that there is any
11 technical constraint to the implementation of local number portability by May 24,
12 2004. Petitioners have not met the standard that would lead one to conclude the
13 economic burden exceeds that "typically associated with efficient competitive entry."
14 Nor have Petitioners demonstrated that the implementation of number portability
15 would conflict with the public interest and the competitive choice guidelines set by
16 the FCC and this Commission.

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

20 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

21 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 27 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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Alliance Communications Inc. and Splitrock Properties
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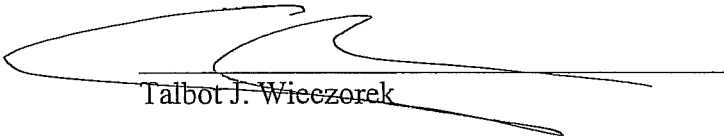
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Before the
Federal Communications Commission
Washington, D.C. 20554

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.

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 (Ellensburg)

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).

WIRELINE TRADING PARTNER PROFILE

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Part A
Trading Partner Profile

For Verizon Wireless:

Company Name – Verizon Wireless (Verizon Wireless Affiliates are identified in Part E hereto)
Administrative OCN – G056

**OCN LIST FOR VERIZON
WIRELESS**

STATE	OCN	STATE	OCN
AL	6804	MT	6564
AR	6805	NE	5807
AZ	6572	NC	6324
CA	6006	ND	6568
CO	6567	NH	6386
CT	6388	NV	6458
DC	6402	NJ	6391
DE	6393	NY	6959
FL	6502	NM	6573
GA	6540	OH	6025
HI	6516	OK	5813
IA	6570	OR	6523
ID	6565	PA	6392
IL	6333	RI	6389
IN	6725	SC	6398
KS	6532	SD	6569
KY	6500	TN	6673
LA	6505	TX	6506
ME	6386	UT	6571
MA	6387	VA	6827
MD	6395	VT	6390
MS	6396	WV	6394
MO	5814	WA	6246
MN	5816	WI	6508
MI	6003	WY	6566

Verizon Wireless Service Order Activation System SPID – 6006
 Verizon Wireless Local Service Management System SPID – 0572, 6827

Address – Port Center
 300 River Rock Blvd.
 Murfreesboro, TN 37128
 Country – USA

Wireline Carrier B
 Company Name: [Wireline Carrier B to provide list of Affiliates on Part 4]
 Wireline Carrier B to insert OCNs with associated states here and to complete items on the table below
 Address: [insert address]
 [insert address]

Item	Verizon Wireless	Wireline Carrier B
Effective Date		
Note: The above contact is also assumed to be the first point of contact for profile changes.		
Contact name for Wireline Carrier	Verizon Wireless, Port Center	
Contact description	Port Center - General Information	
Phone number	1-800-455-2007	
	Not available until 11/24/09	

Item	Verizon Wireless	Wireline Carrier B
... Common information for testing and production environments ...		
Administrative OCN	G056	
Administrative Authorized Exchange Carrier Name (if applicable)	EBAW	
Holiday Days (List Days)	N/A	
Holiday time begin (hh:mm)	N/A	
Holiday time end (hh:mm)	N/A	
... for Testing ...		

Service Provider SOA ID (SPID)	6006	
LSMS SPID	0572, 6827	
WPR / LSR Version ID	Preference to latest industry-supported version. WPR is for WLS-WLN porting, LSR is for WLN-WLS.	
WPRR / FOC Version ID	Preference to latest industry-supported version.	
Time Zone (PST, MST, CST, EST)	Coordinated per Time Zone, per contact information in Part B.	
Business days (Sun, Mon, etc.)	Testing to be coordinated per contact information in Part B	
Business day begin (hh:mm)	Testing to be coordinated per contact information in Part B	
Business day end (hh:mm)	Testing to be coordinated per contact information in Part B	
... for Production ...		
Service Provider SOA ID (Verizon Wireless SPID)	6006	
LSMS SPID	0572, 6827	
WPR / LSR Version ID	LSOG (most current version) WPR is for WLS-WLN porting, LSR is for WLN-WLS.	
WPRR / FOC Version ID	LSOG (most current version)	
Time Zone (PST, MST, CST, EST)	24x7x365	
Business days (Sun, Mon, etc.)	24x7x365	
Business day begin (hh:mm)		
Business day end (hh:mm)		

C	Item	Verizon Wireless	Wireline Carrier B
O	... for Testing ...		
R	Porting Method: Primary,	Current, Test Env = Telcordia	
B	Secondary, N/A	SMG 4.2.0.50 (WICIS 2.x)	
A	ICP Package/Application ("send to")	SMG 4.2: 205.174.188.227	
	ICP Physical Server ("receive from")	SMG 4.2: 205.174.188.229	
	Failover ICP Server	SMG 4.2: 205.174.188.228	
	SOA Application	SMG 4.2: 205.174.188.226	

SOA Server	SMG 4.2: 205.174.188.229	
Failover SOA Server	SMG 4.2: 205.174.188.229	
Application Port Information	Test Env 2 = 26233	
Naming Service / IOR	Static IP (or N/A)	
DLCI (Frame Relay usage)	N/A	
LDAP Provider	N/A	
Security Requirements	N/A	
Firewall Requirements	Allow TCP and UDP traffic	
SSL Requirements	N/A	
Proprietary Requirements	N/A	
Service IDL version	N/A	
Implementation OMG standard compliant?	Yes	
... for Testing OMG CORBA Standards Supported ...		
Verizon Wireless		Wireline Carrier B
Vendor	Borland	Vendor
Verizon Wireless Product Name/Version	CORBA	Wireline Carrier B Product Name/Version
OMG CORBA Version	Corba IDL 2.1	OMG CORBA Version
IOP Version		
... for Production ...		
Porting Method: Primary, Secondary, N/A	Current Production = SMG 4.2	
ICP Package/Application ("send to")	SMG 4.2: 205.140.9.27 205.140.9.29	
ICP Physical Server ("receive from")	SMG 4.2: 205.140.9.17 205.140.9.19	
Failover ICP Server	SMG 4.2: 205.140.9.16 205.140.9.18	
SOA Application	SMG 4.2: 205.140.9.26 205.140.9.28	
SOA Server	SMG 4.2: 205.140.9.16 205.140.9.18	
Failover SOA Server	SMG 4.2: 205.140.9.17 205.140.9.19	
Application Port Information	26232 (setup as "2" + SPID)	
Naming Service / IOR	Static IP (or N/A)	
DLCI (Frame Relay usage)	N/A	
LDAP Provider	N/A	
Security Requirements	N/A	
Security Requirements	N/A	

Firewall Requirements	Allow TCP and UDP traffic		
SSL Requirements	N/A		
Proprietary Requirements	N/A		
Service IDL version	N/A		
Implementation OMG standard compliant?	Yes		
... for Production OMG CORBA Standards Supported ...			
Verizon Wireless		Wireline Carrier B	
Vendor	Borland	Vendor	
Verizon Wireless Product Name/Version	CORBA	Wireline Product Name/Version	
OMG CORBA Version	Corba IDL 2.1	OMG CORBA Version	

	Item	Verizon Wireless	Wireline Carrier B
F A X	... for Testing ...		
	Porting Method: Primary, Secondary, Low Tech Interface, LTI		
	Fax number (machine printed forms)	1-813-209-5983	
	Fax number (hand printed forms)	1-813-209-5982	
	... for Production ...		
	Porting Method: Primary, Secondary, Low Tech Interface, LTI		
	Fax number (machine printed forms)	1-813-209-5983	
	Fax number (hand printed forms)	1-813-209-5982	
	Note: When responding to our call center, please respond to the 1-800-FAX Number listed on the document.		

	Item	Verizon Wireless	Wireline Carrier B
E D I	... for Testing ...		
	Porting Method: Primary, Secondary, Low Tech Interface (LTI)		
	Specific EDI Requirements	N/A	
	... for Production ...		
	Porting Method: Primary, Secondary, N/A		
	Specific EDI Requirements	N/A	

O T H E R	Item	Verizon Wireless	Wireline Carrier B
	... for Testing ...		
	Porting Method: Primary, Secondary, N/A		
	Other Communication Requirements		
	... for Production ...		
	Porting Method: Primary, Secondary, N/A		
	Other Communication Requirements		

The carriers agree that information contained in this Part A is operational in nature and subject to change.

The carriers agree to make every effort to give the other carrier thirty (30) days' notice of any changes to its information pursuant to the General Contact Information set forth in Part A.

The carriers' contact information contained in this Trading Partner Profile is for the sole purpose of carrier-to-carrier communication and not for distribution to customers and/or end users.

**Part B – General Contact Information and
Trouble Reporting Contact Information**

For Verizon Wireless:

General Contact Information

Wireless-Wireline Porting:

Verizon Wireless Porting Center

Hours of Operation: 24 x 7 x 365 (open all holiday's, no exceptions)

Address: 300 River Rock Blvd.
Murfreesboro, TN 37128

Phone: 1-800-488-2002

Porting Center Carrier Relations

Contact: Associate Director of Inter-Carrier Relations

Phone: 1-800-711-9300

Fax: 1-615-372-2411

Hours: 8:00am to 5:00pm (Central Time)

E-mail: PortCenterICR@GL.VerizonWireless.com

Pre-Launch (Pre-11/24/03) Inter-Carrier Test Scheduling

Contact: Wireline Inter-Carrier Test Coordinator

Phone: 1-248-915-3430

Fax: 1-248-915-3799

E-mail: Marie.Moore@VerizonWireless.com

Post-Launch (Post-11/24/03) Inter-Carrier Test Scheduling

Contact: Inter-Carrier Relations

Phone: 1-800-711-9300

Fax: 1-615-372-2411

E-mail: PortCenterICR@GL.VerizonWireless.com

Trouble Reporting Contact Information

Process: The Verizon Wireless Porting Center is the initial interface for all trouble resolution activity associated with porting numbers. The Porting Center will refer issues to the appropriate internal Network or provisioning group for resolution within Verizon Wireless.

Trouble Area:

ICP/General Trouble Reporting

Phone: 1-800-711-9300
Fax: 1-615-372-2425
E-mail: VZWLNPGeneral@GL.VerizonWireless.com

Disaster Recovery

Contact: Porting Center Resource Manager
Phone: 1-800-711-9300
Fax: 1-615-372-2425
E-mail: PCLNPTNC@GL.VerizonWireless.com

CORBA:

Contact: TSI Hotline
Phone: 1-800-892-2888
Fax: 1-813-273-3164
E-mail: Hotline@tsiconnections.com; Subject: Customer#: WLNP

For Wireline Carrier B:

General Contact Information

[contact]

Hours of Operation:

Address:

[contact]

Phone:

Fax:

Trouble Reporting Contact Information

Trouble Area:

ICP/General Trouble Reporting

Phone:

Fax:

E-mail:

Disaster Recovery

Contact:

Phone:

Fax:

E-mail:

CORBA:

Contact:

Phone:

Fax:

E-mail:

Note: Each carrier shall make available a Porting Administration Group or Trouble Reporting contact on a 24x7x365 basis.

The Trouble Reporting Contacts may be amended from time to time by a carrier upon providing thirty (30) days' written notice to the other at the General Contact Information set forth in this Part A.

The carriers' contact information contained in this Trading Partner Profile is for the sole purpose of carrier-to-carrier communication and not for distribution to customers and/or end users.

Part C – Trouble Ticket Detail

For Verizon Wireless:

Information Required For Logging Trouble Tickets*

The following may be required for trouble reports:

- Carrier Name;
- Reporting Carrier organization;
- SPID and associated OCN(s);
- Point of Contact Name;
- Point of Contact Number;
- Porting Telephone Number/MDN;
- LRN;
- Time and Date of Port;
- Associated Error Codes;
- Description of Problem; and
- Other relevant data.

For Wireline Carrier B:

Information Required For Logging Trouble Tickets*

The following is proposed information for trouble reports:

- Carrier Name;
- Reporting Carrier organization;
- SPID and associated OCN(s);
- Point of Contact Name;
- Point of Contact Number;
- Porting Telephone Number/MDN;
- LRN;
- Time and Date of Port;
- Associated Error Codes;
- Description of Problem; and
- Other relevant data.

*Each carrier shall make available a Porting Administration Group or Trouble Reporting contact on a 24x7x365 basis.

The carriers contact information contained in this Trading Partner Profile is for the sole purpose of carrier-to-carrier communication and not for distribution to customers and/or end users.

Part D – Porting Validation Standards

For Verizon Wireless:

Information Required For Post-Paid Port Validation:

1. Billing Last Name
2. Business Name if no information for Billing Name
3. Five Digit Zip Code
4. SSN/Tax ID Number
5. Account Number if no SSN or Tax ID
6. Porting Telephone Number

Information Required for Pre-Paid Port Validation:

1. Porting Telephone Number
2. Password/PIN

For Wireline Carrier B:

Information Required For Post-Paid Port Validation:

Information Required for Pre-Paid Port Validation:

Note: Other than those mandatory data items set forth in Section 3.3.1 of the WICIS, the above shall be the only information which may be utilized by a carrier to this Trading Partner Profile to validate a port request for post-paid numbers. “Delay” or “denial” of ports between the carriers shall occur only in the event a carrier is unable to complete the validation of those validation elements expressly set forth above. Once validated, the Carriers shall be obligated to complete the porting transaction. Any variations or proposed changes in the agreed data fields noted above shall be communicated to the other carrier at the information provided in Part B.

Part E – Affiliate Lists

For Verizon Wireless:

Allentown SMSA Limited Partnership d/b/a Verizon Wireless
By Bell Atlantic Mobile Systems of Allentown, Inc., Its General Partner

Anderson CellTelCo d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Athens Cellular, Inc. d/b/a Verizon Wireless

Badlands Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless
By: CommNet Cellular Inc., Its Managing Agent

Bell Atlantic Mobile of Asheville, Inc. d/b/a Verizon Wireless

Bell Atlantic Mobile of Rochester, LP d/b/a Verizon Wireless
By Upstate Cellular Network, Its General Partner
By Cellco Partnership, Its General Partner

Binghamton MSA Limited Partnership d/b/a Verizon Wireless
By NYNEX Mobile of New York Limited Partnership, Its General Partner
By Upstate Cellular Network, Its General Partner
By Cellco Partnership, Its General Partner

Bismarck MSA Limited Partnership d/b/a Verizon Wireless
By Cellular Inc. Network Corporation, Its General Partner

Boise City MSA Limited Partnership d/b/a Verizon Wireless
By Verizon Wireless (VAW) LLC, Its General Partner

California RSA No. 4 Limited Partnership d/b/a Verizon Wireless
By Pinnacles Cellular, Inc., Its General Partner

Cellco Partnership d/b/a Verizon Wireless

Cellular Inc. Network Corporation d/b/a Verizon Wireless

Chicago 10 MHz LLC d/b/a Verizon Wireless
By Cellco Partnership, Its Sole Member

Chicago SMSA LP d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Colorado 7 – Saguache Limited Partnership d/b/a Verizon Wireless
By: CommNet Cellular Inc., Its Managing Agent

Colorado RSA No. 3 Limited Partnership d/b/a Verizon Wireless
By Verizon Wireless (VAW) LLC, Its General Partner

CommNet Cellular License Holding LLC d/b/a Verizon Wireless
By Cellular Inc. Financial Corporation, Its Sole Member

CyberTel Cellular Telephone Company d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Dallas MTA, LP d/b/a Verizon Wireless
By Verizon Wireless Texas, LLC, Its General Partner

Danville Cellular Telephone Company Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Des Moines MSA General Partnership d/b/a Verizon Wireless
By Verizon Wireless (VAW) LLC, Its General Partner

Dubuque MSA Limited Partnership d/b/a Verizon Wireless
By Southwestco Wireless, LP, Its General Partner
By Southwestco Wireless, Inc., Its General Partner

Duluth MSA Limited Partnership d/b/a Verizon Wireless
By AirTouch Minnesota, LLC, Its General Partner
By Cellco Partnership, Its Sole Member

Eastern South Dakota Cellular, Inc. d/b/a Verizon Wireless
Fayetteville Cellular Telephone Company Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Fresno MSA Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Gadsden CellTelCo Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Gila River Cellular General Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its Managing General Partner

Gold Creek Cellular of Montana Limited Partnership d/b/a Verizon Wireless
By Cellular Inc. Network Corporation, Its General Partner

Grays Harbor-Mason Cellular Limited Partnership d/b/a Verizon Wireless
By Verizon Wireless (VAW) LLC, Its General Partner

GTE Mobilnet of California Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

GTE Mobilnet of Florence, Alabama Incorporated d/b/a Verizon Wireless

GTE Mobilnet of Fort Wayne Limited Partnership d/b/a Verizon Wireless
By GTE Wireless of the Midwest Incorporated, Its General Partner

GTE Mobilnet of Indiana Limited Partnership d/b/a Verizon Wireless
By GTE Wireless of the Midwest Incorporated, Its General Partner

GTE Mobilnet of Indiana RSA #3 Limited Partnership d/b/a Verizon Wireless
By GTE Wireless of the Midwest Incorporated, Its General Partner

GTE Mobilnet of Indiana RSA #6 Limited Partnership d/b/a Verizon Wireless
By GTE Wireless of the Midwest Incorporated, Its General Partner

GTE Mobilnet of Santa Barbara Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

GTE Mobilnet of South Texas Limited Partnership d/b/a Verizon Wireless
By San Antonio MTA LP, Its General Partner
By Verizon Wireless Texas, LLC, Its General Partner

GTE Mobilnet of Terre Haute Limited Partnership d/b/a Verizon Wireless
By GTE Wireless of the Midwest Incorporated, Its General Partner

GTE Mobilnet of Texas RSA #17 Limited Partnership d/b/a Verizon Wireless
By San Antonio MTA LP, Its General Partner
By Verizon Wireless Texas, LLC, Its General Partner

GTE Mobilnet of Texas RSA #21 Limited Partnership d/b/a Verizon Wireless
By San Antonio MTA LP, Its General Partner
By Verizon Wireless Texas, LLC, Its General Partner

GTE Mobilnet of the Southwest LLC d/b/a Verizon Wireless
By Cellco Partnership, Its Sole Member

GTE Wireless of the Midwest Incorporated d/b/a Verizon Wireless

Hamilton Cellular Telephone Company d/b/a Verizon Wireless
By New Par, Its General Partner
By Verizon Wireless (VAW) LLC, Its General Partner

Idaho 6 – Clark Limited Partnership d/b/a Verizon Wireless
By: CommNet Cellular Inc., Its Managing Agent

Idaho RSA No. 1 Limited Partnership d/b/a Verizon Wireless
By Verizon Wireless (VAW) LLC, Its General Partner

Idaho RSA No. 2 Limited Partnership d/b/a Verizon Wireless
By Verizon Wireless (VAW) LLC, Its General Partner

Idaho RSA 3 Limited Partnership d/b/a Verizon Wireless
By Verizon Wireless (VAW) LLC, Its General Partner

Illinois RSA 1 Limited Partnership d/b/a Verizon Wireless
By GTE Wireless of the Midwest Incorporated, Its General Partner

Illinois RSA 6 and 7 Limited Partnership d/b/a Verizon Wireless
By Illinois SMSA Limited Partnership, Its General Partner
By Cellco Partnership, Its General Partner

Illinois SMSA Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Indiana RSA #1 Limited Partnership d/b/a Verizon Wireless
By GTE Wireless of the Midwest Incorporated, Its General Partner

Indiana RSA 2 Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Iowa 8 – Monona Limited Partnership d/b/a Verizon Wireless
By CommNet Cellular Inc., Its Managing Agent

Iowa RSA 5 Limited Partnership d/b/a Verizon Wireless
By GTE Wireless of the Midwest Incorporated, Its General Partner

Iowa RSA 10 General Partnership
By Cellco Partnership d/b/a Verizon Wireless, Its Manager

Iowa RSA No. 4 Limited Partnership d/b/a Verizon Wireless
By GTE Wireless of the Midwest Incorporated, Its General Partner

Kentucky RSA No. 1 Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Los Angeles SMSA Limited Partnership d/b/a Verizon Wireless
By AirTouch Cellular, Its General Partner

Missouri Valley Cellular, Inc. d/b/a Verizon Wireless
By CommNet Cellular, Inc., Its Managing Agent

Modoc RSA Limited Partnership d/b/a Verizon Wireless
By AirTouch Cellular, Its General Partner

Muskegon Cellular Partnership d/b/a Verizon Wireless
By Verizon Wireless (VAW) LLC, Its General Partner

NC-2 LLC d/b/a Verizon Wireless

New Hampshire RSA 2 Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

New Mexico RSA 3 Limited Partnership d/b/a Verizon Wireless
By GTE Mobilnet of the Southwest LLC, Its General Partner
By Cellco Partnership, its Sole Member

New Mexico RSA 6-I Partnership d/b/a Verizon Wireless
By GTE Mobilnet of the Southwest LLC, Its General Partner
By Cellco Partnership, Its Sole Member

New Mexico RSA No. 5 Limited Partnership d/b/a Verizon Wireless
By GTE Mobilnet of the Southwest LLC, Its General Partner
By Cellco Partnership, Its Sole Member

New Par d/b/a Verizon Wireless
By Verizon Wireless (VAW) LLC, Its General Partner

New York RSA 2 Cellular Partnership d/b/a Verizon Wireless
By Upstate Cellular Network, Its General Partner
By Cellco Partnership, Its General Partner

New York RSA No. 3 Cellular Partnership d/b/a Verizon Wireless
By Upstate Cellular Network, Its General Partner
By Cellco Partnership, Its General Partner

New York SMSA Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

North Central RSA 2 of North Dakota Limited Partnership d/b/a Verizon Wireless
By CommNet Cellular Inc., Its Managing Agent

North Dakota 5 - Kidder Limited Partnership d/b/a Verizon Wireless
By CommNet Cellular Inc., Its Managing Agent

North Dakota RSA No. 3 Limited Partnership d/b/a Verizon Wireless
By AirTouch North Dakota, LLC, Its General Partner

Northeast Pennsylvania SMSA Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Northern New Mexico Limited Partnership d/b/a Verizon Wireless
By Cellular Inc. Network Corporation, Its General Partner

Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless
By CommNet Cellular Inc., Its Managing Agent

NYNEX Mobile Limited Partnership 1 d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

NYNEX Mobile Limited Partnership 2 d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

NYNEX Mobile of New York, LP d/b/a Verizon Wireless
By Upstate Cellular Network, Its General Partner
By Cellco Partnership, Its General Partner

Olympia Cellular Limited Partnership d/b/a Verizon Wireless
By Verizon Wireless (VAW) LLC, Its General Partner

Omaha Cellular Telephone Company d/b/a Verizon Wireless
By AirTouch Nebraska, LLC, Its General Partner
By Cellco Partnership, Its Sole Member

Orange County-Poughkeepsie Limited Partnership d/b/a Verizon Wireless
By Verizon Wireless of the East LP, Its General Partner
By Verizon Wireless of Georgia LLC, Its General Partner
By Cellco Partnership, Its Sole Member

Oxnard-Ventura-Simi Limited Partnership d/b/a Verizon Wireless
By AirTouch Cellular, Its General Partner

Pennsylvania 3 Sector 2 Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Pennsylvania 4 Sector 2 Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Pennsylvania RSA 1 Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Pennsylvania RSA No. 6 (I) Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Pennsylvania RSA No. 6 (II) Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Pittsburgh SMSA Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Pittsfield Cellular Telephone Company d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Platte River Cellular of Colorado Limited Partnership d/b/a Verizon Wireless
By: CommNet Cellular Inc., Its Managing Agent

Portland Cellular Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Pueblo Cellular, Inc. d/b/a Verizon Wireless

Redding MSA Limited Partnership d/b/a Verizon Wireless
By Sacramento Valley Limited Partnership, Its General Partner
By AirTouch Cellular, Its General Partner

Rockford MSA Limited Partnership d/b/a Verizon Wireless
By GTE Wireless of the Midwest Incorporated, Its General Partner

RSA 7 Limited Partnership d/b/a Verizon Wireless
By AirTouch Iowa RSA 7, LLC, Its Managing Partner
By Cellco Partnership, Its Sole Member

Sacramento Valley Limited Partnership d/b/a Verizon Wireless
By AirTouch Cellular, Its General Partner

San Antonio MTA, L.P. d/b/a Verizon Wireless
By Verizon Wireless Texas, LLC, Its General Partner

San Isabel Cellular of Colorado Limited Partnership d/b/a Verizon Wireless
By: CommNet Cellular Inc., Its Managing Agent

Sanborn Cellular, Inc. d/b/a Verizon Wireless
By CommNet Cellular, Inc., Its Managing Agent

Sangre De Cristo Cellular, Inc. d/b/a Verizon Wireless
By CommNet Cellular, Inc., Its Managing Agent

Seattle SMSA Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Sioux City MSA Limited Partnership d/b/a Verizon Wireless
By Cellular Inc. Network Corporation, Its General Partner

Smoky Hill Cellular of Colorado Limited Partnership d/b/a Verizon Wireless
By CommNet Cellular Inc., Its Managing Agent

Southern & Central Wireless, LLC d/b/a Verizon Wireless
By Cellco Partnership, Its Sole Member

Southern Indiana RSA Limited Partnership d/b/a Verizon Wireless
By GTE Wireless of the Midwest Incorporated, Its General Partner

Southwestco Wireless LP d/b/a Verizon Wireless
By Southwestco Wireless Inc., Its Managing Partner

Spokane MSA Limited Partnership d/b/a Verizon Wireless
By Verizon Wireless (VAW) LLC, Its General Partner

Springfield Cellular Telephone Company d/b/a Verizon Wireless
By New Par, Its General Partner
By Verizon Wireless (VAW) LLC, Its General Partner

St. Joseph CellTelCo d/b/a Verizon Wireless
By Verizon Wireless (VAW) LLC, Its General Partner

St. Lawrence Seaway RSA Cellular Partnership d/b/a Verizon Wireless
By Upstate Cellular Network, Its General Partner
By Cellco Partnership, Its General Partner

Syracuse SMSA Limited Partnership d/b/a Verizon Wireless
By Upstate Cellular Network, Its General Partner
By Cellco Partnership, Its General Partner

The Great Salt Flats Partnership d/b/a Verizon Wireless
By AirTouch Utah, LLC, Its General Partner
By Cellco Partnership, Its Sole Member

Topeka Cellular Telephone Company, Inc. d/b/a Verizon Wireless

Tuscaloosa Cellular Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Upstate Cellular Network d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Utah RSA 6 Limited Partnership d/b/a Verizon Wireless
By CommNet Cellular Inc., Its Managing Agent

Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

Verizon Wireless of the East LP d/b/a Verizon Wireless
By Verizon Wireless of Georgia LLC, Its General Partner
By Cellco Partnership, Its Sole Member

Verizon Wireless Personal Communications LP d/b/a Verizon Wireless

Verizon Wireless Tennessee Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Vermont RSA Limited Partnership d/b/a Verizon Wireless
By NYNEX Mobile Limited Partnership 1, Its General Partner
By Cellco Partnership, Its General Partner

Virginia RSA 5 Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Virginia 10 RSA Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Wasatch Utah RSA No. 2 Limited Partnership d/b/a Verizon Wireless
By AirTouch Utah, LLC, Its General Partner
By Cellco Partnership, Its Sole Member

Washington, DC SMSA Limited Partnership d/b/a Verizon Wireless
By Cellco Partnership, Its General Partner

Waterloo MSA Limited Partnership d/b/a Verizon Wireless
By Southwestco Wireless LP, Its General Partner
By Southwestco Wireless Inc., Its General Partner

Wyoming 1 – Park Limited Partnership d/b/a Verizon Wireless
By CommNet Cellular Inc., Its Managing Agent

For Wireline Carrier B:

[Wireline Carrier B to insert its affiliates list here]

Porting Questionnaire with Verizon Wireless

Carrier Name:

Completed by:

Date:

1. Name of point of contact (within your company)
 - a. Phone number
 - b. Fax number
 - c. E mail address
2. Name of back up or secondary contact (within your company)
 - a. Phone number
 - b. Fax number
 - c. E mail address
3. Hours of operation
4. Observed holidays
5. Mailing address
6. Please provide the SPID(s) associated with you company.
7. Is your company associated with or a subsidiary of any other companies? If so, which companies and SPIDS
8. How should Verizon Wireless submit a port request or LSR to your company? Fax? Email?
9. What is your turnaround for port requests (3,4 or 5 days)?

10. If fax, does the company utilize TSP?
- If not, please provide the fax number
 - If multiple SPID's are involved, do the requests go to the same fax or different numbers?
 - If multiple fax numbers, please provide a list with SPID and corresponding fax number.
 - Are different areas (or regions) covered by different SPIDs (i.e. Northeast US covered by SPID 1234, Southeast US covered by SPID 5678, etc)?
11. If E Mail, please provide e-mail address(es).
- If multiple SPID's are involved, do the requests go to the same e-mail address of different addresses?
 - If multiple addresses, please provide a list with SPID and corresponding e-mail addresses.
 - Are different areas (or regions) covered by different SPIDs (i.e. Northeast US covered by SPID 1234, Southeast US covered by SPID 5678, etc)?
12. If requests are to be sent by any other method, please provide instructions in detail.
13. What LSOG (LSR) version does the company use?
14. Does the company have a template of the LSR, EUI and NP forms showing your required fields and format?
- If yes, can the company provide a copy?
 - If not, can someone go thru a form, line by line, with us to verify properly prepared forms are submitted?
15. Does your company resell numbers to other carriers (type one)?
- If yes:

What companies?

What are their SPIDs?

Any specific NPA-NXX?

Do you have any contact information for these companies?

- b. Does your company or has your company purchased numbers from other carriers?

16. Is the company willing to test with Verizon Wireless?

Any additional comments:

Please return completed form and any attachments to me via fax at 615-372-2382 or via e-mail at Nilda.Penn@verizonwireless.com

LSOG 6 - Revised 6/14/03

Number Portability Service Request



Administrative Section

PON VER ATN PG OF

Service Detail Section

LNUM LNA PORTED NBR

NPT RTI NPTG

LNUM LNA PORTED NBR

NPT RTI NPTG

LNUM LNA PORTED NBR

NPT RTI NPTG

LNUM LNA PORTED NBR

NPT RTI NPTG

LNUM LNA PORTED NBR

NPT RTI NPTG

LNUM LNA PORTED NBR

NPT RTI NPTG

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NPT RTI NPTG

LNUM LNA PORTED NBR

NPT RTI NPTG

LNUM LNA PORTED NBR

NPT RTI NPTG

LSOG 6 - Revised 6/14/03

Local Service Request (LSR)



041133

Administrative Section

PON

VER

LSR NO

ATN

SC

PG

OF

D/TSENT

DDD

APPTIME

DDDO

NOR

DFDT

DFDFO

PROJECT

CHC

REQTYP

ACT

SUP

EXP

EXP RSN

RTR

CC

RVER

NNSP

ONSP

ALBR

AGAUTH

ACTL

SACTL

LST

TOS

SPEC

NC

NCI

SECNCI

RPON

RORD

NENA/ECC

NPDI

SLI

QRYNBR

SCD

AFA

ACCOUNT FEATURE

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ACCOUNT FEATURE

ACCOUNT FEATURE DETAIL

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ACCOUNT FEATURE

ACCOUNT FEATURE DETAIL

LSOG 6 - Revised 6/14/03

Local Service Request (LSR)



0 4 1 2 3 2

Administrative Section

PON VER ATN PG OF

Bill Section

BAN1 BAN2

EBP VTA

Contact Section

INIT

TELNO FAX NO

IMPCON TELNO (IMPCON)

DSGCON DRC TELNO (DSGCON)

FAX NO (DSGCON) ATR

Remarks

LSOG 6 - Revised 6/14/03

End User Service Request



038225

Administrative Section

PO# VER AIN PG OF

Disconnect Information

DNUM DISC NBR TERS

TC OPT TC TO PRI TC TO SEC

TC PER

TCID TC NAME

TCID TC NAME

TC TO SEC

TCID TC NAME

TCID TC NAME

TC TO SEC

TCID TC NAME

TCID TC NAME

DNUM DISC NBR TERS

TC OPT TC TO PRI TC TO SEC

TC PER

TCID TC NAME

TCID TC NAME

TC TO SEC

TCID TC NAME

TCID TC NAME

TC TO SEC

TCID TC NAME

TCID TC NAME

LSOG 6 - Revised 6/14/03

End User Service Request



038126

Administrative Section

PON VER ATN PG OF

Location and Access Section

LOCNUM

NAME NCON AFT

SAPR SANO SASF SASD

SASN

SATH SASS LD1 LV1

LD2 LV2 LD3 LV3

AAI

CITY

STATE ZIP CODE

ICON TELNO

ACC

WSOP CPE MFR

CPE MOD ELT B

Bill Section

EATN

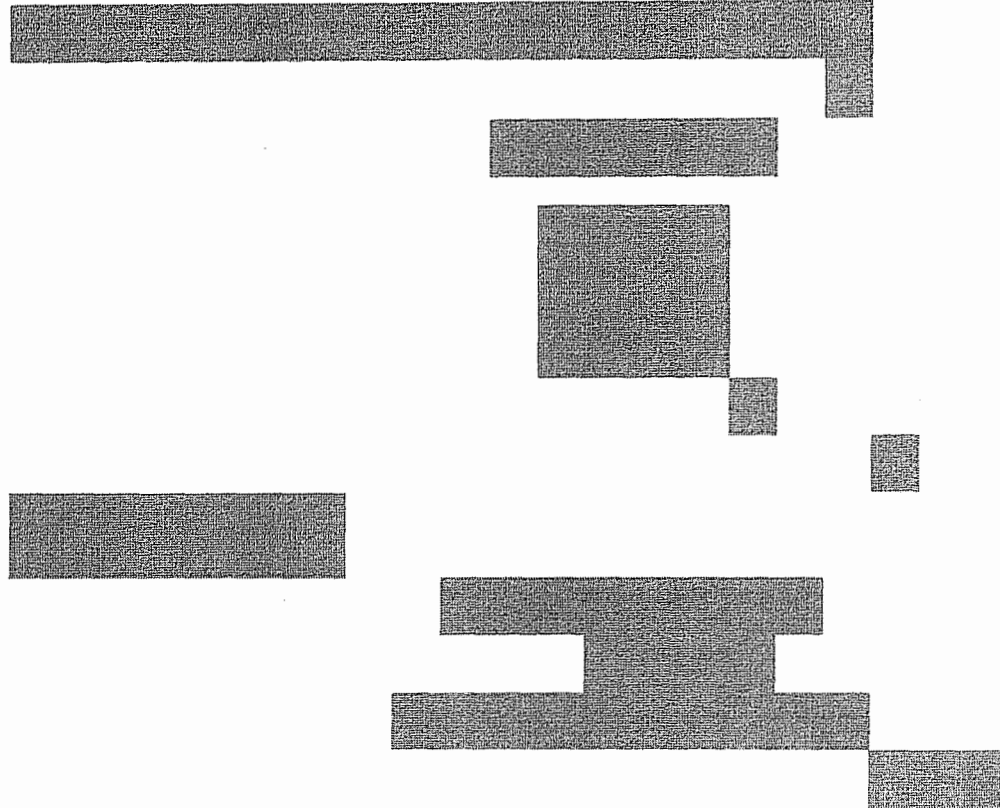
Exhibit R-4-TB

Faith Municipal Telephone Company
 Timeline for Implementation of Local Number Portability

Month:
 Week:

1				2				3				4				5				6			
1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4

- Upgrade switch software (1 Mitel)
 (16 to 18 weeks, depending on vendor schedule)
- Update switch routing translation tables
 (1 day per switch, depending on vendor schedule)
- Assign LRN to switches
 (4 to 6 weeks to appear in LERG)
- Sign service agreements with:
 - NPAC
 (1 month)
 - SOA
 (1 month)
 - Query Service Provider
 (1 month)
- Test SOA process
 (1 week, after SOA agreement signed)
- Test SS7 queries
 (1 week, after Query agreement signed and switch upgraded)
- Negotiate Service Level Agreements & Trading Partner Profiles with other carriers
 (7 weeks)
- Train staff & develop internal business procedures
 (6 to 8 weeks, concurrent with other activity)
- Modify billing system
 (4 weeks)
- Install trunks to new provider's POI
 (8 to 10 weeks)
- Test entire process
 (2 to 3 weeks, after all other steps completed)



McCook Cooperative Telephone Company																					
Timeline for Implementation of Local Number Portability																					
		1				2				3				4				5			
Month:																					
Week:		1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4
Upgrade switch software (6 Nortel)		[All switches have LNP software]																			
(1 to 2 months, depending on vendor schedule)																					
Update switch routing translation tables																					
(1 day per switch, depending on vendor schedule)																					
Assign LRN to switches																					
(4 to 6 weeks to appear in LERG)																					
Sign service agreements with:																					
NPAC																					
(1 month)																					
SOA																					
(1 month)																					
Query Service Provider																					
(1 month)																					
Test SOA process																					
(1 week, after SOA agreement signed)																					
Test SS7 queries																					
(1 week, after Query agreement signed and switch upgraded)																					
Negotiate Service Level Agreements & Trading Partner Profiles with other carriers																					
(7 weeks)																					
Train staff & develop internal business procedures																					
(6 to 8 weeks, concurrent with other activity)																					
Modify billing system																					
(4 weeks)																					
Install trunks to new provider's POI																					
(8 to 10 weeks)																					
Test entire process																					
(2 to 3 weeks, after all other steps completed)																					

Sioux Valley

		1										2										3										4										5									
		1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4														
Month:																																																			
Week:																																																			
Sioux Valley Telephone Company																																																			
Timeline for Implementation of Local Number Portability																																																			
Upgrade switch software (2 Siemens)																																																			
(1 to 2 months, depending on vendor schedule)																																																			
Update switch routing translation tables																																																			
(1 day per switch, depending on vendor schedule)																																																			
Assign LRN to switches																																																			
(4 to 6 weeks to appear in LERG)																																																			
Sign service agreements with:																																																			
NPAC																																																			
(1 month)																																																			
SOA																																																			
(1 month)																																																			
Query Service Provider																																																			
(1 month)																																																			
Test SOA process																																																			
(1 week, after SOA agreement signed)																																																			
Test SS7 queries																																																			
(1 week, after Query agreement signed and switch upgraded)																																																			
Negotiate Service Level Agreements & Trading																																																			
Partner Profiles with other carriers																																																			
(7 weeks)																																																			
Train staff & develop internal business procedures																																																			
(6 to 8 weeks, concurrent with other activity)																																																			
Modify billing system																																																			
(4 weeks)																																																			
Install trunks to new provider's POI																																																			
(8 to 10 weeks)																																																			
Test entire process																																																			
(2 to 3 weeks, after all other steps completed)																																																			

Tri County Telecom Inc.
 Timeline for Implementation of Local Number Portability

Month:	1				2				3				4				5			
Week:	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4

Upgrade switch software (2 Nortel)

(1 to 2 months, depending on vendor schedule)

Update switch routing translation tables

(1 day per switch, depending on vendor schedule)

Assign LRN to switches

(4 to 6 weeks to appear in LERG)

Sign service agreements with:

NPAC

(1 month)

SOA

(1 month)

Query Service Provider

(1 month)

Test SOA process

(1 week, after SOA agreement signed)

Test SS7 queries

(1 week, after Query agreement signed and switch upgraded)

Negotiate Service Level Agreements & Trading

Partner Profiles with other carriers

(7 weeks)

Train staff & develop internal business procedures

(6 to 8 weeks, concurrent with other activity)

Modify billing system

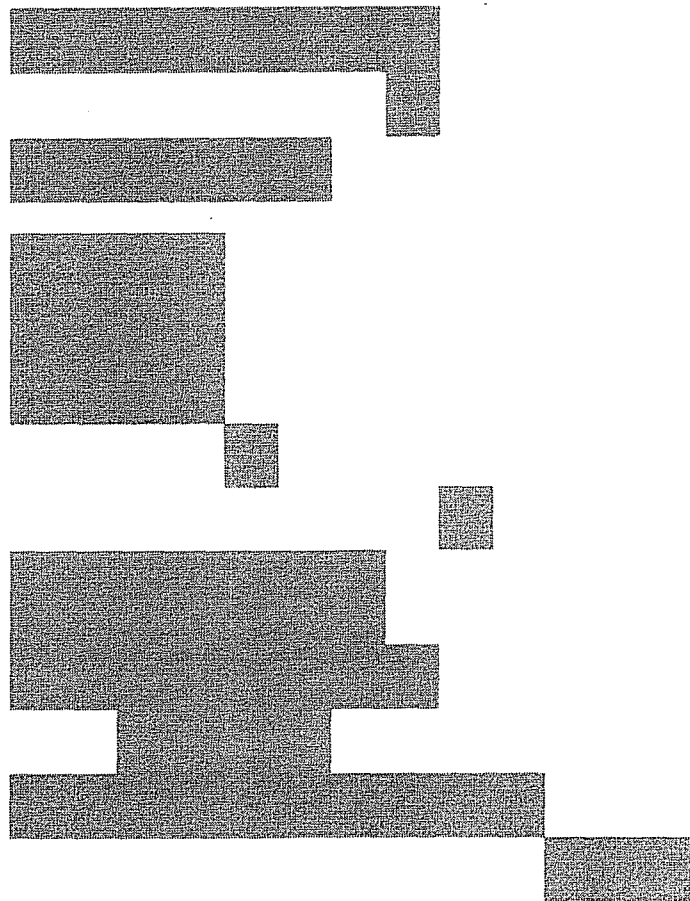
(4 weeks)

Install trunks to new provider's POI

(8 to 10 weeks)

Test entire process

(2 to 3 weeks, after all other steps completed)



Valley Telecommunications Cooperative Association, Inc.																					
Timeline for Implementation of Local Number Portability																					
		1				2				3				4				5			
Month:																					
Week:		1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4
Upgrade switch software (1 Nortel) (1 to 2 months, depending on vendor schedule)		█																			
Update switch routing translation tables (1 day per switch, depending on vendor schedule)										█											
Assign LRN to switches (4 to 6 weeks to appear in LERG)		█																			
Sign service agreements with:																					
NPAC (1 month)		█																			
SOA (1 month)		█																			
Query Service Provider (1 month)		█																			
Test SOA process (1 week, after SOA agreement signed)						█															
Test SS7 queries (1 week, after Query agreement signed and switch upgraded)														█							
Negotiate Service Level Agreements & Trading Partner Profiles with other carriers (7 weeks)		█																			
Train staff & develop internal business procedures (6 to 8 weeks, concurrent with other activity)		█																			
Modify billing system (4 weeks)						█															
Install trunks to new provider's POI (8 to 10 weeks)		█																			
Test entire process (2 to 3 weeks, after all other steps completed)														█							

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE LOCAL NUMBER	)	SUPPLEMENTAL ORDER
PORTABILITY SUSPENSION DOCKETS	)	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

June 23, 8:30 a.m.	TC04-062, Stockholm-Strandburg Telephone Company; TC04-060, Venture Communications Cooperative; TC04-061, West River Cooperative Telephone Company; TC04-077, James Valley Cooperative Telephone Company
June 23, p.m.	Testimony of Steven E. Watkins pertaining to all LNP suspension dockets
June 24, 8:30 a.m.	TC04-050, Valley Telecommunications Cooperative Association, Inc.; TC04-051, Faith Municipal Telephone Company; TC04-045, Golden West Telecommunications Cooperative, Inc.; TC04-044, Sioux Valley Telephone Company; TC04-046, Armour Independent Telephone Company, Bridgewater-Canistota Independent Telephone Company and Union Telephone Company
June 25, 8:30 a.m.	TC04-055, Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc.; TC04-084, Tri-County Telecom, Inc.; TC04-049, McCook Cooperative Telephone Company
June 29, 8:30 a.m.	TC04-025, Kennebec Telephone Company; TC04-052, Midstate Communications, Inc.; TC04-048, Beresford Municipal Telephone Company; TC04-053, Western Telephone Company
June 30, 8:30 a.m.	TC04-085, Cheyenne River Sioux Tribe Telephone Authority; TC04-056, RC Communications, Inc. and Roberts County Telephone Cooperative Association
July 1, 8:30 a.m.	TC04--038, Santel Communications Cooperative, Inc.

Although the Commission will attempt to keep the proceedings within the above schedule, scheduling adjustments may be necessary in the event that proceedings are unable to be completed on the scheduled date or for other good cause. The Commission has scheduled Monday, June 28 as an open hearing date in the event that additional time is needed.

In order to accommodate the testimony common to several dockets and to avoid needless repetition of evidence, the transcript and hearing record for all of the LNP suspension dockets will be recorded as a single transcript and hearing record. A separate transcript and hearing record will be recorded for TC03-192.

It is therefore

ORDERED, that the schedule for the hearing in the LNP suspension dockets and in Docket No. TC03-192 shall be as set forth above; and it is further

ORDERED, that the transcript and hearing record for the LNP suspension dockets and Docket No. TC03-192 shall be recorded as set forth above.

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 Kalbs*

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: <u>Tina Douglas</u>
Date: <u>6-18-04</u>
(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

Bantz, Gosch & Cremer, L.L.C.

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June 17, 2004

08416-009
Ms. Pamela Bonrud
Executive Director
S.D. Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

RECEIVED

JUN 18 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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,

A handwritten signature in black ink, appearing to read "Jm Cremer".

JAMES M. CREMER

JMC:mvs
\\JVT\LNP Waiver\Bonrud10

Enclosures

pc James Graft
Talbot J. Wiczorek
Richard D. Coit
David A. Gerdes
Darla Pollman Rogers
Richard J. Helsper
Jeffrey D. Larson

RECEIVED

JUN 18 2004

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE) Docket No. TC04-025; TC04-038; TC04-044
PETITIONS FOR SUSPENSION OR) through TC04-056; TC04-060 through TC04-062;
MODIFICATION OF § 251(b)(2)) TC04-077; TC04-084; and TC04-085
OF THE COMMUNICATIONS) PETITIONERS' RESPONSE IN OPPOSITION
ACT OF 1934 AS AMENDED) 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.

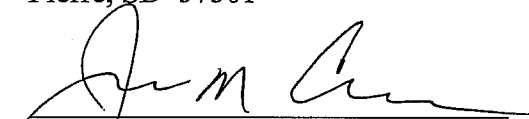
Dated this 17th day of June, 2004.

ATTORNEYS FOR PETITIONERS:

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Jeffrey D. Larson
Larson & Nipe
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/s/ Darla Pollman Rogers
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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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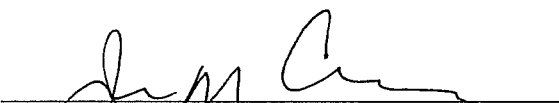
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SOUTH DAKOTA, NORTH DAKOTA, NEBRASKA
COLORADO, MONTANA, WYOMING & MINNESOTA

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

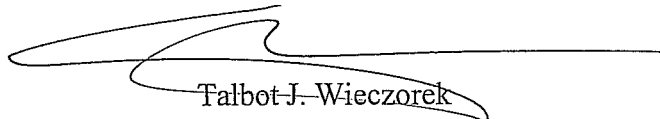
Dear Ms. Bonrud:

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. Wiczorek

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 18 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 J. [Signature]*
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**

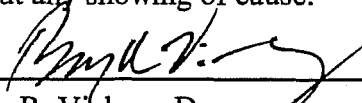
**Court File No. _____
CERTIFICATION OF DEAN
AND LAW STUDENT, ET AL.**

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**

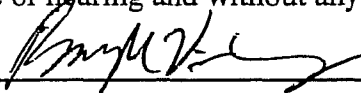
**IN THE MATTER OF THE
CERTIFICATION OF LAW STUDENT
AS LEGAL INTERN**

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

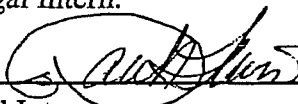


Barry R. Vickrey, Dean
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CERTIFICATION OF LAW STUDENT

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

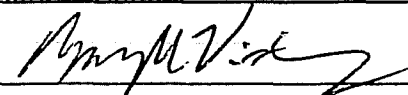


Legal Intern

DEAN'S APPROVAL OF SUPERVISING LAWYER PURSUANT TO SDCL 16-18-2.9:

Name of Supervising Lawyer: Mark I. Connot

Dated April 16, 2004



Barry R. Vickrey, Dean
University of South Dakota School of Law
414 E. Clark St.
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Telephone (605) 677-5443

RECEIVED

JUN 22 2004

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HUGHES)

IN CIRCUIT COURT SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
SIXTH JUDICIAL CIRCUIT

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

In the Matter of the Petition of Brookings) Docket Nos. TC04-047; TC04-192;
Municipal Utilities d/b/a Swiftel) TC04-025; TC04-044 through TC04-046;
Communications for Suspension or) TC04-048 through TC04-056; TC04-060
Modification of 47 U.S.C. Section 251 (b)(2)) through TC04-062; TC04-084; and
Of the Communication Act of 1934 as) TC04-085
Amended)
)
)

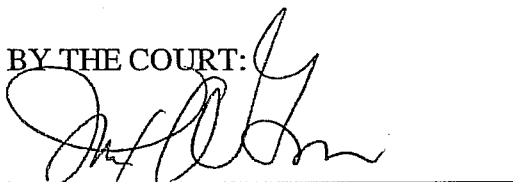
ORDER

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

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)	ORDER ESTABLISHING BRIEFING
NUMBER PORTABILITY SUSPENSION)	AND DECISION SCHEDULE
DOCKETS)	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: Alvino Koelb

Date: 7/13/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman *RS*

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner

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JOHN L. BROWN

MARGO D. NORTHRUP, Associate

OF COUNSEL:
Robert D. Hofer
E. D. Mayer
TELEPHONE
605-224-5825
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605-224-7102

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
Attorney at Law

MDN/ph

Enclosures

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION

AUG 05 2004

OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITIONS
FOR SUSPENSION OR MODIFICATION
OF §251(b)(2) OF THE COMMUNICA-
TIONS 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 Petitions¹ 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 TELECOM 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 TELECOMMUNICA-
TIONS 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.*

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 infeasible.

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*, 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.

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

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

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 known 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

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 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.

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.

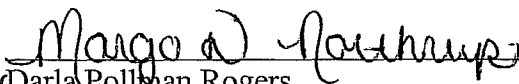
All of this, of course, does not contemplate the havoc that could be wreaked upon South Dakota’s intercarrier compensation regime of access charges, reciprocal transport and termination charges and potential transit charges charged by third parties, such as Qwest, if rural carriers are forced to carry 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:

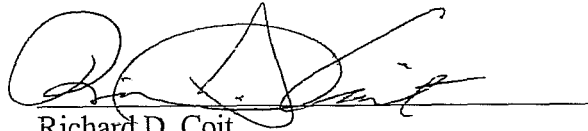
Ms. Pamela Bonrud
Executive Director
SD Public Utilities Commission
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Pierre, South Dakota 57501

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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Dated this fifth day of August, 2004.

A handwritten signature in black ink, appearing to read "Richard D. Coit", written over a horizontal line.

Richard D. Coit
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Bob Sahr, Chair
Gary Hanson, Vice-Chair
Jim Burg, Commissioner
August 20, 2004

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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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 Alts Wiest
Staff Attorney

RAW:dk
Enc.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITIONS FOR) STAFF'S BRIEF
SUSPENSION OR MODIFICATION OF 47)
U.S.C. § 251(b)(2) OF THE COMMUNICATIONS)
ACT OF 1934 AS AMENDED) 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

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;

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

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

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

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 policies 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

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.

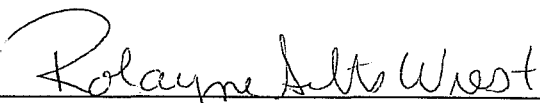
Staff finds that this case poses a closer question of whether a suspension should be granted. However, using 1.5% estimate for demand, Alliance/Splitrock could expect to port up to 147 numbers per year, or over 12 per month. Thus, Staff believes that it is in the public interest to deny Alliance/Splitrock's 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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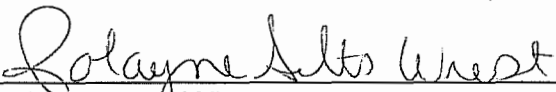
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AUG 20 2004

RE: LNP DOCKETS, Docket TC04-054, AND OTHERS
Our file: 0053

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Dear Pam:


Enclosed are original and ten copies of Midcontinent's Post
Hearing Brief, which please file.

With a copy of this letter, I am sending by mail a copy of
this brief to the service list.

Additionally, I have this date transmitted a copy of the brief
by e-mail to the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP



BY:

DAG:mw

Enclosures

cc/enc: Service List

J. G. Harrington

Mary Lohnes

Tom Simmons

Nancy Vogel

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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AUG 20 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITION) DOCKET TC04-054
OF INTERSTATE TELECOMMUNICATIONS)
COOPERATIVE, INC. FOR SUSPENSION)
OF MODIFICATION OF 47 U.S.C.) MIDCONTINENT'S
SECTION 251(b)(2) OF THE) POST HEARING BRIEF
COMMUNICATIONS ACT OF 1934 AMENDED)

INTRODUCTION

In addition to the captioned docket, Midcontinent has also intervened in these dockets: TC04-038, Santel Communications Cooperative; TC04-044, Sioux Valley Telephone Company; TC04-050, Valley Telecommunications Cooperative; TC04-051, Faith Municipal Telephone Company; TC04-055, Alliance Communications Cooperative and Splitrock Properties; TC04-056, RC Communications, Inc., and Roberts County Telephone Cooperative; TC04-060, Venture Communications Cooperative; TC04-061, West River Cooperative Telephone Company (from which Midcontinent has withdrawn); and TC04-077, James Valley Cooperative Telephone Company (which was settled by agreement dated July 30, 2004, and approved by the Commission on August 17, 2004). These interventions represent approximately half of the LNP dockets which were heard by the Commission. Midcontinent's interventions were governed by those

exchanges in which Midcontinent either does business or anticipates interconnection with the Company as an ILEC or CLEC.

Midcontinent's primary focus in these dockets deals with wireline to wireline, or intramodal, local number portability as a CLEC. Midcontinent is not in the wireless business and does not anticipate seeking local number portability as a wireless carrier from ILECs or CLECs. Clearly, the testimony in these dockets exhibited that there are substantial differences in cost and character of intermodal LNP as compared to intramodal LNP. Midcontinent's comments will almost exclusively deal with intramodal LNP, although both intramodal LNP and intermodal LNP are mandated by the 1996 Telecommunications Act and are therefore comparable in some ways.

Midcontinent believes that all ILECs should offer intramodal LNP. The hearing testimony revealed that, from the petitioners' perspective, the biggest problem with intermodal LNP is the lack of a point of interconnection in the ILEC's rate center, and the resultant costs of transport. This problem is nonexistent in any intramodal LNP transaction involving Midcontinent, or most other wireline companies. Because of the current nature of its business, Midcontinent's comments will primarily focus on interconnection issues with Interstate Telecommunications

Cooperative (ITC), but Midcontinent believes that the law is clear, and intramodal LNP should be ubiquitous.

SUMMARY OF ARGUMENT

The FCC has entered two main orders dealing with intermodal LNP, while it has made no substantive effort to modify the original status of intramodal LNP. This speaks as loudly as anything else for the proposition that the competitive goal of the 1996 Act remains the unequivocal standard for wireline to wireline connectivity. The evidence clearly shows that the cost of providing intramodal LNP is not such that it represents an adverse economic impact on users of telecommunications services generally, imposes a requirement that is unduly economically burdensome or imposes a technically infeasible requirement. Given the overarching goal of the 1996 Act of inducing competition into the local loop, it is clear that under such circumstances intramodal LNP is in the public interest, convenience and necessity.

ARGUMENT AND AUTHORITIES

The 1996 Act is clear that every local exchange carrier has, among other things, the duty to provide local number portability, to the extent technically feasible, consistent with the requirements of the FCC. 47 U.S.C. 251(b)(2). For all practical purposes, this obligation is without qualification, because there

is no question that technical feasibility presently exists, and the FCC has entered no orders modifying this obligation in the realm of intramodal LNP. Nonetheless, the petitioners have applied for suspensions and modifications as to both intermodal and intramodal for rural carriers under 47 U.S.C. 251(f)(2). To obtain suspension or modification, a rural carrier can receive relief only to the extent that its state commission determines that a suspension or modification is necessary (1) to avoid significant adverse economic impact on customers, (2) to avoid an unduly economically burdensome requirement or (3) to avoid imposing a technically infeasible requirement. Coupled with this, the Commission must find that the suspension or modification is consistent with the public interest, convenience and necessity. This is a heavy burden. It is submitted that this burden is particularly heavy as it relates to intramodal LNP, and it is petitioners who have ". . . the burden of going forward as well as the burden of persuasion . . ." in this proceeding. Gourley vs. Board of Trustees of SD Retirement System, 289 NW2d 251, 253 (SD 1980).

Two FCC orders govern intermodal LNP.¹ On the other hand, the FCC has left the area of intramodal LNP unqualified and unmodified.

¹These orders are the November Intermodal Order, CC Docket No. 95-116, Memorandum Opinion and Order and further Notice of Proposed Rulemaking, released November 10, 2003, and the January Order, CC Docket No. 95-116, Order, released

Thus, petitioners must show by a preponderance of the evidence² "significant adverse economic impact," an unduly economic burdensome requirement or a technically infeasible requirement. 47 U.S.C. 251(f)2). It is submitted that, as to intramodal LNP, the petitioners have not done so in these dockets.

In addition to the burdens just mentioned, the same statute additionally requires that suspensions and modifications must be consistent with the public interest, convenience and necessity. Rhetorically, one must ask how it is that suspensions and modifications are beneficial to the public interest where they would only serve to enhance the competitive advantage of an incumbent carrier competing with a CLEC to provide high speed internet and cable, but withholding local number portability because the incumbent carrier sees it as being more advantageous to spend all its funds developing internet and cable. Given the clear mandate of the 1996 Act that competition be injected into the local loop, it is hard to imagine that tipping the playing field to competitively favor the incumbent is in the public interest.

January 16, 2004. The November order gave carriers outside the top 100 MSAs until May 24 to comply with the wireless number portability requirement (largely on the ground that wireless providers were not obligated to implement portability in those markets until that date). The January order gave small carriers operating inside the top 100 MSAs the same extension.

²Generally, the burden of proof in administrative proceedings is a preponderance of the evidence. Matter of Zar, 434 NW2d 598 (SD 1989).

The foregoing is precisely what is going on in the ITC Webster and Waubay exchanges. Jerry Heiberger's testimony clearly shows that ITC wishes to spend its money on services that will compete directly with Midcontinent, yet ITC withholds an essential portion of the package which Midcontinent would seek to offer prospective customers. Mr. Heiberger testified on page 4 of his direct prefiled testimony, dated May 14, 2004, as follows:

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. ITC is a rural company and has limited resources to fund network investments in rural areas. We would prefer to serve the real demands of our customers rather than provide a service that has been mandated by the FCC that has very limited demand.

Under cross-examination, beginning at page 96 of the transcript,

Mr. Heiberger testified as follows:

Q: It's correct, is it not, Midcontinent contends in order to compete effectively it has to have local number portability?

A: Yes. That's correct.

* * *

Q: Are you aware of the purpose of . . . what was the announced purpose of . . . what was the announced purpose of local number portability in the 96 Act?

A: I don't know.

Q: You don't know why they required incumbent local exchange carriers to provide local number portability to connecting local exchange carriers?

A: Not specifically what they wanted us to do with it.

Q: Mr. Heiberger, you have a newsletter that you publish on the internet; is that correct?

A: Correct.

Q: I'm going to show you what has been marked as Exhibit 2, and I'll ask you if it is copy of your column in your newsletter that appeared in your April newsletter?

* * *

A: Yes. This is a copy of my article.

Q: Would you look at the second paragraph, please, and read it?

A: Starting with the "Federal Communications Commission"?

Q: Right.

A. "Has issued an order on November 10, 2003. This order basically states if a wireline company such as your cooperative ITC, is requested by a wireless company to provide LNP, the wireline company must comply and provide the service within six months of the initial request. The LNP service essentially provides customers the ability to port or transfer

his or her wireline phone number to a wireless phone, thus eliminating the need for a wireless phone number or existing wireline service."

Q: Would you read the first part of the next paragraph.

A: "Since the FCC issued the order ITC has received numerous requests from wireless companies to provide the service." [Sic; the quotation includes the next sentence] Incidentally, we have also received a similar request from a competing wireline company within our service territory.

Q: And who might that competing wireline company be that you received as similar request from?

A: It would be Midco.

Q: Okay. It's true, is it not, that Midco gave you that request because they feel that they need local number portability in order to compete with ITC in that exchange?

* * *

A: I don't know if that was why you filed.

Q: Have you read Midcontinent's motion to compel in the 192 docket?

A: Yes.

Q: I will show you a copy of the motion to compel in the 192 docket and direct your attention to paragraph 4 of that motion, the last sentence. Would you read that, please.

A: "Logically avoiding competition can be the only reason an incumbent LEC would wish to discriminate between wireless to wireline porting and wireline to wireline porting."

* * *

- Q: Okay. Have you ever understood that Midcontinent wanted local number portability so that it could compete fairly with ITC in Webster?
- A: Based on previous filed testimony, yeah, you know, Ms. Lohnes stated it there, that she thought it was needed so they could successfully compete.
- Q: Okay. Thank you. And so going back to your prefiled testimony on page 4, what you're in essence saying is that you prefer to spend money on your broadband investments in order to compete with Midcontinent rather than spending money on local number portability, which would permit Midcontinent to compete with ITC in the telecommunications area.
- A: No. Basically, the crux of that statement is that we've had greater demand for broadband services than we've had for LNP services, and I can't envision why we would want to go spend the amount of money that would be required for LNP but rather invest it in services that my customers are asking for.
- Q: Do you agree that not offering LNP to Midcontinent puts Midcontinent at a competitive disadvantage?
- A: I don't know that.
- Q: How about if you were in Midcontinent's shoes would you rather have LNP, or would you rather be able to use your own NXX when those people want to keep their numbers in Webster?
- A: I am not in LNP's [Sic; Midcontinent's] shoes. I guess I don't know. I really haven't thought about it.
- Q: You heard Mary Lohnes's testimony to the effect that she had received numerous . . . or quite a

number of requests for LNP? You heard that testimony, did you not?

A: I think she said she had her technicians contact her in regards to when we were going to get LNP services in Webster is what I think I recall.

Q: You don't recall her saying that they had customers making those inquiries?

A: I think she stated she had some customers requesting it and then she also elaborated on other technicians.

Q: Would you expect customers to want to have local number portability if they were switching carriers?

A: I guess I'm not a customer. I guess I can't answer for them.

Notwithstanding argument to the contrary by ITC in its brief, the evidence shows that Midcontinent has received requests for local number portability which it cannot fulfill. As testified by Mary Lohnes, many customers will only go with Midcontinent if they can retain, as a matter of convenience, their current telephone numbers. This only stands to reason, and is why Congress mandated local number portability in the Act in the first place. In her direct prefiled testimony dated June 25, 2004, Exhibit 8, page 4, Mary Lohnes testified as follows:

Q: Why is LNP important to Midcontinent in the Webster Exchange?

A: Midcontinent cannot effectively compete against ITC without LNP. Customers tend to want to keep their

telephone numbers. We have found that in other markets about 50% of the time customers request to keep their phone number in order to make the switch to a new carrier. Many of those are senior citizens who don't want to have to try and remember a new phone number and get it out to their family and friends. Midcontinent has received a number of requests from Webster customers for number portability. Remember, Midcontinent's entry into the Webster exchange is a competitive entry. ITC is offering cable service in competition to Midcontinent's long standing presence in the market, since 1974. Midcontinent believes ITC, as the incumbent carrier, is clearly violating both the spirit and the letter of the 1996 Act in impeding competition in this manner.

John Dewitt's testimony shows there to be a "substantial difference" between the implementation of intramodal LNP and intermodal LNP, intramodal LNP being about 7.5 percent of the cost of implementing intermodal LNP. (John Dewitt, page 215). If the cost of implementing intermodal LNP is substantially greater³, how can it be said that intramodal LNP will impose an "unduly economically burdensome" requirement or have a "significant adverse economic impact on users?" The answer is simple, intramodal LNP is a very small part of the cost, and it can easily be addressed through federal cost recovery mechanisms.

³Setting aside for the moment Western Wireless's evidence that petitioners' cost evidence is greatly overstated; but even accepting WWC's evidence, the cost difference remains substantial.

CONCLUSION

The contrast between intramodal LNP and intermodal LNP may or may not be as striking as depicted by petitioners. Nonetheless, certain things are clear from the evidence produced in these dockets. The 1996 Act mandates competition. To work, competition must take place on a level playing field. The FCC has not seen fit to modify the clear mandate for intramodal LNP found in the 1996 Act. Petitioners have not, and cannot, sustain their burden to prove the significant adverse economic impact necessary to warrant suspensions or modifications relating to wireline to wireline local number portability. As to intramodal LNP, the petitions for suspension or modification should be denied.

Dated this 20th day of August, 2004.

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BY: 

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August 20, 2004

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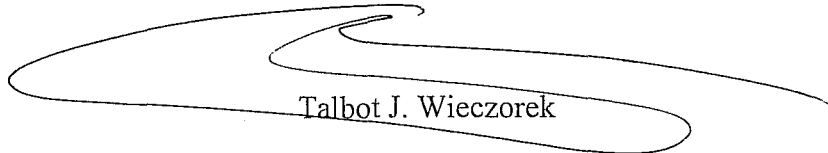
RE: WWC License LLC – Local Number Portability Post-Hearing Brief
GPGN File No. 5924.040157

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

TJW:klw

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITIONS FOR) WWC LICENSE LLC's POST-
SUSPENSION OR MODIFICATION OF 47) HEARING BRIEF
U.S.C. § 251(b)(2) OF THE)
COMMUNICATIONS ACT OF 1934 AS)
AMENDED)

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 Telecom, 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 nation's 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.

I. 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 TELECOM 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 TELECOM experts had calculated costs.

Mr. Bullock testified that the TELECOM 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 TELECOM 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 Company 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 (1999).

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, Petitioner's 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 technical 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 somehow 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.

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 burdensome⁵ 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

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 at some initial thoughts with respect to the standards that the Commission has to apply in these cases. One 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 are 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 in 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 though 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 than 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.

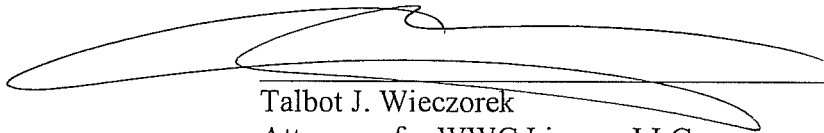
CONCLUSION

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 28 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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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.
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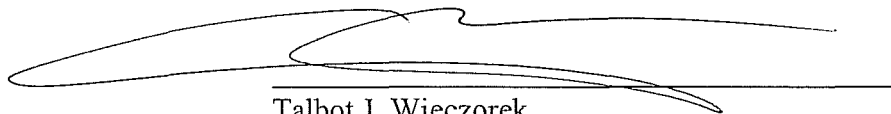
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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITIONS
FOR SUSPENSION OR MODIFICATION
OF §251(b)(2) OF THE COMMUNICA-
TIONS 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 survey¹: "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 it 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 Cir. 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 infeasibility (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.

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.

tioners, 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-

¹² *In the Matter 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

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

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 wireline-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. Wiczorek) 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

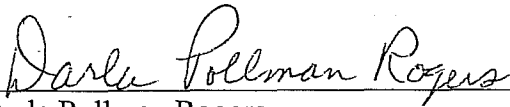
schedules obtain. For one group of companies, the implementation schedule would begin almost immediately. For another group of companies, implementation would begin May 24, 2005 -- a one year extension from the original implementation date. For the third group of companies, implementation would begin 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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McCook Cooperative Telephone Co.
Midstate Communications, Inc.
RC Communications and Roberts County
Sioux Valley Telephone
Stockholm-Strandburg Telephone
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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)	ORDER TEMPORARILY
NUMBER - PORTABILITY	)	SUSPENDING LOCAL NUMBER
SUSPENSION DOCKETS	)	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: *Neilino Kalbo*

Date: *9/7/04*

(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

RECEIVED

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SEP 10 2004

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

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IN THE MATTER OF THE PETITION OF TC04-025
KENNEBEC TELEPHONE COMPANY FOR
SUSPENSION OR MODIFICATION OF 47 U.S.C.
SECTION 251(B)(2) OF THE COMMUNICATIONS
ACT OF 1934 AS AMENDED

IN THE MATTER OF THE PETITION OF SANTEL TC04-038
COMMUNICATIONS COOPERATIVE, INC. FOR
SUSPENSION OF INTERMODAL LOCAL NUMBER
PORTABILITY OBLIGATIONS

IN THE MATTER OF THE PETITION OF SIOUX TC04-044
VALLEY TELEPHONE COMPANY FOR SUSPENSION
OR MODIFICATION OF 47 U.S.C. SECTION
251(B)(2) OF THE COMMUNICATIONS ACT OF
1934 AS AMENDED

IN THE MATTER OF THE PETITION OF GOLDEN TC04-045
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

IN THE MATTER OF THE PETITION OF ARMOUR TC04-046
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

IN THE MATTER OF THE PETITION OF TC04-047
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

ORIGINAL

1	IN THE MATTER OF THE PETITION OF BERESFORD MUNICIPAL TELEPHONE COMPANY	TC04-048
2	FOR SUSPENSION OR MODIFICATION OF	
3	47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	
4	IN THE MATTER OF THE PETITION OF MCCOOK COOPERATIVE TELEPHONE COMPANY FOR	TC04-049
5	SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS	
6	ACT OF 1934 AS AMENDED	
7	IN THE MATTER OF THE PETITION OF VALLEY TELECOMMUNICATIONS COOPERATIVE	TC04-050
8	ASSOCIATION, INC. FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION	
9	251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	
10		
11	IN THE MATTER OF THE PETITION OF CITY OF FAITH TELEPHONE COMPANY FOR	TC04-051
12	SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS	
13	ACT OF 1934 AS AMENDED	
14	IN THE MATTER OF THE PETITION OF MIDSTATE COMMUNICATIONS, INC. FOR	TC04-052
15	SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS	
16	ACT OF 1934 AS AMENDED	
17	IN THE MATTER OF THE PETITION OF WESTERN TELEPHONE COMPANY FOR	TC04-053
18	SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION 251(B)(2) OF THE COMMUNICATIONS	
19	ACT OF 1934 AS AMENDED	
20	IN THE MATTER OF THE PETITION OF INTERSTATE TELECOMMUNICATIONS	TC04-054
21	COOPERATIVE, INC. FOR SUSPENSION OR MODIFICATION OF 47 U.S.C. SECTION	
22	521(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	
23	IN THE MATTER OF THE PETITION OF ALLIANCE COMMUNICATIONS COOPERATIVE,	TC04-055
24	INC. AND SPLITROCK PROPERTIES, INC. FOR SUSPENSION OR MODIFICATION OF 47 U.S.C.	
25	SECTION 251(B)(2) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED	

1 HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

2 PROCEEDINGS: August 31, 2004
3 1:30 P.M.
4 Room 412, Capitol Building
 Pierre, South Dakota

5 PUC COMMISSION: Robert Sahr, Chairman
6 Gary Hanson, Vice-Chairman
 Jim Burg, Commissioner

7
8 COMMISSION STAFF: John Smith
9 Rolayne Ailts Wiest
 Gregory Rislov
 Pam Bonrud

10
11 REPORTED BY: Lori J. Grode, RPR/RMR

12
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24 CRST, Faith, Golden West, Vivian and Kadoka,
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 Roberts County and RC, Sioux Valley,
25 Stockholm-Strandburg, Tri-County, Valley,
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9 Faith, Golden West, Vivian and Kadoka,
10 Interstate, Kennebec, McCook, Midstate,
11 Roberts County and RC, Sioux Valley,
12 Stockholm-Strandburg, Tri-County, Valley,
13 West River, Western, and Brookings;

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14 ALSO APPEARING:

15 MARY LOHNES, Midcontinent
16 JIM ATKINS, Swiftel
17 RON WILLIAMS, Western Wireless
18 DOUG EIDAHL, Vantage Point
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P R O C E E D I N G S

1
2 CHAIRMAN SAHR: Good afternoon. This is the
3 time and place for the closing oral arguments in
4 the LNP dockets.

5 We're here in Room 412, in Pierre, at the
6 State Capitol. It is approximately 1:30 p.m. on
7 August 31st, 2004. With me here in Pierre is
8 Commissioner Jim Burg, and joining us on the
9 phone line is Vice Chairman Gary Hanson. And I
10 am Chairman Bob Sahr of the South Dakota Public
11 Utilities Commission.

12 The first thing I'll do is ask the people
13 who are on the phone line to please state your
14 name and who you are affiliated with.

15 MR. DICKENS: Chairman Sahr, this is Ben
16 Dickens and Mary Sisak. We're appearing with
17 Darla Rogers today, and we're also appearing
18 separately for the City of Brookings.

19 CHAIRMAN SAHR: Thank you.

20 MR. LARSON: Chairman Sahr, this is Jeff
21 Larson, appearing on behalf of Santel.

22 CHAIRMAN SAHR: Thank you. Is there anyone
23 else other than Commissioner Hanson on the phone
24 line?

25 MR. WILLIAMS: Chairman Sahr, this is Ron

1 Williams with Western Wireless.

2 CHAIRMAN SAHR: Okay.

3 MS. LOHNES: Chairman, this is Mary Lohnes.

4 MR. EIDAHL: Doug Eidahl, Vantage Point.

5 CHAIRMAN SAHR: And was this Mary from
6 Midcontinent?

7 MS. LOHNES: Yes.

8 CHAIRMAN SAHR: Thank you. This is Jim
9 Atkins from the City of Brookings, Swiftel
10 Communications.

11 CHAIRMAN SAHR: Is there anybody else?

12 All right. Let's -- we can stay on the
13 record, but let's try to figure out what order
14 we're going to go in. John has informed me,
15 Darla, you're going to go first and then Ben?

16 MR. DICKENS: Yes, or Jeff Larson.

17 CHAIRMAN SAHR: Okay. Rich? Tal?

18 MR. WIECZOREK: Sure.

19 CHAIRMAN SAHR: Dave and then staff.

20 MS. WIEST: Sure.

21 CHAIRMAN SAHR: Does that work?

22 MS. WIEST: Works for me.

23 CHAIRMAN SAHR: Is there anyone else that I
24 missed who's going to be making oral argument?
25 If not, the floor is yours, Darla.

1 MS. ROGERS: Thank you very much. My name
2 is Darla Pollman Rogers, and I represent all of
3 the petitioners in this case, with the exception
4 of Santel Communications, which is Docket TC
5 04-038, and Brookings Municipal Utilities, doing
6 business as Swiftel Communications, which is
7 Docket TC 04-047.

8 Members of the Commission: In my opening
9 statement, given what seems like light years ago
10 now, I refer to this entire LNP suspension
11 modification process as "our LNP journey." Here
12 we are a few months later, the pleadings have all
13 been filed, the discovery has been completed,
14 there have been a -- there has been a long series
15 of hearings conducted, exhibits and corrected
16 exhibits have been introduced, and the issues
17 have been thoroughly briefed by all of the
18 parties and by staff.

19 So we come to the end of this phase of the
20 journey. And on behalf of all of the petitioners
21 that I represent, I want to thank you for your
22 time and your attention throughout this process
23 that was at times arduous. There is little more,
24 in my opinion, to be said, so I'm going to keep
25 my comments to you today very brief.

1 In preparation for these closing arguments
2 today, I went back and reviewed my notes of my
3 opening statement, as well as the notes of
4 staff's opening statement. And at the outset of
5 these dockets, we, as petitioners, asked you to
6 do several things:

7 We, first of all, pointed out your
8 jurisdiction and your authority and your
9 responsibility to suspend and/or modify LNP
10 obligations under 47 USC 251(f)(2) and also
11 pursuant to SDCL 49-31-80. And your authority to
12 do so has basically not been disputed throughout
13 this process.

14 We also tried to point out for you, as did
15 the commission staff in its opening statement,
16 some of the key issues that we would request you
17 to focus on. The first one was the costs of LNP.
18 And we pointed out to you that we would
19 establish, as petitioners, that there are
20 significant adverse economic impact -- or this is
21 a significant adverse economic impact on
22 subscribers.

23 We would also show that provisioning of LNP
24 would be unduly economically burdensome to the
25 companies.

1 The second issue we asked you to focus on
2 was the transport and routing issues associated
3 with LNP.

4 The third thing we pointed out to you was
5 unresolved issues at the federal level.

6 And, finally, we asked you to look at the
7 public interest, including a cost benefit
8 analysis.

9 I'm not going to replot that ground. And I
10 trust that you have focused on all of those
11 factors throughout the hearing. I would,
12 however, like to direct your attention to the
13 three points today. The first one is the
14 transport routing issues associated with LNP.
15 And I would like to bring these up again and
16 review them because of their significance to our
17 petitioners.

18 The petitioners have maintained throughout
19 this process that they have no legal obligation
20 to transport traffic to points beyond their
21 service territories whether the traffic is
22 associated with ported numbers or not.

23 Under the provisions of 47 USC Section
24 251(c)(2)(b), incumbent LEC's are required to
25 provide interconnection only at a "technically

1 feasible point within the carrier's network."

2 Staff apparently reached the same conclusion
3 with regard to the responsibility for transport.
4 Quoting from staff's brief, staff stated:
5 Staff's position is that the Commission should
6 find that an RLEC is not responsible for the cost
7 of transporting LNP traffic outside of its
8 exchange area and that a local exchange company
9 shouldn't be required to transport local exchange
10 calls beyond its local exchange area.

11 Petitioners concur with and support this
12 aspect of staff's recommendation, and we would
13 urge the Commission to modify petitioners' LNP
14 obligations pursuant to Section 251 of the Act to
15 clearly state that each petitioner is not
16 required to transport calls beyond its local
17 exchange area.

18 Having said that, however, I would point out
19 that that does not resolve all of the transport
20 and routing issues. Uncertainties still exist.

21 First of all, at the FCC level, the FCC has
22 yet to address the transport and routing issues.
23 What we have referred to as the Sprint petition
24 is currently pending, and there are other appeals
25 wherein the FCC may address these issues, but

1 that has not transpired to date.

2 There is Western Wireless' position. They
3 have said that it's petitioners' responsibility
4 for transport, and they proposed Qwest as a
5 transiting possibility without further evidence
6 of whether or not that is a viable option.

7 The staff said do not require direct
8 connections or any specific routing methods. The
9 RLEC and the requesting carrier can negotiate the
10 method of transport. And, of course, the
11 petitioners' position has been that direct
12 connections are necessary either within each
13 exchange or within each host and stand-alone
14 switch exchange area.

15 So what is the answer? I'm not sure I can
16 tell you the exact answer. But what I can
17 suggest to you is that you follow the example of
18 the Nebraska Commission in its recent ruling and
19 conclude as the Nebraska Commission has that
20 indirect connections are technically infeasible
21 presently and that resulting transport costs
22 "would indeed be a part of the costs associated
23 with implementation of LNP and that such costs
24 would either be an additional significant adverse
25 economic impact on end users, or would be an

1 undue economic burden on the local exchange
2 carriers." And that's from the Nebraska Order at
3 pages seven and pages ten through eleven.

4 The second point I would like to make to you
5 today is that we're at a different point in the
6 LNP history, so to speak, than we were at the
7 beginning of these proceedings. You, as a
8 Commission, now have other input to consider than
9 you had at the start of this process.

10 FCC Chairman Powell wrote a letter to the
11 president of NARUC, dated June 18th of 2004. And
12 in that letter he stated -- and I would also
13 point out that letter is part of the record in
14 this case -- "I urge state commissions to
15 consider the burdens on small businesses in
16 addressing those waiver requests and to grant the
17 requested relief if the state commissions deem it
18 appropriate."

19 In addition, there have been other decisions
20 of the state commissions. We provided a summary
21 of those decisions in our Reply Brief.
22 Approximately 250 LNP suspension requests have
23 been filed or submitted in 38 states on behalf of
24 approximately 786 local exchange carriers, and
25 this is as of June 2004.

1 The vast majority of states have granted
2 relief of one form or another, either temporary
3 or permanent suspension to rural LEC's. So I
4 would submit to you that you are not plowing new
5 ground here, so to speak. And I would also urge
6 you as a Commission to look at what the majority
7 of what other state commissions have done and
8 grant the relief requested by the petitioners
9 herein.

10 The third point that I would make to you
11 concerns the public interest. Are the
12 suspensions and modifications requested herein
13 consistent with public interest, convenience, and
14 necessity? And I would submit to you that the
15 overwhelming evidence is that they are.

16 A determination of the public interest
17 relating to the LNP suspension petitions involves
18 a cost versus benefit analysis. The costs were
19 thoroughly analyzed throughout the proceedings.
20 Petitioners have clearly demonstrated the
21 significant adverse impact on users and the undue
22 economic burden on carriers. The staff
23 apparently concurs that all petitioners have met
24 one or both of these cost tests.

25 The Nebraska Commission recently stated that

1 an analysis of the benefits of such
2 implementation turns on whether there is a demand
3 for LNP among the telecommunications users served
4 by petitioners.

5 The record clearly establishes that little
6 or no demand exists. All but three of the
7 managers who testified on behalf of the
8 petitioners presented direct testimony that they
9 have had no demand for LNP. Think about that.
10 Not one request in their areas for LNP. This
11 included some of the larger carriers as well,
12 including Golden West, Alliance, and Venture.

13 Petitioners disagree with staff's conclusion
14 that the public interest test is not met for all
15 petitioners. There is no evidence of higher
16 demand in the grouped three exchanges. Even
17 assuming a 1.5 percent porting rate, which was
18 estimated by staff and was concededly a guess,
19 that is a very small percentage of customers
20 sustaining a very costly luxury of LNP for only a
21 few subscribers.

22 The per line impact on customers has been
23 demonstrated to be significant for all South
24 Dakota consumers regardless of whether their
25 carrier is large or small even though even among

1 the larger companies there is no evidence of
2 higher demand. And, in fact, the evidence
3 establishes that some of the largest companies
4 have the lowest densities, which even staff
5 concedes density has an effect on demand.

6 The cost does not get any better for
7 consumers of larger companies. As we pointed out
8 in our brief, the bottom line is this: The
9 benefit picture does not improve for customers of
10 a large company. I would also point out to you,
11 as was considered by the Nebraska Commission,
12 that there was no evidence submitted that a
13 suspension would adversely impact consumers
14 because there hasn't been any demand.

15 How many more surcharges are we going to add
16 to customers' bills for services they don't want
17 and will never use? I would submit to you that
18 any cost is too high for customers that -- for a
19 service that customers do not want.

20 I ended my opening statement with a picture
21 for you and that was a public interest scale.
22 And I said it was like the Scales of Justice, or
23 a teeter-totter, whichever you prefer to look at.
24 Actually, the Nebraska Commission did essentially
25 the same thing in its final analysis of the

1 public interest.

2 So if you picture our Scales of Justice --
3 and remember we said that the public interest
4 element or test involves weighing the cost versus
5 benefit analysis. And on the cost side what do
6 we have? We have the actual costs.
7 Implementation of LNP and those costs, even if
8 you set aside transport for a moment -- which, of
9 course, you can't do -- are considerable.

10 Number two, we have the economic obstacles
11 that still exist.

12 Number three, we have the unresolved issues,
13 including porting interval.

14 And, number four, and that spills over into
15 number three, is the transport routing issues
16 that are unresolved yet.

17 All of those are on the cost side. Now,
18 what's on the benefit side? Lack of demand.
19 That's what the evidence showed. Clearly, then,
20 the scale, the balance of the scale, tips in
21 favor of granting the suspensions requested.

22 Based on the evidence and the record before
23 this Commission, we urge you to find, as the
24 Nebraska Commission did, that the petitioners
25 have sustained their burden of proof pursuant to

1 47 USC Section 251(f)(2)(b) that suspension and
2 modification of the requirements of local number
3 portability and the November 10th order of the
4 FCC is consistent with the public interest,
5 convenience, and necessity.

6 Finally, we would add, as requested in our
7 Reply Brief, that if any implementation is
8 ordered at all, it shouldn't occur until May 24th
9 of 2006 at the earliest so that at least
10 18 months of experience can be gained before this
11 matter is re-evaluated.

12 Thank you again for your attention.

13 CHAIRMAN SAHR: Thank you. Mr. Dickens.

14 MR. DICKENS: Thank you, Mr. Chairman. I'll
15 be very, very brief.

16 We would concur in the remarks by
17 Ms. Rogers. The only thing I would add is that I
18 know your schedule here for Midco here today on
19 intermodal LNP. We've covered that topic in our
20 brief. We do not believe that intermodal LNP is
21 justified from a cost benefit analysis. We
22 discussed that, for instance, on page 12 of our
23 Reply Brief. And we would rest on that brief,
24 and that concludes my remarks.

25 CHAIRMAN SAHR: Thank you very much.

1 Mr. Larson.

2 MR. LARSON: Thank you. Also I am not going
3 to add a great deal to what Darla has presented
4 to the Commission.

5 My client's situation is obviously similar
6 to everyone else's. I would like to point out
7 just two very brief things: In the discussion
8 about costs and the argument that intervenors
9 have used showing substantially lesser costs in
10 certain situations, I would like to point out
11 that it has been the history of these petitioners
12 and our desire at this time to always provide
13 quality service.

14 And that I don't think we want to provide a
15 situation or buy into a situation where we would
16 be giving any kind of service unachieved, which
17 suggests that the costs presented in evidence by
18 the petitioners are the costs that need to be
19 considered and why they therefore meet the
20 statutory requirement.

21 And, lastly, that none of us -- I don't mean
22 to be demeaning. I suggest this to myself and I
23 advise clients, the court, or commission, we
24 don't check our common sense at the door. There
25 is no -- it's almost uncontroverted there is no

1 demand for this service. And I would suggest to
2 you, as Darla alluded, that this is not going to
3 change by next spring; and that therefore if
4 anything would be granted, we would certainly ask
5 that it be at least spring of 2006. And that's
6 all I'd have. Thank you very much.

7 CHAIRMAN SAHR: Thank you very much.

8 Mr. Coit.

9 MR. COIT: Thank you. I would also like to
10 thank you, the Commission, for all of the time
11 spent during the hearings process. And I would
12 also like to thank you for the opportunity for
13 these arguments today.

14 I also concur in Ms. Rogers' comments. SDTA
15 presented testimony through one witness in this
16 case, Mr. Steven Watkins. And Mr. Watkins
17 commented on the various standards and the
18 evidence as weighed up against those standards
19 for judging these LNP suspensions, but his
20 primary emphasis was on the public interest
21 analysis. And in argument today, I would just
22 like to focus in on, I think, a couple of the
23 more important considerations within that
24 analysis.

25 In our initial brief before the Commission,

1 we had set forth, I think it's pages 41 through
2 53, a list of the various reasons why we don't
3 believe it is in the public -- or we do believe
4 it is in the public interest to grant all of
5 their requested suspensions. Staff is suggesting
6 -- or is recommending that certain companies not
7 receive a suspension.

8 We don't agree that the public interest
9 factors or the public interest analysis is any
10 different really in terms of the result, what the
11 result should be. We believe that all of the
12 companies, if you look at it, look at the
13 standards that are there, and looking at the
14 public interest in particular, deserve a
15 suspension.

16 First -- and Ms. Rogers discussed this at
17 length here, that the lack of demand --
18 Mr. Watkins, in his testimony, discussed the lack
19 of demand and explained that at least in his
20 opinion, you know, the reasons that you don't
21 have any real demand for this particular
22 service -- and speaking specifically to
23 intermodal portability -- is the fact that the
24 services today, anyway, are not really viewed as
25 substitutes, but are viewed as complimentary

1 services.

2 So you just don't have much consumer
3 interest in taking the same telephone number and
4 moving it to the completely different service.
5 That's not to say that doesn't happen. But
6 there's just not that many customers that are
7 interested in doing that. And that's borne out
8 with respect to, you know, the nationwide numbers
9 that were presented in some of the testimony.

10 And then, in addition to that, the demand, I
11 think you can assume, is pretty minimal, very
12 minimal because of the poor wireless coverage in
13 South Dakota.

14 There are probably other reasons why there
15 isn't much demand, but it's very clear from the
16 record in this case that today there really
17 isn't. There's little, if any, demand. And
18 that, to me, is the most significant thing that
19 sticks out in the public interest analysis.

20 The other thing that is an issue or a factor
21 that I think equally has to be considered for all
22 of the companies are the unresolved issues at the
23 federal level. Right now we have at the federal
24 level a number -- I know of at least two
25 proceedings that are pending that will impact

1 these LNP obligations and the cost of those
2 obligations.

3 You've got the FCC further notice of
4 proposed rule making. We don't exactly know what
5 the timeline is on that, but we know that it's
6 there. We know that there's a rush to try to
7 resolve some of these issues. We've got the
8 Sprint petition proceeding that is to address the
9 transport obligation issues.

10 We also have a pending appeal in the U.S.
11 Court of Appeals that was brought by USTA, NTCA,
12 and some other national telephone organizations.
13 And I, as of today, don't know exactly what the
14 timeline is for -- none of us know exactly what
15 the timeline is for the decision in that case,
16 but that appeal is pending.

17 And to the extent that certain companies are
18 not granted a suspension, effectively they're
19 going to be stripped of those appellate rights.
20 You're not going to give that -- you're not going
21 to give them a chance to wait for that decision
22 and see exactly, you know, what their obligations
23 are. And, clearly, that case, as well as the FCC
24 cases that are pending, will impact LNP costs.

25 Staff is recommending, and we agree, that

1 rural LEC's are not responsible to carry traffic
2 outside of their service areas. We don't know
3 today, though, what the FCC's decision is going
4 to be on the transport. And, very clearly, those
5 decisions could impact LNP costs.

6 If you look at the other state decisions,
7 Western Wireless, in its brief, had referenced a
8 decision in New York and a decision in Michigan.
9 There are a lot of decisions out there. As
10 Ms. Rogers pointed out, the majority of those
11 decisions are in favor of granting suspensions
12 or modifications for some period of time.

13 I think I quoted -- we quoted in the --
14 mentioned in the Reply Brief that as of the end
15 of June there were 18 states out of the 35 states
16 that had suspensions pending or before them that
17 18 states already have granted some relief to
18 rural LEC's.

19 I would, in particular, like to refer the
20 Commission to the decision of the Ohio
21 Commission, the Nebraska Commission, and the
22 Mississippi Commission, all of whom gave weight
23 to the fact that there were issues unresolved at
24 the federal level. Specifically noted, that
25 those decisions will impact LNP costs, and for

1 that specific reason -- or along with other
2 reasons decided that the suspensions should be
3 granted that were requested, or at least some
4 level of suspension should be granted.

5 I think the other thing to remember is that
6 there is an LNP surcharge that has to be
7 established. And to the extent that the costs
8 aren't known at the time that that LNP surcharge
9 has to be established, companies are in the
10 position of having to change that down the road.
11 And if they have to change that, they actually
12 have to get a waiver of the FCC rules to change
13 that surcharge.

14 And from the research that we've done, it
15 doesn't appear in looking at past FCC decisions
16 that that sort of a waiver is going to be very
17 kindly at all. That being the case viewed, you
18 know, it really puts the companies in the
19 position of having to determine what their LNP
20 costs are and put it in a charge before the
21 decisions are made at the federal level that will
22 definitely impact those costs.

23 The last thing that I would like to spend a
24 little bit of time commenting on is the transport
25 option issue.

1 We spent a lot of time at the hearing
2 discussing various transport options.

3 In Western Wireless, throughout the hearing,
4 tried to portray that transport issue as being a
5 pretty simple one. And they suggested on
6 numerous occasions during the hearing that their
7 proposal would be more efficient and less
8 expensive to implement than the direct connection
9 proposals forwarded by petitioners.

10 These Western Wireless claims, in our view,
11 only look at the transport issue from Western
12 Wireless' perspective, and they really give
13 absolutely no consideration to the actual
14 financial impact on the rural LEC's.

15 As reflected in the testimony of Mr. Houdek,
16 Mr. DeWitt, and others, Mr. Bullock, if rural
17 carriers with their limited service areas are
18 ultimately forced to bear the burden of
19 transporting landline calls to ported wireless
20 numbers, all the way to a serving LATA tandem,
21 and are forced to exchange these calls with
22 Western Wireless and all other wireless carriers
23 as local calls, the impacts will be "huge" for
24 all the petitioners.

25 We commented on this in our Reply Brief, and

1 I'm -- just to give you an idea, I'm guessing, of
2 the impacts. If landline carriers must consider
3 landline calls for a ported number served by a
4 wireless carrier as local and are also required
5 to take on the responsibility to transport that
6 traffic to a location outside of their existing
7 local calling areas or service areas, there are a
8 number of financial impacts.

9 Not only will there be additional direct
10 costs associated with LNP implementation, there
11 will be impacts on other LEC revenues. If the
12 traffic to ported numbers is considered local,
13 the LEC minutes flowing through the separations
14 process that is utilized to establish federal and
15 state access rates will be affected.

16 There will be a resulting increase in local
17 traffic, and this increase will translate into a
18 greater shift of cost recovery to the intrastate
19 jurisdiction. This, in turn, will require higher
20 local exchange service rates and/or intrastate
21 access rates.

22 In addition, if the traffic is considered
23 local and not subject to access charges,
24 customers will be encouraged to bypass to an even
25 greater extent the current landline total

1 networks. Increased bypass will lead to fewer
2 access minutes and higher intraaccess state
3 charges. The business of landline toll carriers
4 competing will also be impacted. If landline to
5 landline calls moving from one landline local
6 calling area to another landline calling area are
7 considered toll, but landline to wireless calls
8 are not, landline long distance companies are
9 tremendously disadvantaged, and this would
10 undoubtedly be a negative impact on landline
11 carriers' toll revenues.

12 So when you look at the transport issue,
13 there's much more to consider than just the cost
14 of those facilities that are established between
15 the ILEC's and the Qwest. There's much more to
16 it than that. There are a lot of impacts
17 associated with the transport option.

18 Lastly, I would just like to comment on the
19 last item that we had referenced in talking about
20 the public interest. And that is the fact that
21 we really are dealing today with a situation
22 where it is effectively one-way porting.

23 Looking at that from the ILEC perspective,
24 we have nothing to gain from this from a
25 competitive perspective. It certainly doesn't

1 create a level playing field given the different
2 calling scopes that exist between wireless and
3 wireline companies. And I think that is
4 something that should be kept in mind in this
5 process.

6 If the FCC would have done it right, it
7 would have gone ahead and they would have
8 addressed the local calling scope differences,
9 the rate center issues, before they ever ordered
10 intramodal LNP. We can all speculate as to why
11 they did it. I'm not sure why they did it. It
12 has created a mess throughout the entire
13 industry, which is illustrated by the fact that
14 we have 250 some suspensions that are pending.

15 If the FCC would have done it in an
16 appropriate way and addressed the real regulatory
17 problems that are presented before they ordered
18 it, I don't think we would have all of this
19 litigation. And I think just the number of
20 suspensions that are out there give you a pretty
21 good indication that there are a lot of problems
22 that need to be resolved.

23 We believe that the Commission should give
24 the FCC a chance to resolve those issues, to give
25 the courts a chance to revolve those issues

1 before requiring ILEC's to implement LNP. Thank
2 you.

3 CHAIRMAN SAHR: Thank you very much.
4 Mr. Wieczorek.

5 MR. WIECZOREK: Thank you, Chairman Sahr.
6 Thank you, Commissioners, for your patience
7 through all this, the two-week hearing and now
8 granting us this chance to come in and wrap this
9 up with some oral arguments.

10 I'm not going to repeat everything that was
11 in the briefs. I think the briefs are -- our
12 brief outlined our position fairly well. But
13 there are some highlights that I'd like to
14 address and then like to address some things that
15 were contained in the Reply Brief.

16 First of which is, you know, it's obvious
17 that the petitioners don't want to provide LNP,
18 period. They see it as allowing other companies
19 to come in and get some of their customers.

20 But the statutory test is fairly clear. And
21 there are words in that test that set out that
22 have to have meaning when you look at this and
23 the petitioners have to pay attention to. First
24 of all of which is that to meet the first
25 requirement they have to show that your action is

1 necessary, that's necessary to avoid a
2 technically infeasible situation.

3 Now, at the time of the hearing all three
4 petitioners' cost experts said, well, this is
5 technically feasible. It's really a cost issue.
6 We now hear it is technically infeasible. Now
7 the argument seems to be it's technically
8 infeasible because it becomes technically
9 infeasible unless you require point of
10 interconnect.

11 But that totally ignores what's happened in
12 Minnesota that was talked about at the time of
13 the hearing. The MIC petition did not -- follows
14 the procedure for transport that was set up and
15 recommended by Western Wireless in this
16 situation. To now take the position that it
17 works in Minnesota but technically it's
18 infeasible here makes absolutely no sense. And,
19 frankly, they didn't provide any testimony that
20 makes that technically infeasible.

21 The cost issues: Let's take transport right
22 out of the box. That's a huge cost issue. Now,
23 one of the issues in our brief and one of the
24 issues I have with the way this has been
25 presented by petitioners is they've had -- their

1 obligation under the statute is to show you
2 Commissioners why your action is necessary to
3 avoid an unduly economic requirement that's
4 unduly economically burdensome.

5 However, rather than out of the box when
6 this obligation came on and when Western Wireless
7 contacted every one of these petitioners and said
8 we would like to start working on porting
9 numbers. Do you have any questions? Contact us.
10 They sent out their cost experts. Their cost
11 experts did one analysis, and they restricted it
12 to interconnection agreement routing
13 arrangements.

14 There's no contact with Western Wireless.
15 And this -- in their brief -- in their Reply
16 Brief they take the position, well, you could
17 change those interconnection agreements, but
18 Western Wireless has never asked us to do that.

19 I say that that is a misrepresentation,
20 clearly. Ron Williams sat here and said, look,
21 we tried to put that language in those
22 interconnection agreements to begin with. It was
23 taken out, not by us, but by them. And he was
24 clearly -- there was clearly testimony that every
25 one of these petitioners received a notice from

1 Western Wireless seeking some kind of dialogue.

2 And now to come to this Commission and say
3 they could have provided, but they haven't
4 bothered to ask. And to put the burden back on
5 us is inappropriate, and it's, like I said, a
6 misrepresentation of the facts that has been in
7 front of the Commission and the truth.

8 The obligation sits on the petitioners.
9 Western Wireless has come to this table to try to
10 make things work. Throughout these -- throughout
11 these proceedings Western Wireless has stepped up
12 to try to make this work. The proceeding --

13 Western Wireless told this Commission, to
14 try to eliminate some of the uncertainty, that
15 Western Wireless would pick up the transport
16 issues and yet until the FCC decides that final.
17 And yet transport continues to come up saying
18 it's in these arguments saying it can't be done.

19 Yet Mr. Bullock, a cost expert here, in
20 response to Vice Chair Hanson's question says,
21 you know, if Western Wireless is going to pay the
22 way -- I think his phrase was, if you're going to
23 pay the freight, you get to pick the railroad,
24 meaning that if Western Wireless is going to pick
25 the freight, they can make -- they can have this

1 delivered over the Qwest lines, they can go these
2 routes.

3 So to come in and try to jack up the
4 transport costs to legitimize and make necessary
5 this Commission's actions is inappropriate, and I
6 believe the facts bear out that your actions are
7 unnecessarily unduly economically burdensome.

8 Really the only thing that they can prove
9 under the first element, or arguably prove, is
10 there are significant adverse economic impacts.
11 And as our brief pointed out, they haven't proven
12 it. There has been no testimony, with the
13 exception of Kennebec, as to what the customers
14 are willing to pay for LNP.

15 It is interesting to note that in our brief
16 we discuss the Kennebec survey wherein one out of
17 five people in Kennebec saved up 50 cents a month
18 to have this opportunity, and 12 percent of the
19 customers in Kennebec that responded to a survey,
20 a mailed survey to them that they turned around
21 and responded to would be willing to pay a dollar
22 to have this option.

23 No other petitioners provided this
24 information. And they didn't respond to it in
25 the Reply Brief. The reason they -- that the

1 petitioners don't respond to it in their Reply
2 Brief is because that supports the demand for LNP
3 and the desire of rural customers to have LNP.

4 I submit if one in five people in Kennebec
5 are willing to pay 50 cents for at least one
6 company here, or two companies, one under 50
7 cents and one that hovers around 50 cents, one
8 out of five is a significant portion of the
9 people. To say that that now creates a
10 significant adverse impact, economic impact on
11 the individuals, the evidence does not exist. It
12 isn't there. That's a very high demand for LNP.

13 And those areas that are even closer than
14 Kennebec to the more urban areas of South Dakota
15 outside of Sioux Falls, those areas with a higher
16 demographic makeup are obviously and more mobile
17 bedroom communities into Sioux Falls, I think the
18 common sense -- as counsel for Santel said if you
19 don't leave that at the door -- common sense
20 tells you those people likely have a higher
21 demand for LNP as they go about their business
22 and live in one community, but work in another.

23 So as our brief clearly sets forth, we do
24 not believe any of the petitioners have met their
25 burden under the first part of the test. You

1 only go to the public interest if they've met one
2 of those three factors under the first part of
3 the test.

4 Public interest, they point back to
5 Mr. Watkins. Mr. Watkins makes some very general
6 statements. He doesn't like LNP. He doesn't
7 like the way the FCC set it up. However, he
8 doesn't look at any of the petitioners and say
9 this petitioner has the following factors and
10 that's why I don't believe it fits with their
11 customer base.

12 He makes references -- and Mr. Coit repeated
13 it -- that there's -- in some areas there's poor
14 cellular service. And I believe the corporate
15 representative from Valley talked about that.
16 And that's one of the reasons staff's brief set
17 forth that they should be one of the not
18 immediate people to provide LNP.

19 However, most of the corporate
20 representatives complain about cellular service,
21 yet Mr. Watkins would have you believe if
22 cellular is ubiquitous throughout the service
23 area of one of these LEC's, the demand for LNP is
24 equivalent to that of value. And his general
25 testimony cannot stand for showing public

1 interest to grant LNP.

2 A couple issues on a staff's brief I'd like
3 to address and that is some -- the first is out
4 of their categories, why we disagree that LNP is
5 necessary -- or suspension of LNP is necessary
6 under the test provided under the statute.

7 . If one were to accept the staff -- the way
8 the staff has broken out the petitioners by
9 category, two of the petitioners, I believe,
10 would be -- should be moved out what they term
11 the category two, which is an extension to May of
12 next year and down into providing LNP
13 immediately. Specifically, Sioux Valley, which
14 has a low cost per line, in alliance with some of
15 the other petitioners that staff feels should
16 provide LNP immediately.

17 And staff's projections, which I can contend
18 are low, of 84 ports a year, or seven ports a
19 month. Sioux Valley's is located not far out of
20 the Sioux Falls area and is probably an area that
21 will see more active porting.

22 The other company that they have placed in
23 the tier two that I believe should be moved down
24 and providing immediately LNP based on their
25 analysis is Santel. Santel's costs, again, are

1 within that range that the staff felt was
2 acceptable and also their ports, though staff's
3 are lower at 72.

4 One of the other factors out there that was
5 testified to was affiliated or a subsidiary
6 company of Santel is moving into as a competitive
7 LEC into the Mitchell area so that would also
8 provide them with additional expertise since in
9 that competitive LEC area they're going to have
10 to be LNP compliant.

11 One of the issues of the Reply Brief I have
12 an issue with the way they try to interpret the
13 staff's brief and there's -- it was alluded to in
14 arguments by petitioners' counsel, and that is in
15 their brief they have taken the position that
16 staff's brief means for anybody who gets a
17 suspension to May of 2005 or 2006, that they
18 don't have to start implementing until that time
19 period comes.

20 I don't read staff's brief that way. I read
21 staff's brief -- and I'll let staff speak to it.
22 But if staff's brief's intent was that would they
23 have an extension to 2000 -- May of 2005 and only
24 then do they have to start the exercising --
25 implementing, I would say that that would be an

1 inappropriate additional extension.

2 The petitioners -- even though petitioners
3 who receive an extension, should the Commission
4 grant it, can work on the preliminary work,
5 provide LNP, and it should be a date certain for
6 it to be LNP compliant. It makes no sense to set
7 a date and then say, okay, now you have to start
8 working on implementing and leave the date that
9 they actually have to become compliant wide open
10 to them saying, we're just starting on it, we're
11 going to start our training program now, we're
12 going to go through all these things, we're going
13 to start talking to the cell companies. So I
14 think a date certain to be LNP compliant is
15 necessary.

16 The Reply Brief of petitioners talks about
17 modifying the staff's requirement in dealing with
18 transport to require point of interconnection, or
19 POI's, and successfully negotiate transport. Yet
20 their brief says we're not asking for an
21 interconnection agreement, but we're asking for
22 them to successfully negotiate transport.

23 I believe this is a red herring where they
24 can just delay implementation of LNP. I believe
25 for those companies that this Commission order --

1 and, again, Western Wireless would say except for
2 the five that we've stipulated to should get to
3 March 31st of next year -- should be all of them,
4 that there shouldn't be a requirement to reach
5 some kind of contractual agreement for transport.
6 We, as Western Wireless, will be motivated to
7 provide transportation in the most cost-effective
8 manner possible.

9 We should not be restricted to try to come
10 up with something short of an interconnection
11 agreement, but come up with some contractual
12 agreement to arrange for transport.

13 The other -- one of the other troubling
14 aspects I have is how the petitioners have
15 approached this. They group all petitioners
16 together and they talk about needing points of
17 interconnect and how this can't be done. Yet
18 they make no distinctions for those companies
19 that Western Wireless already has point of
20 interconnect with.

21 Western Wireless already has point of
22 interconnection with Golden West, Vivian,
23 Venture, West River and Interstate. Yet
24 petitioners would have you accept that that makes
25 no difference at this point. They just need to

1 be lumped in and receive the same extension.

2 It's -- their argument is duplicitous in
3 that they try to group all these petitioners
4 together saying that points of interconnect are
5 needed and then ignore the existing points of
6 interconnection.

7 Finally, I would ask the Commission look
8 behind the actions -- or look at the actions of
9 the petitioners. There is a generally-accepted
10 legal analysis which is sometimes called the
11 clean hands doctrine. And that generally means
12 that if you're going to ask for exceptions, if
13 you're going to ask to fit within a rule, if
14 you're going to ask for extensions, that you come
15 to the tribunal or commission that you're
16 requesting that to with clean hands to say we
17 have attempted to resolve this in earnest. We
18 cannot resolve this. There are things that we
19 cannot resolve. Please give us this extension.
20 Why we are working on the solution.

21 Commissioners, I submit that with the
22 exception of James Valley and Cheyenne River
23 Sioux Tribe, none of the petitioners come to you
24 with clean hands. And they shouldn't be rewarded
25 for attempting to make you act by increasing

1 their costs and by not attempting to resolve
2 these issues either before they came to this
3 Commission or during the pendency of this action.

4 There was -- there is an attack on Western
5 Wireless' position when we say these people
6 should -- these petitioners should implement LNP
7 within 60 days. James Valley came to you and
8 said they could do it within ninety. I will
9 submit that James Valley had already had their
10 software for LNP activated.

11 However, the testimony is, though, all the
12 Nortel switches that come with that software only
13 needs to be activated. James Valley hit the
14 ground running and said we can do this in
15 90 days. To award more than 90 days -- and even
16 to award 90 days awards the remaining petitioners
17 for coming to this Commission without those clean
18 hands. Thank you.

19 CHAIRMAN SAHR: Thank you. Mr. Gerdes.

20 MR. GERDES: Mr. Chairman, members of the
21 Commission: I'll be brief. Midcontinent has
22 been something like a mouse in the corner in this
23 proceeding. I found it interesting that my good
24 friend, Mr. Dickens, pointed out their arguments
25 in their brief -- as nearly as I can tell, he

1 pointed out page 12, and as nearly as I can tell,
2 that's the only page in a 37-page brief that
3 Midcontinent was mentioned, which I would submit
4 to you is about consistent or equal to the amount
5 of attention that the petitioners have paid to
6 the subject of intramodal LNP.

7 I calculate one page out of a 37-page brief
8 to be about 2.6 percent. And I would suggest
9 that that was about the amount of time that the
10 petitioners paid to intramodal LNP in this
11 proceeding, which I think proves our point.

12 And our point is that the law as passed in
13 1996 requires local number portability. The '96
14 Act also requires that there be competition in
15 the local loop. There really is very little
16 question that local number portability is
17 necessary to inject competition into the local
18 loop.

19 Given the minimal additional cost that is
20 associated with intramodal LNP, it is our
21 position that the petitioners have not sustained
22 their burden of proof.

23 I'd like to also just give you a short
24 analysis of the way I see the law on this. The
25 petitioners have the burden of proof. We all

1 agree to that. And I think most of the briefs
2 have covered the actual legal principle itself.

3 And so I would suggest to you that what
4 251(f)(2) says as to suspensions or
5 modifications, that in order to override what is
6 the statutory public interest, as embraced by the
7 '96 Act, the petitioners have the burden of, in
8 effect, turning the public interest around
9 180 degrees.

10 In other words, turning public interest onto
11 its ear. Because, remember, the overarching
12 reason for passing the '96 Act was to inject
13 competition into the local loop. That was the
14 reason. Competition is the alternative for
15 regulation. That was why the '96 Act was passed.

16 So if you look at the structure of
17 251(f)(2), it says that in order for the
18 petitioners to receive suspensions or
19 modifications, they must show that there is no --
20 in order to receive the suspensions and
21 modifications, they must show that it is
22 necessary to avoid a significant adverse economic
23 impact on customers, they must show that it is
24 necessary to avoid an unduly economically
25 burdensome requirement, or to avoid imposing a

1 technically infeasible requirement.

2 And coupled with this, there must also be
3 finding that these suspensions and modifications
4 are consistent with the public interest.

5 So what has to be done is they have to go
6 through -- they have to turn the ladder
7 upside-down in order to get to the point they
8 want to get to, and that's a big burden of proof.

9 Now, I'm not going to comment on the
10 wireline to wireless LNP. But I would submit to
11 you that if you look at the evidence in this
12 proceeding, there's absolutely no question that
13 they have not proven that the mandate of the '96
14 Act should be set aside.

15 Let's not forget the FCC has had ample
16 opportunity to modify the requirements of the
17 Act, and they simply haven't done it. They have
18 done it with respect to wireless LNP, but not
19 local number portability, intramodal local number
20 portability.

21 So we would submit that clearly there's no
22 reason to delay and that local number portability
23 should be ordered in the intramodal situation.

24 One last comment: The two things that the
25 petitioners argue about the most, the lack of a

1 point of interconnection in the rate center and
2 the cost of transport, are simply not present in
3 wireline to wireline LNP.

4 Thank you very much for indulging the
5 parties to this case in a very interesting
6 two-week hearing and in the briefing process. As
7 always, these proceedings are educational for all
8 of us. Thank you.

9 CHAIRMAN SAHR: Thank you. Staff.

10 MS. WIEST: In staff's brief what we tried
11 to do was evaluate each company and try to come
12 up with what in staff's opinion was a reasonable
13 recommendation.

14 And I think with respect to that first
15 group, Kennebec, Faith, Tri-County,
16 Stockholm-Strandburg and Western, I really don't
17 think there's too much of an argument as to
18 whether those companies should be granted some
19 sort of a suspension. There was a question of
20 how long it is.

21 Staff has, of course, proposed a two-year
22 suspension due to those significant per line
23 costs in those cases. We believe even with an
24 FCC decision deciding some of the issues, that
25 the significant adverse impact standards could

1 still be met.

2 Going to our second group of companies from
3 for which staff recommends a one-year suspension,
4 these do have some floor costs. In the first
5 group we believe, in all likelihood, they will
6 have a higher number of ports; and we believe
7 they would benefit from a one-year suspension.
8 Again, hopefully the FCC will inject some
9 certainty into the proceedings.

10 Also some of the companies have some
11 individual issues. For example, Armour,
12 Bridgewater, Union has a mitel switch that will
13 most likely need to be replaced at some point in
14 the next couple years or the next -- or at least
15 they have to make a decision. And Valley
16 testified it only had 25 percent wireless
17 coverage.

18 With respect to the third set of companies,
19 I guess staff believes that at some point when
20 you do have the cost versus demand balancing
21 test, there is a point at which it can be in the
22 public interest to implement LNP for these
23 companies.

24 For example, when you have Golden, Qwest,
25 Vivian, Kadoka, you have costs down to around 30

1 cents. And for ITC it costs around 55 cents
2 higher access line numbers. Plus, in that case
3 you have Midcontinent's entry into parts of ITC
4 service area which certainly increased the
5 porting demand.

6 Staff would be -- will admit that the line
7 between the second and the third group is not
8 nearly as clear-cut as the line between the first
9 and the second group. And I think that ends up
10 being a judgment call for the Commissioners to
11 make if they choose to follow this type of
12 situation.

13 Going on to the one issue about technically
14 infeasible, I do not -- I still do not think that
15 any of the companies can qualify under the
16 technically infeasible standard. Based on the
17 evidence, including evidence from the
18 petitioners, I think it clearly showed that it is
19 technically feasible to implement LNP.

20 And that brings me to my next point is how
21 should it be implemented. As we state in our
22 brief, we don't think the RLEC's are responsible
23 for the costs of transporting LNP traffic outside
24 of their exchange.

25 But, on the other hand, we don't think that

1 the Commission should go and mandate how LNP
2 traffic should be transported in each case. I
3 think you just to have look at James Valley and
4 Cheyenne River to see that if you look at a
5 company-by-company basis. And it depends. Is
6 there direct connection in there? If there is
7 not, I think the companies are certainly in the
8 best position to figure out which is the most
9 efficient and which is the most reliable method
10 for transport.

11 Also, we did note in our brief if the
12 Commission does grant suspensions for some of or
13 all of the companies, we think the sub companies
14 should be required to keep track of requests for
15 LNP. We would encourage wireless companies to
16 keep track.

17 And I think for some of the companies that
18 have to do generic upgrades or switch
19 replacements, the Commission would need more
20 information as to those timelines that they would
21 request additional suspensions.

22 But in the end, it's staff's opinion the
23 demand for LNP will increase over time. And
24 that's certainly a factor to be considered in the
25 public interest balancing test.

1 And just going to the question of whether
2 there was shown little demand for LNP, I think
3 based on the evidence, it's more accurate to say
4 that the demand is uncertain. I mean even
5 Mr. Bullock had put in numbers that range from
6 like six-tenths to 3 percent demand.

7 And Mr. Wieczorek also mentioned the
8 Kennebec survey. But I do think that there will
9 be some demand for LNP, but at this point I would
10 agree that the demand is uncertain.

11 And with respect to Mr. Wieczorek's comment
12 about what our suspensions or timelines mean,
13 when we talk about a one-year suspension, we do
14 mean that by one year that the Commission -- that
15 they would have to have it implemented by then
16 unless they would ask for further suspension
17 before that time. Thank you.

18 CHAIRMAN SAHR: Thank you. At this point in
19 time I will move that the Commission go into
20 executive session to discuss the case.

21 COMMISSIONER BURG: Can we ask questions?
22 Is that appropriate, I guess, is what I'm asking?

23 CHAIRMAN SAHR: Let's go off the record for
24 a second.

25 (A DISCUSSION WAS HELD OFF THE RECORD.)

1 COMMISSIONER BURG: I guess I have basically
2 just one anyway.

3 CHAIRMAN SAHR: First of all, let's go back
4 on the record. At this point in time we'll see
5 if there are questions from the Commissioners or
6 the advisors for the Commissioners.

7 Commissioner Burg.

8 COMMISSIONER BURG: The question I have --
9 and I'll ask it first of Ms. Rogers and then of
10 Mr. Wieczorek. The fact that transport -- if
11 transport were transferred to the wireless
12 requesting company to provide, does that make the
13 cost of transport in any way disappear?

14 MS. ROGERS: No, sir.

15 COMMISSIONER BURG: Would it just shift it
16 to a different group of consumers? Would that be
17 accurate?

18 MS. ROGERS: I believe that what we've tried
19 to portray is that while you can consider the
20 actual costs of the implementation of LNP with
21 switch upgrades and all of those types of
22 elements, and you can consider transport, you
23 can't ignore transport. The transport costs are
24 not going to go away.

25 So one way or another they're going to have

1 to be borne by someone. So I think your
2 statement is accurate.

3 COMMISSIONER BURG: What would be your
4 analysis of the impact on LNP requests if that
5 transport costs was shifted to the requesting
6 party?

7 MS. ROGERS: At this point, and in
8 accordance with the evidence as it came in in
9 this hearing, I'm not sure that it would have --
10 or make a great difference. I mean we are just
11 not seeing a demand or request for LNP.

12 I mean we're saying that in our -- in the
13 exchanges that are represented here, they have
14 not had customers that have come in and said "we
15 want to port our numbers to a wireless carrier."
16 And they have not been privy to these proceedings
17 to know the costs involved. There is just not a
18 demand for it.

19 COMMISSIONER BURG: I'll give you a chance
20 to answer the same questions, Mr. Wieczorek.
21 Does the cost merely go to a different party, the
22 transport costs, or do some of them actually just
23 go away in any way?

24 MR. WIECZOREK: What Western Wireless has
25 proposed is pending the final decision of the

1 FCC, we would pay the transport costs. So to the
2 extent, sure, there's still costs there, but
3 they're not borne by the petitioners or the
4 petitioners' customers.

5 COMMISSIONER BURG: How would you recover
6 that transport cost?

7 MR. WIECZOREK: It would be part of the
8 regular bill.

9 COMMISSIONER BURG: Would your marketing of
10 LNP change if you had that additional cost?

11 MR. WIECZOREK: I'm not in the marketing
12 Department of Western Wireless. I would -- so to
13 the extent I believe it would not because they
14 would just pick that cost up and it would be part
15 of their internal cost structure.

16 To the extent that Western Wireless has
17 available points of interconnect already, they
18 would use those. Otherwise, they would use the
19 existing infrastructure either through SDTA or
20 Qwest, as discussed by Mr. Williams. And those
21 costs would just be part of the costs that they
22 would pay if it's a cellular customer calling in
23 that area.

24 COMMISSIONER BURG: Because my concern is
25 that we have right now, of course, there's no

1 reason not to promote and advertise and try to
2 get LNP customers because there's actually no
3 cost to the requesting wireless party.

4 And my concern is that where we already
5 have, from the evidence in the record at least,
6 very low take on local number portability, if
7 there were additional costs to be added to the
8 person asking to port their number through their
9 wireless company, that that desirability, both on
10 the part of the wireless company and the consumer
11 to pay the extra costs for the purpose of LNP
12 might even reduce that more. That's kind of
13 where I'm coming from.

14 MR. WIECZOREK: I do not envision that
15 Western -- it would cause Western Wireless to
16 stop any marketing. They would plan on doing an
17 LNP if the Commission would make the petitioners
18 become LNP. And I do not envision -- and, of
19 course, I'm the attorney, not the engineer, but I
20 do not envision that it would increase the
21 baseline costs of what Western Wireless would
22 charge its customer base.

23 CHAIRMAN SAHR: Off the record.

24 (A DISCUSSION WAS HELD OFF THE RECORD.).

25 CHAIRMAN SAHR: I do have a couple questions

1 since we're taking the time for that.

2 One of the things that came up is the --
3 from staff is the request that if waivers are
4 granted, then the LNP request be tracked.
5 Ms. Rogers, do you know if that's something
6 that's acceptable to your clients?

7 MS. ROGERS: To my knowledge, yes, that
8 would be acceptable to my clients.

9 CHAIRMAN SAHR: And if a waiver were to be
10 granted, one of the issues would be is this
11 something that would be open-ended, or would
12 there be a date certain? And I think implicit
13 with that date certain would be the thought that
14 obviously the Act does have a preference for LNP
15 with state oversight.

16 What would you say to the argument of
17 setting dates as opposed to being open-ended when
18 it comes to the issue of making sure that all
19 involved are moving towards taking appropriate
20 steps to put in new technology that it makes it
21 easier to do LNP and more cost effective and that
22 negotiations continue on in good faith going
23 forward?

24 How would you deal with the issue of whether
25 or not to leave this open-ended or set a date

1 certain? Because I think the idea of the date
2 certain is that it will give impetus to people to
3 try to move towards LNP even if it currently is
4 something that they feel is costly.

5 MS. ROGERS: I believe in the materials that
6 we've presented to the Commission and also in the
7 -- in some of the other decisions that we have
8 referenced and, in particular, Nebraska, Nebraska
9 did set basically the date of January of 2006,
10 which is like an 18-month period, to kind of see
11 what the resolution is going to be of some of the
12 unresolved issues, whether our costs are going to
13 be greater, because they could be depending on
14 what happens at the FCC level, and also where the
15 demand goes as time progresses.

16 And so that's why in our Reply Brief we had
17 also suggested instead of, you know, instead of
18 January 1st of 2006, instead, you know, January
19 -- June 26th of 2006.

20 I'm not -- I think that it depends on the
21 circumstances of some of the companies. And I
22 think that we would not have -- we would not be
23 adverse to a date certain such as Nebraska has
24 implemented as long as there is still enough
25 flexibility so that if there are circumstances

1 within an individual company that would put them
2 in a position where they would need to apply for
3 an additional extension or an extension of that
4 time, that there would be enough flexibility and
5 ability for that particular company or whichever
6 ones it might be, to come back before this
7 Commission and request an extension of that date.

8 CHAIRMAN SAHR: And then a question that
9 relates to the ITC and Midco situation -- and
10 this would be for either you or Mr. Coit --
11 Midco has made the argument that when we look at
12 intramodal LNP, that we have more certainty and
13 that -- although I don't know if Mr. Gerdes made
14 the argument here, I certainly think there might
15 be some feelings that perhaps ITC opened the door
16 for some competition by offering cable services
17 -- there have been some questions about who would
18 bear the cost of LNP in those situations.

19 I think, Mr. Coit, you or maybe it was
20 Ms. Rogers in the brief had made the point that
21 you felt it would be the Webster and Waubay
22 consumers that would bear that. And I guess I
23 would imagine Midcontinent's response would be,
24 well, you opened the door.

25 How would you have the Commission deal with

1 that situation, which, I mean, I think is
2 significantly different than the -- than the
3 intermodal LNP.

4 MS. ROGERS: If I could, Commission, I would
5 like to defer that question to Ben Dickens. I
6 think he was a little bit more involved in that
7 other docket than I was. So I would like to
8 defer that to him if you would allow me to do so.

9 CHAIRMAN SAHR: That would be fine.
10 Mr. Dickens.

11 MR. DICKENS: Well, Ms. Sisak is with me,
12 and she's going to speak to that.

13 CHAIRMAN SAHR: You guys are running out of
14 attorneys.

15 MR. DICKENS: I won't defer to anybody else.

16 MS. SISAK: I'm prepared to answer. I think
17 part of the problem with the Midcontinent
18 example, you are correct that the unresolved
19 issues are not -- maybe not of concern, or maybe
20 not as great a concern for intramodal LNP. For
21 example, transport shouldn't be a significant
22 issue and, obviously, wireless to wireline
23 porting is not an issue.

24 The problem is the way Midcontinent has
25 requested LNP, which is on an exchange-by-

1 exchange basis. Now, for ITC it's two exchanges.
2 And so when you look at what ITC would have to do
3 to become LNP capable for those two exchanges,
4 they would, in essence, have to incur almost all
5 of the costs of LNP other than the transport
6 costs that are in their cost exhibit. But they'd
7 only be able to spread that over the few
8 customers in those two exchanges.

9 And so on the one hand I do not disagree
10 that some of the issues on intramodal porting are
11 fewer, but on the other hand the way Midcontinent
12 has requested LNP makes the costs really
13 significant.

14 CHAIRMAN SAHR: Thank you. And I'll ask the
15 follow-up question you're probably already
16 anticipating. If that is the situation, didn't
17 ITC open up the door for that result when it went
18 into the cable business?

19 MS. SISAK: Well, I'm going to have to say I
20 don't know if ITC only offers cable service in a
21 couple of exchanges. So I guess I can't fully
22 answer the question. I don't think they've
23 opened the door.

24 I think the situation may be quite different
25 if Midcontinent, for example, came in and

1 requested LNP for all ITC exchanges. The cost
2 analysis would be different.

3 MS. SMITH: Ms. Sisak, this is John Smith.
4 When you say the costs in those two exchanges can
5 only be spread over those two exchanges, do you
6 mean that any surcharge the company imposed could
7 only be imposed in those two exchanges? Or are
8 you just stating that costs that have a
9 company-wide level of cost incurrences are only
10 going to benefit those two exchanges, but those
11 surcharges would be borne by all of the customers
12 in the company?

13 MS. SISAK: The answer is it's our
14 understanding of the FCC rules that the federal
15 surcharge could only be applied to the customers
16 in those two exchanges. And the second part of
17 your question, though, is also true. Only the
18 customers in those two exchanges could benefit
19 from LNP. That's all of the other ITC customers
20 for LNP would be inequitable from that standpoint
21 as well.

22 COMMISSIONER BURG: Can I ask a follow-up
23 question? The question I'd have to Ms. Sisak
24 would even all the people in those exchanges be
25 able to benefit, or are they only going to offer

1 it into the urban area where they have cable, or
2 do they offer cable in the entire exchange?

3 I mean we even narrow it down to even fewer
4 people because we're asking all the people in
5 those exchanges to pay for services that can only
6 benefit that metropolitan area, I'm guessing.

7 MR. SMITH: They're only certified in the
8 towns.

9 COMMISSIONER BURG: Yeah. So then even if
10 we tie it to those two exchanges, we're having a
11 lot of people pay for it that aren't -- it isn't
12 even available to, is the only challenge that I
13 see.

14 CHAIRMAN SAHR: Although the provider that
15 made the conscious decision to open themselves up
16 to this form of competition could also bear the
17 cost and they don't have to pass on to the
18 consumer. And it's a little bit different than
19 the people who are operating their businesses and
20 have somebody else come into the market without
21 the converse of that happening.

22 I would give Mr. Gerdes a chance to add
23 anything he wants to.

24 MR. GERDES: First thing I'd observe,
25 Commissioners, is we're getting pretty far

1 outside the evidentiary record of the proceeding.
2 And so I hesitate to go where I need to go to
3 answer one question.

4 Our evidence is that ITC is building out
5 their cable and it's not in all of the exchanges
6 at this point. They're in the process of
7 building it out. That's what we understand from
8 their web site.

9 As far as the rest of it is concerned, our
10 point is as stated, and that is that this is a
11 competitive entry. I mean, I don't --
12 Midcontinent has to come in -- has to compete.
13 And if ITC is going to go into Midcontinent's
14 business, then Midcontinent has the ability to go
15 into ITC's business, we would submit, so we can
16 offer the same packages. I mean, it's a
17 competitive situation.

18 As far as spreading the costs are concerned,
19 I'd agree with what Chairman Sahr suggested would
20 be one of our arguments and that is, well, they
21 should have thought of that before they went into
22 the business.

23 But the other part of it is regardless of
24 what the FCC requirements are, if in fact, the
25 cable business gets spread out all through the

1 ITC exchanges, eventually then you will end up
2 having those costs all spread through the ITC
3 exchanges. So it's a gradual thing rather than
4 an instantaneous thing.

5 But, again, it's simply a matter of leveling
6 the playing field in a competitive situation.
7 And it gets a little bit far away from the
8 philosophical aspect of local number portability,
9 quite frankly, because, quite frankly, again, we
10 would submit that there is no comparison between
11 intramodal and intermodal LNP.

12 And that if you look at the law on
13 intramodal LNP, there is -- there isn't any
14 qualification to the obligation of a carrier to
15 provide it as in the law. There's none. And so
16 they have to. I mean, that's the bottom line.
17 Now, and I guess that's the end of what I have to
18 say.

19 CHAIRMAN SAHR: Well, and there certainly is
20 a case that could be made saying when you're
21 dealing with intramodal LNP, that there's much --
22 well, there's -- there may more likely be a cost
23 benefit in lower rates to consumers when you're
24 dealing with services that are a direct
25 substitute for one another as opposed to -- we

1 don't need to re-argue this whether or not you
2 consider cellular service a substitute or
3 compliment to wireline. I think you more than
4 likely in those exchanges, if, at least in
5 theory, it should work that you would get lower
6 rates, so an additional cost might be made up for
7 in the competition between the two parties all
8 offering substitute services.

9 MR. GERDES: Because you are doing, in fact,
10 what the '96 Act contemplates and that is putting
11 true competition into the loop. I mean that's
12 what that does. So, theoretically, it will keep
13 prices as low as they can go.

14 MR. SMITH: Can I ask a follow-up for maybe
15 Sisak and Dave? Is under the cable exemption,
16 you know, when you give up your exemption when
17 you get into cable business, does the Commission
18 yet retain after that its authority under
19 251(F)(2) to suspend? Is that still in existence
20 after that?

21 MS. SISAK: Excuse me?

22 MR. SMITH: Do we still even have the
23 ability to suspend once they've lost their rural
24 exemption through the cable -- entering the cable
25 business?

1 MS. SISAK: Yes, you do. Two different
2 sections and two different exemptions.

3 MR. GERDES: I think that's right.

4 MS. SISAK: You specifically retain that
5 authority. And I would further point out that
6 although this might seem a little bit unfair to
7 the cable competitors and even the CLEC
8 competitors, the reality is Congress only thought
9 to give some form of protection to ILEC's when it
10 implemented 251.

11 MR. SMITH: Follow-up question maybe for
12 Mr. Wieczorek on that. Let me ask you this with
13 ITC then: If we were to not grant the suspension
14 because of the issue with respect to the
15 intramodal porting, effectively, is there any --
16 what are the additional cost considerations,
17 then, with respect to going to wireless?

18 MR. WIECZOREK: The only additional cost
19 considerations that I would see would be the need
20 to activate LNP for those switches that were not
21 part of the exchange that they already have with
22 Midco. They do have some of their switches --
23 already have the software activated, but they do
24 have some switches, and I'm not sure the switches
25 they would have. That would be in Midco's area.

1 But, I mean, that's what I envision being an
2 additional cost.

3 MR. SMITH: I mean there would be additional
4 cost. It would not be de minimis.

5 MR. WIECZOREK: Well, I would guess I would
6 argue what the definition of de minimis might be.
7 But there would be additional cost to become LNP
8 compliant beyond the Midco because I think it's a
9 fair statement that they have switches outside of
10 Midco that aren't LNP compliant yet.

11 MR. COIT: If I could comment on that
12 briefly. I agree there would be additional
13 costs. Obviously, you have the transport issue
14 that is involved with the intermodal that you
15 don't have, as we all know; and that can generate
16 additional cost depending exactly how that is
17 ultimately distributed in terms of the burden.

18 The other thing that I think to keep in mind
19 with respect to intermodal portability is not
20 just the direct cost of implementing the LNP. As
21 I had mentioned earlier, there are significant
22 other financial impacts associated with
23 intermodal LNP as a result of the difference
24 between the calling scopes between wireless and
25 wireline.

1 So I would just encourage the -- or urge the
2 Commission to not -- when you're looking at
3 intramodal LNP, just don't think about the direct
4 cost of providing the LNP service. There are
5 other financial impacts that I think the LEC is
6 going to experience as a result.

7 MR. SMITH: I just have one last thing, Mr.
8 Wieczorek. You mentioned some of the exchanges
9 on this list that already had direct connections,
10 and I didn't catch all those companies as you
11 were breezing through that.

12 MR. WIECZOREK: We have existing POI's with
13 Golden West, Vivian --

14 MR. SMITH: Hang on a second.

15 MR. WIECZOREK: Vivian, Venture, West River,
16 and Interstate. And I believe and for some of
17 those we have more than one existing POI due to
18 their system. I know for sure that's true with
19 Interstate. I believe that's true for Venture.
20 And the others I couldn't say for certain.

21 MR. SMITH: You don't with Brookings,
22 though, huh?

23 MR. WIECZOREK: They're not on my list.

24 MR. COIT: And I think the West River you
25 mentioned would be the West River out of Hazen,

1 North Dakota? Is it West River Telephone Co-op
2 or West River Telephone Communications
3 Cooperative?

4 MR. WIECZOREK: I believe it is the Mobridge
5 branch.

6 MR. SMITH: They're not requesting the
7 waiver.

8 MR. SMITH: Cross them out.

9 MS. SISAK: And I would like to just offer
10 one reminder. Although Western Wireless has
11 direct connect with the companies mentioned, the
12 other wireless carriers operating in the area do
13 not or may not. I'm not positive, but that is --
14 I think we need to remember that there are other
15 wireless carriers that will impact the cost of
16 LNP and will be impacted by these decisions.

17 CHAIRMAN SAHR: Thank you. Any other
18 questions from Commissioners or advisors? Seeing
19 none, I move that we go into executive session.

20 Why don't we do this: And this can be back
21 on the record. It's about 3:00 o'clock right
22 now. So that we can give everybody here in
23 Pierre and on line a little bit of certainty, we
24 will shoot for 3:30 to come back upstairs. And
25 at least that gives you the minimum amount of

1 time that you have or perhaps if you look at it
2 the other way, the maximum, but it at least gives
3 us a target. And realize the Commission may end
4 up having to take longer, but everyone knows they
5 have half an hour to check their messages and do
6 whatever else they need to do.

7 (COMMISSION IN EXECUTIVE SESSION, AND HEARING
8 RECONVENED AT 4:00 PM.)

9 CHAIRMAN SAHR: Let's go back on the record.

10 We are -- we've come out of executive
11 session, and we're prepared to make a couple of
12 motions.

13 I'd like to say at the outset that LNP
14 clearly comes with a cost associated with that.
15 And I think the Act contemplates the commissions
16 reviewing that and looking at not only those
17 costs, but also the public interest test. And
18 that's what we attempted to do here.

19 Under these circumstances, that cost, when
20 coupled with the uncertain demand, makes it
21 extremely difficult to ask our state's consumers
22 to bear the cost of intermodal LNP at this time.

23 And certainly another factor that I think
24 all the Commissioners felt was out there is a
25 current uncertainty. We have pending FCC

1 proceedings. We have pending court cases. And
2 it really would be prudent to see how these cases
3 proceed so we have more certainty as to the
4 effect of requiring LNP. We also may have the
5 ability to look and see what happens in other
6 cases as well and see how those LNP matters
7 proceed.

8 With that in mind, I'm going to make the
9 first motion, which will be relating to
10 intermodal LNP, or wireline to wireless LNP.

11 And I would move that we grant the request
12 for suspensions until December 31, 2005.

13 COMMISSIONER HANSON: Second.

14 CHAIRMAN SAHR: And we have a second from
15 Hanson. And I have an additional comment, but I
16 will go ahead and let --

17 COMMISSIONER BURG: One comment first.

18 CHAIRMAN SAHR: The one thing I would say is
19 we will work out some of the details on how the
20 December 31st, 2005, time frame will be -- how
21 that particular date will work as far as the
22 procedures for how it will be -- how people can
23 file to continue suspensions, or to have that
24 reviewed if they feel it's necessary.

25 So although the suspension is granted until

1 December 31st, 2005, it doesn't limit the ability
2 of the Commission to grant a further suspension
3 from 2005, from the December 31st, 2005, on. I
4 think that's something we'll look at in the
5 future to see if the carriers affected would file
6 for suspension, additional suspension.

7 One of the things I would add is I think we
8 saw that during the hearing we had some very good
9 negotiations take place, and I would urge people
10 to continue looking into that and urge the
11 parties to continue to take steps to try to move
12 towards LNP.

13 Because no matter what the feelings of this
14 Commission may be one way or the other, there's
15 certainly a chance there may be ultimately an LNP
16 obligation, and there is without a doubt some
17 consumer benefit to LNP.

18 So I would strongly urge everyone to
19 continue to work on these issues and to see if
20 you can't come up with a mutually-acceptable
21 solution without having the PUC being involved.

22 And then I think the final thing I would add
23 is just thank you, the PUC staff. They did a
24 great job. And I think the brief and the
25 analysis supplied by PUC staff were excellent.

1 And although we did not follow their
2 recommendations to a T, we certainly appreciated
3 the analysis; and it gave us a really, I think,
4 balanced view of the issues.

5 COMMISSIONER BURG: Gary, did you have any
6 comments you wanted to make, Gary, before I make
7 mine?

8 COMMISSIONER HANSON: Go ahead, Jim.

9 COMMISSIONER BURG: I will concur in part
10 and dissent in part with that motion. I concur
11 that we grant suspension to all petitioners. I
12 feel they met the requirement approving the
13 necessity of suspension -- they met the
14 requirement of proving the necessity of
15 suspension to avoid significant adverse economic
16 impact on users of telecommunications generally.

17 I also feel they met the burden to avoid
18 imposing a requirement that is unduly
19 economically burdensome. I don't think the key
20 is to what it costs per customer. I think the
21 key is what the total cost is. Because the only
22 way that you get lower per customer is by having
23 a lot of customers, not that it's any cheaper to
24 provide that service.

25 And I think -- and later on I'll mention

1 that I think it can be used to better use. I
2 believe all parties accepted the fact that LNP
3 could be technically feasible. I don't think
4 that was an issue. I don't believe the LNP is
5 right for application in rural areas at this
6 time.

7 Several discussions -- decisions, several
8 decisions need to be made by the FCC and numerous
9 states have granted suspended waivers because of
10 that and other reasons, and I agree with those.

11 My threshold for significant economic impact
12 and undue economic burden is quite low. I do not
13 see public benefit due to the low estimated LNP
14 interest and the unavailability of LNP at all in
15 vast areas of the state. So why should those
16 consumers bear any additional cost to provide LNP
17 to others when very few people are going to
18 benefit?

19 I would further argue that the per line cost
20 is not the proper indicator, but the total cost
21 when you consider adverse economic impact. Total
22 cost is a public interest economic impact. This
23 is money not available for higher telephone
24 communications usage, both by wireline and
25 wireless companies.

1 The fact that transport could be paid by the
2 wireless companies does not make those costs
3 disappear. The money spent for transport by
4 wireless providers is money, I feel, could better
5 be spent for better and wider wireless services.
6 If I had my preference -- and I believe a mistake
7 was made in requiring wireline to wireless
8 portability at all. I don't think -- I think
9 it's proven to not be that desirable.

10 And so now I concurred in that part of the
11 motion. I dissent in the part of the setting a
12 date specific. I think it just puts us through
13 this exercise again. I think that even the
14 desire for LNP is actually going to wane, not
15 grow. However, my preference would be that a
16 review is granted on suspension based on evidence
17 of requests for LNP as a percentage of the
18 customers in an exchange.

19 If we took that approach and showed that the
20 actual desirability is out there, that's what I
21 think should trigger whether we do additional
22 review or not, rather than just a date certain
23 down the road on a product that I don't think is
24 going to be taken and I think is expensive in
25 general.

1 So with that, that's where I stand on that
2 motion.

3 CHAIRMAN SAHR: Okay. So that resolved the
4 issue of the intermodal LNP. We still have the
5 issue of the LNP for intramodal purposes, which
6 would be the ITC request for suspension; is that
7 correct?

8 MR. SMITH: That's right.

9 CHAIRMAN SAHR: And I would move that we
10 take that under advisement. I think all along we
11 acknowledged that while there are similarities in
12 these cases, that the ITC and Midco case involved
13 some dynamics that aren't in the other cases.
14 And I think it's appropriate at this time to take
15 them under advisement and issue an opinion at a
16 later date.

17 COMMISSIONER BURG: I would second that.

18 COMMISSIONER HANSON: Hanson concurs.

19 COMMISSIONER BURG: And I'd just like to add
20 I think that there are some reasons to look at
21 that request for intramodal LNP; however, at this
22 point it's not nearly clear enough to me as to
23 how those costs would be distributed. And I
24 can't imagine that entire cost on those two
25 counts and not finding a better way to mitigate

1 that. I think with we need to take it under
2 advisement and investigate that a little bit
3 farther.

4 CHAIRMAN SAHR: With that, the hearing will
5 be concluded. And I do want to thank all
6 involved for their professionalism and input. It
7 was a long process, but I think it was something
8 that was a great learning process for everyone.
9 Thank you.

10 (The hearing concluded at 4:10 p.m.)

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1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
 2) :SS
 3 COUNTY OF STANLEY) SIXTH JUDICIAL CIRCUIT

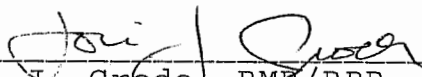
4 I, Lori J. Grode, Registered Merit Reporter and
 5 Registered Professional Reporter and Notary Public in
 6 and for the State of South Dakota:

7 DO HEREBY CERTIFY that the above hearing pages 1
 8 through 73, inclusive, was recorded stenographically by
 9 me and reduced to typewriting.

10 I FURTHER CERTIFY that the foregoing transcript of
 11 the said hearing is a true and correct transcript of the
 12 stenographic notes at the time and place specified
 13 hereinbefore.

14 I FURTHER CERTIFY that I am not a relative or
 15 employee or attorney or counsel of any of the parties,
 16 nor a relative or employee of such attorney or counsel,
 17 or financially interested directly or indirectly in this
 18 action.

19 IN WITNESS WHEREOF, I have hereunto set my hand and
 20 seal of office at Ft. Pierre, South Dakota, this 2nd day
 21 of September, 2004.

22 
 23 _____
 24 Lori J. Grode RMR/RPR
 25 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)	FINAL DECISION AND
ALLIANCE COMMUNICATIONS)	ORDER; NOTICE OF ENTRY
COOPERATIVE, INC. AND SPLITROCK)	
PROPERTIES, INC. FOR SUSPENSION OR)	TC04-055
MODIFICATION OF 47 U.S.C. § 251(B)(2) OF)	
THE COMMUNICATIONS ACT OF 1934 AS)	
AMENDED)	

PROCEDURAL HISTORY

On March 15, 2004, Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc. (Alliance 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 their 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 Alliance'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), Midcontinent Communications (Midcontinent) 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 25, 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 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 intermodal 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).

1. Alliance filed the Petition on March 15, 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. Midcontinent filed to intervene on March 24, 2004, WWC filed to intervene on March 30, 2004, and SDTA filed to intervene on March 31, 2004. On April 19, 2004, the Commission issued an order granting intervention to WWC, Midcontinent 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 25, 2004. The hearing was held as scheduled.

3. On September 4, 2004, the Commission issued an Order Temporarily Suspending Local Number Portability Obligations suspending Alliance'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 "*Intramodal 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.

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 Alliance is a local exchange carrier with fewer than 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. Alliance is a rural local exchange carrier (RLEC) that provides local exchange and exchange access services to 9,851 access lines of which 77 are Lifeline service. Alliance Ex 1, p. 1; 47 U.S.C. §153(37).

9. Three wireless carriers have made bona fide requests for LNP from Alliance. No wireline carrier has made a bona fide request for LNP. Alliance Ex 1 at 2.

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, Alliance and 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 Alliance'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 Alliance is necessary to avoid a significant adverse economic impact on Alliance's users of telecommunications services generally and to avoid imposing a requirement that is unduly economically burdensome on Alliance. 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 Alliance to implement number portability will be significant. These costs fall into three general categories: switch upgrade, transport and recurring operational costs. The evidence addressing Alliance's costs of implementing LNP was conflicting. Alliance's cost witness projected the non-recurring cost for Alliance to implement LNP to be \$158,355 excluding transport and \$170,144 including transport. He estimated the recurring monthly costs for Alliance to be \$3,668 excluding transport and \$19,170 including transport. Alliance's cost witness projected that these costs would translate into an LNP cost of \$0.84 per line per month excluding transport and \$2.68 including transport. Bullock Ex 3. WWC's witness projected a non-recurring cost of \$108,258 excluding transport and \$108,822 including transport. WWC Ex 15. WWC's cost witness projected recurring monthly cost for Alliance at \$2,217 excluding transport and \$3,658 including transport. WWC Ex 15. WWC projected these costs would translate into an LNP cost of \$0.47 cost per line per month excluding transport and \$0.61 including transport. WWC Ex 15.

18. The major areas of disagreement regarding the costs of implementing LNP for Alliance and the other Petitioners were switch upgrade, internal costs and transport. The difference between WWC's and Alliance's cost estimate for switch upgrade was the different assumptions made by Alliance's and WWC's experts on the estimated growth in number of ports from the switch. TR 930-31. The difference in other internal costs was essentially a difference in judgment between the two experts based upon their professional experiences. TR 851, 883-84, 934.

19. As with most of the other Petitioners, transport costs, particularly recurring monthly costs, comprised a significant portion of the costs for Alliance to provide LNP. Transport costs as estimated by WWC were considerably smaller. Alliance proposed a transport method using a DS1 (T1) circuit installed between each Alliance host switch or stand alone switch that is not subtended from a local tandem to each wireless carrier that is currently providing service in Alliance's territory that does not already have a direct trunk into Alliance's network. TR. at 868.

20. 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 Alliance's customers via Alliance'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 lower estimated initial non-recurring cost outlay - \$11,789 as calculated by Alliance's witness vs. \$564 as estimated by WWC's witness and a significantly lower estimated monthly recurring cost for transport for Alliance - \$15,502 per month as calculated by Alliance's witness vs. \$1,441 per month as calculated by WWC's witness. Bullock Ex 3; WWC Ex 15.

21. The basis for the routing methodology proposed by Alliance's cost witness was:

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.

The second reason is that direct trunks for delivery of traffic from the ILEC network to the wireless carrier is consistent with existing interconnection agreements.

The third reason we decided to price our transport this way is that it's a known entity. We can look up tariffs for T-1 circuits, and it is what it is. That's the price you pay for a T-1 circuit from point A to point B.

. . . And, finally, and I think this is particularly important, at this time I think it's safe to say that nobody can predict the volume of traffic. . . . TR 856-858. See also TR 879-880.

22. 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.

23. 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*.

⁷⁵As 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.

24. 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 Alliance'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.

25. 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.

26. 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 Alliance 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.

27. 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 Alliance 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 Alliance could necessarily simply opt into WWC's interconnection agreement with Qwest either in its entirety or as to only one particular provision.

28. 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 Alliance 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 Alliance would then have been compelled to incur the substantial switch upgrade and other non-transport costs of LNP implementation.

29. 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.

30. Other factors that influenced the differences between Alliance's and WWC's estimates of the cost of LNP implementation primarily involved the ability of Alliance to reduce administrative mobilization costs through sharing with other RLECs.

31. Although there was evidence in the record that Petitioners 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).

32. We find that implementing LNP at this time could cost Alliance or its users as much as \$0.84 per line per month excluding transport and that the costs of transport, if ultimately held to be Alliance's responsibility, could raise that monthly cost substantially higher.

33. Almost 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 Alliance's case, both Alliance's and WWC's cost witnesses used the same estimated porting number to derive estimated costs.

34. Alliance's manager testified that Alliance had received no requests for LNP from its customers. Alliance Ex 1 at 2. Alliance did not conduct a formal survey. TR 816.

35. 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.

36. 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 Ex 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.*

37. 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.

38. 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.

39. 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%.

40. 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.

41. 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 from 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. 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.

42. 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.

43. 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 Alliance's LNP obligations for a period of time within which some of the uncertainties might be resolved. Alliance 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.

44. The Commission accordingly finds that it is consistent with the public interest convenience and necessity to suspend Alliance'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.

45. 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.

46. 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.

47. Given the significant costs of implementing and providing LNP services in the Alliance 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 Alliance area at this time, the Commission finds that suspending Alliance's LNP obligations until December 31, 2005, is necessary to avoid a significant adverse economic impact on the users of Alliance's telecommunications services generally.

48. Based upon the same findings, the Commission further finds that suspending Alliance's LNP obligations until December 31, 2005, is necessary to avoid imposing a requirement that is unduly economically burdensome on Alliance.

49. Although Midcontinent intervened in this docket, it is not presently certified to provide service in Alliance's territory. Before Midcontinent can be granted a certificate of authority in Alliance's territory, it will have to comply with the requirements of ARSD 20:10:32:15. At such time as Midcontinent applies for authority to provide services in Alliance's territory, Midcontinent can also petition the Commission for a lifting of the suspension of intramodal LNP granted herein.

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 Alliance'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 Alliance's LNP obligations pending final action on Alliance'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. Alliance is a local exchange carrier serving fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide. Alliance 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 Alliance of the requirements 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.

8. Granting a suspension of Alliance's intramodal and intermodal LNP obligations until December 31, 2005, is necessary to avoid a significant adverse economic impact on the users of Alliance's telecommunications services generally.

9. Granting a suspension of Alliance's intramodal and intermodal LNP obligations until December 31, 2005, is necessary to avoid imposing a requirement that is unduly economically burdensome on Alliance.

10. Although Midcontinent intervened in this docket, it is not presently certified to provide service in Alliance's territory. Before Midcontinent can be granted a certificate of authority in Alliance's territory, it will have to comply with the requirements of ARSD 20:10:32:15. At such time

as Midcontinent applies for authority to provide services in Alliance's territory, Midcontinent can also petition the Commission for a lifting of the suspension of intramodal LNP granted herein.

11. The suspension granted herein does not relieve Alliance of its obligation to properly route calls to numbers ported between other carriers, including wireless carriers.

It is therefore

ORDERED, that Alliance's obligation to implement 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 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 Alliance 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 at such time as Midcontinent applies for authority to provide services in Alliance's territory, Midcontinent can also petition the Commission for a lifting of the suspension of intramodal LNP granted herein; and it is further

ORDERED, that the suspension granted herein does not relieve Alliance 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:	<u><i>Wilma Kelso</i></u>
Date:	<u>9/30/04</u>
(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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October 29, 2004

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And via fax at: 605-773-3809

Pamela Bonrud
Executive Director
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Pierre SD 57501

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

FAX Received OCT 29 2004

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:

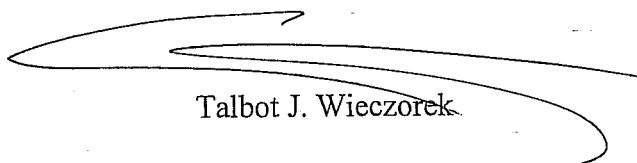
- TC04-038 Santel Communications Cooperative, Inc.
- TC04-044 Sioux Valley Telephone Company
- TC04-045 Golden West Telecommunications Cooperative, Inc.,
Vivian Telephone Company and Kadoka Telephone
Company
- TC04-046 Armour Independent Telephone Company, Bridgewater-
Canistota Independent Telephone 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

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

Pam Bonrud
October 29, 2004
Page 2

If you have any questions, please call me.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Talbot J. Wieczorek'. The signature is written over the printed name.

Talbot J. Wieczorek

TJW:klw

Enclosures

c: Western Wireless, Inc.
Richard Coit
Darla Pollman Rogers
Jeff Larson
David Gerdes
Richard Helsper
Ben Dickens

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

NOV 01 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITION)
OF ALLIANCE COMMUNICATIONS)
COOPERATIVE, INC. AND)
SPLITROCK PROPERTIES, INC. FOR)
SUSPENSION OR MODIFICATION OF)
47 U.S.C. § 251(b)(2) OF THE)
COMMUNICATIONS ACT OF 1934 AS)
AMENDED)

Docket No. TC04-055

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 Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc. 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:

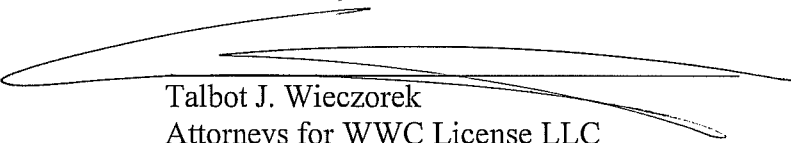
- 1) the Commission inappropriately interpreted 47 USC § 251(f)(2) in a manner which is inconsistent with the statutory construction and congressional intent by improperly blending the public interest prong with the economic elements of the necessity prong and by failing to perform the analysis it deemed 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, 17-29, 32, 33, 35, 36, 39, 41-48, 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, GOODSSELL
& NELSON, LLP



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Attorneys for WWC License LLC
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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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Kadoka Armour, Bridgewater-Canistota Tele Co
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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
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Talbot J. Wieczorek

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

NOV 01 2004

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)

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
WWC LICENSES
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
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

Intervenor, WWC License LLC ("Western Wireless"), by and through its attorney, Talbot J. Wiczorek, 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/Splitrocks, 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.

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.

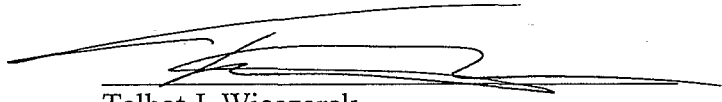
The South Dakota Public Utilities Commission's staff recommended that Brookings, ITC, Venture, Golden West/Vivian/Kadoka and Alliance/Splitrock be denied suspension. While Western Wireless believes all Petitioners failed to meet their standards, Western Wireless agrees with staff's position that these 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, GOODSSELL
& 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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Beresford Municipal Telephone Company
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.
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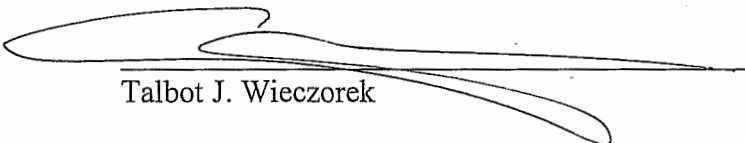
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Talbot J. Wiczorek

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

NOV 22 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF
ALLIANCE COMMUNICATIONS COOP-
ERATIVE, INC. AND SPLITROCK PROP-
ERTIES, INC. FOR SUSPENSION OR
MODIFICATION OF 47 U.S.C. §251(b)(2)
OF THE COMMUNICATIONS ACT OF 1934
AS AMENDED

DOCKET NUMBER TC04-055

OPPOSITION TO THE PETITION
TO RECONSIDER FINAL
DECISION AND ORDER

ALLIANCE COMMUNICATIONS COOPERATIVE, INC. AND SPLITROCK PROP-
ERTIES, INC. (Petitioner), by its attorney, 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 simultane-
ously 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

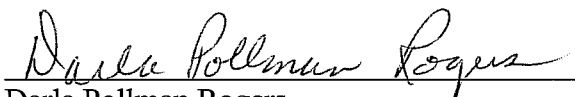
4) the Public Interest Analysis performed by the Commission is not consistent with the facts before and findings made by the Commission.

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.



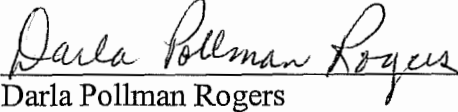
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CERTIFICATE OF SERVICE

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:

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	<input checked="" type="checkbox"/>	E-Mail
Richard J. Helsper	<input checked="" type="checkbox"/>	First Class Mail
Glover, Helsper and Rasmussen, P.C.	<input type="checkbox"/>	Hand Delivery
100 Twenty-Second Avenue, Suite 200	<input type="checkbox"/>	Facsimile
Brookings, South Dakota 57006	<input type="checkbox"/>	Overnight Delivery
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Richard D. Coit, Executive Director	<input checked="" type="checkbox"/>	First Class Mail
South Dakota Telecommunications Ass'n	<input type="checkbox"/>	Hand Delivery
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Pierre, South Dakota 57501	<input type="checkbox"/>	Overnight Delivery
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Larson and Nipe	<input type="checkbox"/>	Hand Delivery
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	<input type="checkbox"/>	E-Mail

Dated this twenty-second day of November, 2004.



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 COMMUNICA-
TIONS ACT OF 1934 AS AMENDED

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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.

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.

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-

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-

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

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

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.

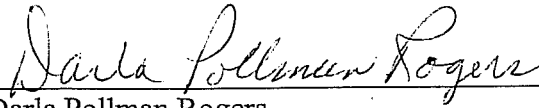
It is clear that Western Wireless' criticism of the Orders is misguided as the Commission performed a thorough public interest analysis based on the evidence presented on the record which included 1) a thorough analysis of the LNP cost information presented by all Parties; and 2) a thorough analysis 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 Western Wireless.

Respectfully submitted this twenty-second day of November, 2004.

A handwritten signature in cursive script that reads "Darla Pollman Rogers". The signature is written in black ink and is positioned above a horizontal line.

Darla Pollman Rogers

Riter, Rogers, Wattier & Brown, LLP

P. O. Box 280

Pierre, South Dakota 57501

Telephone (605) 224-7889

Fax (605) 224-7102

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

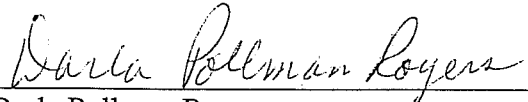
Richard D. Coit, Executive Director (X) First Class Mail
South Dakota Telecommunications Ass'n () Hand Delivery
P. O. Box 57 () Facsimile
Pierre, South Dakota 57501 () Overnight Delivery
(X) E-Mail

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

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF)	ORDER DENYING PETITION
ALLIANCE COMMUNICATIONS)	FOR RECONSIDERATION
COOPERATIVE, INC. AND SPLITROCK)	
PROPERTIES, INC. FOR SUSPENSION OR)	TC04-055
MODIFICATION OF 47 U.S.C. § 251 (B)(2) OF)	
THE COMMUNICATIONS ACT OF 1934 AS)	
AMENDED)	

On March 15, 2004, Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc. (Alliance 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 their 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 Alliance'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), Midcontinent Communications (Midcontinent) 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 25, 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 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 intermodal 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:	<u>Helaine Kalbs</u>
Date:	<u>12/30/04</u>
(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)	AMENDED FINAL DECISION
ALLIANCE COMMUNICATIONS)	AND ORDER; NOTICE OF
COOPERATIVE, INC. AND SPLITROCK)	ENTRY
PROPERTIES, INC. FOR SUSPENSION OR)	
MODIFICATION OF 47 U.S.C. § 251(B)(2) OF)	TC04-055
THE COMMUNICATIONS ACT OF 1934 AS)	
AMENDED)	

PROCEDURAL HISTORY

On March 15, 2004, Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc. (Alliance 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 their 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 Alliance'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), Midcontinent Communications (Midcontinent) 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 25, 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 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 intermodal 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).

1. Alliance filed the Petition on March 15, 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. Midcontinent filed to intervene on March 24, 2004, WWC filed to intervene on March 30, 2004, and SDTA filed to intervene on March 31, 2004. On April 19, 2004, the Commission issued an order granting intervention to WWC, Midcontinent 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 25, 2004. The hearing was held as scheduled.

3. On September 4, 2004, the Commission issued an Order Temporarily Suspending Local Number Portability Obligations suspending Alliance'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.

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 Alliance is a local exchange carrier with fewer than 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. Alliance is a rural local exchange carrier (RLEC) that provides local exchange and exchange access services to 9,851 access lines of which 77 are Lifeline service. Alliance Ex 1, p. 1; 47 U.S.C. §153(37).

9. Three wireless carriers have made bona fide requests for LNP from Alliance. No wireline carrier has made a bona fide request for LNP. Alliance Ex 1 at 2.

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, Alliance and 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 Alliance'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 Alliance is necessary to avoid a significant adverse economic impact on Alliance's users of telecommunications services generally and to avoid imposing a requirement that is unduly economically burdensome on Alliance. 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 Alliance to implement number portability will be significant. These costs fall into three general categories: switch upgrade, transport and recurring operational costs. The evidence addressing Alliance's costs of implementing LNP was conflicting. Alliance's cost witness projected the non-recurring cost for Alliance to implement LNP to be \$158,355 excluding transport and \$170,144 including transport. He estimated the recurring monthly costs for Alliance to be \$3,668 excluding transport and \$19,170 including transport. Alliance's cost witness projected that these costs would translate into an LNP cost of \$0.84 per line per month excluding transport and \$2.68 including transport. Bullock Ex 3. WWC's witness projected a non-recurring cost of \$108,258 excluding transport and \$108,822 including transport. WWC Ex 15. WWC's cost witness projected recurring monthly cost for Alliance at \$2,217 excluding transport and \$3,658 including transport. WWC Ex 15. WWC projected these costs would translate into an LNP cost of \$0.47 cost per line per month excluding transport and \$0.61 including transport. WWC Ex 15.

18. The major areas of disagreement regarding the costs of implementing LNP for Alliance and the other Petitioners were switch upgrade, internal costs and transport. The difference between WWC's and Alliance's cost estimate for switch upgrade was the different assumptions made by Alliance's and WWC's experts on the estimated growth in number of ports from the switch. TR 930-31. The difference in other internal costs was essentially a difference in judgment between the two experts based upon their professional experiences. TR 851, 883-84, 934.

19. As with most of the other Petitioners, transport costs, particularly recurring monthly costs, comprised a significant portion of the costs for Alliance to provide LNP. Transport costs as estimated by WWC were considerably smaller. Alliance proposed a transport method using a DS1 (T1) circuit installed between each Alliance host switch or stand alone switch that is not subtended from a local tandem to each wireless carrier that is currently providing service in Alliance's territory that does not already have a direct trunk into Alliance's network. TR. at 868.

20. 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 Alliance's customers via Alliance'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 lower estimated initial non-recurring cost outlay - \$11,789 as calculated by Alliance's witness vs. \$564 as estimated by WWC's witness and a significantly lower estimated monthly recurring cost for transport for Alliance - \$15,502 per month as calculated by Alliance's witness vs. \$1,441 per month as calculated by WWC's witness. Bullock Ex 3; WWC Ex 15.

21. The basis for the routing methodology proposed by Alliance's cost witness was:

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.

The second reason is that direct trunks for delivery of traffic from the ILEC network to the wireless carrier is consistent with existing interconnection agreements.

The third reason we decided to price our transport this way is that it's a known entity. We can look up tariffs for T-1 circuits, and it is what it is. That's the price you pay for a T-1 circuit from point A to point B.

. . . And, finally, and I think this is particularly important, at this time I think it's safe to say that nobody can predict the volume of traffic. . . . TR 856-858. See also TR 879-880.

22. 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.

23. 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*.

⁷⁵As 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.

24. 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 Alliance'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.

25. 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.

26. 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 Alliance 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.

27. 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 Alliance 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 Alliance could necessarily simply opt into WWC's interconnection agreement with Qwest either in its entirety or as to only one particular provision.

28. 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 Alliance 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 Alliance would then have been compelled to incur the substantial switch upgrade and other non-transport costs of LNP implementation.

29. 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.

30. Other factors that influenced the differences between Alliance's and WWC's estimates of the cost of LNP implementation primarily involved the ability of Alliance to reduce administrative mobilization costs through sharing with other RLECs.

31. Although there was evidence in the record that Petitioners 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).

32. We find that implementing LNP at this time could cost Alliance or its users as much as \$0.84 per line per month excluding transport and that the costs of transport, if ultimately held to be Alliance's responsibility, could raise that monthly cost substantially higher.

33. Almost 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 Alliance's case, both Alliance's and WWC's cost witnesses used the same estimated porting number to derive estimated costs.

34. Alliance's manager testified that Alliance had received no requests for LNP from its customers. Alliance Ex 1 at 2. Alliance did not conduct a formal survey. TR 816.

35. 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.

36. 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 Ex 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.

37. 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.

38. 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.

39. 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%.

40. 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.

41. 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 from 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. 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.

42. 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.

43. 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 Alliance's LNP obligations for a period of time within which some of the uncertainties might be resolved. Alliance 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.

44. The Commission accordingly finds that it is consistent with the public interest convenience and necessity to suspend Alliance'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.

45. 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.

46. 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.

47. Given the significant costs of implementing and providing LNP services in the Alliance 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 Alliance area at this time, the Commission finds that suspending Alliance's LNP obligations until December 31, 2005, is necessary to avoid a significant adverse economic impact on the users of Alliance's telecommunications services generally.

48. Based upon the same findings, the Commission further finds that suspending Alliance's LNP obligations until December 31, 2005, is necessary to avoid imposing a requirement that is unduly economically burdensome on Alliance and its/their customers.

49. Although Midcontinent intervened in this docket, it is not presently certified to provide service in Alliance's territory. Before Midcontinent can be granted a certificate of authority in Alliance's territory, it will have to comply with the requirements of ARSD 20:10:32:15. At such time as Midcontinent applies for authority to provide services in Alliance's territory, Midcontinent can also petition the Commission for a lifting of the suspension of intramodal LNP granted herein.

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 Alliance'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 Alliance's LNP obligations pending final action on Alliance'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. Alliance is a local exchange carrier serving fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide. Alliance 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 Alliance of the requirements 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.

8. Granting a suspension of Alliance's intramodal and intermodal LNP obligations until December 31, 2005, is necessary to avoid a significant adverse economic impact on the users of Alliance's telecommunications services generally.

9. Granting a suspension of Alliance's intramodal and intermodal LNP obligations until December 31, 2005, is necessary to avoid imposing a requirement that is unduly economically burdensome on Alliance and its/their customers.

10. Although Midcontinent intervened in this docket, it is not presently certified to provide service in Alliance's territory. Before Midcontinent can be granted a certificate of authority in Alliance's territory, it will have to comply with the requirements of ARSD 20:10:32:15. At such time

as Midcontinent applies for authority to provide services in Alliance's territory, Midcontinent can also petition the Commission for a lifting of the suspension of intramodal LNP granted herein.

11. The suspension granted herein does not relieve Alliance of its obligation to properly route calls to numbers ported between other carriers, including wireless carriers.

It is therefore

ORDERED, that Alliance's obligation to implement 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 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 Alliance 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 at such time as Midcontinent applies for authority to provide services in Alliance's territory, Midcontinent can also petition the Commission for a lifting of the suspension of intramodal LNP granted herein; and it is further

ORDERED, that the suspension granted herein does not relieve Alliance 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:	<u>Adrian Kach</u>
Date:	<u>1/5/05</u>
(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