

TC04-085

RW/HB

In the Matter of IN THE MATTER OF THE PETITION OF CHEYENNE RIVER SIOUX TRIBE TELEPHONE AUTHORITY 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 |
|---------|--|
| 4/23 04 | Filed & Docketed |
| 4/29 04 | Weekly Filings; |
| 4/29 04 | Petition to Intervene (Chc License LLC); |
| 5/7 04 | SDTA Petition for Intervention; |
| 5/13 04 | Order Directing Interim Disposition Pending Final Decision and Order Granting Intervention; |
| 5/13 04 | Order and Notice of Procedural Schedule and Hearing and of Intent to take Judicial Notice; |
| 5/14 04 | Direct Testimony of Steven E. Shattles; |
| 5/17 04 | Direct Pre-Filed Testimony of J. D. Williams; |
| 5/17 04 | Direct Pre-Filed Testimony of Douglas J. Neff; |
| 6/1 04 | Testimony of Ron Williams on behalf of WWC License L.L.C.; |
| 6/11 04 | Intervenors Motion to Compel Discovery or in the alternative to strike Petitioners' ^{pre-filed testimony regarding costs} ; |
| 6/11 04 | Brief in support of Intervenors Motion to Compel Discovery or in the alternative to strike ^{petitioners' pre-filed testimony regarding costs} ; |
| 6/14 04 | Rebuttal Testimony of Steven E. Shattles; |
| 6/15 04 | Rebuttal Testimony of Douglas J. Neff on behalf of C.RSTTA; |
| 6/15 04 | Rebuttal Testimony of J. D. Williams on behalf of C.RSTTA; |
| 6/16 04 | Supplemental Order for and Notice of Hearing; |
| 6/18 04 | Order for and Notice of Hearing on Motion to Compel ^{to strike Petitioners' pre-filed testimony regarding costs;} ; |
| 6/18 04 | Petitioners' Response in Opposition to Intervenors Motion to Compel Discovery or in the alternative ^{to strike Petitioners' pre-filed testimony regarding costs;} ; |
| 6/18 04 | Certificate of Admission (Paul A. Lewis, Intern); |
| 6/22 04 | Orders (Admitting Benjamin H. Dickens, Jr and Mary J. Koel); |
| 7/7 04 | LTP Summary in Docket TC04-025; |
| 7/13 04 | Order Establishing Briefing and Decision Schedule; |
| 8/5 04 | Post-Hearing Brief of Petitioner and SDTA; |

8/16/04 Stipulation

8/26/04 Final Decision and Order Approving and Incorporating Stipulation;

8/26/04 Rocket Closed.

LAW OFFICES
RITER, ROGERS, WATTIER & BROWN, LLP
Professional & Executive Building
319 South Coteau Street
P.O. Box 280
Pierre, South Dakota 57501-0280
www.riterlaw.com

TC 04-08!

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APR 23 2004

OF COUNSEL:
Robert D. Hofer
E. D. Mayer
TELEPHONE
605-224-5825
FAX
605-224-7102

ROBERT C. RITER, Jr.
DARLA POLLMAN ROGERS
JERRY L. WATTIER
JOHN L. BROWN

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

April 23, 2004

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

Re: Cheyenne River Sioux Tribe Telephone Authority

Dear Pam:

Enclosed herein for filing are the original and ten copies of Cheyenne River Sioux Tribe Telephone Authority's **Petition for Suspension or Modification** for filing in the above docket.

Sincerely yours,



Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

CC: J. D. Williams (with enclosure)
Mary Sisak (with enclosure)

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BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

APR 23 2004

In the Matter of the Application)
of Cheyenne River Sioux Tribe)
Telephone Authority for)
Suspension or Modification)
of Section 251(b)(2) of the)
Communications Act of 1934,)
as amended)

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Docket No. _____

PETITION FOR SUSPENSION OR MODIFICATION

Pursuant to Section 251(f)(2) of the Telecommunications Act of 1996 (“the Act”), 47 U.S.C. § 251(f)(2) and Section 49-31-80 of the South Dakota Codified Laws (SDCL), Cheyenne River Sioux Tribe Telephone Authority (CRST) hereby respectfully petitions the South Dakota Public Utilities Commission (Commission) for a suspension or modification of the number portability requirement in Section 251(b)(2) of the Communications Act of 1934, as amended (the Act). CRST also requests an immediate suspension of Section 251(b)(2) pending this Commission’s consideration of the suspension request.

I. INTRODUCTION

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

¹ 47 U.S.C. §251(b)(2).

² 47 C.F.R. §52.23-52.29 and 52.32-52.33.

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

II. SECTION 20:10:32:39 REQUIREMENTS

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

(1) The applicant is Cheyenne River Sioux Tribe Telephone Authority, 100 Main Street, P.O. Box 810, Eagle Butte, SD, 57625-0810, (605) 964-2600. The designated contacts are:

J.D. Williams
General Manager
Cheyenne River Sioux Tribe Telephone Authority

Darla Pollman-Rogers
Professional & Executive Building
319 South Coreau Street
P.O. Box 280
Pierre, SD 57501-0280
(605) 224-5825

and

Benjamin H. Dickens, Jr.
Mary J. Sisak
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, NW, Suite 300

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

Washington, DC 20037
(202) 659-0830

(2) As of 2003, CRST had 3,499 subscriber lines nationwide.

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

(4) CRST 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, CRST requests suspension until six (6) months following the FCC's full and final disposition of the issues associated with the routing of calls between wireline and wireless providers in the *Sprint Petition*⁴ and the porting interval and wireless to wireline porting in its pending FNPRM, at which time CRST may need to seek further Section 251(f)(2) relief based upon the economic impact of these decisions.

CRST also requests immediate temporary suspension of the 251(b)(2) requirement pending this Commission's consideration of this request.

(5) CRST requests that the suspension of Section 251(b)(2) be effective as soon as possible. CRST requests that the temporary suspension of Section 251(b)(2) be effective no later than May 24, 2004.

(6) The information supporting this petition is contained on pages 3 through 14 of this Petition.

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

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

III. BACKGROUND

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

1. CRST is engaged in the provision of general telecommunications services in the State of South Dakota subject to, for purposes of this petition, the jurisdiction of this Commission. CRST currently provides basic local exchange service in five (5) exchanges and, in 2003, had 3,499 access lines in service. A list of CRST's switches for which a suspension of LNP is requested is attached as Exhibit 1.

2. CRST received a request for LNP dated November 18, 2003 from Western Wireless Corporation (Western Wireless). Western Wireless requested LNP in all of CRST's switches.⁵ Pursuant to the FCC's rules, CRST must implement LNP in these switches, absent a grant of this suspension petition, by May 24, 2004. CRST also received a request for LNP from Verizon Wireless on April 20, 2004. Western Wireless has a point of interconnection in CRST's rate centers. Verizon Wireless does not have a point of interconnection or maintain telephone numbers in CRST's rate centers.

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

4. Section 251(f)(2) of the Act allows a rural telephone company with fewer than two percent (2%) of the subscriber lines installed in the aggregate nationwide, (as of

⁵ In its request, Western Wireless listed two of CRST's switches as Dupree switches. One of these switches, however, is now in Takini.

December 2002, approximately 188 million local telephone lines)⁶ to petition a state commission for a suspension or modification of the application of a requirement provided by 47 U.S.C. § 251(b) and (c). With 3,499 access lines, CRST is a 2% carrier entitled to request suspension or modification of the LNP requirements pursuant to Section 251(f)(2).

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

(A) is necessary:

- (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
- (ii) to avoid imposing a requirement that is unduly economically burdensome; or
- (iii) to avoid imposing a requirement that is technically infeasible; and

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

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

IV. ARGUMENT

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

1. The known cost of LNP is excessive

7. CRST requests suspension of the LNP requirement in Section 251(b)(2) of the Act because, as shown in Exhibit 2, implementation of LNP would impose a significant

⁶ See “Federal Communications Commission Releases Study on Telephone Trends”, FCC News Release

adverse economic impact on users of telecommunications services generally. Exhibit 2 shows the estimated known costs to implement LNP at this time. Pursuant to the FCC's rules, certain direct costs of LNP can be recovered from end users through a monthly surcharge over a five-year period.⁷ All remaining costs must be recovered, if at all, through the carrier's general rates and charges. It should be noted that although some of the listed costs are fairly firm, such as the Service Order Administration cost, other costs, such as port test and verification costs, are dependent on unknown factors, for example, the number of customers who ultimately port their number.

8. In order to provide LNP to Verizon Wireless, the Petitioner is including transport cost estimates from each of its switches to Verizon Wireless. Thus, Exhibit 2 also contains estimates for the recurring and non-recurring cost of transport, which essentially is the cost of installing direct connections to Verizon Wireless. Based on the existing network configuration, in order to resolve the transport and routing issues caused by the implementation of LNP when the wireless carrier does not have a point of interconnection or numbers in the LEC's rate centers, a dedicated facility is required from each CRST switch to Verizon Wireless.

9. CRST estimates that in order to implement LNP it will have recurring and non-recurring costs as set forth in Exhibit 2 attached hereto and incorporated herein by reference. As noted, certain direct recurring and non-recurring costs of LNP can be recovered from end users through a monthly surcharge over a period of five years and the remaining costs must be recovered, if at all, through the carrier's general rates and charges. To attempt to approximate the difference in charges to end-users during the

(rel. Aug. 7, 2003).

⁷ 47.C.F.R. § 52.33.

five-year period and beyond, CRST's per-line cost estimate is based on recovering all non-recurring costs over five years. This may not reflect the actual LNP surcharge allowed by the FCC, however, because some of the non-recurring costs may not be recoverable through the surcharge. With this caveat in mind, CRST estimates that the cost of LNP for all exchanges, including the estimated direct transport charges to Verizon Wireless, will increase line charges by \$2.60 per line per month for five years and \$2.29 per line per month thereafter. CRST estimates that the cost of LNP for all exchanges, excluding the estimated direct transport charges to Verizon Wireless, will increase line charges by \$0.84 per line per month for five years and \$0.55 per line per month thereafter.

10. In its Order, the FCC acknowledged that LNP raised certain routing issues for rural carriers where no direct connection exists. The FCC, however, found that these issues did not need to be resolved in the LNP proceeding. Rather, the FCC indicated that they would be addressed in a pending Petition for Declaratory Ruling filed by Sprint Corporation.⁸ This creates a difficult dilemma for LECs, like CRST, and this Commission with respect to the "public interest." Simply stated, installing direct connections will increase significantly the cost of LNP. However, without direct connections, subscribers who call a number that has been ported to a wireless carrier like Verizon Wireless will incur a toll charge for that call, even though such calls previously were rated as local. This will occur because Verizon Wireless' point of interconnection is outside of CRST's service territory. Therefore, calls to Verizon Wireless are routed to the subscriber's preferred interexchange carrier.

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").

2. Additional Unknown Costs of LNP Could Increase the Burden

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

15. The LNP costs in Exhibit 2 also do not include the cost of implementing wireless to wireline porting, which is under consideration by the FCC. In this regard, the 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.¹⁰ These proposals also would increase the cost of LNP, however, it is not clear to what extent.

B. LNP Would Be Unduly Economically Burdensome

16. As shown, LNP implementation would result in the assessment of a new LNP surcharge on end users and could increase local rates. These actions would make CRST'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

¹⁰ It is not clear what "virtual FX" service would entail as the FCC did not define it and CRST offers no such service.

the cost of LNP. By increasing the cost of service, LNP would make wireline services even less competitive with wireless services.

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

18. Moreover, pursuant to the FCC's Order, although wireline carriers have been ordered to port numbers to wireless carriers when the wireless carrier has no point of interconnection or numbers in the LEC's rate centers, the FCC does not require wireless carriers to port numbers under the same circumstances to wireline carriers, even where the wireline carrier may choose to accept such ports. Thus, the current porting requirement is a one-way requirement – CRST can lose customers through porting to the wireless carriers, but it cannot gain customers from them.

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

20. Wireline to wireless porting under current routing protocols also will impose an unduly economically burdensome requirement by making the network less efficient and by confusing consumers which could result in reduced calling. Currently, CRST does not

carry traffic to points of interconnection beyond its service territory. Therefore, as discussed herein, calls to Verizon Wireless, whose point of interconnection is outside of CRST's service territory, are routed to an interexchange carrier and the calling party incurs a toll charge. If a direct trunk is not established, and a CRST telephone number is ported to a wireless carrier, calls to the ported number also will be routed to an interexchange carrier and the calling customer will incur a toll charge, even though before porting the call would be rated as a local call.

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

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

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

23. CRST believes that the current demand for LNP is very small or non-existent. As of the date of this filing, no CRST customer has ever made an inquiry to CRST 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

other.¹¹ Wireline to wireless porting appears to be a small fraction of wireless porting in general. According to NeuStar, 95% of wireless ports have been from one wireless carrier to another and only 5% of wireless ports were between wireline and wireless carriers.¹² Accordingly, there appears to be little, if any, demand for wireline to wireless LNP and absent such demand, no public benefit will be derived from LNP.

24. Even if some level of LNP demand develops in the future, the costs that would be incurred by CRST to implement and maintain LNP, which ultimately would be borne by ratepayers, would not be justified to provide the benefit of number portability to a few end users. CRST should not expend its available resources on an investment that has so few, if any, benefits.

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

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

V. IMMEDIATE TEMPORARY SUSPENSION REQUESTED

¹¹ 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."

¹² See NARUC Notebook, *Communications Daily*, Vol. 24, No. 46, p.4 (March 9, 2004)

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

VI. CONCLUSION

28. As demonstrated, CRST 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.

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

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

WHEREFORE, CRST respectfully requests the Commission to:

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

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

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

Dated this twenty-third day of April, 2004.

**CHEYENNE RIVER SIOUX TRIBE
TELEPHONE AUTHORITY**

By: Margo D. Northrup
Margo D. Northrup
Darla Pollman Rogers
Their Attorneys

Benjamin H. Dickens, Jr.
Mary J. Sisak
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, NW Suite 300
Washington, DC 20037
(202) 659-0830

Of Counsel

EXHIBIT 1

Eagle Butte- DMS-10- Host Switch
Takini- DMS-10- Remote
Isabel – DMS-10- Remote
Dupree- DMS-10- Remote
LaPlant- DMS-10- Remote

EXHIBIT 2

Cheyenne River Sioux Tribe Telephone Authority
Estimated Local Number Portability Costs

| <u>LNP Nonrecurring Costs</u> | <u>Without Transport</u> | <u>With Transport</u> |
|-------------------------------------|------------------------------|---------------------------|
| Switch upgrade costs | \$ 22,000 | \$ 22,000 |
| Internal business procedure changes | 6,067 | 6,067 |
| Intercarrier testing | 6,000 | 6,000 |
| Other internal costs | 5,108 | 5,108 |
| LNP query set up | 368 | 368 |
| Service order administration | 1,000 | 1,000 |
| Customer notification costs | <u>995</u> | 995 |
| Nonrecurring transport costs | | <u>2,306</u> |
| TOTAL NONRECURRING COSTS | <u>\$ 41,538</u> | <u>\$ 43,844</u> |

| <u>LNP Monthly Recurring Costs</u> | | |
|------------------------------------|---------------------|---------------------|
| LNP query costs per month | \$ 300 | \$ 300 |
| Service order administration | 800 | 800 |
| Switch maintenance costs per month | <u>185</u> | 185 |
| Recurring transport costs | | <u>4,126</u> |
| TOTAL RECURRING MONTHLY COSTS | <u>\$ 1,285</u> | <u>\$ 5,411</u> |

Monthly Cost Calculations per Access Line

| | | |
|---|------------|------------|
| Access lines excluding lifeline | 2,365 | |
| Total nonrecurring costs per month amortized over a five year period | \$ 692 | \$ 731 |

| | | |
|-------------------------------|-----------------|-----------------|
| Total monthly recurring costs | <u>1,285</u> | <u>5,411</u> |
| Total monthly costs | \$ <u>1,977</u> | \$ <u>6,142</u> |
| LNP costs per access lines | \$ <u>0.84</u> | \$ <u>2.60</u> |

South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of April 22, 2004 through April 28, 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

**TC04-083 In the Matter of the Application of Qwest Communications Corporation for a
Certificate of Authority to Provide Local Exchange Services in South Dakota.**

On April 22, 2004, Qwest Communications Corporation (QCC) filed an application for a Certificate of Authority to provide competitive local exchange services in South Dakota. QCC plans to provide a broad range of interLATA and intraLATA telecommunications services for voice and data applications to business and residences throughout South Dakota. QCC will provide competitive local exchange telecommunications service, in conjunction with interexchange telecommunications services and operator services, within South Dakota by means of resale, the leasing of facilities, and/or the construction of its own facilities on a statewide basis.

Staff Analyst: Michele Farris
Staff Attorney: Karen E. Cremer
Date Filed: 04/22/04
Intervention Deadline: 05/14/04

**TC04-084 In the Matter of the Petition of Tri-County Telcom, Inc. for Suspension or
Modification of 47 U.S.C. Section 251(b)(2) of the Communications Act of 1934 as
Amended.**

On April 23, 2004, Tri-County Telcom, Inc. (Tri-County) filed a petition seeking suspension or modification of Section 251(b)(2) of the Telecommunications Act of 1996 regarding intermodal (wireline to wireless) number portability. Tri-County also is seeking an immediate suspension of Section 251(b)(2) pending the Commission's consideration of the suspension request until six (6) months following the Commission's final decision. According to Tri-County, it has received requests for LNP from Celco Partnership d/b/a Verizon Wireless and Western Wireless. Tri-County 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) Tri-County may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. Tri-County requests the Commission to (1) issue an interim order that suspends any obligation that may exist for Tri-County to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for Tri-County's obligation to implement LNP until conditions are met as described herein; and (3) grant Tri-County such other and further relief that may be proper.

Staff Analyst: Harlan Best
Staff Attorney: Rolayne Ailts Wiest
Date Filed: 04/23/04
Intervention Deadline: 05/07/04

**TC04-085 In the Matter of the Petition of Cheyenne River Sioux Tribe Telephone Authority for
Suspension or Modification of 47 U.S.C. Section 251(b)(2) of the Communications
Act of 1934 as Amended.**

On April 23, 2004, Cheyenne River Sioux Tribe Telephone Authority (CRST) filed a petition seeking suspension or modification of Section 251(b)(2) of the Telecommunications Act of 1996 regarding intermodal (wireline to wireless) number portability. CRST also is seeking an immediate suspension of Section 251(b)(2) pending the Commission's consideration of the suspension request until six (6) months following the Commission's decision. According to CRST, it has received requests for LNP from Verizon Wireless and Western Wireless. CRST 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) CRST may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. CRST requests the Commission to (1) issue an interim order that suspends any obligation that may exist for CRST to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for CRST's obligation to implement LNP until conditions are met as described herein; and (3) grant CRST such other and further relief that may be proper.

Staff Analyst: Harlan Best
Staff Attorney: Rolayne Ailts Wiest
Date Filed: 04/23/04
Intervention Deadline: 05/07/04

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GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

ATTORNEYS AT LAW

WYNN A. GUNDERSON
J. CRISMAN PALMER
G. VERNE GOODSSELL
JAMES S. NELSON
DANIEL E. ASHMORE
TERENCE R. QUINN
DONALD P. KNUDSEN
PATRICK G. GOETZINGER
TALBOT J. WIECZOREK
MARK J. CONNOT

AMERICAN MEMORIAL LIFE BUILDING
440 MT. RUSHMORE ROAD
POST OFFICE BOX 8045
RAPID CITY, SOUTH DAKOTA 57709-8045

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AMY K. SCHULTZ
JASON M. SMILEY

April 28, 2004

NEXT DAY DELIVERY

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

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APR 29 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

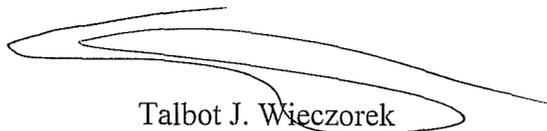
RE: WWC's Petition to Intervene In the Matter of the Petition of Cheyenne River Sioux Tribe Telephone Authority for Suspension of Intermodal Local Number Portability Obligations (TC04-085)
WWC's Petition to Intervene In the Matter of the Petition of Tri-County Telecom, Inc. for Suspension of Intermodal Local Number Portability Obligations (TC04-084)
GPGN File No. 5925.040157

Dear Ms. Bonrud:

Enclosed for filing, please find Western Wireless' Petitions to Intervene in the two above-entitled matters. I have enclosed the original and ten copies.

If you need anything further at this time, please let me know.

Sincerely,



Talbot J. Wiczorek

TJW:klw

Enclosures

c: Clients

Darla Pollman Rogers

RECEIVED

APR 29 2004

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Docket No. TC 04-085

In the Matter of the Petition of Cheyenne River
Sioux Tribe Telephone Authority for
Suspension of Intermodal Local Number
Portability Obligations

PETITION TO INTERVENE

Pursuant to ARSD 20:10:01:15.02, WWC License LLC, doing business as CellularOne, (hereinafter "Western Wireless"), petitions to intervene in Docket TC 04-077 for the following reasons:

1. Western Wireless is a cellular service provider in areas served by Cheyenne River Sioux Tribe Telephone Authority, (hereinafter "CRST"), who has requested suspension on its local number portability obligations at issue in this proceeding. Western Wireless sent CRST a bonafide request ("BFR") to implement local number portability. 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 CRST is feasible and appropriate and no suspension of providing local number portability should be allowed.
3. To suspend the obligations of CRST to deploy local number portability would be against public interest.
4. Western Wireless also contests CRST's request for immediate suspension of local number portability requirements and requests that the Commission, at a minimum, establish an

expedited procedural schedule that would determine the factual and legal support for a decision on the merits of CRST's request for local number portability suspension.

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

WHEREFORE, Western Wireless respectfully requests:

1. That its Petition to Intervene be granted;
2. That CRST's request for immediate suspension be denied; and
3. That CRST's request to suspend deploying local number portability be denied.

Dated this 27 day of April, 2004.

GUNDERSON, PALMER, GOODSSELL
& NELSON, LLP

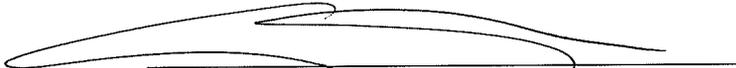


Talbot J. Wieczorek
Attorneys for WWC License LLC
440 Mt. Rushmore Road, Fourth Floor
PO Box 8045
Rapid City SD 57709
605-342-1078
Fax: 605-342-0480

CERTIFICATE OF SERVICE

The undersigned certifies that on the 28 day of April, 2004, I served a true and correct copy of the foregoing Petition to Intervene, by email and U.S. Mail, first-class, postage paid to:

dprogers@riterlaw.com
Darla Pollman Rogers
Riter, Rogers, Wattier & Brown LLP
PO Box 280
319 South Coteau Street
Pierre, SD 57501



Talbot J. Wiczorek



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

Rural roots, global connections

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May 7, 2004

MAY 07 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 TC04-085, Cheyenne River Sioux Tribe Telephone Authority 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 CRST, as well as counsel for Western Wireless Corporation, which we expect will be another intervening party.

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**

RECEIVED

MAY 07 2004

**IN THE MATTER OF THE PETITION OF)
CHEYENNE RIVER SIOUX TRIBE)
TELEPHONE AUTHORITY FOR SUSPENSION)
OR MODIFICATION OF § 251(b)(2) OF THE)
COMMUNICATIONS ACT OF 1934, AS)
AMENDED)**

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
DOCKET TC04-085
PETITION TO INTERVENE**

SDTA Petition for Intervention

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

1. On or about April 23, 2004, Cheyenne River Sioux Tribe Telephone Authority (CRST) 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 CRST petition filed with the Commission, CRST is a rural telephone company as defined in 47 U.S.C. § 153(37) and, as of year 2003, was providing its local exchange services to 3,499 subscriber lines. 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 CRST, 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 CRST as the petitioning party in this proceeding, and also based on the likelihood that determinations made by the Commission in this matter will impact other similar proceedings initiated by other SDTA member companies. Accordingly, SDTA has an interest in this proceeding and seeks intervention herein.

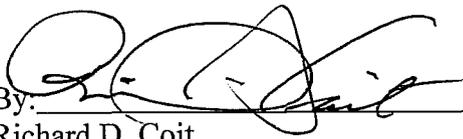
7. SDTA supports the CRST request for suspension or modification of the federal LNP requirements for all those reasons set forth in their petition filed in this matter, and strongly urges the Commission to grant the relief requested.

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

Dated this 7th day of May 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 May 7th, 2004 to:

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:

Darla Pollman Rogers, Attorney
Riter, Rogers, Wattier and Brown, LLP
P.O. Box 280
Pierre, SD 57501

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

Dated this 7th 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**

| | |
|---|-------------------------------|
| IN THE MATTER OF THE PETITION OF) | ORDER GRANTING INTERIM |
| CHEYENNE RIVER SIOUX TRIBE TELEPHONE) | SUSPENSION PENDING |
| AUTHORITY FOR SUSPENSION OR) | FINAL DECISION AND |
| MODIFICATION OF 47 U.S.C. § 251(B)(2) OF) | ORDER GRANTING |
| THE COMMUNICATIONS ACT OF 1934 AS) | INTERVENTION |
| AMENDED) | TC04-085 |

On April 23, 2004, Cheyenne River Sioux Tribe Telephone Authority (CRSTTA) 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 CRSTTA, it has received requests to deploy LNP from Verizon Wireless and Western Wireless. CRSTTA 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) CRSTTA may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. CRSTTA requests the Commission to (1) issue an interim order that suspends any obligation that may exist for CRSTTA to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for CRSTTA's obligation to implement LNP until conditions are met as described herein; and (3) grant CRSTTA such other and further relief that may be proper.

On April 29, 2004, the Commission electronically transmitted notice of the filing and the intervention deadline of May 7, 2004, to interested individuals and entities. WWC License LLC d/b/a CellularOne (Western Wireless) filed to intervene on April 29, 2004, and the South Dakota Telecommunications Association (SDTA) filed to intervene on May 7, 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 May 11, 2004, and pursuant to 47 U.S.C. Section 251(f)(2) of the Telecommunications Act of 1996 and SDCL 49-31-80, the Commission voted to grant the request for an interim suspension order pending final decision. The Commission found that the Petitions to Intervene were timely filed and demonstrated good cause to grant intervention. It is therefore

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

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

Dated at Pierre, South Dakota, this 13th 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: Helaine Kolbo

Date: 5/18/04

(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

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 13th 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>Alaine Kalbs</i> </u> |
| Date: <u> 5/18/04 </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



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

Rural roots, global connections

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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 "Richard D. Coit". The signature is fluid and cursive, with the first name "Richard" being the most prominent part.

Richard D. Coit
Executive Director and General Counsel
SDTA

CERTIFICATE OF SERVICE

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

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

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

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

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

Dated this 14th day of May, 2004.



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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

MAY 14 2004

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

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

- TC04-025 - Kennebec Telephone Company
- TC04-038 - Santel Communications Cooperative
- TC04-044 - Sioux Valley Telephone Company
- TC04-045 - Golden West Telecommunications Cooperative
Vivian Telephone Company
Kadoka Telephone Company
- TC04-046 - Armour Independent Telephone Company
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.
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- 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”)
21 at a fixed location within a specific geographic area to use by a mobile customer of a
22 wireless carrier in the provision of mobile service, and vice versa.

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.

21
22
23

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.

LAW OFFICES
RITER, ROGERS, WATTIER & BROWN, LLP

Professional & Executive Building
319 South Coteau Street
P.O. Box 280
Pierre, South Dakota 57501-0280
www.riterlaw.com

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MAY 17 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

OF COUNSEL:
Robert D. Hofer
E. D. Mayer
TELEPHONE
605-224-5825
FAX
605-224-7102

ROBERT C. RITER, Jr.
DARLA POLLMAN ROGERS
JERRY L. WATTIER
JOHN L. BROWN

May 17, 2004

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

Re: Docket Number TC04-85 (CRST)

Dear Pam:

Enclosed are the original and ten copies of the **DIRECT PRE-FILED TESTIMONY OF J. D. WILLIAMS** and the **DIRECT PRE-FILED TESTIMONY OF DOUGLAS J. NEFF** in the above-named docket.

Sincerely yours,



Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

CC: J. D. Williams (with enclosure)
Rich Coit (with enclosure)
Talbot J. Wiczorek (with enclosure)

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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
CHEYENNE RIVER SIOUX TRIBE
TELEPHONE AUTHORITY FOR SUS-
PENSION OR MODIFICATION OF 47
U.S.C § 251(b)(2) OF THE COM-
MUNICATIONS ACT OF 1934 AS
AMENDED

Docket No. TC04-085

DIRECT PRE-FILED TESTIMONY OF

J.D. WILLIAMS

May 17, 2004

**DIRECT PRE-FILED TESTIMONY OF
J.D. WILLIAMS**

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Q: What is your name and address?

A: My name is J.D. Williams. My business address is P.O. Box 810, 100 Main Street, Eagle Butte, SD 57625. My business phone number is (605) 964-2600.

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

A: I am the General Manager of Cheyenne River Sioux Tribe Telephone Authority (CRST). CRST is a rural telephone company engaged in the provision of general telecommunications services in the State of South Dakota.

Q: How many access lines does CRST have?

A: CRST has 3,499 access lines. Excluding lifeline customers, CRST has only 2,365 access lines.

Q: Please describe the interconnection arrangements between CRST and other carriers.

A: CRST has points of interconnection (POI) with SDN, Qwest and Western Wireless. The SDN connection is for toll completion and toll terminating for InterLATA, IntraLATA (non-Qwest terminating), operator services, and verification trunking. The Qwest POI is a terminating trunk, only for Qwest IntraLATA traffic. CRST has two Western Wireless interconnections. One is a Cellular Type 1A MF trunk which is a two-way trunk. The second POI with Western Wireless is a Cellular Type 2B SS7 two way trunk.

Q: Are there any wireless carriers authorized to serve in your company's service area?

A: To my knowledge, Western Wireless and Verizon are authorized to serve this area.

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

1 A: No. To the best of my knowledge, there have not been any subscribers that have re-
2 quested LNP.

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

5 A: Yes. Any amount of capital investment that is diverted to the implementation of LNP
6 will reduce needed capital from broadband investments.

7 **Q: How much time would be required for CRST to provide LNP?**

8 A: If the Commission denies the LNP petition, CRST believes that it will need approxi-
9 mately ten weeks to implement LNP.

10 **Q: In your experience as the general manager of CRST have you seen increases or ad-**
11 **ditions to the itemized fees on your customer's telephone bills?**

12 A: Yes. Many customers tell me that there have been too many new fees or fee increases in
13 the past few years.

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

16 A: We expect the reaction to be very negative. The fees would make CRST's service offer-
17 ing less competitive with the services provided by wireless carriers and, therefore, sub-
18 scribership may fall.

19 **Q: Is the public interest, convenience, and necessity served by requiring CRST to im-**
20 **plement LNP at this time?**

21 A: No. The current demand for LNP appears to be non-existent, as no CRST customer has
22 ever made an inquiry to CRST regarding LNP or a request for LNP, and the cost of LNP
23 is significant.

1 **Q: Does this conclude your direct testimony?**

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

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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 CHEYENNE RIVER SIOUX TRIBE
TELEPHONE AUTHORITY FOR SUS-
PENSION OR MODIFICATION OF
§ 251(b)(2) OF THE COMMUNICA-
TIONS ACT OF 1934 AS AMENDED

Docket No. TC04-085

DIRECT PRE-FILED TESTIMONY OF

DOUGLAS J. NEFF

May 17, 2004

1 A: I will provide testimony on cost issues of implementing Local Number Portability
2 (“LNP”) that is pertinent to the Telephone Authority’s cost exhibit.

3 **Q: What are the anticipated costs of implementing LNP?**

4 A: The anticipated costs of implementing LNP are categorized in two areas, nonre-
5 curring and recurring costs. I have also further provided anticipated costs for
6 transport where a direct interconnection is not present. The LNP petition filed on
7 behalf of the Telephone Authority included an Exhibit detailing the estimated
8 implementation costs for LNP. This Exhibit is attached as Exhibit (A). Each of
9 the cost elements will be defined in the following paragraphs.

10 I. LNP Nonrecurring Costs

11 The nonrecurring costs of LNP include the costs identified below.

12 *Switch Upgrade Costs:*

13 The Telephone Authority utilizes a Nortel Networks (Nortel) DMS-10 as its wire-
14 line switching platform. The Telephone Authority determined from discussions
15 with Nortel personnel that the existing generic software will not support LNP.

16 Based on information provided to the Telephone Authority, the nonrecurring cost
17 estimate for the LNP software feature was \$22,000.

18 *Internal business procedure changes*

19 The implementation of LNP will require the Telephone Authority to implement
20 new administrative policies and procedures. The nonrecurring costs included
21 training for six (6) customer service representatives and coordination of service
22 order procedures with the central office technicians. It also includes the estimated
23 cost of local routing number assignment training and the engineering services of

1 the Telephone Authority's engineers, Kadrmas, Lee & Jackson for general engi-
2 neering services used in the LNP implementation planning process. The costs
3 were estimated as follows:

4 The training of six (6) customer service representatives and the coordination of
5 service order procedures with the central office technicians was estimated to re-
6 quire 18 hours at an approximate loaded labor rate of \$20.00 per hour for a cost of
7 \$367.

8 The cost of training company employees in connection with Local Routing Num-
9 ber Assignment was estimated at \$1,000.

10 The estimated central office technician costs relating to administrative procedure
11 changes was estimated at 27 hours at an approximate loaded labor rate of \$37.50
12 per hour for a cost of \$1,000.

13 Estimated engineering costs from Kadrmas, Lee & Jackson in connection with
14 LNP implementation are \$3,700.

15 *intercarrier Testing*

16 This cost estimate addresses the anticipated activities to program a ported
17 number in the central office, set-up of appropriate switching functions and testing
18 the functionality of the LNP software. This estimate included internal and exter-
19 nal central office technician time of 160 hours at a labor rate of \$37.50 per hour
20 including benefits which totaled approximately \$6,000.

21 *Other internal costs*

22 The implementation of the LNP DMS-10 software will require outside training at
23 a Nortel training facility. The estimated costs include training costs, the time of

1 three (3) central office technicians at the training facility, travel, meals and lodg-
2 ing. Total estimated cost, \$5,108.

3 *LNP Query set-up*

4 The estimated internal costs to establish and set-up a ported out number 15 was
5 estimated by reviewing the NECA Tariff FCC No. 5 and includes the LNP order
6 charge and estimated administrative office time and central office technician time.

7 The LNP order charge was estimated at \$48. The office and central office techni-
8 cian time to set-up accounts was estimated at \$320.

9 *Service Order Administration ("SOA")*

10 As part of the LNP implementation, the Telephone Authority must select a
11 provider to administer updates to the Number Portability Administration Center
12 (NPAC) LNP database. The SOA cost estimate was based on a survey of SOA
13 providers and was estimated to be \$1,000.

14 *Customer Notification Costs*

15 The implementation of LNP likely will generate confusion among the Telephone
16 Authority subscribers. The Telephone Authority plans to develop advertising and
17 bill inserts to educate subscribers about LNP and what it means to the subscribers.

18 The cost of developing advertising and bill inserts was determined by reviewing
19 costs of prior notifications, local newspaper advertising and the estimated admin-
20 istrative staff and legal review time to prepare a notification. This cost was esti-
21 mated at \$995.

22

caused by future changes to LNP software. The estimated monthly cost of these upgrades, including labor and benefit costs for Telephone Authority employees involved with the upgrades, was estimated at \$185.

Recurring transport costs

Recurring transport costs represents the costs and revenues associated with lower telecommunications network usage and the potential loss of operating revenues associated with LNP. To quantify the potential costs and lost revenues, the Telephone Authority's publicly available 2002 traffic study was reviewed. The estimated total annual minutes-of-use lost due to an estimated 10 ported numbers was calculated. The total lost minutes-of-use were increased by a factor of 2 to estimate lost toll minutes-of-use and potential local and access rate increases. These assumptions were applied only to those wireless carriers not directly connected to the Telephone Authority. The total recurring transport costs were estimated as follows:

| | | |
|---------------------------------------|--------------|---------------------------|
| Total annual minutes-of-use | 66,156,563 | |
| Divided by access lines | <u>3,499</u> | |
| Estimated lost access minutes-of-use | 18,907 | (minutes-of-use per year) |
| Estimated ported lines | x 10 | |
| Weighting factor | <u>x 2</u> | |
| Minutes-of-use per year | 378,140 | |
| Intrastate terminating access rate | <u>.1168</u> | (composite) |
| Estimated lost annual access revenues | \$ 44,166 | |

1 Estimated additional central office technician labor including benefits to monitor,
2 change or adjust switching registers for ported numbers:

3 Approximately 144 hours annually at \$37.50 per hour 5,400

4 Total estimated annual recurring transport cost \$ 49,566

5 Estimated monthly recurring transport cost \$ 4,126

6 **Q: How were the number of “ported out” numbers determined?**

7 A: For purposes of the estimates provided, a factor of .5% was applied to the Tele-
8 phone Authority’s 2,365 access lines, which excludes lifeline customers, rounded
9 to the nearest 10. This resulted in an estimate of 10 ports per year.

10 **Q: What additional costs could be incurred if the porting interval were short-**
11 **ened?**

12 A: If the porting interval is shortened, the Telephone Authority would need to have
13 internal and external technical expertise readily available to perform the required
14 porting procedures. Additional costs that would be incurred are unknown at this
15 time.

16 **Q: How would the cost estimates change if the Telephone Authority must**
17 **implement only Intramodal (wireline to wireline) LNP?**

18 A: As I currently understand how the Telephone Authority’s network functions, I am
19 unaware of any significant changes to the cost estimates provided to implement
20 intramodal LNP versus intermodal LNP at this time.

21 **Q: Does this conclude your direct testimony?**

22 A: Yes.

Exhibit (A)

Exhibit (A)

Cheyenne River Sioux Tribe Telephone Authority
 Estimated Local Number Portability Costs

| <u>LNP Nonrecurring Costs</u> | <u>Without Transport</u> | <u>With Transport</u> |
|-------------------------------------|------------------------------|---------------------------|
| Switch upgrade costs | \$ 22,000 | \$ 22,000 |
| Internal business procedure changes | 6,067 | 6,067 |
| Inter-carrier testing | 6,000 | 6,000 |
| Other internal costs | 5,108 | 5,108 |
| LNP query set up | 368 | 368 |
| Service order administration | 1,000 | 1,000 |
| Customer notification costs | <u>995</u> | 995 |
| Nonrecurring transport costs | | <u>2,306</u> |
| TOTAL NONRECURRING COSTS | <u>\$ 41,538</u> | <u>\$ 43,844</u> |

| <u>LNP Monthly Recurring Costs</u> | | |
|------------------------------------|---------------------|---------------------|
| LNP query costs per month | \$ 300 | \$ 300 |
| Service order administration | 800 | 800 |
| Switch maintenance costs per month | <u>185</u> | 185 |
| Recurring transport costs | | <u>4,126</u> |
| TOTAL RECURRING MONTHLY COSTS | <u>\$ 1,285</u> | <u>\$ 5,411</u> |

Monthly Cost Calculations per Access Line

| | | |
|---|---------------------|---------------------|
| Access lines excluding lifeline | 2,365 | |
| Total nonrecurring costs per month amortized over a five year period | \$ 692 | \$ 731 |
| Total monthly recurring costs | <u>1,285</u> | <u>5,411</u> |
| Total monthly costs | <u>\$ 1,977</u> | <u>\$ 6,142</u> |
| LNP costs per access lines | <u>\$ 0.84</u> | <u>\$ 2.60</u> |

RECEIVED

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 CHEYENNE RIVER SIOUX TRIBE
TELEPHONE AUTHORITY FOR SUS-
PENSION OR MODIFICATION OF
§ 251(b)(2) OF THE COMMUNICA-
TIONS ACT OF 1934 AS AMENDED

Docket No. TC04-085

CERTIFICATE OF SERVICE

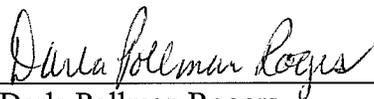
CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the **DIRECT PRE-FILED TESTIMONY OF J. D. WILLIAMS** and the **DIRECT PRE-FILED TESTIMONY OF DOUGLAS J. NEFF** 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

Dated this seventeenth day of May, 2004.



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

LAW OFFICES
RITER, ROGERS, WATTIER & BROWN, LLP

Professional & Executive Building
319 South Coteau Street
P.O. Box 280
Pierre, South Dakota 57501-0280
www.riterlaw.com

TC04-005

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MAY 21 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

ROBERT C. RITER, Jr.
DARLA POLLMAN ROGERS
JERRY L. WATTIER
JOHN L. BROWN

OF COUNSEL:
Robert D. Hofer
E. D. Mayer
TELEPHONE
605-224-5825
FAX
605-224-7102

May 20, 2004

Ron Williams
Western Wireless Corporation
3650 131st Ave. SE, Suite 400
Bellevue, Washington 98006

Via U.S. Mail and Fax Number 425-586-8666

Re: Cheyenne River Sioux Tribe Telephone Authority

Dear Mr. Williams:

Please be advised that I represent the above-named telephone company. By Order dated April 19, 2004, the Public Utilities Commission of the State of South Dakota granted an interim suspension to Cheyenne River Sioux Tribe Telephone Authority (CRST) of its obligation to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Communications Act of 1934, as amended. Accordingly, CRST will not be LNP capable on May 24, 2004, nor will it have the capability to perform an LNP database query.

In light of the above, CRST will continue to route calls to your NPA NXXs in our common rate center(s) via our direct connection(s), even if the number has been ported from you to a different carrier. It has come to our attention that some wireless carriers do not perform an LNP query in such circumstances and, instead, provide a recording to the caller that the number is not in working order, which would result in a "dropped" call.

In order to ensure that such calls are not dropped and that the consumer's call can be completed, CRST asks you to indicate whether you intend to perform the LNP query on calls to a ported number that are transmitted to you by CRST and which have not been queried. If you do not intend to perform LNP queries in these cases, CRST requests that you provide the LNP query. We note that the Federal Communications Commission has stated that carriers that are not LNP-capable are "permitted to arrange for the default wireless carrier that originally serviced the ported telephone number to perform the query." *In the Matter of CenturyTel, Inc. et al., Notice of Apparent Liability for Forfeiture*, File No. EB-04-IH-0012, DA 04-1304. CRST believes that the FCC's LNP rules do not apply to us in light of the suspension granted by the South Dakota Commission. In the interest of ensuring reliable communications service to the citizens of South Dakota, we are willing to work with you to ensure that the query has been performed, until such time as the legal and practical implementation issues can be resolved.

In light of the impending May 24, 2004, wireless LNP implementation date, please indicate by May 21, 2004, your agreement to perform LNP queries in the circumstances described herein.

Thank you for your prompt attention to this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Darla Pollman Rogers".

Darla Pollman Rogers
Attorney at Law

DPR/ph

cc: Chairman Robert K. Sahr
Commissioner Gary Hanson
Commissioner James A. Burg
John Smith
Rolayne Wiest
J. D. Williams, CRST

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

ATTORNEYS AT LAW

WYNN A. GUNDERSON
J. CRISMAN PALMER
G. VERNE GOODSSELL
JAMES S. NELSON
DANIEL E. ASHMORE
TERENCE R. QUINN
DONALD P. KNUDSEN
PATRICK G. GOETZINGER
TALBOT J. WIECZOREK
MARK J. CONNOT

AMERICAN MEMORIAL LIFE BUILDING
440 MT. RUSHMORE ROAD
POST OFFICE BOX 8045
RAPID CITY, SOUTH DAKOTA 57709-8045
TELEPHONE (605) 342-1078 • FAX (605) 342-0480

JENNIFER K. TRUCANO
MARTY J. JACKLEY
DAVID E. LUST
THOMAS E. SIMMONS
TERRI LEE WILLIAMS
PAMELA SNYDER-VARNS
SARA FRANKENSTEIN
AMY K. SCHULTZ
JASON M. SMILEY

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SOUTH DAKOTA, NORTH DAKOTA, NEBRASKA
COLORADO, MONTANA, WYOMING & MINNESOTA

May 28, 2004

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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

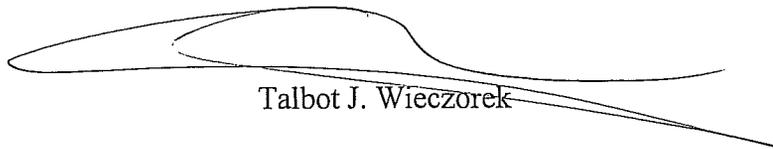
RE: In the Matter of Local Number Portability Obligations Docket No. TC 04-025;
TC04-038; TC04-044 through TC04-056; TC04-060 through TC04-062;
TC04-077; TC04-084 and TC04-085

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

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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

- 1
- 2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**
- 3 A. My name is Ron Williams. My business address is 3650 131st Avenue South East,
4 Bellevue, Washington 98006.
- 5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**
- 6 A. I am employed as Director – InterCarrier Relations by Western Wireless Corporation.
7 My duties and responsibilities include developing effective and economic
8 interconnection and operational relationships with other telecommunications carriers,
9 including the establishment of local number portability (“LNP”) arrangements and
10 interconnection agreements. I work with other departments within Western Wireless
11 to assess company interconnection and LNP needs and interface with carriers to
12 ensure arrangements are in place to meet the operational objectives of the company.
- 13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**
- 14 A. I have a BA in Accounting and a BA in Economics from University of Washington. I
15 also have a MBA from Seattle University.
- 16 **Q. FOR WHOM ARE YOU TESTIFYING IN THIS PROCEEDING?**
- 17 A. I am testifying on behalf of WWC License L.L.C. (“Western Wireless”), which
18 provides commercial mobile radio services (“CMRS”) in the state of South Dakota.
- 19 **Q. WHAT IS YOUR PROFESSIONAL EXPERIENCE IN THE FIELD OF**
20 **TELECOMMUNICATIONS?**
- 21 A. I have ten years experience working for GTE (now Verizon), including six years in
22 telephone operations and business development, and four years in cellular operations.
23 I also have two years experience in start-up CLEC operations with FairPoint
24 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).

DOCKET TC04-025 et al

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.

DOCKET TC04-025 et al

TESTIMONY OF RON WILLIAMS ON BEHALF OF WESTERN WIRELESS

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 "Inter-carrier 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.

DOCKET TC04-025 et al

TESTIMONY OF RON WILLIAMS ON BEHALF OF WESTERN WIRELESS

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)

DOCKET TC04-025 et al

TESTIMONY OF RON WILLIAMS ON BEHALF OF WESTERN WIRELESS

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.

DOCKET TC04-025 et al

TESTIMONY OF RON WILLIAMS ON BEHALF OF WESTERN WIRELESS

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)

DOCKET TC04-025 et al

TESTIMONY OF RON WILLIAMS ON BEHALF OF WESTERN WIRELESS

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:

dprogers@riterlaw.com

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

Attorney for:

Kennebec Telephone Co.
Sioux Valley Telephone Co
Golden West, Vivian Telephone Co and Kadoka
Armour, Bridgewater-Canistota Tele Co and Union Tele Co
Beresford Municipal Telephone Company
McCook Cooperative Telephone Company
Valley Telecommunications Cooperative Association, Inc.
City of Faith Telephone Company
Midstate Communications, Inc.
Western Telephone Company
Interstate Telecommunications Cooperative, Inc.
Alliance Communications Inc. and Splitrock Properties
RC Communications, Inc., and Roberts County Telephone Cooperative Assn.
Venture Communications Cooperative

West River Cooperative Telephone Company
Stockholm-Strandburg Telephone Company
Tri-County Telcom
Cheyenne Sioux Tribe

jdlarson@santel.net

Jeffrey D. Larson
Larson and Nipe
PO Box 277
Woonsocket, SD 57385-0277

Attorney for:
Santel Communications

rjh1@brookings.net

Richard J. Helsper
100 22nd Avenue, Suite 200
Brookings SD 57006
And
Benjamin H. Dickens, Jr.
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, NW, Suite 300
Washington, DC 20037

Attorneys for:
Brookings Municipal Utilities d/b/a Swiftel Communications

jcremer@midco.net

James Valley Cooperative Telephone Company
James Cremer
Bantz, Gosch & Cremer
PO Box 970
Aberdeen, SD 57402

Attorney for:
James Valley Cooperative Telephone Company

dag@magt.com

David Gerdes
503 S. Pierre Street
Pierre, SD 57501

Attorney for:
Midcontinent

richcoit@sdtanline.com

Richard Coit

SD Telecommunications Assoc.

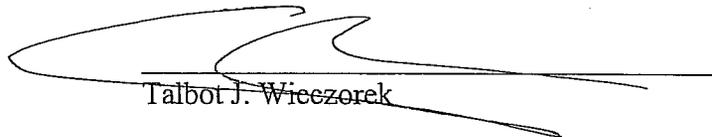
PO Box 57

320 E Capitol Ave

Pierre SD 57501-0057

Attorney for:

South Dakota Telecommunications Assoc.



Talbot J. Wiczorek

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).

APPENDIX B

OPPOSITIONS, COMMENTS, AND REPLY COMMENTS

Comments

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

Oppositions

Sprint filed oppositions to the following petitions:

- Bentleyville Petition (December 8, 2003)(**);
- Joint Petition (December 10, 2003);
- Northeast Florida Petition (December 3, 2003);
- Valley Petition (December 8, 2003);
- Warwick Valley Petition (December 16, 2003); and
- YCOM Petition (December 10, 2003).

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

Reply Comments

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

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

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

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

ORDER

Adopted: May 12, 2004

Released: May 13, 2004

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

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

II. BACKGROUND

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

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

² 47 U.S.C. §§ 151-174.

³ 47 U.S.C. §251(b).

providers to become LNP-capable pursuant to sections 1, 2, 4(i), and 332 of the Act.⁴ In doing so, the Commission concluded that the public interest is served by making LNP available across different technologies and thereby promoting competition between CMRS service providers and wireline carriers.⁵ Initially, CMRS providers were required to become LNP-capable by June 30, 1999.⁶ The Commission subsequently extended this deadline, and required CMRS carriers operating in the top 100 Metropolitan Statistical Areas (MSAs) to provide number portability upon request by another carrier by November 24, 2003.⁷ CMRS carriers operating outside the top 100 MSAs must become LNP-capable within six months of a request or by May 24, 2003, whichever is later.⁸ On November 10, 2003, the Commission concluded that, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.⁹ The Commission, however, granted wireline carriers operating in areas outside of the 100 largest MSAs, in certain circumstances, a waiver until May 24, 2004 of the requirement to port numbers to wireless carriers.¹⁰ The Commission later granted certain LECs with fewer than two percent of the nation's subscriber lines in the aggregate nationwide (Two Percent Carriers) that operate in the top 100 MSAs a limited waiver of the wireline-to-wireless porting requirement.¹¹

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

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

⁵ See *id.* at 8432, ¶ 153.

⁶ *Id.* at 8440, ¶ 166.

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

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

⁹ See *Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23706-07 (2003) (*Intermodal LNP Order*).

¹⁰ *Id.*

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

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

informal quotes from various switch equipment manufacturers at that time.¹³ NEP subsequently concluded that it would be more efficient and economical to replace its existing switches with software based switch (“soft switch”) technology.¹⁴ Accordingly, in March 2003, NEP sought formal quotes and proposals from several switch manufacturers for soft switches.¹⁵ In September 2003, NEP contracted with Taqua, Inc. (Taqua) to purchase eight soft switches to be installed on a phased-in basis, beginning on May 1, 2004 and ending on December 31, 2005.¹⁶ However, according to NEP, certain service feature implementation issues need to be resolved before the first switch can be put into service.¹⁷ NEP requests a waiver to provide additional time to accommodate the deployment schedule for its eight exchanges and to resolve the implementation issues.¹⁸

4. NEP contends good cause exists for granting an extension of the May 24, 2004 porting implementation deadline.¹⁹ Specifically, NEP maintains that it has been planning and implementing network upgrades since 2001 to address expected network capability requirements.²⁰ NEP argues that it did not anticipate that intermodal porting²¹ would be an “imminent requirement” until the Commission’s *Intermodal LNP Order* released in November 2003.²² Upon release of the order, NEP contends that it immediately reviewed its number portability plans with Taqua.²³ NEP maintains that, while working with Taqua to resolve certain service feature issues, it became apparent to NEP that it will be unable to meet the May 24, 2004 implementation deadline for all of its switches.²⁴ Further, NEP states that it will provide the Commission with quarterly progress reports and updates to the deployment schedule, including solutions that will allow NEP to advance its deployment schedule and number portability.²⁵

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 3, 5.

¹⁷ *Id.* at 3.

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

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

²⁰ NEP Petition at 2-3.

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

²² *Id.* at 4.

²³ *Id.*

²⁴ *Id.* at 5.

²⁵ *Id.* at 6.

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

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

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

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

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

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

²⁹ *Id.*

³⁰ See NTCA Reply Comments.

³¹ See *id.* at 1.

³² *Id.* at 3.

³³ *Id.* at 2-3.

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

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

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

³⁷ *WAIT Radio*, 418 F.2d at 1157.

³⁸ *Id.* at 1159.

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

III. DISCUSSION

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

10. *Special Circumstances.* We are not persuaded by NEP's claims that special circumstances exist warranting a waiver of the May 24, 2004 porting deadline in order to accommodate NEP's switch delivery and deployment schedule, and provide additional time to resolve any service feature issues. We find that NEP has not presented "extraordinary circumstances beyond its control in order to obtain an extension of time."⁴² Rather, NEP consciously made a business decision to upgrade its switches on a certain schedule.⁴³ NEP has not shown that challenges it may face are different from those faced by similarly situated carriers who are able to comply.⁴⁴ Generalized references to limited resources and implementation problems do not constitute substantial, credible evidence justifying an exemption from the porting requirements. NEP has known since 1996 that it would need to support LNP within six months of a request from a competing carrier.⁴⁵ Although wireless LNP was delayed, all carriers have been on notice since July 2002 that wireless and intermodal LNP would become available beginning in November 2003.⁴⁶ Thus, NEP has had sufficient time to follow through with these mandates and prepare for LNP.⁴⁷

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

⁴⁰ *Id.*

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

⁴² *Number Portability First Report and Order*, 11 FCC Rcd at 8397, ¶ 85.

⁴³ *See supra* ¶ 3.

⁴⁴ *See Western Wireless Order*, 18 FCC Rcd at 24696, ¶ 10 (in denying a waiver request to extend the thousands-block number pooling and LNP deadlines, the Bureau found that "Western ha[d] not demonstrated that it will sustain costs that are different from, or burdensome than, the costs of similarly situated Tier II wireless carriers").

⁴⁵ *See Number Portability First Report and Order*, 11 FCC Rcd 8352; *Telephone Number Portability*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7273-75, ¶¶ 60-66 (1997) (*Number Portability Reconsideration Order*).

⁴⁶ *See Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd 14972.

⁴⁷ *See Western Wireless Order*, 18 FCC Rcd at 24697-98, ¶ 13.

(continued....)

11. *Public Interest.* We also conclude that an extension of the porting deadline until December 31, 2005 would not serve the public interest because it would unduly delay the benefits of number portability to the public and could cause customer confusion. Portability has promoted, and will continue to promote, competition, especially in underserved areas, by allowing consumers to move to carriers that better serve consumers' needs without having to make the difficult choice to give up their numbers.⁴⁸ Thus, we find that the public interest would be served by implementing porting as soon as possible.

12. Furthermore, NEP should have considered the porting requirements, set out by the Commission long ago, when it contracted with vendors to install necessary upgrades. Accordingly, we conclude that granting NEP's request to extend the porting deadline would be inconsistent with the Commission's policy to promote competition, consumer choice, and efficient number use. We therefore deny NEP's request for a waiver of the May 24, 2004 porting implementation deadline.

13. Although we are not persuaded that a waiver of the porting requirements until December 31, 2005 is justified, we decline to enforce NEP's LNP obligations for sixty days following the release of this Order.⁴⁹ We find that some limited time to allow NEP to make the necessary preparations to implement LNP is reasonable to ensure compliance with our rules.⁵⁰ Non-enforcement for sixty days will also help to avoid any network disruptions, maximize trouble-free operation of LNP, and ensure that customers' requests for services will not be delayed due to carriers' difficulty in obtaining numbering resources.⁵¹

(Continued from previous page) _____

⁴⁸ *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14984, ¶ 28.

⁴⁹ *See Western Wireless Order*, 18 FCC Rcd 24692 (in denying Western's petition for waiver to extend the thousands-block number pooling (pooling) and LNP deadlines, the Bureau found that a sixty-day non-enforcement period would provide Western the time needed to properly implement and commence LNP and pooling).

⁵⁰ *Id.* at 24698, ¶ 16.

⁵¹ *Id.*

IV. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4(i), 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, 332, and the authority delegated under sections 0.91, 0.291, 1.3, 52.9(b), and 52.23(e) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 52.9(b), 52.23(e), the petition filed by The North-Eastern Pennsylvania Telephone Company is DENIED to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Wireline Competition Bureau

Exhibit Williams Direct - 3 BFR Summary - South Dakota

| Telco Name | OCN | Date BFR Sent to Telco | Date Response Sent From Telco | Respondents Name | Date Operation Agreement Sent to Telco |
|--|------|------------------------|-------------------------------|----------------------|--|
| Valley Telecom Cooperative Association, Inc. | 1685 | 11/18/2003 | 12/1/2003 | Steve Oleson | 12/19/2003 |
| Santel Communications Cooperative, Inc. | 1676 | 11/18/2003 | 12/2/2003 | Darla Pollman Rogers | 12/19/2003 |
| Stockhom-Strandburg Telephone Co. | 1679 | 11/18/2003 | 12/3/2003 | Darla Pollman Rogers | 12/19/2003 |
| Cheyenne River Sioux Tribe Telephone Authority | 1647 | 11/18/2003 | 12/16/2003 | J.D. Williams | 12/10/2003 |
| Vivian Telephone dba Golden West Telecom. | 1686 | 11/18/2003 | 11/19/2003 | George Strandell | 12/19/2003 |
| Bridgewater-Canistota Ind. Tel. Co. - Golden West | 0158 | 11/18/2003 | 11/19/2003 | George Strandell | 12/19/2003 |
| Armour Independent Telephone Co. - Golden West | 1640 | 11/18/2003 | 11/19/2003 | George Strandell | 12/19/2003 |
| Sioux Valley Telephone Company - Golden West | 1677 | 11/18/2003 | 11/19/2003 | George Strandell | 12/19/2003 |
| Midstate Communications, Inc. | 1670 | 11/18/2003 | 12/12/2003 | Peggy Reinesch | 12/10/2003 |
| McCook Cooperative Telephone Co. | 1669 | 11/18/2003 | 12/2/2003 | Darla Pollman Rogers | 12/19/2003 |
| City of Faith Municipal Telephone Company | 1653 | 11/18/2003 | N/A | N/A | 12/10/2003 |
| West River Telephone Cooperative Company | 1689 | 11/18/2003 | 11/24/2003 | Jerry Reisenauer | 12/19/2003 |
| Beresford Municipal Telephone Company | 1649 | 11/18/2003 | 11/21/2003 | Wayne Akland | 12/19/2003 |
| Alliance Communications | 1657 | 11/18/2003 | 2/2/2004 | Don Snyders | 12/10/2003 |
| James Valley Cooperative Telephone Company | 1664 | 11/18/2003 | 11/19/2003 | George Strandell | 12/19/2003 |
| Kadoka Telephone Co. - Golden West | 1667 | 11/18/2003 | 11/19/2003 | George Strandell | 12/19/2003 |
| Golden West Telecommunications | 1659 | 11/18/2003 | 11/19/2003 | George Strandell | 12/19/2003 |
| Union Telephone Co. - Golden West | 1684 | 11/18/2003 | 11/19/2003 | George Strandell | 12/19/2003 |
| Venture Communications Cooperative | 1680 | 11/18/2003 | 12/2/2003 | Darla Pollman Rogers | N/A |
| Interstate Telecom Coop, Inc. | 1651 | 11/18/2003 | 11/21/2003 | Jerry Heiberger | 12/19/2003 |
| RC Communications | 1662 | 11/18/2003 | 11/21/2003 | Pamela Harrington | 12/19/2003 |
| Kennebec Telephone Co. | 1668 | 11/18/2003 | 11/21/2003 | Rod Bowar | 12/19/2003 |
| Swiftel Communications - Brookings Municipal Util. | 1650 | 11/18/2003 | N/A | N/A | 12/19/2003 |
| Roberts County Telephone Cooperative Assoc. | 1674 | 11/18/2003 | 11/21/2003 | Pamela Harrington | 12/19/2003 |

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

| | | |
|--|---|----------------------|
| In the Matter of |) | |
| Telephone Number Portability |) | |
| |) | |
| |) | CC Docket No. 95-116 |
| CTIA Petitions for Declaratory Ruling on |) | |
| Wireline-Wireless Porting Issues |) | |
| |) | |
| |) | |
| |) | |

**MEMORANDUM OPINION AND ORDER AND FURTHER NOTICE OF PROPOSED
RULEMAKING**

Adopted: November 7, 2003

Released: November 10, 2003

By the Commission: Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein issuing separate statements.

Comment Date: 20 days after publication in the Federal Register.

Reply Comment Date: 30 days after publication in the Federal Register.

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Appendix A – List of Commenters

Appendix B - Initial Regulatory Flexibility Analysis

I. INTRODUCTION

1. In this order, we provide guidance to the industry on local number portability (LNP) issues relating to porting between wireless and wireline carriers (intermodal porting). First, in response to a Petition for Declaratory Ruling filed on January 23, 2003, by the Cellular Telecommunications and Internet Association (CTIA), we clarify that nothing in the Commission's rules limits porting between wireline and wireless carriers to require the wireless carrier to have a physical point of interconnection¹ or numbering resources in the rate center where the number is assigned. We find that porting from a wireline carrier to a wireless carrier is required where the requesting wireless carrier's "coverage area" overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port. The wireless "coverage area" is the area in which wireless service can be received from the wireless carrier. In addition, in response to a subsequent CTIA petition, we clarify that wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting between the carriers. We also decline to adopt a mandatory porting interval for wireline-to-wireless ports at the present time, but we seek comment on the issue as noted below.

2. In the accompanying Further Notice of Proposed Rulemaking (Further Notice), we seek comment on how to facilitate wireless-to-wireline porting if the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer. In addition, we seek comment on whether we should require carriers to reduce the length of the porting interval for ports between wireless and wireline carriers.

II. BACKGROUND

A. Statutory and Regulatory Background

3. Section 251(b) of the Communications Act of 1934, as amended (the Act) requires local exchange carriers (LECs) to provide local number portability, to the extent technically feasible, in accordance with requirements prescribed by the Commission.² Under the Act and the Commission's rules, local number portability is defined as "the ability of users of telecommunications services to retain,

¹ Referred to hereinafter as "point of interconnection."

² 47 U.S.C. § 251(b)(2).

at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”³

4. The Commission released the Local Number Portability *First Report and Order* in 1996, which promulgated rules and deployment schedules for the implementation of number portability.⁴ The Commission highlighted the critical policy goals underlying the LNP requirement, indicating that “the ability of end users to retain their telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of telecommunications services they can choose to purchase.”⁵ The Commission found that “number portability promotes competition between telecommunications service providers by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers.”⁶

5. The Commission adopted broad porting requirements, noting that “as a practical matter, [the porting obligation] requires LECs to provide number portability to other telecommunications carriers providing local exchange or exchange access service within the same MSA.”⁷ In addition, the Commission noted the section 251(b) requires LECs to port numbers to wireless carriers. The Commission stated that “section 251(b) requires local exchange carriers to provide number portability to all telecommunications carriers, and thus to Commercial Mobile Radio Service (CMRS) providers as well as wireline service providers.”⁸

6. The Commission adopted rules implementing the LNP requirements. Section 52.21(k) of the rules defines number portability to mean “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”⁹ Section 52.23(b)(1) provides that “all local exchange carriers (LECs) must provide a long-term database method for number portability in the 100 largest Metropolitan Statistical Areas (MSAs) by December 31, 1998 ... in switches for which another carrier has made a specific request for the provision of number portability ...”¹⁰ Finally, Section 52.23(b)(2)(i) of the Commission rules provides that “any wireline carrier that is certified ... to provide local exchange service, or any licensed CMRS provider, must be permitted to make a request for the provision of number portability.”¹¹

7. In 1997, in the Local Number Portability *Second Report and Order*, the Commission adopted recommendations from the North American Numbering Council (NANC) for the implementation of

³ 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(k).

⁴ Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (First Report and Order).

⁵ *Id.* at 8368, para. 30.

⁶ *Id.*

⁷ *Id.* at 8393, para. 77.

⁸ *Id.* at 8431, para. 152.

⁹ 47 C.F.R. § 52.21(k).

¹⁰ 47 C.F.R. § 52.23(b)(1).

¹¹ 47 C.F.R. § 52.23(b)(2)(i).

wireline-to-wireline number portability.¹² Under the guidelines developed by the NANC, porting between LECs was limited to carriers with facilities or numbering resources in the same rate center to accommodate technical limitations associated with the proper rating of wireline calls.¹³ The NANC guidelines made no recommendations regarding limitations on intermodal porting.

8. Although the Act excludes CMRS providers from the definition of local exchange carrier, and therefore from the section 251(b) obligation to provide number portability, the Commission has extended number portability requirements to CMRS providers.¹⁴ In the Local Number Portability *First Report and Order*, the Commission indicated that it had independent authority under sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, to require CMRS carriers to provide number portability.¹⁵ The Commission noted that “sections 2 and 332(c)(1) of the Act give the Commission authority to regulate commercial mobile radio service operators as common carriers ...”¹⁶ Noting that section 1 of the Act requires the Commission to make available to people of the United States, a rapid, efficient, nation-wide and world-wide wire and radio communication service, the Commission stated that its interest in number portability “is bolstered by the potential deployment of different number portability solutions across the country, which would significantly impact the provision of interstate telecommunications services.”¹⁷ Section 4(i) of the Act grants the Commission authority to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Communications Act of 1934, as amended] as may be necessary in the execution of its functions.”¹⁸ The Commission concluded that “the public interest is served by requiring the provision of number portability by CMRS providers because number portability will promote competition between providers of local telephone services and thereby promote competition between providers of interstate access services.”¹⁹

9. The Commission determined that implementation of wireless LNP, which would enable wireless subscribers to keep their phone numbers when changing carriers, would enhance competition between wireless carriers as well as promote competition between wireless and wireline carriers.²⁰ The

¹² Telephone Number Portability, CC Docket No. 95-116, *Second Report and Order*, 12 FCC Rcd 12,281 (1997) (*Second Report and Order*). The requirement that LECs port numbers to wireless carriers has not been applied previously due to extensions of the deadline for wireless carriers’ implementation of LNP. See Telephone Number Portability, Cellular Telecommunications & Industry Association’s Petition for Extension of Implementation Deadlines, CC Docket No. 95-116, *Memorandum Opinion and Order*, 13 FCC Rcd 16315 (1998); Telephone Number Portability, Cellular Telecommunications & Industry Association’s Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229, *Memorandum Opinion and Order*, 14 FCC Rcd 3092 (1999); and Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184 and CC Docket No. 95-116, *Memorandum Opinion and Order*, 17 FCC Rcd 14972 (2002).

¹³ North American Numbering Council Local Number Portability Selection Working Group Final report and Recommendation to the FCC, Appendix D at 6 (rel. April 25, 1997). This report is available at <http://www.fcc.gov/wcb/tapd/nanc/lnpastuf.html>.

¹⁴ *First Report and Order* at 8431, paras 152-53.

¹⁵ *Id.* at para. 153. See 47 U.S.C. §§ 1, 2, 4(i), and 332.

¹⁶ *Id.*

¹⁷ *Id.* at 8432, para. 153.

¹⁸ 47 U.S.C. § 154(i).

¹⁹ *First Report and Order* at 8432, para. 153.

²⁰ *Id.* at 8434-36, paras. 157-160.

Commission noted that “service provider portability will encourage CMRS-wireline competition, creating incentives for carriers to reduce prices for telecommunications services and to invest in innovative technologies, and enhancing flexibility for users of telecommunications services.”²¹ Commission rules reflecting the wireless LNP requirement provide that, by the implementation deadline, “all covered CMRS providers must provide a long-term database method for number portability ... in switches for which another carrier has made a request for the provision of LNP.”²²

10. In the Local Number Portability *Second Report and Order*, after adopting NANC guidelines applicable to wireline-to-wireline porting, the Commission directed the NANC to develop standards and procedures necessary to provide for wireless carriers’ participation in local number portability.²³ The Commission indicated its expectation that changes to LNP processes would need to be made to accommodate porting to wireless carriers. The Commission noted that “the industry, under the auspices of NANC, will probably need to make modifications to local number portability standards and processes as it gains experience in implementing number portability and obtains additional information about incorporating CMRS providers into a long-term number portability solution and interconnecting CMRS providers with wireline carriers already implementing their number portability obligations.”²⁴ In addition, the Commission noted that the NANC would have to consider issues of particular concern to wireless carriers, including how to account for differences between service area boundaries for wireline versus wireless services.²⁵

11. In 1998, the NANC submitted a report on the integration of wireless and wireline number portability from its Local Number Portability Administration (LNPA) Working Group to the Common Carrier Bureau (now known as the Wireline Competition Bureau).²⁶ The report discussed technical issues associated with wireless-to-wireline porting. The report noted that differences between the local serving areas of wireless and wireline carriers affected the porting capabilities of each type of carrier, making it infeasible for some wireline carriers to port-in numbers from wireless subscribers. The report explained that because wireline service is fixed to a specific location the subscriber’s telephone number is limited to use within the rate center within which it is assigned.²⁷ By contrast, the report noted, because wireless service is mobile and not fixed to a specific location, while the wireless subscriber’s number is associated with a specific geographic rate center, the wireless service is not limited to use within that rate center.²⁸ As a result of these differences, the report indicated that, if a wireless subscriber seeks to port his or her number to a wireline carrier, but the subscriber’s NPA-NXX is outside of the wireline rate center where the subscriber is located, the wireline carrier may not be able to receive the ported number.²⁹ The NANC did not reach consensus on a solution to this issue, and reported that this lack of symmetry, referred to as

²¹ *Id.* at 8437, para. 160.

²² 47 C.F.R. § 52.31(a).

²³ *Second Report and Order* at 12333, para. 90.

²⁴ *Id.*

²⁵ *Id.* at 12334, para. 91.

²⁶ North American Numbering Council Local Number Portability Administration Working Group Report on Wireless Wireline Integration, May 8, 1998, CC Docket No. 95-116 (filed May 18, 1998) (First Report on Wireless Wireline Integration).

²⁷ *Id.* at 7.

²⁸ *Id.*

²⁹ *Id.*

“rate center disparity,” raises questions by some carriers about competitive neutrality.³⁰ The Common Carrier Bureau sought comment on the NANC report.³¹

12. The NANC submitted a second report on the integration of wireless and wireline number portability to the Commission in 1999,³² and a third report in 2000,³³ both focusing on porting interval issues. The second report provided an analysis of the wireline porting interval and considered alternatives to reduce the porting interval for ports between wireless and wireline carriers.³⁴ The report recommended that each potential alternative be thoroughly developed and investigated.³⁵ The third report again analyzed the elements of the wireline porting interval and examined whether the length of the porting interval for both intermodal ports and wireline-to-wireline ports could be reduced.³⁶ The NANC determined that the wireline porting interval should not be reduced, but it was unable to reach a consensus on an intermodal porting interval.³⁷ Accordingly, we seek comment on the appropriate interval for intermodal porting.³⁸

B. Outstanding Petitions for Declaratory Ruling

13. On January 23, 2003, CTIA filed a petition requesting that the Commission issue a declaratory ruling that wireline carriers have an obligation to port their customers' telephone numbers to wireless carriers whose service areas overlap the wireline rate center that is associated with the number.³⁹ In its petition, CTIA claims that some LECs have narrowly construed their LNP obligations with regard to wireless carriers, taking the position that portability is only required where the wireless carrier receiving the number already has a point of presence or numbering resources in the wireline rate center.⁴⁰ CTIA urges the Commission to confirm that wireline carriers have an obligation to port to wireless carriers when their respective service areas overlap. CTIA notes that, in several of its decisions, the Commission has found that LNP is necessary to promote competition between the wireless and wireline

³⁰ Letter from Alan C. Hasselwander, Chairman, NANC to A. Richard Metzger, Jr., Chief, Common Carrier Bureau (filed Apr. 14, 1998).

³¹ Common Carrier Bureau Seeks Comment on North American Numbering Council Recommendation Concerning Local Number Portability Administration Wireline and Wireless Integration, CC Docket No. 95-116, *Public Notice*, 13 FCC Rcd 17342 (1998).

³² North American Numbering Council Local Number Portability Administration Working Group Second Report on Wireless Wireline Integration, June 30, 1999, CC Docket No. 95-116 (filed Nov. 4, 1999) (Second Report on Wireless Wireline Integration).

³³ North American Numbering Council Local Number Portability Administration Working Group Third Report on Wireless Wireline Integration, Sept. 30, 2000, CC Docket no. 95-116 (filed Nov. 29, 2000) (Third Report on Wireless Wireline Integration).

³⁴ Second Report on Wireless Wireline Integration at section 3.

³⁵ *Id.* at section 1.1.

³⁶ Third Report on Wireless Wireline Integration at section 3.

³⁷ Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau, (filed Nov. 29, 2000).

³⁸ See paras. 45-51, *infra*.

³⁹ CTIA Petition for Declaratory Ruling, CC Docket No. 95-116 (filed Jan. 23, 2003) (January 23rd Petition).

⁴⁰ *Id.* at 3.

industries. CTIA argues that, without Commission action to resolve the deadlock over the rate center disparity issue, the reality of wireline-to-wireless porting will be at risk because many wireline subscribers will be unable to port their numbers to wireless carriers that serve their areas.⁴¹

14. CTIA also requests that the Commission confirm that a wireline carrier's obligation to port numbers to a wireless carrier can be based on a service-level porting agreement between the carriers, and does not require an interconnection agreement. According to CTIA, number portability requires only that a carrier release a customer's number to another carrier and assign the number to the new carrier in the Number Portability Administration Center (NPAC) database, which is queried solely to identify the carrier that can terminate calls to the customer.⁴²

15. The majority of wireless carriers submitting comments support CTIA's request for declaratory ruling. They agree with CTIA that, without Commission action to resolve the rate center issue, the majority of wireline customers will be prevented from porting their number to a wireless carrier.⁴³ They call for the Commission to reject any proposal that would restrict porting to rate centers where a wireless carrier has already obtained numbers, contending that such a limitation would be inconsistent with the competitive objectives of intermodal LNP and would waste numbering resources.⁴⁴

16. Wireline carriers generally oppose CTIA's petition.⁴⁵ Some argue that requiring LECs to port to carriers who do not have a point of interconnection or numbering resources in the same rate center in which the number is assigned would give wireless carriers an unfair competitive advantage over wireline carriers.⁴⁶ LECs argue that, in contrast to wireless carriers who have flexibility in establishing their service areas and rates, wireline carriers are governed by state regulations. Under the state regulatory regime, they rate and route local and toll calls based on wireline rate centers. Consequently, LECs contend, wireline service providers do not have the same opportunity that wireless carriers have to offer number portability where the rate center in which the number is assigned does not match the rate center in which the LEC seeks to serve the customer.⁴⁷ Others argue that CTIA's petition would amount to a system of location portability rather than service provider portability, causing customer confusion over

⁴¹ *Id.* at 19.

⁴² *Id.* at 3.

⁴³ AT&T Wireless, Midwest Wireless, Nextel, Sprint, T-Mobile, and US Cellular all filed comments supporting CTIA's January 23rd petition. Comments and Reply Comments filed in response to the CTIA's January 23rd and May 13th petitions are listed in Appendix A.

⁴⁴ *See, e.g.*, Sprint Reply Comments on CTIA's January 23rd Petition at 9; T-Mobile Comments on CTIA's January 23rd Petition at 14-15; and Virgin Mobile Reply Comments on CTIA's January 23rd Petition at 4.

⁴⁵ Centurytel, Fred Williams & Associates, the Independent Alliance, the Michigan Exchange Carriers Association, NECA and NTCA, the Nebraska Rural Independent Companies, OPASTCO, SBC, TCA, USTA, and Valor Communications all filed comments opposing CTIA's January 23rd petition.

⁴⁶ *See, e.g.*, Centurytel Comments on CTIA's January 23rd Petition at 5-6; Fred Williams & Associates Comments on CTIA's January 23rd Petition at 8; SBC Comments on CTIA's January 23rd Petition at 1; Letter from Cronan O'Connell, Vice President-Federal Regulatory, Qwest to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116 (filed Oct. 9, 2003) (*Qwest Oct. 9th Ex Parte*); and Letter from Kathleen B. Levitz, Vice President-Federal Regulatory, BellSouth to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116 (filed Sept. 9, 2003) (*BellSouth Sept. 9th Ex Parte*).

⁴⁷ *See, e.g.*, Letter from James C. Smith, Senior Vice President, SBC Telecommunications, Inc. to Michael K. Powell, Chairman, FCC, CC Docket No. 95-116 (filed Aug. 29, 2003) (*SBC Aug. 29th Ex Parte*); and BellSouth Sept. 9th *Ex Parte*.

the rating of calls.⁴⁸ Several LECs also argue that the Commission may not permit intermodal porting outside of wireline rate center boundaries without first issuing a Notice of Proposed Rulemaking.⁴⁹ Several rural LECs argue that requiring porting between wireline and wireless carriers where the wireless carriers do not have a point of interconnection in the same rate center as the ported number would raise intercarrier compensation issues, as wireline carriers would be required to transport calls to ported numbers through points of interconnection outside of rural LEC serving areas.⁵⁰

17. On May 13, 2003, CTIA filed a second Petition for Declaratory Ruling. In its petition, CTIA argues that, in addition to the rate center issue that was the subject of its January petition, there are additional LNP implementation issues that have not been resolved by industry consensus and therefore must be addressed by the Commission.⁵¹ Specifically, CTIA requests that the Commission rule on the appropriate length of the porting interval, the necessity of interconnection agreements, a dispute between BellSouth and Sprint concerning the ability of carriers to designate different routing and rating points, definition of the largest 100 Metropolitan Statistical Areas (MSAs), the bona fide request requirement, and whether carriers must support nationwide roaming for customers with ported numbers.

18. On October 7, 2003, we released a Memorandum Opinion and Order addressing carrier requests for clarification of wireless-wireless porting issues.⁵² In response to CTIA's May 13th petition as well as a Petition for Declaratory Ruling/Application for Review, we concluded that wireless carriers may not impose "business rules" on their customers that purport to restrict carriers' obligations to port numbers upon receipt of a valid request to do so. In addition, we clarified that wireless-to-wireless porting does not require the wireless carrier receiving the number to be directly interconnected with the wireless carrier that gives up the number or to have numbering resources in the rate center associated with the ported number. We clarified that, although wireless carriers may voluntarily negotiate interconnection agreements with one another, such agreements are not required for wireless-to-wireless porting. We confirmed also that, in cases where wireless carriers are unable to reach agreement regarding the terms and conditions of porting, all such carriers must port numbers upon receipt of a valid request from another carrier, with no conditions.

19. We encouraged wireless carriers to complete "simple" ports within the industry-established two and one half hour porting interval and found that no action was necessary regarding the porting of numbers served by Type 1 interconnection because carriers are migrating these numbers to switches served by Type 2 interconnection or are otherwise developing solutions.⁵³ Finally, we reiterated the requirement that wireless carriers support roaming nationwide for customers with pooled and ported

⁴⁸ See Centurytel Comments on CTIA's January 23rd Petition at 4-5.

⁴⁹ See, e.g., Letter from Gary Lytle, Qwest to Marlene H. Dortch, Secretary, FCC (filed Oct. 17, 2003) (Qwest Oct. 17th *Ex Parte*); and SBC Aug. 29th *Ex Parte*.

⁵⁰ NECA and NTCA Comments on CTIA's January 23rd Petition at 6. See, In the Matter of Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, Sprint Petition for Declaratory Ruling, CC Docket No. 01-92 (filed July 18, 2002) (Sprint Petition for Declaratory Ruling).

⁵¹ CTIA Petition for Declaratory Ruling, CC Docket No. 95-116 (filed May 13, 2003) (May 13th Petition).

⁵² Telephone Number Portability, CC Docket No. 95-116, *Memorandum Opinion and Order*, FCC 03-237, rel. Oct. 7, 2003.

⁵³ Type 1 numbers reside in an end office of a LEC and are assigned to a Type 1 interconnection group, which connects the wireless carrier's switch and the LEC's end office switch. Type 2 numbers reside in a wireless carrier's switch and are assigned to a Type 2 interconnection group, which connects the wireless carrier's switch and a LEC access tandem switch or end office switch.

numbers, and we addressed outstanding petitions for waiver of the roaming requirement. We indicated our intention to address issues related to intermodal porting in a separate order.⁵⁴

III. ORDER

A. Wireline-to-Wireless Porting

20. *Background.* In its January 23rd Petition, CTIA requests that the Commission clarify that the LNP rules require wireline carriers to port numbers to any wireless carrier whose service area overlaps the wireline carrier's rate center that is associated with the ported number.⁵⁵ CTIA claims that, absent such a clarification, a majority of wireline customers will not be able to port their phone number to the wireless carrier of their choice because wireless carriers typically have a point of interconnection or numbering resources in only a fraction of the wireline rate centers in their service areas.⁵⁶ Citing prior Commission decisions, CTIA notes that the Commission has cited intermodal competition as a basis for imposing LNP requirements on wireless carriers.⁵⁷ CTIA argues that the Commission's objectives with respect to intermodal competition cannot be realized without prompt action.

21. *Discussion.* The Act and the Commission's rules impose broad porting obligations on LECs. Section 251(b) of the Act provides that all local exchange carriers "have the duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."⁵⁸ The Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."⁵⁹ In implementing these requirements in the Local Number Portability *First Report and Order*, the Commission determined that LECs were required to provide portability to all other telecommunications carriers, including CMRS service providers, providing local exchange or exchange access service within the same MSA.⁶⁰ The Commission's rules reflect these requirements, requiring LECs to offer number portability in switches for which another carrier made a request for number portability and providing that all carriers, including CMRS service providers must be permitted to make requests for number portability.⁶¹

⁵⁴ Remaining issues from CTIA's January 23rd and May 13th petitions pertaining to intermodal porting are addressed in this order. Additional issues from CTIA's May 13th petition, including the implication of the porting interval for E911, the definition of the 100 largest MSAs, and the bona fide request requirement have been addressed separately. See Letter from John B. Muleta, Chief, Wireless telecommunications Bureau, to John T. Scott, III, Vice President and Deputy General Counsel, Verizon Wireless and Michael F. Altschul, Senior Vice President, General Counsel, CTIA, CC Docket No. 95-116, DA 03-2190, dated July 3, 2003. See also, Numbering Resource Optimization, *Fourth Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket Nos. 99-200 and 95-116 (rel. June 18, 2003).

⁵⁵ January 23rd Petition at 3.

⁵⁶ *Id.* at 18.

⁵⁷ *Id.* at 12-16.

⁵⁸ 47 U.S.C. § 251(b).

⁵⁹ 47 U.S.C. § 153(30).

⁶⁰ *First Report and Order* at 8393, 8431, paras. 77 and 152.

⁶¹ 47 C.F.R. § 52.23(b)(1), (b)(2)(i).

22. We conclude that, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.⁶² Permitting intermodal porting in this manner is consistent with the requirement that carriers support their customers' ability to port numbers while remaining at the same location. For purposes of this discussion, the wireless "coverage area" is the area in which wireless service can be received from the wireless carrier. Permitting wireline-to-wireless porting under these conditions will provide customers the option of porting their wireline number to any wireless carrier that offers service at the same location. We also reaffirm that wireless carriers must port numbers to wireline carriers within the number's originating rate center. With respect to wireless-to-wireline porting, however, because of the limitations on wireline carriers' networks ability to port-in numbers from distant rate centers, we will hold neither the wireline nor the wireless carriers liable for failing to port under these conditions. Rather, we seek comment on this issue in the Further Notice below.

23. We make our determinations based on several factors. First, as stated above, under the Act and the Commission's rules, wireline carriers must port numbers to other telecommunications carriers, to the extent that it is technically feasible to do so, in accordance with regulations prescribed by the Commission.⁶³ There is no persuasive evidence in the record indicating that there are significant technical difficulties that would prevent a wireline carrier from porting a number to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number. Accordingly, the plain text of the Act and the Commission's rules, requiring LECs to provide number portability applies. In fact, several LECs acknowledge that there is no technical obstacle to porting wireline numbers to wireless carriers whose point of interconnection is outside of the rate center of the ported numbers.⁶⁴ Moreover, at least two LECs, Verizon and Sprint, have already established agreements with their wireless affiliates that specifically provide for intermodal porting.⁶⁵ In addition, BellSouth indicates in its comments that it has no intention of preventing customers from porting their telephone numbers to wireless carriers upon the customers' requests—regardless of whether or not the

⁶² We anticipate that a minimal amount of identifying information will be transmitted from the wireless carrier to the LEC when a customer seeks to port. For example, carriers may choose to verify the zip code of the porting-out wireline customer in their validation procedures.

⁶³ 47 U.S.C. § 251(b)(2), 47 C.F.R. § 52.23.

⁶⁴ See BellSouth Comments on CTIA's January 23rd Petition at 3; and USTA Comments on CTIA's January 23rd Petition at 7-8.

Several interexchange carriers (IXCs) have brought to the Commission's attention a problem IXCs face in identifying whether a customer has switched carriers. This problem can result in customers receiving erroneous bills from IXCs after they have switched local or interexchange carriers, and could also be a problem when customers port from a wireline carrier to a wireless carrier. While we do not address this issue in the instant order, we have sought comment on carrier petitions regarding this matter. See Pleading Cycle Established for Comments on Petition for Declaratory Ruling and/or Rulemaking, filed by Americatel Corporation, and for Comments on Joint Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, filed by AT&T Corp., Sprint Corp., and WorldCom, Inc., CG Docket No. 02-386, *Public Notice*, 17 FCC Rcd 25535 (2002).

⁶⁵ "Verizon and Verizon Wireless Reach Barrier-Free Porting Agreement in Advance of November 24 Deadline," Press Release from Verizon Wireless dated Sept. 22, 2003, available at <http://news.vzw.com/news/2003/09/pr2003-09-22.html>; and "Sprint Wireless Local Number Portability Plans on Track, on Schedule for November Deadline," Press Release from Sprint dated Oct. 1, 2003, available at Sprint.com.

carriers' service areas overlap.⁶⁶ Accordingly, BellSouth states, number portability can still occur despite the "rate center disparity" issue. We note that, to the extent that LECs assert an inability to port numbers to wireless carriers under the circumstances described herein, they bear the burden of demonstrating with specific evidence that porting to a wireless carrier without a point of interconnection or numbering resources in the same rate center to which the ported number is assigned is not technically feasible pursuant to our rules.

24. Second, neither the Commission's LNP rules nor any of the LNP orders have required wireless carriers to have points of interconnection or numbering resources in the same rate center as the assigned number for wireline-to-wireless porting. In the Local Number Portability *Second Report and Order*, the Commission adopted NANC recommendations regarding several specific aspects of number portability implementation, including technical and operational standards for the provision of number portability by wireline carriers.⁶⁷ In this context, the Commission adopted the NANC recommendations concerning the boundaries applicable to wireline-to-wireline porting. Specifically, the Commission adopted NANC recommendations limiting the scope of ports to wireline carriers based on wireline carriers' inability to receive numbers from foreign rate centers.⁶⁸

25. In this order, we address a different issue, wireline-to-wireless porting. The NANC recommendations that were the subject of the *Second Report and Order* included a boundary for wireline-to-wireline porting, but were silent regarding wireline-to-wireless porting issues. In adopting the NANC recommendations, the Commission specifically recognized that the NANC had not included recommendations regarding wireless carriers' participation in number portability and that modifications to existing standards and procedures would probably need to be made as the industry obtained additional information about incorporating CMRS service providers into a long-term number portability solution and interconnecting CMRS carriers with wireline carriers already implementing number portability.⁶⁹ However, while the Commission noted that NANC should consider intermodal porting issues of concern to wireless carriers, it did not impose limits on wireline-to-wireless porting while NANC considered these issues, nor did it give up its inherent authority to interpret the statute and rules with respect to the obligation of wireline carriers to port numbers to wireless carriers. Accordingly, we find that in light of the fact that the Commission has never adopted any limits regarding wireline-to-wireless number portability, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's coverage area overlaps the geographic location of the rate center to which the number is assigned.⁷⁰

⁶⁶ See BellSouth Comments on CTIA's January 23rd Petition at 3. In recent ex parte filings, BellSouth argues that the Commission cannot proceed to require intermodal porting until it addresses the issues arising from the differences in network architecture, operational support systems, and regulatory requirements that distinguish wireline carriers from wireless carriers. See, e.g., BellSouth Sept. 9th *Ex Parte*.

⁶⁷ See *Second Report and Order*. Subsequent NANC reports address technical issues associated with wireless-to-wireline porting. In the Further Notice, we seek comment on these technical feasibility issues.

⁶⁸ North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, Appendix D at 6 (rel. April 25, 1997). This report is available at www.fc.gov/wcb/tapd/nanc/lnpastuf.html.

⁶⁹ *Second Report and Order* 12 FCC Rcd at 12333-34.

⁷⁰ Similarly, wireless-to-wireline porting is required, as of November 24, 2003, where the requesting carrier's coverage area overlaps the geographic location of the rate center to which the number is assigned

26. We reject the argument advanced by certain wireline carriers,⁷¹ that requiring LECs to port to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number would constitute a new obligation imposed without proper notice. In fact, the requirement that LECs port numbers to wireless carriers is not a new rule. Citing the D.C. Circuit's decision in the *Sprint* case specifying the distinction between clarifications of existing rules and new rulemakings subject to APA procedures, Qwest, for example, argues that the permitting wireline-to-wireless porting in the manner outlined above would change LECs' existing porting obligations.⁷² As described earlier, however, section 251(b) of the Act and the Commission's Local Number Portability *First Report and Order* impose broad porting obligations on wireline carriers. Specifically, these authorities require wireline carriers to provide portability to all other telecommunications carriers, including wireless service providers. While the Commission decision in the Local Number Portability *Second Report and Order* limited the scope of wireline carriers' porting obligation with respect to the boundary for wireline-to-wireline porting, the Commission, as noted above, has never established limits with respect to wireline carriers' obligation to port to wireless carriers. The clarifications we make in this order interpret wireline carriers' existing obligation to port numbers to wireless carriers. Therefore, these clarifications comply with the requirements of the Administrative Procedure Act as well as the D.C. Circuit's decision in the *Sprint* case.

27. We also reject the argument made by some LECs that the scope of wireline-to-wireless porting should be limited because wireline carriers may not be able to offer portability to certain wireless subscribers.⁷³ As discussed above, under the Act and the Commission's rules, wireline carriers must port numbers to other telecommunications carriers, to the extent technically feasible. The fact that there may be technical obstacles that could prevent some other types of porting does not justify denying wireline consumers the benefit of being able to port their wireline numbers to wireless carriers. Each type of service offers its own advantages and disadvantages (e.g., wireless service offers mobility and larger calling areas, but also the potential for dropped calls) and wireline customers will consider these attributes in determining whether or not to port their number. In our view, it would not be appropriate to prevent wireline customers from taking advantage of the mobility or the larger local calling areas associated with wireless service simply because wireline carriers cannot currently accommodate all potential requests from customers with wireless service to port their numbers to a wireline service provider. Evidence from the record shows that limiting wireline-to-wireless porting to rate centers where a wireless carrier has a point of interconnection or numbering resources would deprive the majority of wireline consumers of the ability to port their number to a wireless carrier.⁷⁴ With such limited intermodal porting, the competitive benefits we seek to promote through the porting requirements may not be fully achieved. The focus of the porting rules is on promoting competition, rather than protecting individual competitors. To the extent that wireline carriers may have fewer opportunities to win customers through porting, this disparity results from the wireline network architecture and state regulatory requirements, rather than Commission rules.

28. We conclude that porting from a wireline to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number does not, in and of itself, constitute location portability, because the rating of calls to the ported number stays the same. As stated above, a wireless carrier porting-in a wireline number is required to maintain the number's original rate center designation following the port. As a result, calls to the ported number will continue to be rated

⁷¹ See, e.g., Letter from Gary Lytle, Qwest to Marlene H. Dortch, Secretary, FCC (filed Oct. 17, 2003) (Qwest Oct. 17th Ex Parte); and SBC Aug. 29 Ex Parte.

⁷² Qwest Oct. 17th Ex Parte at 11. See *Sprint Corp. v. FCC*, 315 F. 3d 369 (D.C. Cir. 2003).

⁷³ See, e.g., SBC Aug. 29th Ex Parte and BellSouth Sept. 9th Ex Parte.

⁷⁴ January 23rd Petition at 6.

in the same fashion as they were prior to the port. As to the routing of calls to ported numbers, it should be no different than if the wireless carrier had assigned the customer a new number rated to that rate center.⁷⁵

29. Some wireline carriers contend that they lack the technical capability to support wireline-to-wireless porting in the manner outlined above, and that they need time to make technical modifications to their systems. We emphasize that our holding in this order requires wireline carriers to support wireline-to-wireless porting in accordance with this order by November 24, 2003, unless they can provide specific evidence demonstrating that doing so is not technically feasible pursuant to our rules.⁷⁶ We expect carriers that need to make technical modifications to do so forthwith, as the record indicates that major system modifications are not required and that several wireline carriers have already announced their technical readiness to port numbers to wireless carriers without regard to rate centers.⁷⁷ We recognize, however, that many wireline carriers outside the top 100 MSAs may require some additional time to prepare for implementation of intermodal portability. In addition we note that wireless carriers outside the top 100 MSAs are not required to provide LNP prior to May 24, 2004, and accordingly are unlikely to seek to port numbers from wireline carriers prior to that date. Therefore for wireline carriers operating in areas outside of the 100 largest MSAs, we hereby waive, until May 24, 2004, the requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned. We find that this transition period will help ensure a smooth transition for carriers operating outside of the 100 largest MSAs and provide them with sufficient time to make necessary modifications to their systems.

30. Carriers inside the 100 largest MSAs (or outside the 100 largest MSAs, after the transition period) may file petitions for waiver of their obligation to port numbers to wireless carriers, if they can provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules.⁷⁸ We note that several wireline carriers have already filed requests for waiver.⁷⁹ We will

⁷⁵ As noted in paras. 39-40 below, there is a dispute as to which carrier is responsible for transport costs when the routing point for the wireless carrier's switch is located outside the wireline local calling area in which the number is rated. See Sprint Petition for Declaratory Ruling. The existence of this dispute over transport costs does not, however, provide a reason to delay or limit the availability of porting from wireline to wireless carriers.

We recognize that the Act limits wireline carriers' ability to route calls outside of Local Access Transport Area (LATA) boundaries. See 47 U.S.C. § 272. See also, Application by SBC Communications, Inc., Southwestern Bell Telephone, and Southwestern Bell Communications, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, *Memorandum Opinion and Order*, 15 FCC Rcd 18354 (2000). Accordingly, we clarify that our ruling is limited to porting within the LATA where the wireless carrier's point of interconnection is located, and does not require or contemplate porting outside of LATA boundaries.

⁷⁶ 47 U.S.C. § 251(b). We anticipate that, as a general matter, enforcement issues regarding both wireless-wireless and wireless-wireline local number portability at this time are likely to be better addressed in the context of Section 208 formal compliant proceedings or related mediations as opposed to FCC-initiated forfeiture proceedings. In this connection, we note that a violation of our number portability rules would constitute an unjust and unreasonable practice under section 201(b) of the Act.

⁷⁷ We note that Verizon has already announced its intention to port numbers without regard to rate centers. See "Verizon and Verizon Wireless Reach Barrier-Free Porting Agreement in Advance of November 24 Deadline," Press Release from Verizon Wireless dated Sept. 22, 2003, available at <http://news.vzw.com/news/2003/09/pr2003-09-22.html>.

⁷⁸ 47 C.F.R. § 1.3, 52.25(e). See also *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

consider these requests separately, and our decision in this order is without prejudice to any potential disposition of these requests.

B. Interconnection Agreements

31. *Background.* In its January 23rd petition, CTIA requests that the Commission confirm that a wireline carrier's obligation to port numbers to a wireless carrier requires only that a carrier release a customer's number to another carrier and assign the number to the new carrier in the Number Portability Administration Center (NPAC) database, which is queried solely to identify the carrier that can terminate calls to the customer. From a practical perspective, CTIA contends, such porting can be based on a service-level porting agreement between carriers, and does not require direct interconnection or an interconnection agreement. Moreover, CTIA argues, because the Commission imposed number portability requirements on wireless carriers pursuant to its authority under sections 1, 2, 4(i), and 332 of the Act, and outside the scope of sections 251 and 252, number portability between wireline and wireless carriers is governed by a different regime than number portability between wireline carriers and is subject to the Commission's unique jurisdiction over wireless carriers.⁸⁰

32. A number of wireless carriers agree with CTIA, arguing that requiring wireless carriers to establish interconnection agreements with wireline carriers from whom they sought to port numbers would delay LNP implementation.⁸¹ Several wireline carriers, however, assert that interconnection agreements for porting are necessary.⁸² SBC, for example, argues that under sections 251 and 252 of the Act, LECs must establish interconnection agreements for porting.⁸³ SBC contends that interconnection agreements guarantee parties their right to negotiate, provide a means of resolving disputes, and allow public scrutiny of agreements.⁸⁴ In addition, some LECs argue that, without interconnection agreements, they have no means to ensure that they will receive adequate compensation for transporting and terminating traffic to wireless carriers.

33. Other LECs, on the other hand, disagree that interconnection agreements are a necessary precondition to intermodal porting. Verizon contends that intermodal porting is not a Section 251 requirement and is therefore not necessary to incorporate wireless-wireline porting into Section 251 agreements.⁸⁵ AT&T questions whether either service level agreements or interconnection agreements are necessary, contending that because such little information needs to be exchanged between carriers for porting, less formal arrangements may be sufficient.⁸⁶ Sprint argues that interconnection agreements are

⁷⁹ See e.g., Franklin Telephone Company, Inc. Petition for Waiver, CC Docket Nos. 95-116 (filed Sept. 24, 2003); Intercommunity Telephone Company, LLC Petition for Waiver, CC Docket No. 95-116 (filed Sept. 24, 2003); and North Central Telephone Cooperative, Inc. Petition for Waiver, CC Docket No. 95-116 (filed Sept. 24, 2003).

⁸⁰ May 13th Petition at 17-18.

⁸¹ See Sprint Comments on CTIA's May 13th Petition at 16; T-Mobile Comments on CTIA's May 13th Petition at 8; and Virgin Mobile Comments on CTIA's May 13th Petition at 4-5.

⁸² See Missouri Independent Telephone Company Group Comments on CTIA's May 13th Petition; National Telecommunications Cooperative Association Comments on CTIA's May 13th Petition; and SBC Comments on CTIA's May 13th Petition.

⁸³ SBC Comments on CTIA's May 13th Petition at 8.

⁸⁴ *Id.*

⁸⁵ Sprint Comments on CTIA's May 13th Petition at 18; Verizon Comments on CTIA's May 13th Petition at 10.

⁸⁶ AT&T Reply Comments on CTIA's May 13th Petition at 7-8.

not required for LNP because whether or not a customer ports a number from one carrier to another has nothing to do with the interconnection arrangements two carriers use for the exchange of traffic.⁸⁷ Several LECs urge the Commission to let carriers determine on their own what type of agreement to use to facilitate porting.⁸⁸

34. *Discussion.* We find that wireless carriers need not enter into section 251 interconnection agreements with wireline carriers solely for the purpose of porting numbers. We note that the intermodal porting obligation is also based on the Commission's authority under sections 1, 2, 4(i) and 332 of the Act. Sprint argues that interconnection agreements are not required to implement every section 251 obligation.⁸⁹ Sprint also claims that because porting involves a limited exchange of data (e.g., carriers need only share basic contact and technical information sufficient to allow porting functionality and customer verification to be established), interconnection agreements should not be required here.⁹⁰ We agree with Sprint that wireline carriers should be required to port numbers to wireless carriers without necessarily entering into an interconnection agreement because this obligation can be discharged with a minimal exchange of information. We thus find that wireline carriers may not unilaterally require interconnection agreements prior to intermodal porting. Moreover, to avoid any confusion about the applicability of section 252 to any arrangement between wireline and wireless carriers solely for the purpose of porting numbers, we forbear from these requirements as set forth below.

35. To the extent that the *Qwest Declaratory Ruling Order* could be interpreted to require any agreement pertaining solely to wireline-to-wireless porting to be filed as an interconnection agreement with a state commission pursuant to sections 251 and 252 of the Act, we forbear from those requirements. First, we conclude that interconnection agreements are not necessary to prevent unjust or unreasonable charges or practices by wireless carriers with respect to porting. The wireless industry is characterized by a high level of competition between carriers. Although states do not regulate the prices that wireless carriers charge, the prices for wireless service have declined steadily over the last several years.⁹¹ No evidence suggests that requiring interconnection agreements for intermodal porting is necessary for this trend to continue.

36. For similar reasons, we find that interconnection agreements for intermodal porting are not necessary for the protection of consumers.⁹² The intermodal LNP requirement is intended to benefit

⁸⁷ Letter from Luisa L. Lancetti, Vice President, PCS Regulatory Affairs, Sprint to John Rogovin, General Counsel, FCC (filed Sept. 22, 2003).

⁸⁸ See Association for Local Telecommunications Services Reply Comments on CTIA's May 13th Petition at 3, BellSouth Comments on CTIA's May 13th Petition at 9; and USTA Reply Comments on CTIA's May 13th Petition at 6.

⁸⁹ See note 87.

⁹⁰ Sprint's profile information exchange process is an example of the type of contact and technical information that would trigger an obligation to port. See, Letter from Luisa L. Lancetti, Vice President PCS Regulatory Affairs, Sprint Corp. to John B. Muleta, Chief, Wireless Telecommunications Bureau (filed Sept. 23, 2003); and Letter from Luisa L. Lancetti, Vice President, PCS Regulatory Affairs, Sprint Corp. to John B. Muleta, Chief, Wireless Telecommunications Bureau and William Maher, Chief, Wireline Competition Bureau (filed August 8, 2003).

⁹¹ Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Eighth Report*, FCC 03-150, at 45 (rel. July 14, 2003).

⁹² Certain LECs have expressed concern that without interconnection agreements between LECs and CMRS carriers, calls to ported numbers may be dropped, because NPAC queries may not be performed for customers who have ported their numbers from a LEC to a CMRS carrier. See Letter from Mary J. Sisak, Counsel for Centurytel, Inc. to Marlene H. Dortch, Secretary, FCC (filed Oct. 23, 2003). We do not find these concerns to be justified,

consumers by promoting competition between the wireless and wireline industries and creating incentives for carriers to provide new service offerings, reduced prices, and higher quality services. Requiring interconnection agreements for the purpose of intermodal porting could undermine the benefits of LNP to consumers by preventing or delaying implementation of intermodal porting. We also do not believe that the state regulatory oversight mechanism provided by Section 251 is necessary to protect consumers in this limited instance.

37. Finally, we conclude that forbearance is consistent with the public interest. Number portability, by itself, does not create new obligations with regard to exchange of traffic between the carriers involved in the port. Instead, porting involves a limited exchange of data between carriers to carry out the port. Sprint, for example, notes that to accomplish porting, carriers need only exchange basic contact information and connectivity details, after which the port can be rapidly accomplished.⁹³ Given the limited data exchange and the short time period required to port, we conclude that interconnection agreements approved under section 251 are unnecessary. In view of these factors, we conclude that it is appropriate to forbear from requiring interconnection agreements for intermodal porting.

C. The Porting Interval

38. CTIA requests that the Commission require wireline carriers to reduce the length of the porting interval, or the amount of time it takes two carriers to complete the process of porting a number, for ports from wireline to wireless carriers.⁹⁴ Currently, the wireline-to-wireline porting interval is four business days.⁹⁵ The wireline porting interval was adopted by the NANC in its Architecture and Administrative Plan for Local Number Portability, which was approved by the Commission.⁹⁶ Upon subsequent review of the porting interval, the NANC agreed that the four business day porting interval for wireline-to-wireline porting should not be reduced; it did not specify a porting interval for intermodal porting.⁹⁷ The current porting interval for wireless-to-wireless ports is two and one half hours.⁹⁸ We decline to require wireline carriers to follow a shorter porting interval for intermodal ports at this time. Instead, we will seek comment on this issue in the Further Notice. We note that, while we seek comment on whether to reduce the length of the wireline porting interval, the current four business day porting

however, because the Commission's rules require carriers to correctly route calls to ported numbers. *See* Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7307-08, paras. 125-126.

⁹³ Sprint Comments on CTIA's May 13th Petition at 13-14.

⁹⁴ May 13th Petition at 7.

⁹⁵ Wireline carriers are required to complete the LSR/FOC exchange within 24 hours and complete the port within three business days thereafter. *See* North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, Appendix E (rel. April 25, 1997).

⁹⁶ *Second Report and Order*, 12 FCC Rcd 12281 (1997)

⁹⁷ Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau, (filed Nov. 29, 2000).

⁹⁸ *See* North American Numbering Council Local Number Portability Administration Working Group Report on Wireless Wireline Integration, May 8, 1998, CC Docket No. 95-116 (filed May 18, 1998) (First Report on Wireless Wireline Integration); North American Numbering Council Wireless Number Portability Subcommittee Report on Wireless Number Portability Technical, Operational, and Implementation Requirements Phase II, CC Docket No. 95-116 (filed Sept. 26, 2000); ATIS Operations and Billing Forum, Wireless Inter-carrier Communications: Interface Specification for Local Number Portability, Version 2, at § 2 p. 6 (Jan. 2003).

interval represents the outer limit of what we would consider to be a reasonable amount of time in which wireline carriers may complete ports. We note also that whatever porting interval affiliated wireline and wireless service providers offer within their corporate family must also be made available to unaffiliated service providers.⁹⁹

D. Impact of Designating Different Routing and Rating Points on LNP

39. CTIA asks the Commission to resolve the intercarrier dispute between BellSouth and Sprint as it affects the rating and routing of calls to ported numbers.¹⁰⁰ CTIA contends that, although the dispute largely concerns matters of intercarrier compensation, to the extent LECs argue that they need not differentiate between rating and routing points for local calls, intermodal porting may not be available to consumers.¹⁰¹ To ensure that permitting porting beyond wireline rate center boundaries does not cause customer confusion with respect to charges for calls, we clarify that ported numbers must remain rated to their original rate center. We note, however, that the routing will change when a number is ported. Indeed, several wireline carriers have expressed concern about the transport costs associated with routing calls to ported numbers. The National Exchange Carrier Association (NECA) and National Telecommunications Cooperative Association (NTCA), for example, argue in their joint comments, that when wireless carriers establish a point of interconnection outside of a rural LEC's serving area, a disproportionate burden is placed on rural LECs to transport originating calls to the interconnection points.¹⁰² They argue that requiring wireline carriers to port telephone numbers to out-of-service area points of interconnection could create an even bigger burden. Other carriers point out, however, that issues associated with the rating and routing of calls to ported numbers are the same as issues associated with rating and routing of calls to all wireless numbers.¹⁰³

40. We recognize the concerns of these carriers, but find that they are outside the scope of this order. As noted above, our declaratory ruling with respect to wireline-to-wireless porting is limited to ported numbers that remain rated in their original rate centers. We make no determination, however, with respect to the routing of ported numbers, because the requirements of our LNP rules do not vary depending on how calls to the number will be routed after the port occurs. Moreover, as CTIA notes, the rating and routing issues raised by the rural wireline carriers have been raised in the context of non-ported numbers and are before the Commission in other proceedings.¹⁰⁴ Therefore, without prejudging the outcome of any other proceeding, we decline to address these issues at this time as they relate to intermodal LNP.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Wireless-to-Wireline Porting

41. *Background.* As noted above, some LECs argue that allowing wireless carriers to port numbers wherever their coverage area overlaps the rate center in which the number is assigned would

⁹⁹ 47 U.S.C. §§ 201(b) and 202(a).

¹⁰⁰ May 13th Petition at 25-26.

¹⁰¹ *Id.*

¹⁰² NECA and NTCA Comments on CTIA's January 23rd Petition at 6.

¹⁰³ BellSouth Comments on CTIA's May 13th Petition at 11-12.

¹⁰⁴ *See, e.g.* In the Matter of Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, Sprint Petition for Declaratory Ruling, CC Docket No. 01-92 (filed July 18, 2002).

give wireless service providers an unfair competitive advantage over wireline carriers.¹⁰⁵ They contend that while this may facilitate widespread wireline-to-wireless porting, wireless-to-wireline porting can only occur in cases where the wireless customer is physically located in the wireline rate center associated with the phone number.¹⁰⁶ If the customer's physical location is outside the rate center associated with the number, porting the number to a wireline telephone at the customer's location could result in calls to and from that number being rated as toll calls. As a result, the LECs assert, they are effectively precluded from offering wireless-to-wireline porting to those wireless subscribers who are not located in the wireline rate center associated with their wireless numbers.¹⁰⁷ Furthermore, the LECs contend that for them to offer wireless-to-wireline porting in this context would require significant and costly operational changes.¹⁰⁸ Qwest, for example, argues that if the Commission were to make the Local Access Transport Area (LATA) or Numbering Plan Area (NPA) the relevant geographic area for porting, LECs would be required to upgrade switches, increase trunking, and rework billing and provisioning systems.¹⁰⁹

42. *Discussion.* We seek comment on how to facilitate wireless-to-wireline porting where there is a mismatch between the rate center associated with the wireless number and the rate center in which the wireline carrier seeks to serve the customer. Some wireline commenters contend that requiring porting between wireline and wireless carriers where the wireless carrier does not have a point of interconnection or numbering resources in the rate center creates a competitive disparity because wireline carriers would not have the same flexibility to offer porting to wireless customers whose numbers are not associated with the wireline rate center. We seek comment on the technical impediments associated with requiring wireless-to-wireline LNP when the location of the wireline facilities serving the customer requesting the port is not in the rate center where the wireless number is assigned. We seek comment on whether technical impediments exist to such an extent as to make wireless-to-wireline porting under such circumstances technically infeasible. Commenters that contend there are technical implications should specifically describe them, including any upgrades to switches, network facilities, or operational support systems that would be necessary. Commenters should also provide detailed information on the magnitude of the cost of such upgrades along with documentation of the estimated costs. We also seek comment on whether the benefits associated with offering wireless-to-wireline porting would outweigh the costs associated with making any necessary upgrades. We seek comment on the expected demand for wireless-to-wireline porting. We note that wireline customers who decide to port their numbers to wireless carriers are able to port their numbers back to wireline carriers if they choose, because the numbers remain associated with their original rate centers.

43. In addition to technical factors, we seek comment on whether there are regulatory requirements that prevent wireline carriers from porting wireless numbers when the rate center associated with the number and the customer's physical location do not match. Commenters that suggest such obstacles exist and result in a competitive disadvantage should submit proposals to address these impediments, as well as consider the collateral effect on other regulatory objectives as a result of these proposals. We note that wireline carriers are not able to port a number to another wireline carrier if the rate center associated with the number does not match the rate center associated with the customer's

¹⁰⁵ See, e.g., Centurytel Comments on CTIA's January 23rd Petition at 5-6; Fred Williams & Associates Comments on CTIA's January 23rd Petition at 8; and SBC Comments on CTIA's January 23rd Petition at 1.

¹⁰⁶ See, e.g., Qwest Oct. 9th *Ex Parte*; and Letter from Herschel L. Abbott, Jr., Vice President-Government Affairs, BellSouth to Michael K. Powell, Chairman, FCC (filed Oct. 14, 2003).

¹⁰⁷ *Id.*

¹⁰⁸ See Letter from Cronan O'Connell, Vice President-Federal Regulatory, Qwest to Marlene H. Dortch, Secretary, FCC (filed July 24, 2003) at 4-5 (Qwest July 24th *Ex Parte*); and SBC Aug. 29th *Ex Parte*.

¹⁰⁹ See Qwest July 24th *Ex Parte* at 4-5.

physical location. We seek comment on whether wireless and wireline numbers should be treated differently in this regard. We also seek comment on whether there are any potential adverse impacts to consumers resulting from wireless-to-wireline porting where the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer.

44. In addition, we seek comment on whether there are other competitive issues that could affect our LNP requirements. For example, to the extent that wireless-to-wireline porting may raise issues regarding the rating of calls to and from the ported number when the rate center of the ported number and the physical location of the customer do not match, we seek comment on the extent to which wireline carriers should absorb the cost of allowing the customer with a number ported from a wireless carrier to maintain the same local calling area that the customer had with the wireless service provider. Alternatively, we seek comment on the extent to which wireline carriers can serve customers with numbers ported from wireless carriers on a Foreign Exchange (FX) or virtual FX basis.¹¹⁰ A third option is for wireline carriers to seek rate design and rate center changes at the state level to establish larger wireline local calling areas. We seek comment on the procedural, technical, financial, and regulatory implications of each of these approaches. We also seek comment on the viability of each of these approaches and whether there are any alternative approaches to consider.

B. Porting Interval

45. *Background.* Over the past several years, the NANC has studied the wireline porting interval and reviewed options for reducing the length of the interval for simple ports.¹¹¹ In the Third Report on Wireless/Wireline Integration, the Local Number Portability Administration Working Group analyzed the elements of the wireline porting interval and investigated how reducing the length of the interval for simple ports would affect carriers' operations.¹¹² The report noted that reducing the porting interval would require wireline carriers to make significant changes to their operations. First, reducing the porting interval would require wireline carriers to automate and make uniform the Local Service Request (LSR)/Local Service Request Confirmation (LSC) Firm Order Confirmation (FOC) process.¹¹³ In addition, the report indicated that wireline carriers would likely have to eliminate or adjust their batch processing operations. The report noted that a change from batch processing to real time data processing would require in-depth system analysis of all business processes that use batch processing systems.¹¹⁴ Based on its analysis of these and other challenges, the working group concluded that because most wireline carriers already found their processes and systems challenged to meet the current porting interval it was not feasible to reduce the length of the wireline porting interval for simple ports.¹¹⁵

46. Because of the number and complexity of changes that would be required in the porting process for wireline carriers, the NANC was not able to reach consensus on reducing the porting interval

¹¹⁰ T-Mobile Comments on CTIA's January 23rd Petition at 11.

¹¹¹ See Second Report on Wireless Wireline Integration; Third Report on Wireless Wireline Integration.

¹¹² See Third Report on Wireless Wireline Integration. Simple ports are defined as those ports that: do not involve unbundled network elements, involve an account for a single line (porting a single line from a multi-line account is not a simple port), do not include complex switch translations (e.g., Centrex or Plexar, ISDN, AIN services, remote call forwarding, multiple services on the loop), may include CLASS features such as Caller ID, and do not include a reseller. All other ports are considered "complex" ports. *Id.* at 6.

¹¹³ *Id.* at 13.

¹¹⁴ *Id.* at 13-14.

¹¹⁵ *Id.* at 14.

to accommodate intermodal porting.¹¹⁶ The wireless industry expressed concern that the wireline four business day porting interval does not fit within its business model.¹¹⁷ In order to accommodate the wireless business model, the NANC attempted to shorten the porting interval for wireline-to-wireless ports by developing a process that will allow the wireless carrier to activate the port before the wireline carrier activates the disconnect in the Number Portability Administration Center (NPAC). This process results in a situation referred to as a “mixed service” condition, whereby the customer can make calls on both the wireline and wireless phones before the port is completed. The NANC reported that this mixed service condition can result in misdirected callbacks in an emergency situation.¹¹⁸ That is, for example, if the emergency operator attempts to callback a person that made a call from the wireless phone, the call may be routed to the wireline phone. The NANC consulted with the National Emergency Number Association and concluded that, while the mixed service condition is not desirable, the incidence of such is low and would not impede intermodal porting.¹¹⁹

47. LECs contend that their current porting interval cannot be reduced readily for intermodal porting, because it is necessary to support the complex systems and procedures of wireline carriers.¹²⁰ SBC, for example, explains that the current porting interval not only ensures that the porting out carrier correctly ports a number to the porting in carrier, but also that these carriers accurately update other systems, including E911, billing, and maintenance.¹²¹ Qwest notes that wireline carriers have longer porting intervals due to differences in network and system configurations.¹²² Qwest indicates that wireline carriers are often constrained by the provisioning of physical facilities (e.g., loops) to serve customers.¹²³ Moreover, LECs contend, reducing the length of the current wireline porting interval would require them to make changes to many of their systems and would involve significant expense.¹²⁴

48. Wireless carriers argue that a reduced intermodal porting interval would encourage more consumers to use porting by eliminating confusion about the porting process.¹²⁵ They argue that a reduced porting interval is technically achievable and that wireline carriers should be required to make the

¹¹⁶ Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau (filed Nov. 29, 2000).

¹¹⁷ Wireline carriers are required to complete the LSR/FOC exchange within 24 hours and complete the port within three business days thereafter. *See* North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, Appendix E (rel. April 25, 1997). *See also* Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau (filed Nov. 29, 2000).

¹¹⁸ *See* Second Report on Wireless Wireline Integration.

¹¹⁹ *See* Letter from John R. Hoffman, Chair, NANC to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, dated Nov. 29, 2000.

¹²⁰ *See* letter from Kathleen Levitz, Vice President-Federal Regulatory, BellSouth to Marlene H. Dortch, Secretary, FCC, dated Oct. 15, 2003.

¹²¹ SBC Aug. 29th *Ex Parte*.

¹²² Qwest Comments on CTIA’s May 13th Petition at 7.

¹²³ *Id.*

¹²⁴ *Id.* at 5.

¹²⁵ *See, e.g.,* AT&T Wireless Comments on CTIA’s May 13th Petition at 3-6; Sprint Comments on CTIA’s May 13th Petition at 6-12; and T-Mobile Comments on CTIA’s May 13th Petition at 7-9.

necessary changes to their systems. At least one wireless carrier recognizes, however, that significant changes to LEC systems may be required to achieve reduced porting intervals.¹²⁶

49. *Discussion.* Reducing the porting interval could benefit consumers by making it quicker for consumers to port their numbers. To that end, wireless carriers intend to complete intramodal wireless ports within two and one-half hours.¹²⁷ There, however, may be technical or practical impediments to requiring wireline carriers to achieve shorter porting intervals for intermodal porting. We seek comment on whether we should reduce the current wireline four business day porting interval for intermodal porting. If so, what porting interval should we adopt? Commenters proposing a shorter porting interval should specify what adjustments should be made to the LNP process flows developed by the NANC.¹²⁸ For example, the wireline NANC LNP Process Flows establish that the FOC must be finalized within 24 hours of receiving the port request.¹²⁹ Specific time periods are also established for other steps within the porting process that may require adjustment in the event that a shorter porting interval is adopted.

50. We also seek comment on whether adjustments to the NPAC processes, including interfaces and porting triggers, would be required.¹³⁰ In addition, we seek comment on the risks, if any, associated with reducing the porting interval for intermodal porting. We seek comment on an appropriate transition period in the event a shorter porting interval is adopted, during which time carriers can modify and test their systems and procedures.

51. We seek input from the NANC on reducing the interval for intermodal porting. The NANC recommendation should include corresponding updates to the NANC LNP process flows and any recommendations on an appropriate transition period. The NANC should provide its recommendations promptly as we intend to review the record and address this issue expeditiously.

V. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

52. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on small entities of the proposals suggested in the *Further Notice*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the *Further Notice*, and must have a separate and distinct heading designating them as responses to the IRFA.

¹²⁶ *See* Sprint Comments on CTIA’s May 13th Petition.

¹²⁷ *See* First Report on Wireless Wireline Integration; North American Numbering Council Wireless Number Portability Subcommittee Report on Wireless Number Portability Technical, Operational, and Implementation Requirements Phase II, CC Docket No. 95-116 (filed Sept. 26, 2000); and ATIS Operations and Billing Forum, Wireless Intercarrier Communications: Interface Specification for Local Number Portability, Version 2, at § 2 p. 6 (Jan. 2003).

¹²⁸ *See* Local Number Portability Selection Working Group Final Report and Recommendation to the FCC (rel. April 25, 1997).

¹²⁹ FOC, or Firm Order Confirmation refers to the response the old service provider sends to the new service provider upon receiving the new service provider’s request to port a number, setting a due time and date for the port. *See* Local Number Portability Selection Working Group Final Report and Recommendation to the FCC (rel. April 25, 1997).

¹³⁰ The NPAC, administered by NeuStar, operates and maintains the centralized databases associated with LNP. Interaction with the NPAC is required for all porting transactions.

B. Paperwork Reduction Analysis

53. This *Further Notice* contains no new or revised information collections.

C. Ex Parte Presentations

54. This is a permit-but-disclose notice and comment rule making proceeding. Members of the public are advised that ex parte presentations are permitted, provided they are disclosed under the Commission's Rules.¹³¹

D. Comment Dates

55. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before twenty (20) days from the date of publication of this *Further Notice* in the Federal Register and reply comments thirty (30) days from the date of publication of this *Further Notice* in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

56. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rule making number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an E-mail to ecfs@fcc.gov, and should including the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

57. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rule making number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rule making number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room TW-A306, 445 12th Street, S.W., Washington, D.C. 20554.

58. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered diskette filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be

¹³¹ See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to: 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, the docket number of this proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554.

59. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202)418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov. This Further Notice can be downloaded in ASCII Text format at: <http://www.fcc.gov/wtb>.

E. Further Information

60. For further information concerning this Further Notice of Proposed Rulemaking, contact: Jennifer Salhus, Attorney Advisor, Policy Division, Wireless Telecommunications Bureau, at (202) 418-1310 (voice) or (202) 418-1169 (TTY) or Pam Slipakoff, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-1500 (voice) or (202) 418-0484 (TTY).

VI. ORDERING CLAUSES

61. Accordingly, IT IS ORDERED THAT, pursuant to sections 4(i) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i) and 160, the Petitions for Declaratory Ruling filed by CTIA on January 23, 2003, and May 13, 2003, are GRANTED to the extent stated herein.

62. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**List of Parties****A. January 23rd Petition****Comments**

ALLTEL
AT&T
AT&T Wireless
BellSouth
California Public Utilities Commission (CA PUC)
CenturyTel, Inc.
Fred Williamson & Associates
Illinois Citizens Utility Board
Independent Alliance
Michigan Exchange Carriers Association
Midwest Wireless
National Exchange Carrier Association and National Telephone Cooperative Association (NECA & NTCA)
Nebraska Rural Independent Companies
New York State Department of Public Service (NY DPS)
Nextel
Ohio Public Utilities Commission (Ohio PUC)
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Rural Telecommunications Group (RTG)
SBC
TCA, Inc
Texas 911 Agencies
T-Mobile
United States Telecom Association (USTA)
United States Cellular (US Cellular)
WorldCom

Reply Comments

AT&T
AT&T Wireless
BellSouth
CA PUC
Cingular Wireless
CTIA
Fred Williamson & Associates
McLeod USA Telecommunications Services
Mid-Missouri Cellular
Bernie Moskal
South Dakota Telecommunications Association
Sprint
T-Mobile
USTA

Valor Telecommunications Enterprises
Virgin Mobile

B. May 13th Petition

Comments

ALLTEL
AT&T
AT&T Wireless
BellSouth
CA PUC
Cincinnati Bell Wireless
Cingular Wireless
City of New York
First Cellular of Southern Illinois
Illinois Citizens Utility Board
Independent Alliance
Missouri Independent Telephone Group
Nebraska Public Service Commission
NENA
Nextel
Ohio PUC
OPASTCO
Qwest
Rural Cellular Association
Rural Iowa Independent Telephone Association
RTG
SBC
Sprint
T-Mobile
Triton PCS
USTA
Verizon
Verizon Wireless
Virgin Mobile
Western Wireless
Wireless Consumers Alliance

Reply Comments

ALLTEL
ALTS
AT&T
AT&T Wireless
Cellular Mobile Systems of St. Cloud, LLC
Cingular Wireless
CTIA
ENMR-Plateau
Illinois Citizens Utility Board

Missouri Independent Telephone Group
NTCA
NTELOS Inc.
T-Mobile
South Dakota Telecommunications Association
Sprint
US Cellular
USTA
Verizon
Verizon Wireless
XIT Cellular

APPENDIX B

**Initial Regulatory Flexibility Analysis
Further Notice of Proposed Rulemaking
CC Docket No. 95-116**

1. As required by the Regulatory Flexibility Act, as amended (RFA),¹³² the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice), CC Docket No. 95-116. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, the Further Notice and IRFA (or summaries thereof) will be published in the *Federal Register*.¹³³

A. Need for, and Objectives of, the Proposed Rules

2. The Further Notice seeks comment on how to facilitate wireless-to-wireline porting where the rate center associated with the wireless number and the rate center in which the wireline carrier seeks to serve the customer do not match. The Further Notice also seeks comment on whether the Commission should reduce the current four-business day porting interval for intermodal porting.

B. Legal Basis for Proposed Rules

3. The proposed action is authorized under Section 52.23 of the Commission's rules, 47 C.F.R. § 52.23, and in Sections 1, 3, 4(i), 201, 202, 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154(i), 201-202, and 251.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹³⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹³⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.¹³⁶ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established

¹³² *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹³³ *See* 5 U.S.C. § 603(a)

¹³⁴ *See* 5 U.S.C. § 603(b)(3).

¹³⁵ 5 U.S.C. § 601(6).

¹³⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

by the Small Business Administration (SBA).¹³⁷ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹³⁸ Nationwide, as of 1992, there were approximately 275,801 small organizations.¹³⁹

5. **Incumbent Local Exchange Carriers.** We have included small incumbent local exchange carriers LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."¹⁴⁰ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.¹⁴¹ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts. According to the FCC's *Telephone Trends Report* data, 1,337 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services.¹⁴² Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees.¹⁴³

6. **Competitive Local Exchange Carriers.** Neither the Commission nor the SBA has developed a specific small business size standard for providers of competitive local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.¹⁴⁴ According to the FCC's *Telephone Trends Report* data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.¹⁴⁵ Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees.¹⁴⁶

7. **Wireless Service Providers.** The SBA has developed a size standard for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under

¹³⁷ 15 U.S.C. § 632.

¹³⁸ *Id.* § 601(4).

¹³⁹ Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

¹⁴⁰ 5 U.S.C. § 601(3).

¹⁴¹ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 5 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

¹⁴² FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, at Table 5.3, p 5-5 (Aug. 2003) (*Telephone Trends Report*).

¹⁴³ *Id.*

¹⁴⁴ 13 C.F.R. § 121.201, NAICS code 513310.

¹⁴⁵ Telephone Trends Report, Table 5.3.

¹⁴⁶ *Id.*

that standard, such a business is small if it has 1,500 or fewer employees.¹⁴⁷ According to the FCC's *Telephone Trends Report* data, 719 companies reported that they were engaged in the provision of wireless telephony.¹⁴⁸ Of these 719 companies, an estimated 294 have 1,500 or fewer employees and 425 have more than 1,500 employees.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.

8. To address concerns regarding wireline carriers' ability to compete for wireless customers through porting, future rules may change wireline porting guidelines. In addition, future rules may require wireline carriers to reduce the length of the current wireline porting interval for ports to wireless carriers. These potential changes may impose new obligations and costs on carriers.¹⁴⁹ Commenters should discuss whether such changes would pose an unreasonable burden on any group of carriers, including small entity carriers.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

9. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁵⁰

10. The Further Notice reflects the Commission's concern about the implications of its regulatory requirements on small entities. Particularly, the Further Notice seeks comment on the concern that wireline carriers, including small wireline carriers, have expressed that permitting wireless carriers to port numbers wherever their rate center overlaps the rate center in which the number is assigned would give wireless carriers an unfair competitive advantage over wireline carriers. Wireline carriers contend that while permitting porting outside of wireline rate center boundaries may facilitate widespread wireline-to-wireless porting, wireless-to-wireline porting can only occur in cases where the wireless customer is physically located in the wireline rate center associated with the phone number. If the customer's physical location is outside the rate center associated with the number, porting the number to a wireline telephone at the customer's location could result in calls to and from that number being rated as toll calls. As a result, LECs assert, they are effectively precluded from offering wireless-to-wireline porting to those wireless subscribers who are not located in the wireline rate center associated with their wireless numbers.

11. The Further Notice seeks comment on how to facilitate wireless-to-wireline porting when the location of the wireline facilities serving the customer requesting the port is not in the rate center where the wireless number is assigned. The Further Notice seeks comment on whether there are technical or regulatory obstacles that prevent wireline carriers from porting-in wireless numbers when the rate center associated with the number and the customer's physical location do not match. The Further Notice

¹⁴⁷ 13 C.F.R. § 121.201, NAICS code 513322.

¹⁴⁸ Telephone Trends Report, Table 5.3.

¹⁴⁹ See e.g., Further Notice, paras. 41, 48-49.

¹⁵⁰ See 5 U.S.C. § 603.

asks commenters that contend that such obstacles exist and result in a competitive disadvantage to submit proposals to mitigate these obstacles.

12. In addition, the Further Notice seeks comment on alternative methods to facilitate wireless-to-wireline porting. To the extent that wireless-to-wireline porting may raise issues regarding the rating of calls to and from the ported number when the rate center of the ported number and the physical location of the customer do not match, the Further Notice seeks comment on the extent to which wireline carriers should absorb the cost of allowing the customers with a number ported from a wireless carrier to maintain the same local calling area that the customer had with the wireless service provider. Alternatively, the Further Notice seeks comment about whether wireline carriers may serve customers with numbers ported from wireless carriers on a Foreign Exchange (FX) or Virtual FX basis. The Further Notice seeks comment on the procedural, technical, and regulatory implications of each of these approaches. These questions provide an excellent opportunity for small entity commenters and others concerned with small entity issues to describe their concerns and propose alternative approaches.

13. The Further Notice also seeks comment about whether the Commission should require wireline carriers to reduce the length of the current wireline porting interval for ports to wireless carriers. The Further Notice analyzes the current wireline porting interval and seeks comment about whether there are technical or practical impediments to requiring wireline carriers to achieve shorter porting intervals for intermodal porting. The Further Notice recognizes that, if a reduced porting interval was adopted, carriers may need additional time to modify and test their systems and procedures. Accordingly, the Further Notice seeks comment on an appropriate transition period in the event a shorter porting interval is adopted.

14. Throughout the Further Notice, the Commission emphasizes in its request for comment, the individual impacts on carriers as well as the critical competition goals at the core of this proceeding. The Commission will consider all of the alternatives contained not only in the Further Notice, but also in the resultant comments, particularly those relating to minimizing the effect on small businesses.

F. Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules

15. None.

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: *In re Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; CC Docket No. 95-116*

After today it's easier than ever to cut the cord. By firmly endorsing a customer's right to untether themselves from the wireline network – and take their telephone number with them – we act to eliminate impediments to competition between wireless and wireline services. Seamless wireline-to-wireless porting is another landmark on the path to full fledged facilities-based competition.

Our action promises significant consumer benefits for wireline and wireless customers. I have heard the concerns expressed by some wireline providers that wireline network architectures and state-imposed rate centers complicate number portability. This proceeding has undoubtedly focused the Commission's attention on these issues. State regulators have long been champions of local number portability and I appreciate their support. I look forward, however, to working with my colleagues in the states to remove additional barriers to inter-modal local number portability such as the difficulty of some providers to consolidate rate centers to more accurately match wireless carrier service areas.

In the end, the consumer benefits associated with inter-modal LNP convince me that the time for Commission action is now. No doubt there will be some bumps in the road to implementation, but I trust that carriers will use their best efforts to ensure consumers have the highest quality experience possible. I look forward to the Commission's November 24th trigger for this obligation and to working with my colleagues to ensure that full wireline to wireless portability is a reality for all consumers everywhere.

**SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Telephone Number Portability – CTLA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No. 95-116

This Order removes the final roadblocks to implementing wireline-to-wireless number portability, which is an important step in facilitating intermodal competition. The Commission mandated local number portability (LNP) within and across the wireline and wireless platforms, where technically feasible, with the goal of maximizing consumer choice. As of November 24, 2003, this goal will become a reality: Most consumers who seek to switch wireless providers or to move from a local exchange carrier to a wireless carrier will be able to retain their existing telephone numbers. While I expressed sympathy in the past to arguments that the November 24 deadline was premature, our present focus must be on implementation, and the foregoing Order provides much-needed clarity regarding the parties' obligations.

I recognize that wireline network architecture and state rating requirements will prevent many (if not most) consumers from porting wireless numbers to wireline carriers. Although, in the short term, wireline carriers will have more limited opportunities to benefit from intermodal LNP than wireless carriers will, I was simply not willing to block consumers from taking advantage of the porting opportunities that are technologically feasible today. I am hopeful that existing obstacles to wireless-to-wireline porting will be addressed as expeditiously as possible through technological upgrades and, where necessary, state regulatory changes.

Finally, I am pleased that the Commission is stepping up its consumer outreach efforts on the issues of wireless and intermodal LNP. To this end, I commend the recent proactive efforts of the Wireless Telecommunications Bureau and the Consumer and Government Bureau to educate the public about our LNP rules. I am also pleased with the recent efforts of industry to reach out to consumers so that they understand what number-porting opportunities are available to them. For consumers to benefit from our expanded LNP regime, it is imperative for them to have sufficient information to make the most appropriate choices for themselves.

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Telephone Number Portability CTIA Petitions for Declaratory Ruling
on Wireline-Wireless Porting Issues (CC Docket No. 95-116)*

With today's action, consumers are assured that intermodal telephone number portability will begin, at last, to become a reality later this month. After numerous delays, consumers are on the verge of enjoying the significant new ability to take their current telephone numbers with them when they switch between carriers and technologies. This gives consumers much sought-after flexibility and it provides further competitive stimulus to telephone industry competition. This makes it a win-win situation for consumers and businesses alike.

It was some seven years ago, in the 1996 Act, when Congress recognized that the ability of consumers to retain their phone numbers when switching providers would facilitate the development of competition. Congress instructed us to get this job done and to use "technical feasibility" as our guide in making sure the vision became reality. This we have labored mightily to do. As a result, American consumers will be able to take their digits with them, unimpeded by the hassle, loss of identity and attendant expenses that until now have accompanied switching between service providers and technologies.

The bulk of the problems accompanying the challenge of porting numbers are behind us now. A very limited few remain and these are the subject of the Further Notice of Proposed Rulemaking also approved today. I am confident that these can be handled expeditiously if all interested parties work together. Similarly, any minor implementation problems that develop should be amenable to swift and cooperative corrective actions. It has taken considerable cooperation to bring us to this important point, and I believe consumer support for porting will encourage all parties to reach quick resolution of the few remaining challenges.

Finally, it is difficult to see how we are ever going to have true intermodal competition in the telephone industry apart from initiatives like the one we embark on today. Intermodal competition always receives strong rhetorical support. Today it gets some action, too.

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116

I am pleased to support this item because it provides important consumer benefits by promoting competition in the wireline telephone market. One of the primary reasons I supported wireless local number portability is the additional competition it is likely to encourage in the wireline market. See Press Statement of Commissioner Kevin J. Martin on the Commission's Decision on Verizon's Petition for Permanent Forbearance from Wireless Local Number Portability Rules (July 16, 2002). As I stated last year, the ability to transfer a wireline phone number to a wireless phone is an important part of ensuring that competition with wireline phones continues to grow. I am glad that today the full Commission agrees.

I am disappointed, however, that the Commission was not able to provide this guidance until weeks before the LNP requirement is scheduled to take effect. The Commission has an obligation to minimize the burdens our regulations place on carriers, and I wish we had provided the guidance in this Order considerably sooner.

Finally, I recognize that LNP – although very important for consumers – places real burdens on the carriers, particularly the small and rural carriers. Accordingly, I support the decision to waive our full porting requirements until May 24, 2004, for wireline carriers operating in areas outside of the largest 100 MSAs. I am also pleased that we emphasize that those wireline carriers may file waiver requests if they need additional time.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: In re Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; CC Docket No. 95-116

I am pleased to support this Order because it clarifies that our rules and policies provide for enhanced number portability opportunities for American consumers. Specifically, we enable consumers to port their wireline telephone numbers to local wireless service providers. We also affirm that wireless carriers are required to port telephone numbers to wireline carriers but recognize that wireline carriers are only able to receive those numbers from wireless carriers on a limited basis. Finally, we rightly seek comment on how to deal with these limitations and further facilitate wireless-to-wireline porting.

I believe that our decision is consistent with Section 251(b) of the Communications Act, which requires local exchange carriers (LECs) to provide local number portability to the extent technically feasible. However, I do recognize that there may be certain limitations on the ability of the nations' smallest LECs to technically provide local number portability. In this regard, I am extremely pleased we made the decision to waive until May 24, 2004, the requirement of LECs operating in areas outside of the largest 100 MSAs to port numbers to wireless carriers that do not have a point of interconnection or numbering resource in the rate center where the LEC customer's wireline number is provisioned.

I recognize that there may be other compelling circumstances that make it disproportionately difficult for these same LECs to provide full number portability. Consequently, I am pleased we agreed to the language in the item recognizing that those wireline carriers may need to file additional waivers of our LNP requirement.

I remain concerned, however, that today's clarification of our LNP rules and obligations will exacerbate the so-called "rating and routing" problem for wireless calls that are rated local, but are in fact carried outside of wireline rate centers. While I appreciate the language in the Order that clarifies that ported numbers must remain rated to the original rate center, the rating and routing issue continues to remain unresolved for rural wireline carriers as well as neighboring LECs and the wireless carriers whose calls are being carried. I believe that we must redouble our efforts to resolve this critical intercarrier compensation issue as quickly and comprehensively as possible.

Finally, I take very seriously the concerns of those wireline carriers that have argued wireline-to-wireless number portability should be limited pending the resolution of issues associated with full wireless-to-wireline porting. While I do not believe that these concerns outweigh the very significant benefits to American consumers that our clarification provides today, I do want to highlight my keen interest in working both with industry and the Chairman and my fellow Commissioners on solutions to address this inequity. The Commission should constantly strive to level the proverbial playing field, and the situation presented by our LNP rules and policies should not be any different.

CONFIDENTIAL

/



Federal Communications Commission
Consumer & Governmental Affairs Bureau
Office of The Bureau Chief



06 May 2004

Via MAIL and FASCIMILE

The Honorable Stan Wise
Commissioner, Georgia Public Service Commission
President, National Association of Regulatory Utility Commissioners
244 Washington Street, S.W.
Atlanta, GA 30334

Dear Stan:

I want to express my deep appreciation for the efforts of National Association of Regulatory Utility Commissioners (NARUC) and its members in making the initial deployment of wireless number portability such a success. Since November 24, 2003, more than three million consumers have been able to choose a new wireless carrier or switch between a wireless and wireline carrier without having to sacrifice their telephone number. As you know, after May 24, 2004, consumers outside of the top markets will possess the power to make the same choice. In light of the approaching opportunity for *all* American consumers to take their phone numbers with them, I wanted to write you out of concern about certain rural wireline carriers' requests for waivers of their porting obligations that are pending in many states.

When considering requests to waive these important, consumer-friendly obligations, states should remain mindful of the tremendous customer benefits that porting generates. I know that NARUC and the FCC agree that the ability of wireless and wireline consumers to port their numbers remains central to producing competition, choice, lower costs, and increased innovation. These benefits are particularly important in rural areas where competition may be less robust than in more urban markets.

It is with those policies in mind that I hope that you, in your capacity as NARUC's president, will encourage state commissions to hold carriers that seek waivers of their porting obligations to the appropriate standard of review. At this point, I understand that many rural wireline carriers have sought waivers of their obligations, and that, in some cases, waivers have been granted. Of course, states have jurisdiction to waive porting obligations for certain rural telephone companies under Section 251(f) of the Telecommunications Act of 1996, where carriers demonstrate undue economic burden or technological infeasibility. I think we can agree that the State commissions should strictly apply that statutory standard so that the rights of consumers are protected. I encourage the State commissions to ensure that carriers seeking waivers demonstrate that they are on a path to compliance so that customers of these

carriers will not be forever denied the rights their fellow consumers enjoy. If relief were to be granted in the absence of extraordinary circumstances, or for indefinite periods, it would be a setback for rural consumers. It should be noted that some of the same carriers that now seek to have their porting obligations waived have long known that they would, absent a demonstration of undue burden, be required to provide porting to both wireline and wireless carriers.

As we approach the May 24, 2004 deadline for nationwide local number portability deployment, the FCC looks forward to working with NARUC and the State Commissions to make sure that the interests of the American consumer are protected. Because of the publicity regarding the nationwide implementation of wireless and intermodal LNP, consumers in all markets will expect to receive its benefits. Where it is deemed appropriate to grant relief, it is important that consumers be educated so that they can make informed decisions as to their telephone service.

I would be happy to discuss this issue further with you or any of your members in the coming weeks.

Sincerely yours,

A handwritten signature in black ink, appearing to read "K. Dane Snowden", with a long horizontal flourish extending to the right.

K. Dane Snowden
Chief
Consumer & Governmental Affairs Bureau

CC: Commissioner Robert Nelson, Chair, Telecommunications Committee, NARUC
Commissioner Carl Wood, Chair, Consumer Affairs Committee, NARUC
John Muleta, Chief, Wireless Telecommunications Bureau
William Maher, Chief, Wireline Competition Bureau



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Washington Watch

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Past Issues

NECA FILINGS

NECA TARIFF FCC NO. 5 Transmittal No. 1018

3/17/2004 - NECA filed Transmittal No. 1018, revising its Tariff F.C.C. No. 5 to become effective April 1, 2004. This filing makes additions and miscellaneous changes to the listings of companies in the Title Pages, Optional Rate Plan Availability, DSL Access Services Availability and Federal Universal Service Charge sections.

NECA TARIFF FCC NO. 5 Transmittal No. 1019

3/17/2004 - NECA filed Transmittal No. 1019, revising its Tariff F.C.C. No. 5 to become effective April 1, 2004. This filing adds Commonwealth Telephone Company to the list of companies applying Local Number Portability (LNP) End User Charges.

NECA TARIFF FCC NO. 5 Transmittal No. 1020

3/17/2004 - NECA filed Transmittal No. 1020, revising its Tariff F.C.C. No. 5 to become effective April 1, 2004. This filing modifies NECA's Asynchronous Transfer Mode Cell Relay Access (ATM-CRS) and Digital Subscriber Line Access (DSL) Services. Specifically, this filing: 1) reduces the monthly rates for most existing ATM-CRS Port speeds, 2) introduces a third discount commitment level under the DSL Access Services Discount Pricing Arrangement, 3) introduces a non-chargeable optional function associated with ATM-CRS Ports enabling customers to transport Internet Protocol packets over the Telephone Company's network, and 4) removes the local exchange service copper-only requirement for ADSL and SDSL Access Services.

Studies show that as much as 20 % of minutes processed by end office switches is going unbilled. This unbilled "Phantom Traffic" is the focus of a one-day conference April 7, 2004 in Washington, DC. For more information please see the Conference Brochure

FCC RELEASES

LNP

Order, CC Docket No. 95-116, DA 04-726

3/17/2004 - The FCC has granted the requests of Cellular Telecommunications and Internet Association, Cingular Wireless, LLC, AT&T Wireless Services, Inc. and ALLTEL Communications, Inc. to withdraw their petition for a rulemaking asking the FCC to rescind the rule requiring commercial mobile radio service (CMRS) providers to provide local number portability.

SECTION 272

Report and Order, CC Docket Nos. 03-228, 96-149, 98-141, 96-149 and 01-337, FCC 04-54

3/17/2004 - The FCC issued a Report and Order removing prohibition against sharing by BOCs and their section 272 affiliates of operating, installation, and maintenance (OI&M) functions. The Commission concluded that it should retain the prohibition against joint ownership by BOCs and their section 272 affiliates of switching and transmission facilities, or the land and buildings on which such facilities are located. The Commission dismissed as moot petitions filed by SBC and BellSouth, pursuant to section 10 of the Act, seeking forbearance from the OI&M sharing prohibition. The Commission also granted SBC's request for modification of the SBC/Ameritech Merger Order conditions related to OI&M services to the extent that these merger conditions are incorporated into the conditions of the SBC Advanced Services Forbearance Order

INDUSTRY FILINGS

USF

Ex Parte, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116 and 98-170

3/16/2004 - Representatives of Microsoft met with Commissioners Adelstein, Abernathy, Copps and Martin and their staff members to explain that policy makers should keep in mind that regulations adopted to suit the PSTN might not translate well into an IP-centric Framework. In terms of Universal Service funding mechanisms, Microsoft believes that either a numbers-based or connections-based approach would be better than today's mechanism, but should be considered only as an interim step.

UNBUNDLED NETWORK ELEMENTS

Ex Parte, CC Docket Nos. 01-338, 96-98 and 98-147

3/17/2004 - In a letter to Commissioner Copps, Earthlink submitted a letter to explain its position on reconsideration of the line sharing unbundled network element rules in light of the D.C. Circuit Court's recent decision in USTA v. FCC. Earthlink states that line splitting is not a functional substitute for line sharing, nor is it a long-term competitive alternative to line sharing.

FEDERAL REGISTER

BIENNIAL REVIEW

Notice, WC Docket No. 02-313, FCC 03-337, FR Doc 04-5657

03/18/04 - The Commission has published a notice in the Federal Register setting the comment dates for its inquiry on whether certain rules should be repealed or modified because they are no longer necessary in the public interest. **Comments are due April 19, 2004. Reply Comments are due May 3, 2004.**

OTHER NEWS

Speaking at a CITA forum on LNP issues, Wireless Bureau Assistant Chief David Firth said that the volume of actual number porting would not be the measure of success, but giving customers the option to port was most important. He indicated that carriers outside of the 100 largest MSA's should be testing and preparing for the May 24, 2004 LNP deadline and that the Commission would not be very sympathetic to last minute waiver requests. He said that the Bureau in its orders has resolved most of the implementation issues. However, if there were still a lack of clarity on certain issues, such as overlapping boundaries, after May 24 the Bureau would consider issuing further guidelines. Responding to questions, he indicated that rating and routing issues between carriers are not porting issues and are therefore not a valid reason for refusing to port. He said that if carriers are experiencing problems with non-compliance by certain carriers, those are enforcement issues and need to be called to the Commission's attention.

The Western Governors Association has sent a letter to Congressional leaders asking them to urge Congress to examine the current Universal Service Fund distribution formula for non-rural carriers, which serve both rural and non-rural areas. The Governors asked Congress to help remedy the imbalance in the distribution of funds. <http://www.westgov.org/wga/testim/usf-ltr3-17-04.pdf>

For assistance with Washington Watch subscription issues please contact dlong@neca.org

To subscribe to Washington Watch go to http://www.neca.org/source/NECA_160_1160.asp

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

ATTORNEYS AT LAW

WYNN A. GUNDERSON
J. CRISMAN PALMER
G. VERNE GOODSSELL
JAMES S. NELSON
DANIEL E. ASHMORE
TERENCE R. QUINN
DONALD P. KNUDSEN
PATRICK G. GOETZINGER
TALBOT J. WIECZOREK
MARK J. CONNOT

AMERICAN MEMORIAL LIFE BUILDING
440 MT. RUSHMORE ROAD
POST OFFICE BOX 8045
RAPID CITY, SOUTH DAKOTA 57709-8045
TELEPHONE (605) 342-1078 • FAX (605) 342-0480
www.gundersonpalmer.com

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

JENNIFER K. TRUCANO
MARTY J. JACKLEY
DAVID E. LUST
THOMAS E. SIMMONS
TERRI LEE WILLIAMS
PAMELA SNYDER-VARNS
SARA FRANKENSTEIN
AMY K. SCHULDT
JASON M. SMILEY

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June 11, 2004

JUN 14 2004

NEXT DAY DELIVERY
And Facsimile 1-605-773-3809
Pamela Bonrud
Executive Director
SD Public Utilities Commission
500 E Capitol Avenue
Pierre SD 57501

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

FAX Received JUN 11 2004

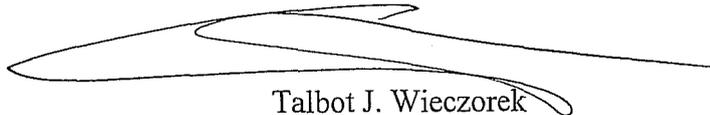
RE: In the Matter of Local Number Portability Obligations Docket No. TC 04-025;
TC04-038; TC04-044 through TC04-056; TC04-060 through TC04-062;
TC04-077; TC04-084 and TC04-085

Dear Ms. Bonrud:

Enclosed for filing please find the original and ten copies of WWC's Motion to Compel Discovery or in the Alternative to Strike Petitioners' Pre-Filed Testimony Regarding Costs and Brief in Support of Motion to Compel Discovery or in the Alternative to Strike Petitioners' Pre-Filed Testimony Regarding Costs.

If you have any questions, please call me.

Sincerely,



Talbot J. Wiczorek

TJW:klw

Enclosures

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

FAX Received JUN 1 1 2004

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JUN 14 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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

Docket No. TC04-025; TC04-038; TC04-044
through TC04-056; TC04-060 through TC04-
062; TC04-077; TC04-084; and TC04-085

**INTERVENOR'S MOTION TO COMPEL
DISCOVERY OR IN THE ALTERNATIVE
TO STRIKE PETITIONERS' PRE-FILED
TESTIMONY REGARDING COSTS**

COMES now Intervenor Western Wireless, LLC, by and through its attorney, Talbot J. Wiczorek of Gunderson, Palmer, Goodsell & Nelson, and hereby moves the Court pursuant to SDCL §§15-6-26(a), 15-6-33 and 15-6-34 for an order compelling Petitioners to provide discovery to First Information Requests of Western Wireless. This motion has been raised for the following reason. Intervenor has requested certain cost information directly related to Petitioners' economic burden assertions. Specifically, Interrogatories numbered 4(a)(i); 4(a)(ii); 5(a)(iv); 5(a)(v); 5(a)(vi); 5(a)(vii); 5(a)(xiv); 5(a)(xv); 5(a)(xvi); 13(g); 16(a); 18; 19; 21; and Request for Production No. 3. All Petitioners asserted confidentiality as the basis for not disclosing the responsive information.

Thereafter, Western Wireless, LLC executed a Confidentiality Agreement covering the information requested. *See* Confidentiality Agreement attached as hereto as Exhibit 1. On May 21, 2004, Western Wireless, LLC provided each of the Petitioners with the Confidentiality Agreement and requested that Petitioners provide the confidential documents previously withheld. *See* correspondence from Intervenor's attorney, Talbot J. Wiczorek dated May 21,

CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of June, 2004, I sent, by email and Next Day Delivery, a true and correct copy of **INTERVENOR'S MOTION TO COMPEL DISCOVERY OR IN THE ALTERNATIVE TO STRIKE PETITIONER'S PRE-FILE TESTIMONY REGARDING COSTS** to:

dprogers@riterlaw.com

Darla Pollman Rogers
Riter, Rogers, Wattier & Brown
319 South Coteau Street
PO Box 280
Pierre, SD 57501

Attorney for:

Kennebec Telephone Co.
Sioux Valley Telephone Co
Golden West, Vivian Telephone Co and Kadoka
Armour, Bridgewater-Canistota Tele Co and Union Tele Co
Beresford Municipal Telephone Company
McCook Cooperative Telephone Company
Valley Telecommunications Cooperative Association, Inc.
City of Faith Telephone Company
Midstate Communications, Inc.
Western Telephone Company
Interstate Telecommunications Cooperative, Inc.
Alliance Communications Inc. and Splitrock Properties
RC Communications, Inc., and Roberts County Telephone Cooperative Assn.
Venture Communications Cooperative
West River Cooperative Telephone Company
Stockholm-Strandburg Telephone Company
Tri-County Telcom
Cheyenne Sioux Tribe

jdlarson@santel.net

Jeffrey D. Larson
Larson and Nipe
205 Dumont Avenue
PO Box 277
Woonsocket, SD 57385-0277

Attorney for:

Santel Communications

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

JUN 14 2004

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

In the Matter of the Local Number Portability
Obligations

Docket No. TC 04-025; TC04-038;
TC04-044 through TC04-056;
TC04-060 through TC04-062;
TC04-084 and TC04-085

**CONFIDENTIALITY AND
PROTECTIVE AGREEMENT**

In the above-entitled matter, the parties are serving Interrogatories, Data Requests, and other discovery items and providing pre-filed testimony that will require the parties to disclose certain information considered to be confidential in nature by the parties. The information sought to be reviewed is financial, network, and customer data, that may be confidential to the parties producing the information. Talbot J. Wiczorek, counsel for Western Wireless Corporation (WWC), will execute and deliver this Agreement on behalf of Petitioners. Darla Pollman Rogers, attorney for: Kennebec Telephone Company (Kennebec); Sioux Valley Telephone Company (Sioux Valley); Golden West, Vivian Telephone Company and Kadoka Telephone Company (Golden West); Armour Independent Telephone Company, Bridgewater-Canistota Independent Telephone Company and Union Telephone Company (Armour); 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. (Interstate); Alliance Communications Inc. and Splitrock Properties (Alliance); RC Communications, Inc., and Roberts County Telephone Cooperative Assn.(RC Comm); Venture Communications

EXHIBIT

tabbles

1

Cooperative (Venture); West River Cooperative Telephone Company (West River); Stockholm-Strandburg Telephone Company (Stockholm); Tri-County Telcom; Inc. (Tri-County) and Cheyenne River Sioux Tribe Telephone Authority (CRST), will execute this Agreement on behalf of said companies. Jeffrey D. Larson, counsel for Santel Communications (Santel), will execute this Agreement on behalf of Santel. Richard J. Helsper, counsel for Brookings Municipal Utilities d/b/a Swiftel Communications (Brookings), will execute this Agreement on behalf of Brookings. James Cremer, counsel for James Valley Cooperative Telephone Company (James Valley), will execute this Agreement on behalf of James Valley. David Gerdes, counsel for Midcontinent Communications (Midcontinent), will execute this Agreement on behalf of Midcontinent. Richard Coit, counsel for South Dakota Telecommunications Association (SDTA), will execute this Agreement on behalf of SDTA. The information to be covered hereunder will include all matters served on the parties or filed with the Commission in the above docket.

Accordingly, it is agreed:

1. All documents, data, information, studies and other matters filed with the Commission or served on a party that are claimed by a party to be trade secret, privileged or confidential in nature shall be furnished pursuant to the terms of this Agreement, and shall be treated by all persons accorded access thereto pursuant to this Agreement as constituting trade secret, confidential or privileged commercial and financial information (hereinafter referred to as "Confidential Information"), and shall neither be used nor disclosed except for the purposes of this proceeding, and solely in accordance with this Agreement. Any information provided identifying an equipment vendor with cost information produced by a party will be deemed confidential.

2. All Confidential Information made available pursuant to this Agreement shall be given to counsel for the parties, and shall not be used or disclosed except for the purposes of this proceeding; provided however, that access to any specific Confidential Information may be authorized by said counsel, solely for the purpose of this proceeding, to consultants or employees of any party to this Agreement, if said person has signed an agreement, attached as Exhibit A, to be bound by the terms and conditions of this Agreement. Counsel shall furnish copies to comply and be bound by the terms of this Agreement to counsel for the other party.

3. Confidential Information will be marked as such when delivered to counsel.

4. In the event that the parties hereto are unable to agree that certain documents, data, information, studies or other matters constitute trade secret, confidential or privileged commercial and financial information, the party objecting to the trade secret claim shall forthwith submit the said matters to the Commission for its review pursuant to this Agreement and in accordance with its administrative rules.

5. All written information filed by the parties in this docket that has been designated as Confidential Information, if filed with the Commission by any party, will be presented to the Commission, as Confidential Information protected by A.R.S.D. 20:10:01:41 and withheld from inspection by any person not bound by the terms of this Agreement, unless such Confidential Information is released from the restrictions of this Agreement, either through agreement of the parties or, after notice to the parties and hearing, pursuant to an Order of the Commission and/or final order of a court having jurisdiction,

6. All persons who may be entitled to receive, or who are afforded access to, any Confidential Information by reason of this Agreement shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the

purposes of preparation for and conduct of this proceeding, and then solely as contemplated herein, and shall take those precautions that are necessary to keep the Confidential Information secure and in accordance with the purposes and intent of this Agreement.

7. The parties hereto affected by the terms of this Agreement further retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Agreement in response to interrogatories, requests for information or cross examination on the grounds of relevancy or materiality,

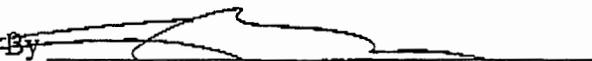
8. This Agreement shall in no way constitute any waiver of the rights of any party herein to contest any assertion of finding of trade secrets, confidentiality or privilege, and to appeal any such determination of the Commission or such assertion by a party.

9. Upon completion of the proceeding, including any administrative or judicial review thereof, all Confidential Information, whether the original or any duplication or copy thereof, furnished under the terms of this Agreement, shall be returned to the party furnishing such Confidential Information upon request or destroyed. Confidential Information made part of the record in this proceeding shall remain in the possession of the Commission.

10. The provisions of this Agreement are specifically intended to apply to data or information supplied by or from any party to this proceeding, and to any non-party that supplies documents pursuant to process issued by this Commission.

11. This Agreement shall be effective immediately and apply to any confidential information provided to date.

Western Wireless Corporation

By 

Talbot J. Wiczorek, Attorney for Western Wireless Corporation

Date: 5/18/04

Brookings Municipal Utilities d/b/a Swiftel Comm.

By _____
Richard Helsper, Attorney for Brookings
Municipal

Date: _____

James Valley Cooperative Telephone Company

By _____
James M. Cremer, Attorney for James Valley
Cooperative Telephone Company

Date: _____

South Dakota Telecommunications Association

By _____
Richard Colt, Attorney for South Dakota
Telecommunications Association

Date: _____

Midcontinent Communications

By _____
David Gerdes, Attorney for
Midcontinent Communications

Date: _____

Kennebec Telephone Company
Sioux Valley Telephone Company
Golden West, Vivian Telephone Company and Kadoka Telephone Company
Armour, Bridgewater-Canistota Tele Co and Union Tele Co
Beresford Municipal Telephone Company
McCook Cooperative Telephone Company
Valley Telecommunications Cooperative Association, Inc.
City of Faith Telephone Company
Midstate Communications, Inc.
Western Telephone Company
Interstate Telecommunications Cooperative, Inc.
Alliance Communications Inc. and Splitrock Properties
RC Communications, Inc., and Roberts County Telephone Cooperative Assn.
Venture Communications Cooperative
West River Cooperative Telephone Company
Stockholm-Strandburg Telephone Company
Tri-County Telcom
Cheyenne River Sioux Tribe

By *Darla Pollman Rogers*
 Darla Pollman Rogers, Attorney for:

Date: 6-04-04

Kennebec Telephone Company
 Sioux Valley Telephone Company
 Golden West, Vivian Telephone Company and Kadoka Telephone Company
 Armour, Bridgewater-Canistota Tele Co and Union Tele Co
 Beresford Municipal Telephone Company
 McCook Cooperative Telephone Company
 Valley Telecommunications Cooperative Association, Inc.
 City of Faith Telephone Company
 Midstate Communications, Inc.
 Western Telephone Company
 Interstate Telecommunications Cooperative, Inc.
 Alliance Communications Inc. and Splitrock Properties
 RC Communications, Inc., and Roberts County Telephone Cooperative Assn.
 Venture Communications Cooperative
 West River Cooperative Telephone Company
 Stockholm-Strandburg Telephone Company
 Tri-County Telcom
 Cheyenne River Sioux Tribe Telephone Authority

GUNDERS, PALMER, GOODSSELL & NELSON, LLP

ATTORNEYS AT LAW

WYNN A. GUNDERSON
J. CRISMAN PALMER
G. VERNE GOODSSELL
JAMES S. NELSON
DANIEL E. ASHMORE
TERENCE R. QUINN
DONALD P. KNUDSEN
PATRICK G. GOETZINGER
TALBOT J. WIECZOREK
MARK J. CONNOT

AMERICAN MEMORIAL LIFE BUILDING
440 MT. RUSHMORE ROAD
POST OFFICE BOX 8045
RAPID CITY, SOUTH DAKOTA 57709-8045
TELEPHONE (605) 342-1078 • FAX (605) 342-0480
www.gundersonpalmer.com

JENNIFER K. TRUCANO
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THOMAS E. SIMMONS
TERRI LEE WILLIAMS
PAMELA SNYDER-VARNS
SARA FRANKENSTEIN
AMY K. SCHULDIT
JASON M. SMILEY

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

May 21, 2004

VIA FAX 1-605-796-4227

Jeffrey D. Larson
Larson and Nipe
PO Box 277
Woonsocket, SD 57385-0277

VIA FAX 1-605-692-4611

Richard J. Helsper
100 22nd Avenue, Suite 200
Brookings SD 57006

VIA FAX 1-605-225-2497

James Cremer
305 Sixth Avenue SE
PO Box 970
Aberdeen, SD 57402-0970

VIA FAX 1-605-224-7102

Darla Pollman Rogers
Riter, Rogers, Wattier & Brown LLP
PO Box 280
319 South Coteau Street
Pierre, SD 57501

RE: Local Number Portability Obligations
GPGN File No. 5925.040157

Dear Counsel:

All of you have withheld documents claiming confidentiality. In any case, when I began receiving all of your discovery and testimony and you withheld documentation claiming confidentiality, I talked to Ms. Rogers and agreed to revise the Confidentiality Agreement a number of us have used previously in the latest ETC filing made by WWC License LLC.

I executed that Monday and faxed it to all of you and I also emailed that to you. When I faxed it to you, I requested you immediately provide me the confidential documents that you have withheld given the fact that I need to file testimony next week and I need the confidential documents to make sure my testimony appropriately responds to all issues. I have not received any of the confidential documents from any of you since then.

In reviewing the discovery, the following confidential documents have been withheld by the following parties:

EXHIBIT

tabbles

2

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

All Counsel
May 21, 2004
Page 2

1. **Alliance (TC04-055) - Confidential documents** – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to nondisclosure agreements (“NDA”) Same for 4(a)(ii); 5(a)(v); 5(a)(vi). Answer to Interrogatory No. 16(a) states information obtained pursuant to NDAs. Response to Request for Production No. 3 – documents obtained pursuant to NDAs.
2. **Armour (TC04-046) - Confidential documents** – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to nondisclosure agreements (“NDA”) Same for 4(a)(ii); 5(a)(v); 5(a)(vi). Answer to Interrogatory No. 16(a) states information obtained pursuant to NDAs. Answers to Interrogatories No. 18, 19, and 21 state, “Response withheld as proprietary and confidential information.” Response to Request for Production No. 3 – documents obtained pursuant to NDAs.
3. **Beresford (TC04-048) - Confidential documents** – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to nondisclosure agreements (“NDA”) Same for 4(a)(ii); 5(a)(v); 5(a)(vi). Answer to Interrogatory No. 16(a) states information obtained pursuant to NDAs. Response to Request for Production No. 3 – documents obtained pursuant to NDAs.
4. **Brookings (TC04-047) - Confidential documents** – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to nondisclosure agreements (“NDA”). Same for 4(a)(ii); 5(a)(iv); 5(a)(v); 5(a)(vi). Answers to Interrogatory No. 13(g) and (h) state information obtained pursuant to NDAs. Response to Request for Production No. 2 and 3 – documents obtained pursuant to NDAs.
5. **City of Faith (TC04-051) - Confidential documents** – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to nondisclosure agreements (“NDA”) Same for 4(a)(ii); 5(a)(v); 5(a)(vi). Answer to Interrogatory No. 16(a) states information obtained pursuant to NDAs. Response to Request for Production No. 3 – documents obtained pursuant to NDAs.
6. **Cheyenne (TC04-085) - Confidential documents** – Answer to Interrogatory No. 4(a)(a) states prices obtained pursuant to a Non Disclosure Agreements (NDA) Same for Interrogatory No. 5(a) re Service Order Administration. Response to Request for Production No. 2 and 3 – some data based on information obtained by Petitioner pursuant to NDA and therefore not provided.

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

All Counsel
May 21, 2004
Page 3

7. **Golden West (TC04-045)** - *Confidential documents* – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to nondisclosure agreements (“NDA”) Same for 4(a)(ii); 5(a)(v); 5(a)(vi).
Answer to Interrogatory No. 16(a) states information obtained pursuant to NDAs.
Response to Request for Production No. 3 – documents obtained pursuant to NDAs.
8. **Interstate (TC04-054)** - *Confidential documents* – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to Non Disclosure Agreements (NDAs) Same for 4(a)(ii); 5(a)(xiv); 5(a)(xv); 5(a)(xvi).
Answer to Interrogatory No. 13(g) and (h) claim information obtained pursuant to NDAs.
Response to Request for Production No. 2 and 3 – documents obtained pursuant to NDAs.
9. **James Valley (TC04-077)** - *Confidential documents* – Answer to Interrogatory No. 4(a)(i) states pricing scenarios based on estimates obtained under NDAs.
Although not required to answer Interrogatory No. 13(h), states information obtained pursuant to NDAs.
Response to Request for Production No. 3 – documents obtained pursuant to NDAs.
10. **Kennebec (TC04-025)** - *Confidential documents* – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to nondisclosure agreements (NDA).
Same for 4(a)(ii); 5(a)(v); 5(a)(vi).
Answer to Interrogatory No. 16(a) states information obtained pursuant to NDAs.
Response to Request for Production No. 3 – documents obtained pursuant to NDAs.
11. **McCook (TC04-049)** - *Confidential documents* – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to nondisclosure agreements (NDA).
Same for 4(a)(ii); 5(a)(v); 5(a)(vi).
Answer to Interrogatory No. 16(a) states information obtained pursuant to NDAs.
Response to Request for Production No. 3 – documents obtained pursuant to NDAs.
12. **Midstate (TC04-052)** - *Confidential documents* – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to nondisclosure agreements (NDA).
Same for 4(a)(ii); 5(a)(v); 5(a)(vi).
Answer to Interrogatory No. 16(a) states information obtained pursuant to NDAs.
Response to Request for Production No. 3 – documents obtained pursuant to NDAs.

All Counsel
May 21, 2004
Page 4

13. **RC Comm, Inc. (TC04-056)** - *Confidential documents* – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to nondisclosure agreements (NDA).
Same for 4(a)(ii); 5(a)(v); 5(a)(vi).
Answer to Interrogatory No. 16(a) states information obtained pursuant to NDAs.
Response to Request for Production No. 3 – documents obtained pursuant to NDAs
14. **Santel (TC04-038)** - *Confidential documents* – Answer to Interrogatory No. 4(a)(i) states pricing scenarios obtained under Non Disclosure Agreements (NDA).
Same for 4(a)(ii); 5(a)(v); 5(a)(vi); 5(a)(vii).
Also, Request for Production No. 2 and 3.
15. **Sioux Valley (TC04-044)** - *Confidential documents* – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to nondisclosure agreements (NDA).
Same for 4(a)(ii); 5(a)(v); 5(a)(vi).
Answer to Interrogatory No. 16(a) – information obtained pursuant to NDAs.
Response to Request for Production No. 3 – documents obtained pursuant to NDAs.
16. **Stockholm(TC04-062)** - *Confidential documents* – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to Non Disclosure Agreements (NDAs).
Same for 4(a)(ii); 5(a)(xiv); 5(a)(xv); 5(a)(xvi).
Answer to Interrogatory No. 13(g) and (h) – information obtained pursuant to NDAs.
Response to Request for Production No. 2 and 3 – documents obtained pursuant to NDAs.
17. **Tri-County (TC04-084)** - *Confidential documents* – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to nondisclosure agreements (NDA).
Same for 4(a)(ii); 5(a)(v); 5(a)(vi).
Interrogatory No. 16(a) – information obtained pursuant to NDAs.
Response to Request for Production No. 3 – documents obtained pursuant to NDAs.
18. **Valley (TC04-050)** - *Confidential documents* – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to nondisclosure agreements (NDA).
Same for 4(a)(ii); 5(a)(v); 5(a)(vi).
Answer to Interrogatory No. 16(a) – information obtained pursuant to NDAs.
Response to Request for Production No. 3 – documents obtained pursuant to NDAs.

All Counsel
May 21, 2004
Page 5

19. **Venture (TC04-060)** - *Confidential documents* – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to Non Disclosure Agreements (NDAs).
Same for 4(a)(ii); 5(a)(xiv); 5(a)(xv); 5(a)(xvi).
Answer to Interrogatory No. 13(g) and (h) – information obtained pursuant to NDAs.
Response to Request for Production No. 2 and 3 – documents obtained pursuant to NDAs.
20. **Western (TC04-053)** - *Confidential documents* – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to nondisclosure agreements (NDA).
Same for 4(a)(ii); 5(a)(v); 5(a)(vi).
Answer to Interrogatory No. 16(a) – information obtained pursuant to NDAs.
Response to Request for Production No. 3 – documents obtained pursuant to NDAs.
21. **West River (TC04-061)** - *Confidential documents* – Answer to Interrogatory No. 4(a)(i) states prices obtained pursuant to nondisclosure agreements (NDA).
Same for 4(a)(ii); 5(a)(xiv); 5(a)(xv); 5(a)(xvi).
Answer to Interrogatory No. 13(g) and (h) – information obtained pursuant to NDAs.
Response to Request for Production No. 2 and 3 – documents obtained pursuant to NDAs.

If your objection was that the information was confidential or proprietary, please immediately provide these documents by email if you have them in electronic format, by fax if you do not have them in an electronic format and by Next Day Delivery.

Every Petitioner has objected to providing cost information, claiming they signed a nondisclosure agreement with vendors. With the execution of the Confidentiality Agreement, the cost information should also be provided even though a nondisclosure has been signed. I have no objection if you redact the names of the vendors from the names of the cost information when you provide it. At least one company has expressed a concern that if the information is provided in electronic format, there may be formulas that are subject to a nondisclosure agreement. In those cases, simply provide me the paper copy.

As to the testimony, I have noted that I did not receive all confidential documents. By way of example, in the testimony of Tom Bullock, I did not receive Exhibit 1. I am still reviewing the testimony. However, I would ask that if you withheld any documents as part of the testimony claiming confidentiality, that you provide them to me based on my executed Confidentiality and Protective Agreement.

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

All Counsel
May 21, 2004
Page 6

If anyone contends that they still cannot provide this cost information, let me know so we can bring the matter before the Commission as, quite frankly, I do not see how Petitioners can meet their burden without providing the raw cost information.

Sincerely,



Talbot J. Wiczorek

TJW:klw

c: Clients

Rolayne Wiest VIA FAX 1-605-773-3809

David Gerdes VIA FAX 1-605-224-6289

Richard Coit VIA FAX 1-605-224-1637

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

JUN 14 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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

Docket No. TC04-025; TC04-038; TC04-044
through TC04-056; TC04-060 through TC04-
062; TC04-077; TC04-084; and TC04-085

**BRIEF IN SUPPORT OF INTERVENOR'S
MOTION TO COMPEL DISCOVERY OR IN
THE ALTERNATIVE TO STRIKE
PETITIONER'S PRE-FILED TESTIMONY
REGARDING COSTS**

Intervenor, WWC Wireless, LLC, by and through its attorney, Talbot J. Wiczorek, of Gunderson, Palmer, Goodsell & Nelson, LLP, hereby submits this brief in support of its Motion to Compel Discovery or In The Alternative To Strike Petitioner's Pre-file Testimony Regarding Costs.

FACTS

On April 29, 2004, Intervenor Western Wireless, LLC, served upon all Petitioners Information Requests. All Petitioners responded to several of the aforementioned requests by asserting that the information requested would not be produced as it was subject to nondisclosure agreements. After receiving Petitioners responses which asserted confidentiality as the basis for not disclosing pertinent information, Western Wireless, LLC executed a Confidentiality Agreement covering the same information. *See Confidentiality Agreement attached as Exhibit 1.*

Upon execution of the agreement, Western Wireless, LLC requested that Petitioners provide the confidential documents that were previously withheld. *See May 21, 2004 correspondence attached herein as Exhibit 2.* Western Wireless, LLC requested immediate

production as this information is necessary to ensure that the proffered testimony addresses all issues. Id. Petitioners have never responded to this May 21 letter. Nor has the information been provided in conjunction with any subsequently served information requests.

To illustrate, the subject requests and respective responses follow.

INTERROGATORIES AND REQUESTS FOR PRODUCTION BASED ON PREVIOUSLY SERVED DISCOVERY REQUESTS

All Petitioners were asked to provide the following and responded as follows:

4. Provide the following information relative to the development of the recurring cost estimate in your petition:
 - a. Explain in detail the methodology and inputs used to develop the recurring cost estimate made in your petition.

RESPONSE: Petitioner estimated the monthly recurring costs as follows:

- i. Recurring Service Order Administration (“SOA”): Cost estimates were based on a compilation of SOA services price lists from firms providing automated SOA services. **The estimated prices were obtained pursuant to nondisclosure agreements (“NDA”) and therefore Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from vendors to provide information subject to the confidentiality rules of the Commission. As Petitioner has not entered into any contracts for SOA services, firm pricing cannot be provided.
 - ii. Recurring LNP Query Costs Per Month: Estimates were based on the assumption that Petitioner would be assessed the monthly minimum for this service based upon the database provider’s contract for query service. **The estimated process were obtained pursuant to NDAs, and therefore Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from vendor(s) to provide the requested information subject to the confidentiality rules of the Commission. As Petitioner has not entered into any contracts for SOA services, firm pricing cannot be provided.
5. Provide the following information relative to the development of the non-recurring cost estimate made in your petition:
Explain in detail the methodology and inputs used to develop the non-recurring cost estimate made in your petition.

RESPONSE: Petitioner estimated the non-recurring costs as follows:

- (iv) Non-Recurring Service Order Administration Cost Estimates were based on a compilation of SOA services price lists from firms providing automated SOA services. The cost estimate represents the anticipated start-up costs to utilize automated services to update the LNP databases. **The sample pricing scenarios were obtained, by Petitioner's consultant, under NDAs and, therefore, Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from the vendors to provide the information subject to the confidentiality rules of the Commission. As the Petitioner has not entered into any contracts for SOA service, firm pricing cannot be provided.
- (v) Non-recurring LNP Query Set Up: Non-recurring LNP Query set-up cost estimates were based on a compilation of SOA services price lists from firms providing automated SOA services. The cost estimate includes estimated startup costs levied by the SOA provider to utilize its services and dip its data base. **The estimated prices were obtained pursuant to nondisclosure agreements and therefore Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from vendors to provide the information subject to the confidentiality rules of the Commission. As Petitioner has not entered into any contracts for SOA services, firm pricing cannot be provided.
- (vi) SOA Non-recurring Set Up Charge: Costs for set-up charge were included. Non-recurring SOA set up cost estimates were based on a compilation of SOA services price lists from firms providing automated SOA services. The cost estimate includes estimated startup costs levied by the SOA provider to utilize its services and dip its data base. **The estimated prices were obtained pursuant to nondisclosure agreements and therefore Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from vendors to provide the information subject to the confidentiality rules of the Commission. As Petitioner has not entered into any contracts for SOA services, firm pricing cannot be provided.
- (vii) Non-Recurring Connection Costs with LNP Database Estimates were based on a compilation of SOA services price lists from several firms providing automated SOA services. **The cost estimate represents the anticipated start-up costs levied by the SOA provider to access their database. Generally, these non-recurring costs are driven by the number of SS7 Point Codes or OCNs. The sample pricing scenarios were obtained under NDA from Syniverse and Verisign. As the Petitioner**

has not entered into any contracts with these or any SOA entities, firm pricing cannot be provided.

- (xiv) Non-Recurring Service Order Administration Cost Estimates were based on a compilation of SOA services price lists from firms providing automated SOA services. The cost estimate represents the anticipated start-up costs to utilize automated services to update the LNP databases. **The sample pricing scenarios were obtained under NDAs and, therefore, Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from the vendors to provide the information subject to the confidentiality rules of the Commission. As the Petitioner has not entered into any contracts for SOA service, firm pricing cannot be provided.
 - (xv) Non-Recurring LNP Query Cost Estimates were based on a compilation of SOA services price lists from firms providing automated SOA services. The cost estimate represents the anticipated start-up costs to utilize SOA services to dip the database. **The estimated prices were obtained pursuant to NDAs and, therefore, Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from the vendors to provide the information subject to the confidentiality rules of the Commission. As the Petitioner has not entered into any contracts for SOA services, firm pricing cannot be provided.
 - (xvi) Non-recurring Connection Costs with LNP Database Estimates were based on a compilation of SOA services price lists from firms providing automated SOA services. The cost estimate represents the anticipated start-up costs to access the database. Generally, these non-recurring costs are driven by the number of SS7 Point Codes or OCNs. **The estimated prices were obtained under NDAs and therefore Petitioner cannot provide the requested information at this time.** Petitioner will seek permission from the vendors to provide the information subject to the confidentiality rules of the Commission. As the Petitioner has not entered into any contracts for SOA service, firm pricing cannot be provided.
13. (g) For the monthly recurring "Service Order Administration" cost, explain the specific nature of the cost including vendor name, fixed and variable cost components, and forecasted transaction volumes.

RESPONSE: The Petitioner has not chosen a Service Order Administrator (SOA) vendor. The Petitioner is considering vendors with automated SOA processes. Typically, SOA charges include startup charges and monthly recurring usage charges with a minimum monthly usage fee. **SOA information was obtained by Petitioner's consultant, pursuant to**

NDAs and, therefore, **Petitioner cannot provide the requested information at this time**. Petitioner will seek permission from the vendors to provide the information subject to the confidentiality rules of the Commission.

- (h) For the monthly recurring “LNP Queries” cost, explain the specific nature of the cost including vendor name, fixed and variable cost, and forecasted transaction volumes.

RESPONSE: The Petitioner has not chosen a Service Order Administrator (SOA) vendor. The Petitioner is considering vendors with automated SOA processes. Typically, SOA charges include a monthly recurring LNP query charge with a minimum monthly charge. The actual monthly recurring fees are driven by LNP query volumes. The Petitioner is assuming all originating local calls will be dipped. The Petitioner is assuming that each access line will originate approximately seven (7) to eight (8) calls per day. At this volume, the Petitioner estimates that the LNP query charges will exceed the minimum monthly amount. **SOA information was obtained, by Petitioner’s consultant, pursuant to NDAs and, therefore, Petitioner cannot provide the requested information at this time**. Petitioner will seek permission from the vendors to provide the information subject to the confidentiality rules of the Commission.

16. Regarding Exhibit 1 “Total Estimated LNP Non-recurring and Recurring Costs”:

- (a) For the “SOA Monthly Charge”, identify the specific nature of the cost including vendor name, fixed and variable cost components, and forecasted transaction volume. Also state whether this is the most cost efficient method you are aware of to implement SOA functionality for the volume of ports in your forecast.

RESPONSE:

- (a) Petitioner has not chosen a Service Order Administrator (SOA) vendor. Petitioner is considering vendors with automated SOA processes. Typically, SOA charges include startup charges and monthly recurring usage charges with a minimum monthly usage fee. **SOA information was obtained pursuant to NDAs and therefore Petitioner cannot provide the requested information at this time**. Petitioner will seek permission from the vendors to provide the information subject to the confidentiality rules of the Commission. At the time of preparation of Exhibit 1, Petitioner was aware of only these SOA estimates. As Petitioner continues to explore the cost factor, Petitioner has found that there may be less costly methods and is currently exploring them.

18. What is the gross switch investment, accumulated depreciation, and net book value of your existing switches?

RESPONSE:

Response withheld as proprietary and confidential information

19. Identify all capital investments made in your switching equipment in the 2001, 2002, 2003 and to date in 2004.

RESPONSE:

Response withheld as proprietary and confidential information.

21. Explain how funds received for Local Switching Support from the High Cost Fund are used by your company and why they shouldn't be used to offset the cost of local number portability so that your services are "reasonably comparable to those services provided in urban areas. . ."

RESPONSE:

Petitioner objects to this question as calling for information that is not relevant to the current proceedings. Response withheld as proprietary and confidential information.

REQUEST FOR PRODUCTION #3:

Provide any vendor quotes you have obtained for any of the following claimed LNP costs:

- Switch Upgrade Costs
- LNP Query Costs
- LNP Software Features
- Technical Implementation and Testing
- Marketing/Informational Flyer
- Additional Vendor Fees
- Billings/Customer Care Software Upgrades
- SOA Non-Recurring Setup Charge
- SOA Monthly Charge
- Translations
- Service Order Administration
- Additional Software Features
- Feature Activation

RESPONSE: **The documents in response to this request were obtained pursuant to NDAs and therefore Petitioner cannot provide them.** Petitioner will seek permission from the vendors to provide the responsive documents subject to the confidentiality rules of the Commission.

ARGUMENT

SDCL § 15-6-26(a) permits a party to seek discovery by written interrogatories under SDCL § 15-6-33, and request for production of documents under SDCL § 15-6-34. SDCL § 15-6-26(b) sets the general scope of discovery. “Unless otherwise limited by order of the court,” a party may seek disclosure of, “any matter, not privileged, which is relevant to the subject matter in the pending action,” whether admissible or not. Id.

Moreover, the scope of discovery is to be broadly construed. Kaarup v. St. Paul Fire and Marine Ins. Co., 436 N.W.2d 17, 19 (S.D. 1989). “A broad construction of the discovery rules is necessary to satisfy the three distinct purposes of discovery: (1) narrow the issues; (2) obtain evidence for use at trial; (3) secure information that may lead to admissible evidence at trial.” Id., citing 8 C. Wright and A. Miller, Federal Practice and Procedure, § 2001 (1970).

. . . the deposition-discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry of “fishing expedition” serve to preclude a party from inquiring into the facts underlying his opponent’s case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. The deposition-discovery procedure simply advances the stage at which the disclosure can be compelled from the time of trial to the period preceding it, thus reducing the possibility of surprise. But discovery, like all matters of procedure, has ultimate and necessary boundaries.

Kaarup, 436 N.W.2d at 20. Under this broad discovery purview, unless privileged, all relevant matters are discoverable. Id. Intervenor Western Wireless, LLC submits that the information requested both through interrogatories and requests for production of documents is properly subject to discovery.

The information requested is directly relevant to the issues pending before the Commission. Petitioners have requested a suspension or modification of the requirements found under 47 U.S.C. §§ 251(f) and 251(c). South Dakota Codified Law § 49-31-80 grants the

Commission the authority to authorize a suspension or modification of any of the requirements of 47 U.S.C. §§ 251(f) and 251(c). It specifically states,

Suspension or modification to carrier with small service area. Consistent with 47 U.S.C. § 251(f)(2) as of January 1, 1998, the commission may grant a suspension or modification of any of the interconnection or other requirements set forth in 47 U.S.C. §§ 251(b) and 251(c), as of January 1, 1998, to any local exchange carrier which serves fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide. Any such carrier shall petition the commission for the suspension or modification. The commission shall grant the petition to the extent that, and for such duration as, the commission determines that the requested suspension or modification is consistent with the public interest, convenience, and necessity and is necessary:

- (1) To avoid a significant adverse economic impact on users of telecommunications services generally;
- (2) To avoid imposing a requirement that is unduly economically burdensome; or
- (3) To avoid imposing a requirement that is technically infeasible.

The commission may suspend enforcement of the requirement or requirements identified in the petition pending final action on the requested suspension or modification.

The Eighth Circuit Court of Appeals has succinctly stated that the plain meaning of the aforementioned statutes, "...requires the party making the request to prove that the request meets the three prerequisites...." Iowa Utilities Board v. Federal Communications Commission (Iowa II), 219 F.3d 744, 762 (8th Cir. 2000), *reversed in part on other grounds by*, Verizon Communications, Inc. v. Fed'l Communications Comm'n, 535 U.S. 467 (2002).

As a result, Petitioners bear the burden of demonstrating a significant adverse economic impact or undue economic burden. Id. Petitioners have refused to produce the economic information upon which they relied in support of these claims. *See above Responses to Information Requests.* Petitioners' basis for their production denial has since been cured by Intervenor Western Wireless, LLC's execution of the Confidentiality Agreement. *See Exhibit 1.*

Intervenors are entitled to this information under the broad gambit of the discovery rules governing this matter. Kaarup, 436 N.W.2d at 20. Therefore, Intervenors respectfully request the Commission compel Petitioners production of the information requested.

In the alternative, Intervenors request that should Petitioners fail to product information which supports their claims of significant adverse economic impact or undue economic burden, that the Commission strike Petitioners pre-file testimony regarding costs.

Petitioners bear the burden of demonstrating and establishing the economic basis which would justify a suspension or modification. Iowa 2, 219 F.3d at 762. If Petitioners are allowed to assert economic burdens without demonstrating the information that they have relied upon to establish such burdens, Intervenor is left in a position where it is unable to thoroughly evaluate the basis of the Petitioners' assertions. Allowing Petitioners to assert an economic burden without demonstrating any proof of that burden would allow for their unjust ability of presenting financial information with no credible basis. Without affording Intervenor an opportunity to review and cross-examine regarding the basis for the economic burden assertions, renders Intervenor completely unable to refute the ultimate issue in this matter. Therefore, Intervenor requests that should Petitioners fail to produce the information which supports their claims of economic burdens, of any pre-filed testimony be stricken as speculative without support.

In conclusion, Intervenor respectfully requests this Court compel Petitioners' production of the information which would satisfy the aforementioned interrogatories and requests for production. Production of this information is appropriate because it is directly relevant to the ultimate issue in this matter. In the alternative, should Petitioners fail to produce the requested information, then Intervenor respectfully requests that this Court strike any pre-filed testimony regarding economic burdens as unfounded.

Dated this 61 day of June, 2004.

GUNDERSON, PALMER, GOODSSELL
& NELSON, LLP



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

CERTIFICATE OF SERVICE

The undersigned certifies that on the ____ day of June, 2004, I served a true and correct copy of the foregoing **BRIEF IN SUPPORT OF INTERVENOR'S MOTION TO COMPEL DISCOVERY OR IN THE ALTERNATIVE TO STRIKE PETITIONER'S PRE-FILED TESTIMONY REGARDING COSTS** by email and NEXT DAY DELIVERY to:

dprogers@riterlaw.com

Darla Pollman Rogers
Riter, Rogers, Wattier & Brown
319 South Coteau Street
PO Box 280
Pierre, SD 57501

Attorney for:

Kennebec Telephone Co.
Sioux Valley Telephone Co
Golden West, Vivian Telephone Co and Kadoka
Armour, Bridgewater-Canistota Tele Co and Union Tele Co
Beresford Municipal Telephone Company
McCook Cooperative Telephone Company
Valley Telecommunications Cooperative Association, Inc.
City of Faith Telephone Company
Midstate Communications, Inc.
Western Telephone Company
Interstate Telecommunications Cooperative, Inc.
Alliance Communications Inc. and Splitrock Properties
RC Communications, Inc., and Roberts County Telephone Cooperative Assn.
Venture Communications Cooperative
West River Cooperative Telephone Company
Stockholm-Strandburg Telephone Company
Tri-County Telcom
Cheyenne Sioux Tribe

jdlarson@santel.net

Jeffrey D. Larson
Larson and Nipe
205 Dumont Avenue
PO Box 277
Woonsocket, SD 57385-0277

Attorney for:

Santel Communications

rjh1@brookings.net

Richard J. Helsper
100 22nd Avenue, Suite 200
Brookings SD 57006
And

Benjamin Dickens
Blooston, Mordkofsy
2120 L. Street, NW #300
Washington, DC 20037

Attorneys for:

Brookings Municipal Utilities d/b/a Swiftel Communications

jcremer@midco.net

James Valley Cooperative Telephone Company
James Cremer
Bantz, Gosch & Cremer
305 6th Avenue, SE
PO Box 970
Aberdeen, SD 57402

Attorney for:

James Valley Cooperative Telephone Company

dag@magt.com

David Gerdes
503 S. Pierre Street
Pierre, SD 57501

Attorney for:

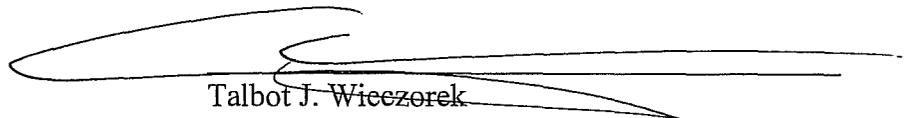
Midcontinent

richcoit@sdtaonline.com

Richard Coit
SD Telecommunications Assoc.
PO Box 57
320 E Capitol Ave
Pierre SD 57501-0057

Attorney for:

South Dakota Telecommunications Assoc.



Talbot J. Wiczorek

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

JUN 14 2004

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

DOCKETS: SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

- 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

REBUTTAL TESTIMONY OF

STEVEN E. WATKINS

Submitted on behalf of above Rural Local Exchange Carriers and
the South Dakota Telecommunications Association

June 14, 2004

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

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

4 Q2: **On whose behalf are you testifying?**

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

8 Q3: **Have you previously submitted testimony in these proceedings?**

9 A: Yes. I submitted direct testimony on May 14, 2004 in these dockets (to be referred to as
10 "Watkins Direct").

11 Q4: **What is the purpose of your Rebuttal Testimony?**

12 A: The primary purpose of this Rebuttal Testimony is to respond to the Direct Testimony
13 filed by Ron Williams on behalf of Western Wireless.

14 Q5: **Do you have any initial comments relative to these dockets?**

15 A: Yes. Only one wireless carrier filed testimony in these proceedings, even though there
16 must be other wireless carriers operating in South Dakota.

17 Q6: **To what do you attribute this lack of interest in LNP in South Dakota by wireless
18 carriers other than Western Wireless?**

19 A: The fact that other wireless carriers have decided not to participate in this proceeding and
20 not to submit testimony is consistent with the general observations and conclusions in my
21 Direct Testimony that there are few, if any, wireline end users in rural South Dakota that
22 actually want to abandon, or would abandon, their wireline service and port their wireline
23 number for use solely in connection with wireless service. There is no real demand for

1 intermodal porting in rural South Dakota and the lack of participation is more evidence of
2 that fact. As such, the other wireless carriers seem to accept and to understand that de-
3 mand for intermodal LNP would be non-existent or small in rural South Dakota areas,
4 and therefore have apparently concluded that spending their time and resources attempt-
5 ing to force, merely on principle, an unnecessary LNP requirement on rural LECs would
6 lack a business purpose.

7 Similarly, I would like to add that Western Wireless has also previously con-
8 cluded in comments filed with the Federal Communications Commission (“FCC”) that
9 “LNP is unnecessary to further competition.” Reply Comments of Western Wireless
10 filed October 21, 2001, in WT Docket No. 01-184 at pp. 2-5 (a proceeding in which Ver-
11 izon Wireless was seeking partial forbearance of LNP requirements). Western Wireless
12 noted that, as a provider of conventional cellular and wireless local loop services, “West-
13 ern is making significant inroads competing against wireline service providers -- without
14 offering LNP.” *Id.* Western Wireless went on to state that “there is no evidence to sug-
15 gest that the inability of CMRS customers to port their numbers is an impediment to
16 changing service providers.” *Id.* at p. 5.

17 **Q7: Do you have any initial comments about Mr. Williams' direct testimony?**

18 **A: Yes. Mr. Williams' testimony is simply incorrect on several points and, therefore, his**
19 **discussion would be misleading if accepted without review:**

20 ■ Mr. Williams confuses a waiver request before the FCC pursuant to the FCC's local
21 number portability (“LNP”) rules in contrast to a suspension proceeding before a state
22 commission pursuant to the broad protections that Congress provided in Section 251(f)(2)
23 of the Act for small telephone companies and their rural customers.

1 ■ In reviewing what Mr. Williams considers to be the standards for review pursuant to a
2 Section 251(f)(2) proceeding, Mr. Williams incorrectly references discussion by the FCC
3 that the Courts have rendered inapplicable. The Courts have concluded that the conclu-
4 sions contained in Mr. Williams' discussion are contrary to the protections Congress set
5 forth in the Act.

6 ■ Mr. Williams questions whether there are LNP routing issues, but then presents incon-
7 sistent testimony that illustrates the same unresolved issues that I set forth in my direct
8 testimony regarding some new routing arrangement that would have to be established af-
9 ter a number is ported. The FCC's confusing statements cannot be reconciled with the
10 facts that I will explain more fully in this Rebuttal Testimony.

11 ■ Mr. Williams discussion of routing issues is, in reality, merely an attempt to impose
12 extraordinary and unfair transport obligations on the rural LECs far beyond those that ac-
13 tually apply. The comments of Western Wireless have more to do with burdening the
14 rural LECs with transport than with any interest in LNP. This may also explain why
15 Western Wireless is the sole wireless carrier participating in this proceeding.

16 **Q8: Are there any relevant issues that are missing from Mr. Williams Direct Testimony?**

17 **A:** Yes. Any discussion of the subject of the adverse economic impact on customers (the
18 first suspension criterion in Section 251(f)(2) of the Act) in South Dakota is glaringly ab-
19 sent from his testimony. While Mr. Williams discusses the economic burden on the
20 Petitioners, he fails to address the adverse economic impact on users of telecommunica-
21 tions services in rural areas of South Dakota. *See* 47 U.S.C. § 251(f)(2)(A)(I) His
22 testimony completely disregards the significant adverse economic impact on users in jux-
23 taposition to the absence of demand or any potential benefit of implementation of LNP in

1 rural areas of South Dakota.

2 Q9: **How have you organized the remainder of your Rebuttal Testimony?**

3 A: For ease of review by the Commission and the parties, the remainder of my Rebuttal Tes-
4 timony will follow, to the extent that is possible, the order of issues presented in Mr.
5 Williams' testimony.

6 Q10: **Do you have any comments regarding Mr. Williams' discussion at p. 3 of a "juris-
7 diction issue regarding waivers to LNP Implementation?"**

8 A: Mr. Williams' conclusions are incorrect in his response on p. 3 of his Direct Testimony.
9 First, Mr. Williams discusses waiver requests before the Federal Communications Com-
10 mission, not suspension requests before a state commission. (He then cites Section 332
11 of the Act to suggest some authority, but Section 332 provides authority for the FCC to
12 establish physical, direct connections with local exchange carriers for wireless carriers,
13 irrelevant to the issues in this proceeding).

14 With respect to a suspension request, there is no question that this Commission
15 possesses jurisdiction pursuant to Section 251(f)(2) of the Communications Act of 1934,
16 as amended ("Act"). Section 251(f)(2) relates to requests to state commissions for sus-
17 pension or modification of requirements in Section 251(b) and (c) of the Act, including
18 the LNP requirement. Mr. Williams spends several pages, beginning on p. 6, discussing
19 the criteria in the Act regarding Section 251(f)(2) proceedings.

20 In contrast, the FCC's narrow waiver request rules are intended only to address
21 situations where there are circumstances beyond the control of a carrier that require some
22 delay in implementation of LNP. Those set of waiver considerations are completely
23 separate and unrelated to the considerations set forth in Section 251(f)(2) of the Act.

1 Pursuant to Section 251(f)(2), the Petitioners seek a suspension or modification,
2 not an FCC waiver, as is clearly their right under this statutory provision, and such re-
3 quests are clearly a matter to be filed with and resolved by state commissions, not the
4 FCC. Moreover, the Petitioners have not sought waiver of any Section 251(b)(2) re-
5 quirement, so the use of this word by Mr. Williams is both incorrect and misleading.

6 Contrary to Mr. Williams' suggestion that the FCC "asserted jurisdiction," there
7 is no opportunity for the FCC to assert its jurisdiction in a Section 251(f)(2) matter, and
8 the FCC has previously and specifically recognized state commissions' authority to grant
9 suspensions from implementation of LNP. In 1997, the FCC specifically cited, in an
10 LNP order, Section 251(f)(2) and noted that if state commissions exercise their authority
11 to suspend, "eligible LECs will have sufficient time to obtain any appropriate Section
12 251(f)(2) relief as provided by the statute." *In the Matter of Telephone Number Portabil-*
13 *ity, First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236 (1997)
14 (*"Number Portability Reconsideration"*) at 7302-03. There has been no reversal of this
15 state commission authority.

16 Q11: **On pages 4-5 and 10-11 of his Direct Testimony, Mr. Williams notes LNP suspen-**
17 **sion activity in other states. What comment do you have regarding this activity in**
18 **other states?**

19 A: Based upon information published by Neustar (dated May 20, 2004), there is LNP sus-
20 pension activity in at least 35 states. The status of that activity in each state is different
21 and is based on the facts and circumstances of the carriers in those states and the specific
22 requests of those carriers. In any event, the majority of those states that have pending
23 suspension requests have granted some relief to the rural LECs seeking suspension.

1 While an exact count is difficult, on May 20, 2004, there appeared to be 28 states in
2 which requests are still pending or some form of the requests had been granted. Never-
3 theless, it appears that 18 of the 35 states have granted either a specific suspension or an
4 interim suspension while the matter is further studied. Far from Mr. Williams attempted
5 portrayal, the majority of the states have found merit in suspending LNP obligations for
6 the smaller LECs. And for those states that may have denied the requests, it is not sur-
7 prising that the state commissions in such states may have been misled by the FCC's less
8 than adequate handling of its confusing LNP orders or the consequences of the unre-
9 solved issues.

10 In any event, the activity in other states is based on the specific circumstances of
11 those states. I would urge the Commission and the parties to focus on the policy, facts,
12 public interest, and impact on consumers as it relates to LNP suspension in South Dakota.
13 This Commission is in the best position to review these facts as they relate to the rural
14 users in South Dakota, and the Commission is in the best position to determine the public
15 interest with respect to those users.

16 **Q12: On page 4 of his testimony, Mr. Williams notes FCC action regarding North-**
17 **Eastern Pennsylvania Telephone Company (“NEP”). What relevance does this ac-**
18 **tion at the FCC have with respect to a state suspension proceeding?**

19 **A:** None. The facts and circumstances of the NEP matter are unrelated to those related to a
20 suspension request or the issues related to the South Dakota Petitioners. As I already ex-
21 plained above, an FCC waiver matter is very much different from one that will review the
22 criteria in the Act under Section 251(f)(2). The NEP matter was a request for temporary
23 waiver before the FCC; NEP is implementing LNP; NEP needed more time as a result of

1 the failure by its equipment manufacturer to deliver necessary functionalities associated
2 with new soft switch installations. While the FCC did not grant the waiver request, it
3 nevertheless gave NEP additional time to get in order the necessary hardware and soft-
4 ware with its equipment manufacturer. In any event, it was not a suspension request
5 pursuant to Section 251(f)(2) of the Act.

6 **Q13: On page 10 of his direct testimony, Mr. Williams notes a statement by the Pennsyl-**
7 **vania Commission. Do you have any comment?**

8 **A:** Yes. What Mr. Williams fails to point out is that the Pennsylvania Commission, in the
9 proceedings cited by Mr. Williams, granted suspension of certain Section 251(b) and (c)
10 interconnection requirements for a large number of small LECs in Pennsylvania contrary
11 to that which is implied by the testimony of Mr. Williams.

12 **Q14: What is your reaction to Mr. Williams' statement at p. 5 that "all LECs have known**
13 **since 1996 that they would be required to provide LNP"?**

14 **A:** Even if this observation were true, it is not relevant to these proceedings because Section
15 251(f)(2) of the Act gives the Petitioners the right to file suspension petitions and it im-
16 poses no time constraints on when such suspension petitions must be filed. In any event,
17 I disagree with the implication. Although the Act contains an LNP provision, there was
18 no LNP requirement until the FCC developed implementation rules (notwithstanding the
19 fact that these rules are still incomplete). Further, for carriers outside of the top 100
20 MSAs, such as the Petitioners, there was no LNP requirement until the Petitioners re-
21 ceived a specific request for LNP. Thus, Petitioners could not know that they might be
22 required to implement LNP until they were asked to do so.

23 Even once various wireless carriers like Western Wireless requested LNP, it was

1 not at all clear that the requests complied with the FCC's rules. In fact, it took the FCC
2 eleven months to "clarify" the meaning of its rules after the wireless carriers admitted un-
3 certainty. It is difficult to understand how Western Wireless can argue that the
4 Petitioners should have known in 1996 that they had an obligation to port numbers to
5 wireless carriers when no wireless carrier had made a request for number portability until
6 2003 and the FCC needed eleven months to "clarify" the obligation that Western Wire-
7 less contends is so apparent.

8 Moreover, a factual review of the record before the FCC demonstrates that no one
9 could have anticipated the FCC would reach the novel conclusions reflected in the *Nov.*
10 *10 Order*. Many very difficult issues associated with intermodal porting have been iden-
11 tified and studied by both the FCC and the industry working group selected by the FCC
12 and, even currently, there has been no proposal or recommendation to resolve these in-
13 termodal porting issues. Consequently, there could not have been any reasonable
14 expectation that the FCC would disregard the record and its own announced process and
15 order intermodal LNP as described in the *Nov. 10 Order*.

16 I will address additional aspects of the *Nov. 10 Order* later in this Rebuttal Testi-
17 mony and explain why the Order represents a significant departure from the FCC's
18 previously announced approach to the establishment of new requirements and how some
19 of the FCC's statements make no sense when compared with the facts. I devote several
20 pages of my Direct Testimony to the background of the sequence of events and/or lack of
21 action that led to the *Nov. 10 Order* and explain why no one could have anticipated the
22 FCC's action. Watkins Direct at pp. 15-35.

23 Q15: **On pp. 6-7 of his Direct Testimony, Mr. Williams sets forth his view of the standards**

1 Congress intended for a Section 251(f)(2) proceeding and sets forth the FCC's de-
2 scription of the meaning of "undue economic burden." Are his views correct?

3 A: No. Mr. Williams has misstated applicable law. The FCC attempted to invoke an im-
4 proper interpretation of what is meant by "undue economic burden," and the Courts have
5 subsequently vacated the applicable FCC Rule relating to this subject.

6 Mr. Williams at p. 7, lines 1-3 and line 12-19, cites the FCC discussion in its *First*
7 *Report and Order* of the narrow criteria that the FCC sought to apply with respect to the
8 evaluation of Section 251(f)(1) exemptions and Section 251(f)(2) suspension and modifi-
9 cation requests and the FCC's attempt to confine the definition of undue economic
10 burdens. As the Courts have concluded, the FCC attempted improperly to narrow the ex-
11 emption, suspension, and modification provisions of Section 251(f) of the Act by
12 adopting Section 51.405 of its Rules. The FCC's conclusions and Section 51.405 of its
13 rules were subsequently vacated. The statements of the FCC cited by Mr. Williams are in
14 the section of the *First Report and Order* that has been completely invalidated by the
15 Courts.

16 On July 18, 2000, on remand from the United States Supreme Court, the United
17 States Court of Appeals for the Eighth Circuit issued its opinion in *Iowa Utilities Board*
18 *v. Federal Communications Commission*, 219 F.3d 744(8th Cir. 2000) ("*IUB II*"), which,
19 *inter alia*, vacated Section 51.405(a), (c) and (d) of the FCC's rules.

20 *IUB II* establishes that the proper standard for determining whether compliance
21 with Section 251(b) or (c) would result in imposing a requirement that is unduly eco-
22 nomically burdensome includes "the full economic burden on the ILEC of meeting the
23 request that must be assessed by the state commission" and not just that which is "beyond

1 the economic burden that is typically associated with efficient competitive entry." 219
2 F.3d at 761 The Court emphasized that "undue economic burden" is just one of three al-
3 ternative bases on which suspension or modification may be granted under § 251(f)(2) --
4 the others being adverse economic impact on users and technical infeasibility.

5 Q16: **How does this Eighth Circuit Court of Appeals decision support the Petitioners' po-**
6 **sitions with respect to their request for suspension of LNP?**

7 A: According to the Court, the FCC attempted unlawfully to limit the interpretation of "un-
8 duly economically burdensome," and, therefore, the FCC had "impermissibly weakened
9 the broad protection Congress granted to small and rural telephone companies." 219 F.3d
10 at 761. In no uncertain terms, the Court concluded that the FCC's interpretation (as re-
11 flected in the references Mr. Williams has provided) frustrated the policy underlying the
12 statute and stated "[t]here can be no doubt that it is an economic burden on an ILEC to
13 provide what Congress has directed it to provide to new competitors in § 251(b) or §
14 251(c)." *Id.*

15 Q17: **Mr. Williams, at pp. 12-15 of his Direct Testimony, questions the infeasible opera-**
16 **tional and technical implementation obstacles that would be encountered by the**
17 **Petitioners. Do you have any comment?**

18 A: Yes. I will let the factual record speak for itself because it fully demonstrates the obsta-
19 cles confronting carriers regarding potential routing of calls to ported numbers where
20 there is no interconnection or other business arrangement in place.

21 Q18: **On page 14, the testimony of Mr. Williams may suggest that you are confused about**
22 **the differences between Service Provider Portability and Location Portability, and**
23 **what the FCC has ordered. Are you confused?**

1 A: No. Although additional issues remain before the FCC and before the Courts regarding
2 the arbitrary aspects of the FCC's orders related to the FCC's own definition of Service
3 Provider Portability compared to Location Portability, my testimony has emphasized the
4 unresolved issues and inconsistencies in the FCC's order related solely to Service Pro-
5 vider Portability. Even Mr. Williams's words (on p. 14), about what Service Provider
6 Portability means, further illustrates my point. Mr. Williams concedes that the statutory
7 and FCC rule definition of Service Provider Portability is the substitution of service using
8 the same number "at the same location where the customer receives landline service."
9 Without debating the fact that a number ported to a mobile user of wireless service auto-
10 matically means that the customer will most certainly not use the same number for
11 service "at the same location where the customer receives landline service," the "at the
12 same location" statutory and rule criterion is rendered unreasonably meaningless where
13 the wireless carrier neither has a presence, nor an interconnection arrangement over
14 which calls can be routed, in the rate center area that constitutes "at the same location."
15 My testimony centers on the "at the same location" issue within the original rate center
16 area. There are many additional issues, beyond this proceeding and the scope of my tes-
17 timony, regarding what meaning to apply with respect to Location Portability.

18 Q19: **Mr. Williams questions whether there are really routing issue problems. Did the**
19 **industry workgroup ever discuss problems associated with routing issues?**

20 A: Yes, the industry workgroup acknowledged and listed the same problems that the FCC
21 has failed to recognize and address in the *Nov. 10 Order*. See also Watkins Direct at p.
22 15-21.

23 A thorough review of the workgroup reports reveals very interesting observations

1 and conclusions consistent with my Direct Testimony about the fact that intermodal port-
2 ing would not be feasible if there are no business and network interconnection
3 arrangements in place with the relevant wireless carrier in the local area that constitutes
4 “at the same location.” I want to emphasize that the “at the same location” criterion is
5 part of the statutory requirement and the FCC’s own definition of Service Provider Port-
6 ability that forms the LNP requirement.

7 In a Report from the North American Number Council (“NANC”) submitted by
8 its Chairman to the FCC on May 18, 1998 (“1998 NANC Report”), the group reported
9 and explained unresolved intermodal LNP issues (Section 3 on page 6):¹

10 SECTION 3 WIRELESS WIRELINE INTEGRATION ISSUES

11 3.1 Rate Center Issue

12 3.1.1 Issue: Differences exist between the local serving areas of
13 wireless and wireline carriers. These differences impact Service Provider
14 Portability with respect to porting both to and from the wireline and wire-
15 less service providers. . . .

16 The 1998 Report concludes (on p. 7) that consensus could not be reached on a so-
17 lution to the Rate Center Issue. (And subsequent reports in 1999 and 2000 have
18 concluded the issue is still open.)

19 This 1998 Report also includes, as an Appendix D, a Background Paper that dis-
20 cusses some of the same issues related to the rate center disparity issue between wireless
21

¹ See letter from Alan C Hasselwander, Chair, North American Numbering Council, dated May 18, 1998, to Mr. A. Richard Metzger, Jr., Chief, Common Carrier Bureau, Federal Communications Commission. The various reports and white papers are attached to Mr. Hasselwander’s May 18 letter. All of the NANC reports to be referenced in this rebuttal testimony can be found on the FCC’s website by going to “Search” and then to “Search for Filed Comments.” These NANC reports are attached to the Petition for Declaratory Ruling filed by CTIA on January 23, 2003 in CC Docket No. 95-116 addressing LNP. By entering the docket number

1 and wireline operations. As I concluded in my Direct Testimony, there are technical
2 infeasibility implications for intermodal porting where there is no presence by the wire-
3 less

1 carrier in the area that constitutes “at the same location” because there is no network or
2 business arrangement in place for the routing of calls. Most notably, as far back as 1998,
3 the NANC realized these same issues and obstacles and reported them to the FCC:

4 3.0 Limitations on the Scope of Service Provider Portability

5
6 Due to the need to ensure proper rating and routing of calls, the NANC
7 LNPA Architecture Task Force agreed that service provider portability was lim-
8 ited to moves within an ILEC rate center. Section 7.3 of the NANC LNP
9 Architecture & Administrative Plan report which has been adopted by the FCC,
10 states, “portability is technically limited to rate center/rate district boundaries of
11 the incumbent LEC

12
13 1998 NANC Report, Appendix D - Rate Center Issue, Section 3.0, Limitations on the
14 Scope of Service Provider Portability at p. 34, underlining added.

15 At p. 35 of the Appendix D Background Paper, the report notes four possible sce-
16 narios -- two for wireline-to-wireless porting and two for wireless-to-wireline porting.
17 For the first two wireline-to-wireless porting scenarios, the Background Information pa-
18 per concludes in both cases that:

19 Porting would be permissible as long as the wireless service provider has
20 established an interconnect agreement for calls to the wireless telephone number

21

22 [Underlining added]

23 The Background Paper goes on to explain that some of the scenarios described for wire-
24 less-to-wireline porting would not be permissible, and this accounts for the competitive
25 disparity that the FCC’s *Nov. 10 Order* has allowed.

26 Finally, the Background Paper at p. 35 summarizes exactly the same kind of tech-
27 nical infeasibility issues related to routing that I set forth in my Direct Testimony, namely
28 that LNP is only possible where there is a business and network interconnection ar-
29 rangement in place with the relevant wireless carrier within the relevant rate center area:

1 The above examples provide only a small sample of potential porting scenarios.
2 If all of the potential scenarios were examined, the following patterns would
3 emerge:
4

5 Porting from a wireline service provider to a wireless service provider
6 [“WSP”] is permitted as long as the subscriber’s initial rate center is within the
7 WSP service area and the WSP has established interconnection/business arrange-
8 ments for calls to wireless numbers in that rate center
9

10 Porting from a wireless service provider to a wireline service provider is
11 *only* allowed when the subscriber’s physical location is within the wireline rate
12 center associated with the wireless NPA-NXX.
13 [Underlining added]

14 The latter statement above is the realization that porting in the wireless-to-
15 wireline direction is limited by the rate center disparity issue and this limitation leads to
16 disparity in competitive opportunities. The former underlined statement above that inter-
17 connection and business arrangements are prerequisites to permit porting is a conclusion
18 that the FCC refuses to acknowledge, yet is a fact. In subsequent reports, NANC repeat-
19 edly stated that there had been no consensus on rate center disparity issues and no
20 recommendation on a technical or competitively fair approach to remedy the reported ob-
21 stacles. In the last report that I can identify, the NANC lists the Rate Center Issue as an
22 “Open Issue” and states that the reader should review the 1998 and 1999 reports for de-
23 tails about the issue (the same discussion from the 1998 report that I have set forth above)
24 and that “[n]o resolution of this issue has occurred.”

25 **Q20: Are these conclusions by the FCC’s expert industry work group consistent with**
26 **your testimony?**

27 **A:** Yes. Where there is no interconnection/business arrangement with a wireless carrier to
28 which a number may be ported, the Petitioners have no established network or business
29 arrangement to route calls; therefore, porting is not “permitted” as the work group prop-

1 erly concluded. Furthermore, the Petitioners have no statutory right or other ability to
2 force wireless carriers to enter into proper “interconnection/business arrangements.” Ac-
3 cordingly, contrary to Mr. Williams’ claims, the technical obstacles that I have outlined
4 in the testimony are real.

5 A wireline LEC that may originate a call to a number of another carrier cannot
6 unilaterally provision a calling service where there is no interconnection/business ar-
7 rangement with the other carrier. Just as the introduction of an Extended Area Service
8 (“EAS”) route between two incumbent LECs involves the establishment of interconnec-
9 tion facilities and business arrangements between the two carriers, the ability of a LEC to
10 exchange local exchange service calls with a wireless carrier also necessitates intercon-
11 nection and the establishment of the necessary terms and conditions under which the
12 traffic will be exchanged. Interconnection occurs as the result of a request by a carrier
13 other than an incumbent LEC and is dependent on the mutual development of terms and
14 conditions between the carriers for such interconnection. These obvious conclusions are
15 embodied in the conclusion of the NANC work group.

16 **Q21: Mr. Williams at p. 20 and his Exhibit 6 diagrams claim that the Petitioners should**
17 **provision network and/or create new arrangements for the delivery of local calls to**
18 **some interconnection point beyond the Petitioners’ networks. Do the local competi-**
19 **tion interconnection rules, or any other regulation, require the Petitioners to**
20 **provision local services to distant points beyond their own networks?**

21 **A:** No. Mr. Williams’ statements are misleading and contrary to the interconnection re-
22 quirements in the Act. Further, as admitted by Western Wireless in response to
23 Interrogatory 7.b., attached hereto as Exhibit 1, Mr. Williams’ statements are contrary to

1 the interconnection agreements recently negotiated between Western Wireless and Peti-
2 tioners.

3 For several reasons, the Petitioners are not required to provision services beyond
4 their own networks, to purchase services from other carriers, or to deliver local exchange
5 carrier service calls to points of interconnection beyond the Petitioners' own networks:

6 ■ The interconnection obligations established under the Act apply with respect to the
7 service area of the incumbent LEC, not the service area of some other LEC:

8 For purposes of this section, the term 'incumbent local exchange carrier'
9 means, with respect to an area, the local exchange carrier that (A) on the date of
10 enactment of the Telecommunications Act of 1996, provided telephone exchange
11 service in such area

12 47 U.S.C. § 251(h), (underlining added)

13 ■ It has long been established that the Act does not require an incumbent LEC to provi-
14 sion, at the request of another carrier, some form of interconnection arrangement that is
15 superior or extraordinary to that which the LEC provisions for itself. The LEC's obliga-
16 tions are only to provide interconnection arrangements that are at least equal to those that
17 the LEC provides for itself and its own service, not superior. However, the suggestion by
18 Mr. Williams that a Petitioner could be required to provision local exchange carrier ser-
19 vices with transport to some distant point, or to purchase services from some other carrier
20 for transport of traffic beyond the Petitioner's network (*e.g.*, from Qwest to transport traf-
21 fic to the Qwest tandem), would represent just such extraordinary arrangement not
22 required of the Petitioners. While an incumbent LEC may, at the incumbent LEC's sole
23 discretion, voluntarily agree to extraordinary arrangements, the LEC would not do so

1 unless the carrier requesting such extraordinary arrangement is prepared to compensate
2 the incumbent LEC or be responsible for the extraordinary costs for any such superior ar-
3 rangement.

4 In the same *IUB II* cited above, the Eighth Circuit Court of Appeals reaffirmed its
5 earlier conclusion, not affected by the Supreme Court's remand, that the FCC had unlaw-
6 fully adopted and attempted to impose interconnection requirements on incumbent LECs
7 that would have resulted in superior arrangements to that which the incumbent LEC pro-
8 vides for itself. It is now well established that an incumbent LEC is not required to
9 provision some superior form of interconnection service arrangement at the request of
10 another carrier, but that is Mr. Williams' suggestion. The Court concluded that "the su-
11 perior quality rules violate the plain language of the Act." The Court concluded that the
12 standard of "at least equal in quality" does not mean "superior quality" and "[n]othing in
13 the statute requires the ILECs to provide superior quality interconnection to its competi-
14 tors." 219 F.3d at 757-758.

15 It is noteworthy here also to point out that under the invalidated superior quality
16 rule that the FCC had originally adopted, even the FCC in imposing the unlawful re-
17 quirement to provide some superior form of interconnection had nevertheless also
18 concluded that the LEC should be paid for the extraordinary costs associated with the su-
19 perior interconnection arrangement. Pursuant to Mr. Williams' suggestion, not only
20 would Western Wireless require a superior quality interconnection from the Petitioners,
21 he would also do so without compensation for the extraordinary costs.

22 ■ The FCC's own interconnection rules addressing the exchange of traffic subject to the
23 so-called reciprocal compensation requirements envision only that traffic exchange take

1 place at an “interconnection point” on the network of the incumbent LEC, not at an inter-
2 connection point on some other carrier’s network. “Incumbent LECs are required to
3 provide interconnection to CMRS providers who request it for the transmission and rout-
4 ing of telephone exchange service or exchange access, under the plain language of
5 section 251(c)(2).” (underlining added) In the Matter of Implementation of the Local
6 Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*,
7 11 FCC Rcd. 15499 at para. 1015. *See also, Id.* at paras. 181-185. Moreover, Sections
8 251(c)(2)(A)-(C) of the Act states:

9 (2) Interconnection.-- The duty to provide, for the facilities and equipment
10 of any requesting telecommunications carrier, interconnection with the local ex-
11 change carrier’s network-- (A) for the transmission and routing of telephone
12 exchange service and exchange access; (B) at any technically feasible point
13 within the carrier’s network; (C) that is at least equal in quality to that provided
14 by the local exchange carrier to itself or to any subsidiary, affiliate, or any other
15 party to which the carrier provides interconnection . . . (underlining added)

16 Therefore, it is Western Wireless’s obligation to provision its own network or ar-
17 range for the use of some other carrier’s facilities outside of the incumbent LEC’s
18 network as the means to establish that “interconnection point” on the network of the in-
19 cumbent LEC.

20 ■ LECs such as the Petitioners generally do not offer or provide any local exchange call-
21 ing service to their own customers that would involve transport to distant locations as
22 suggested by Mr. Williams. Calls which involve transport to distant locations beyond the
23 networks of the Petitioners are provided by interexchange carriers (“IXCs”), and these

1 calling services are not local exchange carrier services. The Act does not require the Pe-
2 titioners to begin to offer some new and extraordinary form of local calling to their own
3 customers. The involvement of the Petitioners in such calls is simply the provision of ac-
4 cess services to IXCs that are the service providers to the end users.

5 Accordingly, there can be no expectation that Petitioners must transport local ex-
6 change service traffic to some distant point when the Petitioners have no statutory or
7 regulatory interconnection obligation to do so. Whether Mr. Williams' suggestion to the
8 contrary (or the presumption embodied in the FCC's confusing statements in its recent
9 orders) equates to a request that is infeasible because it is premised on the fulfillment of
10 a network arrangement that does not exist and for which there is no legal requirement, or
11 a request that imposes undue economic burden on the Petitioners because it would re-
12 quire some extraordinary superior arrangement, it does not really matter because either
13 potential outcome is sufficient to warrant suspension under Section 251(f)(2)(A) of the
14 Act. Either condition is sufficient, on its own, under Section 251(f)(2).

15 **Q22: At page 20 of his Direct Testimony, Mr. Williams questions whether LNP costs**
16 **would impose an undue economic burden on the Petitioners. What response do you**
17 **have to his comments?**

18 **A:** With respect to the economic burden on the Petitioners, while some costs associated with
19 LNP implementation may be recovered through a surcharge imposed on their own cus-
20 tomers, there will be other costs incurred by the Petitioners beyond those costs that
21 qualify for the surcharge treatment. And, if an improper form of LNP were imposed on
22 the Petitioners, one that would impose some extraordinary form of interconnection with a
23 requirement to incur transport costs to some distant point, there would be additional costs

1 associated with an attempt to comply with the directives and the provisioning of the ex-
2 traordinary network and other business arrangements. The potential costs to transport
3 traffic to some distant point are potentially unbounded.

4 Mr. Williams fails to acknowledge the significant adverse economic impact any
5 of this would impose on the rural subscribers in South Dakota.

6 **Q23: On p. 22 of his Direct Testimony, Mr. Williams notes routing issues, potentially**
7 **similar to those that you have discussed above, associated with a Notice of Apparent**
8 **Liability (“NAL”) issued by the Enforcement Bureau of the FCC against Century-**
9 **Tel of Washington. What is your response?**

10 **A:** I note that the NAL is not a final decision. Further, although all of the facts are not clear
11 from the NAL, it is clear that CenturyTel had not received a suspension or interim sus-
12 pension of the LNP requirement from the state commission. For these reasons, it is not
13 clear to what extent, if any, this case may apply to other LECs, like the Petitioners.
14 What is clear, however, is that the proper routing of calls, including in the LNP environ-
15 ment, requires the carriers involved to establish interconnection and business
16 relationships.

17 As I explained above, the Petitioners have no obligation to provision interconnec-
18 tion to distant points beyond that at which the Petitioners provision any other local
19 exchange service calls; the Petitioners have no obligation to put in place some superior
20 form of interconnection service for the benefit of some other carrier that has not re-
21 quested interconnection; and the Petitioners, in any event, cannot resolve these routing
22 issues unilaterally because the Act states that interconnection terms and conditions are es-
23 tablished by a carrier’s request to an incumbent.

1 Q24: **On pp. 22-23, Mr. Williams states that if Petitioners do not implement LNP it will**
2 **limit wireless to wireless LNP because wireless carriers use numbers assigned by**
3 **LECs. How do you respond?**

4 A: Mr. Williams admits in his answer to Interrogatory 19. that Western Wireless is not re-
5 quired to use numbers assigned by LECs and that it can obtain its own numbers and not
6 use those assigned by LECs.

7 Q25: **On pp. 23-24 Mr. Williams notes that the FCC’s Consumer and Governmental Af-**
8 **fairs Bureau submitted a letter to NARUC addressing issues associated with**
9 **requests for suspension before State commissions. Do you have any comment?**

10 A: Yes. A thorough review of the Snowden letter finds that the actual substance is suppor-
11 tive of the grant of the Petitioners’ suspension requests. The letter simply asks the
12 President of NARUC to remind state commissions to apply the “appropriate standard of
13 review” to requests under Section 251(f) of the Act. The Petitioners have already dem-
14 onstrated that grant of their requests is fully consistent with those standards, even beyond
15 the standards required by the Act and beyond that which the Eighth Circuit Court of Ap-
16 peals has confirmed and clarified.

17 The Snowden letter limits its suggestions regarding proper review to include only
18 the “undue economic burden and technically infeasibility” criteria. Just as Mr. Williams
19 has neglected to address the adverse impact on customers that LNP implementation
20 would impose, Mr. Snowden also omits these considerations.

21 Q26: **On page 24, Mr. Williams suggests that there are likely to be greater numbers of**
22 **customers switching to wireless service. Do you have any comment about his state-**
23 **ments?**

1 A: Yes. First, Mr. Williams references Mr. Thierer's speculative CATO report that was pre-
2 pared even before implementation of intermodal LNP in the top 100 MSAs had begun.
3 The evidence that is available since November 24, 2003 indicates that the degree of in-
4 termodal porting from wireline to wireless, in the more urban areas, is small and less than
5 expected. And any expected interest in rural areas, such as those served by the Petition-
6 ers, will even be less than the already nascent level of intermodal porting in urban areas.
7 *See Watkins Direct* at pp. 10-15. In a May 21, 2004 News Release, the FCC reports that
8 since November 2003, "[o]ver 3.5 million numbers have been switched. . . . Approxi-
9 mately 229,000 involved landline customers taking their landline number to a wireless
10 carrier." The latter statistic represents the initial six months of intermodal LNP experi-
11 ence in the Nation's top 100 MSAs. Clearly, the national demand for intermodal LNP in
12 metropolitan areas has been modest.

13 **Q27: Mr. Williams complains at pp. 24-25 that Western Wireless has had to spend re-**
14 **sources for LNP. Is this relevant?**

15 A: No. The fact that the FCC mandated that LNP be implemented by CMRS carriers is not
16 at issue in these proceedings. Congress explicitly established the opportunity for a rural
17 telephone company to obtain a suspension or modification in Section 251(f)(2) under the
18 broad protections Congress intended for rural customers and carriers. Nothing in these
19 requirements includes consideration of actions of other carriers, either voluntarily or in-
20 voluntarily.

21 **Q28: Mr. Williams complains at p. 25 that it would be "unfair" if the Petitioners are not**
22 **required to implement LNP because it would limit Western Wireless opportunity to**
23 **recoup its LNP costs by porting numbers from the Petitioners. How do you re-**

1 **spond?**

2 A: Mr. Williams statement is not compelling given that LNP in the wireless-to-wireline di-
3 rection is only required, pursuant to the *Nov. 10 Order*, in the very limited circumstance
4 where the wireless number resides in the correct LEC rate center. The current circum-
5 stances are more competitively fair than the disparate version of LNP that would result
6 under the FCC's approach given the unresolved rate center disparity issues that I have
7 discussed in my response to Question 19. At least, Western Wireless has some opportu-
8 nity to port numbers from other wireless providers, whereas most of the Petitioners would
9 have little or no opportunity to recoup their costs by porting-in numbers. Requiring the
10 Petitioners to implement LNP would be even more "unfair" than the situation about
11 which Western Wireless complains.

12 Q29: **What relevance does Mr. Williams' quote on p. 26 regarding rate centers and rout-**
13 **ing and rating of calls have here?**

14 A: None. Mr. Williams apparently believes that the quoted FCC statement at p. 26, lines 13-
15 16 of his Direct Testimony has a meaning different than the facts would indicate. First,
16 the rate center associated with a telephone number does not necessarily determine the
17 service treatment of calls. Second, even if a LEC wanted to use rate center areas as the
18 means to define local exchange carrier services, as I have already explained above, the
19 LEC cannot and would not treat calls to a wireless user as a local exchange service call if
20 the LEC has no interconnection or business arrangement in place with the wireless carrier
21 because the LEC would have had no requirement to have network trunks in place or es-
22 tablished terms with other carriers to route such calls. Calls to users of wireless carriers
23 where there is no established network interconnection or business arrangements in place

1 are necessarily handed off to IXCs who complete such calls to a distant point. Therefore,
2 “rated in the same fashion” simply means that the calls to the ported number are treated
3 as IXC calls as any other call is treated for which there is no interconnection or business
4 arrangement in place with the wireless carrier that would allow for the routing of a call by
5 the LEC to the wireless carrier as a local call.

6 **Q30: What concluding comments would you offer to the Commission with regard to the**
7 **pending Requests?**

8 **A:** For all of the reasons set forth in my Direct Testimony and herein, I respectfully urge the
9 Commission to grant the suspension requests of the Petitioners. Their requests satisfy the
10 criteria set forth in Section 251(f)(2) of the Act and are consistent with the preservation
11 of the public interest:

12 ■ The costs to implement LNP, wireline-wireline and wireline-wireless, would impose
13 significant adverse economic impacts on the users of telecommunications in rural areas of
14 South Dakota served by Petitioners.

15 ■ The FCC’s *Nov. 10 Order* as well as subsequent orders and statements regarding in-
16 termodal LNP create more problems than solutions. Intermodal LNP would impose on
17 the Petitioners either undue economic burdens, requirements that are not technically fea-
18 sible, or both.

19 ■ Suspension of the implementation of LNP for these Petitioners is consistent with the
20 public interest, convenience and necessity in that the costs of LNP implementation to
21 both telecommunications users and the Petitioners are significant and the benefits are
22 slight as evidenced by the lack of demand for LNP among consumers in the areas served
23 by the Petitioners in rural South Dakota.

1 Q31: **What is the scope of the modification or suspension that the Petitioners seek from**
2 **this Commission pursuant to Section 251(f)(2)?**

3 A: Specifically, the current suspension of the FCC's LNP requirements should be extended
4 until conditions may have changed (*i.e.*, a change in the cost related to demand) relevant
5 to the public interest considerations that form the basis here for the Petitioners' suspen-
6 sions. This would include suspension until the FCC and the Courts make a full and final
7 disposition of the outstanding issues, including the porting interval and wireless to wire-
8 line LNP requirements. Further, the Commission should confirm that the Petitioners
9 have no obligation to transport calls beyond their service areas for purpose of LNP or any
10 other purpose. Finally, when the issues are resolved and the public interest circumstances
11 may have changed, the Petitioners would need sufficient time to acquire and install the
12 necessary hardware and software and to put in place the necessary administrative proc-
13 esses.

14 Q32: **Does this conclude your Rebuttal Testimony?**

15 A: Yes.

EXHIBIT 1

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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

Docket No. TC04-025; TC04-038; TC04-044
through TC04-056; TC04-060 through TC04-
062; TC04-077; TC04-084; and TC04-085

**WWC'S RESPONSES TO
SUPPLEMENTAL DISCOVERY
REQUESTS OF PETITIONERS**

WWC License LLC, by and through its undersigned attorney, Talbot J. Wieczorek, of Gunderson, Palmer, Goodsell & Nelson, LLP, Rapid City, South Dakota, hereby responds to the Supplemental Discovery Requests of the Petitioners in the following dockets:

| | |
|-----------|---|
| TC-04-025 | Kennebec Telephone Co. |
| TC04-038 | Santel Communications |
| TC04-044 | Sioux Valley Telephone Co. |
| TC04-045 | Golden West, Vivian Telephone Co and Kadoka Tele Co |
| TC04-046 | Armour, Bridgewater-Canistota Tele Co and Union Tele Co |
| TC04-047 | Brookings Municipal Utilities d/b/a Swiftel Communications |
| TC04-048 | Beresford Municipal Telephone Company |
| TC04-049 | McCook Cooperative Telephone Company |
| TC04-050 | Valley Telecommunications Cooperative Association, Inc. |
| TC04-051 | City of Faith Telephone Company |
| TC04-052 | Midstate Communications, Inc. |
| TC04-053 | Western Telephone Company |
| TC04-054 | Interstate Telecommunications Cooperative, Inc. |
| TC04-055 | Alliance Communications Inc. and Splitrock Properties |
| TC04-056 | RC Communications, Inc., and Roberts County Telephone Cooperative Assn. |
| TC04-060 | Venture Communications Cooperative |
| TC04-061 | West River Cooperative Telephone Company |
| TC04-062 | Stockholm-Strandburg Telephone Company |
| TC04-077 | James Valley Cooperative Telephone Company |
| TC04-084 | Tri-County Telcom |
| TC04-085 | Cheyenne Sioux Tribe Telephone Authority |

II. DISCOVERY REQUESTS

A. INTERROGATORIES

1. At page 10, lines 6-14 of Mr. Williams' testimony, he states that similarly situated LECs are not seeking a delay or suspension of LNP implementation. Identify the similarly situated LECs to which you refer and explain with specificity how they are similar to Petitioners, including information on their respective switch upgrade costs, number of lines in service and type of interconnection with wireless carriers.

ANSWER: See Exhibit A for the list of similarly situated LECs that have implemented LNP. Further, numerous LECs throughout the country have not requested waivers of their obligation of porting numbers by May 24, 2004. In fact, some LECs in South Dakota did not apply for a waiver or extension and it was represented by Attorney Rogers that these LECs, planned on providing portability by the deadline and, therefore, were not filing for waivers or extensions. Western Wireless Corporation does not have access to specific switch upgrade costs for LEC's in our service area.

2. At page 10, lines 16-20, and page 11, lines 1-15, you identify other state commissions that have ruled on LEC LNP suspension requests. Identify any other state commissions that have ruled on temporary or permanent LNP suspension requests of which you are aware and indicate how they have ruled.

ANSWER: A comprehensive list of regulatory filings and decisions related to Local Number Portability can be found at www.NECA.org.

3. At page 12, lines 23-26 and page 13, lines 1-7, you state that "Petitioners have identified only a few technical or feasibility issue in the implementation of local number portability" and list three issues. Identify where each Petitioner identified the alleged issues in its Petition, testimony and discovery responses by page number and where applicable, by line number or question number.

As way of clarification, it does not appear any of the companies claim that LNP would be a requirement that is “technically infeasible” under 47 U.S.C. § 251(f)(2)(A)(iii). However, in response to interrogatory 27 of Western Wireless’ First Set of Interrogatories to the Petitioners, Petitioners either answered that there was no technical infeasibility but that implementing the portability under certain circumstances could be difficult based on the lack of rule makings or be difficult to do so using a local seven digit dialed basis. There exists testimony that has been prefiled by various Petitioners also reiterating these positions. To the extent that this interrogatory requests that every instance of every reference that any of the Petitioners’ 22 witnesses may have made to these three areas must be set forth, the interrogatory is objected to as overly broad and unduly burdensome especially in that it seeks summaries of Petitioners’ own testimony.

4. At page 14, lines 17-22, you state that “the LEC will need to route a call to a ported number to the serving tandem.”
 - a. Identify the serving tandem to which you refer.
 - b. Identify any requirement that LECs must route calls to a ported number to the serving tandem. If you are not aware of any such requirement, indicate so.
 - c. Indicate whether you contend that if the LECs route a call to a number ported to Western Wireless to the serving tandem they would also need to route calls to Western Wireless numbers that are not ported numbers to the serving tandem.

ANSWER:

4.a) The Qwest LATA or local tandem to which the trunk group that delivers wireless terminating traffic is connected.

4.b) Pursuant to federal law and regulation, it is the LEC’s requirement to appropriately route the traffic for ported numbers. There is no specific requirement to route to a serving tandem. This is just one of several methods a carrier can use to deliver local traffic to a ported number. Typically, for low traffic volumes, tandem routing, using common or shared trunk groups, is the most cost efficient means of routing such traffic. It appears that Petitioners used the most costly way to route traffic as the basis for their cost analysis rather than considering other ways of routing.

4.c) Objection: How calls need to be routed for Western Wireless numbers separate and a part from LNP issues is not relevant in any of these filings and is not likely to lead to the discovery of admissible evidence.

5. At page 15, footnote 23, you state that the Central Office Code Administration Guidelines published by the Alliance for Telecommunications Industry Solutions “permit a carrier to receive a rate center number assignment and designate a routing point for calls to those numbers that is outside the rate center to which they are assigned.” Do you contend that this requires Petitioners to route calls to a ported number to the serving tandem?

ANSWER: This reference was provided to indicate that tandem routing practices for local calling are not new to the industry. See also response to Question 4.a.

6. At page 15, line 6, you state that “[t]his practice is permitted under industry guidelines...”
To what practice are you referring?

ANSWER: The practice of identifying separate rating and routing points for NPA-NXXs and properly rating and routing traffic based on those designations.

7. At page 3, lines 3-7, you state that you have been “actively involved in negotiation of interconnection agreements with most, if not all, of the Petitioners in this case on behalf of Western Wireless” in response to a question as to whether you have any background or familiarity with Western Wireless’ system in South Dakota and any familiarity with the Petitioners’ systems in South Dakota.
- a. Based on your familiarity with the Petitioners’ systems obtained through the interconnection agreement process, do any of the Petitioners route traffic to Western Wireless customers to the serving tandem identified in 4a?
 - b. Does Western Wireless contend that the Petitioners agreed in the interconnection agreements to route traffic to Western Wireless to the serving tandem?
 - c. Does Western Wireless contend that the FCC’s local number portability rules would require parties to an interconnection agreement to route traffic in a manner different from that to which they agreed?

ANSWER:

7.a) Not at this time. Petitioners can, at any time, begin to route traffic to Western Wireless customers to the serving tandem.

7.b) No.

7.c) No, but nothing prevents Petitioners from amending, by mutual agreement, the interconnection agreements with Western Wireless.

8. At page 16, lines 9-11, you state that “[t]he facts contained in the Petitions do not meet the standard that would lead one to conclude the economic burden exceeds that ‘typically associated with efficient competitive entry.’” Identify the facts that would meet the standard that would lead one to conclude the economic burden exceeds that typically associated with efficient competitive entry.’”

ANSWER: One method to establish this burden might include demonstration of costs that are extraordinary in comparison to other similarly situated companies that have implemented LNP. Another method may be to demonstrate that a Petitioners financial wherewithal is insufficient to sustain implementation of LNP. Adoption of any new service to the public usually entails some costs. The fact that adoption and providing of new service to the public entails a cost in and of itself would not logically lead to the conclusion that there has been any type of undue economic burden or adverse economic impact. Otherwise, any service that would add costs could be barred under such a test.

9. At page 16, lines 12-17, you state that you have experience with SOA and LNP queries in response to a question concerning whether you have experience with the real life costs of LNP implementation.

- a. Indicate whether this means you have experience with the cost of SOA and LNP queries.
- b. If you have such experience, indicate the recurring and non-recurring cost associated with SOA and LNP queries.

ANSWER:

9.a) Yes.

9.b) Please see Western Wireless' response to question 12 of the First Discovery Requests.

10. At page 17, lines 11-13, you state that Petitioners have included fees for SOA non-recurring set up charge or non-recurring Service Order Administration "when estimated port volumes provide no justification for an automated SOA interface."

- a. Identify the specific Petitioners to which you refer.
- b. Indicate for each Petitioner identified in 10.a. whether you contend that the Petitioner's cost estimates for an automated SOA interface are unreasonable or whether you contend that an automated SOA cannot be justified, or both.
- c. Indicate whether Western Wireless utilizes an automated SOA.
- d. Indicate the recurring and non-recurring costs paid by Western Wireless for the SOA interface.

ANSWER:

10.a) All Petitioners

10.b) We contend that automated SOA is not justified for the low port volume forecasts made by the Petitioners

10.c) Although irrelevant to the proceeding, Western does use an automated SOA interface

10.d) Objection, this interrogatory calls for information that is irrelevant and not likely to lead to admissible evidence.

11. At page 17, lines 14-18, you state that "many of the Petitioners have not provided sufficient information in response to interrogatories to address the validity of switch upgrade cost claims at this time." Identify the Petitioners to which you refer.

ANSWER: All Petitioners that have not provided actual switch vendor quotations.

12. At page 18, lines 5-15, you state that Beresford Telephone has overstated SOA costs.

Identify all other Petitioners that you contend have overstated SOA costs.

ANSWER: See response to 10.a.

13. At page 18, lines 9-11, you state that Beresford can utilize the Number Portability Administration Center Help Desk to perform the SOA function for 24 ports for a total of \$360.

- a. Explain how you arrived at a cost of \$360.
- b. Is the Number Portability Administration Center Help Desk and automated SOA interface?
- c. Does Western Wireless utilize the Number Portability Administration Center Help Desk?
- d. If Western Wireless does not utilize the Number Portability Administration Center Help Desk, explain why it does not and identify the factors that resulted in Western Wireless selecting a different SOA interface.
- e. How long does it take to complete a port using the Number Portability Administration Center Help Desk?
- f. Identify the annual number of port requests that Western Wireless has projected it will make of each of the Petitioners for the years 2004 through 2010.

ANSWER:

13.a) The \$360 figure was estimated by taking the number of ports and multiplying by the estimated per port line charge for SOA services (\$15).

13.b) No.

13.c) Western Wireless does use the Number Portability Administration Center Help Desk in certain situations.

13.d) N/A

13.e) The transaction time for using the Number Portability Administration Center Help Desk is estimated to take less than 2 minutes.

13.f) Please see Exhibit B.

14. At page 19, lines 1-3, you state that “Western Wireless estimates the cost of routing traffic to these ported numbers to be \$1,120 for the year including non-recurring charges.” Explain with specificity how you derived this amount.

ANSWER: The estimate was calculated using these inputs:

- A \$400 estimated non-recurring charge for reconfiguration of existing trunk group to Qwest tandem.
- West River estimate of annual ports – 12
- Qwest toll transit rate - \$.003123
- Estimated local calls originated each day on West River network to each ported number – 6
- Estimated average length of local calls originated on West River network to ported numbers – 3.5 minutes
- Assuming a traffic volume estimate after 2.5 years of port activity

- The monthly recurring cost was calculated using this formula: (Annual Ports*2.5 years)*(local calls per day*length of calls*days per month)*transit rate
Alternatively: $(12*2.5)*(6*3.5*30)*0.003123 = \59.02 per month x 12 months = \$708

$NRC\ of\ \$400 + 12\ Months\ of\ MRC\ of\ 708 = 1^{st}\ year\ costs\ of\ \1108

15. At page 19, lines 1 and 2, you state “[a]ssuming these porting customers to have average incoming call characteristics...”, identify with specificity what are the “average incoming call characteristics” to which you refer.

ANSWER: See input assumptions in response 14.

16. At page 19, lines 8-10, you state that you believe the FCC “views that it is the originating carrier’s responsibility to deliver local traffic for termination...”

- a. For each of the Petitioners, identify the calls to Western Wireless numbers by number and routing arrangement, for which Petitioner pays reciprocal compensation to Western Wireless.
- b. Indicate whether you contend that Petitioners would be required to pay reciprocal compensation on calls to numbers ported from the Petitioner to Western Wireless.

ANSWER:

16.a) Objection, the interrogatory is irrelevant and unlikely to lead to admissible evidence and is also overly burdensome and unduly broad in that it seeks information on calling arrangements and number and routing arrangements not related to LNP. Further, each Petitioner would have this information readily available in their existing records.

16.b) Yes.

17. At page 20, lines 5-8, you state that you eliminated switch maintenance cost because LNP does not result in additional increase in this cost. At Addendum D to your Answers to Interrogatories, Local Number Portability Operations Agreement, Section 7.3, states that “[e]ach Party shall monitor and perform effective maintenance through testing and the performance of proactive maintenance activities such as routine testing, development of and adherence to appropriate network trouble isolation processes and periodic review of operational elements for translations, routing and network faults.” Reconcile these two statements.

ANSWER: Switch maintenance and routing table management should be routine practice that is not altered by Local Number Portability operations.

18. At page 20, lines 13-15, you state that “[t]he routing methods proposed by the Petitioners are inefficient in that they make little or no utilization of existing equipment and shared facilities currently used to exchange calls with other carriers.” Identify with specificity and for each Petitioner, the “existing equipment and shared facilities currently used to exchange calls with other carriers” to which you refer.

ANSWER: Trunk groups that currently deliver wireless and other carrier traffic to Petitioners directly from Qwest or any other common/shared trunk group that is connected to the PSTN.

19. At page 22, lines 18-23 and page 23, lines 1-4, you state that if Petitioners do not implement LNP it will limit wireless to wireless number portability because wireless carriers use numbers assigned to them by LECs.

- a. Are you required to use numbers assigned by LECs? If you contend that you are so required, identify the requirement.
- b. Can Western Wireless obtain its own numbers and not use those assigned by LECs? If you contend that Western Wireless cannot obtain its own numbers, explain why not.

ANSWER:

19.a) No, Western Wireless is not required to use numbers assigned by LECs, however, the Petitioners are required to provide them. Many of Western Wireless’ customers and other wireless customers are currently served by numbers provided by LECs.

19.b) Yes, but it would take months and would not resolve porting issues for existing customers.

20. At page 23, lines 9-11, you state that “Qwest has experienced a substantial loss of customers to competitors since the advent of number portability.”

- a. Identify the basis for this statement.
- b. Identify the number of customers lost by Qwest since the advent of number portability in South Dakota.
- c. Identify the number of customers lost by Western Wireless since the advent of number portability in South Dakota.

ANSWER:

20.a) This statement was based on discussions with CLEC's in South Dakota and on transit billing volume changes for Western Wireless traffic delivered to CLEC CLLIs.

20.b) Western Wireless does not have specific customer counts for Qwest line loss in South Dakota.

20.c) Objection, this interrogatory calls for information that is irrelevant and not likely to lead to admissible evidence and the question is vague. Without waiving the objection, Western Wireless answers as follows: Western Wireless has experienced people leaving Western Wireless for other wireless providers and people leaving other wireless providers and coming to Western Wireless. Further, Western Wireless has experienced people wishing to leave Western Wireless who have not been able to port their numbers because Petitioners have refused to implement LNP.

21. At page 25, lines 3-7, you state that "it is unfair that carriers who we compete with, that are similarly obligated, would be exempted from their obligations and thereby limit our ability to recoup the LNP investments we have made by restricting our opportunity to leverage those investments in a competitive marketplace."

- a. Do you believe it would also be unfair if the Petitioners' opportunity to leverage LNP investments was restricted?
- b. Assuming the Petitioners were LNP capable, identify by Petitioner and by rate center all rate centers where Western Wireless would be required to port numbers from Western Wireless to the Petitioner.

ANSWER:

21.a) To the extent that Petitioners have to abide by the same coverage and rate center rules as other carriers, Yes.

21.b) Western Wireless would be obligated to port numbers where the Petitioner provides service.

22. At Exhibit 5A and 5B of your testimony, you list recurring and non-recurring transport costs for some Petitioners. For each Petitioner, explain how the recurring and non-recurring transport cost was derived. If no transport cost is listed for a Petitioner, explain why not.

ANSWER: Non-recurring costs in Exhibit 5A and 5B are, for the most part, those costs provided by the Petitioners. Any modifications made to these costs are explained in my testimony. Recurring costs in Exhibit 5A and 5B were developed as follows:

SOA: Ports per year / 12 months x \$15 Neustar (NPAC) help desk fee per port.

LNP Query: Cost provided by Petitioners or access lines in service x six originating calls per day x 30 days x .00075 per query

If no transport cost is listed for a Petitioner, the Petitioner has indicated they will have no numbers ported from their network.

23. At the conference call sponsored by the South Dakota Commission on June 1, 2004, Western Wireless stated that the testimony and exhibits of Ron Williams include "general" and "company specific" portions. Identify by page and line number the parts of Mr. Williams' testimony that are "general" and the parts that "company specific." Also identify the Exhibits or parts thereof that are "general" and the ones that are "company specific." For the testimony and Exhibits that are company specific, identify the company to which they apply.

ANSWER: These terms were used in regard to comments made during that meeting that Mr. Watkins constitutes a general expert and the costs experts were considered cost company specific experts. In that regard, all the testimony of Ron Williams replying to the issues raised by Mr. Watkins should be considered general testimony applying to policy

and other issues raised by Mr. Watkins. Regarding company specific, the cost testimony of Williams is specific for each petitioner in that it replies to the specific cost testimony submitted by each petitioner. To the extent that the cost testimony could be argued to also apply to the public interest, convenience and necessity issues, the cost analysis is presented for that matter. The same would be said for the testimony of technical difficulties in implementing LNP. Namely, the technical testimony is directed at each petitioner specifically but may also be regarded as applying to general testimony regarding implementation issues.

24. Do you contend that imposing the LNP obligations on Petitioners is not unduly economically burdensome? If your answer to the preceding interrogatory is in the affirmative, please state the following with respect to each Petitioner:

- a. State in detail each fact, matter and circumstance upon which you rely to support your answer.
- b. Identify each person having knowledge of the facts that support your answer and state the substance of their knowledge.
- c. Identify all documents upon which you rely which support you're answer.

ANSWER: Yes.

24.a) Petitioners have failed in their burden to show undue economic burden in their refusal to provide their cost documents received from vendors. Refusal of the Petitioners to provide such documents makes it impossible to make a conclusion that undue economic burden exists. Further, Petitioners all have the financial ability to pay for LNP. See also responses to interrogatory 8 above.

24.b) Petitioners and their witnesses.

24.c) Discovery to date and prefiled testimony of Petitioners.

25. On page 25, lines 1-3 of Mr. Williams' testimony, he states that "We have upgraded our network, implemented new processes, systems, and hired supporting resources to implement LNP in South Dakota. In other words, we have absorbed the costs of implementing LNP

under our FCC obligations.” Please list the cost Western Wireless has incurred for these various items in South Dakota.

ANSWER: Objection, as this interrogatory calls for information that is not relevant or likely to lead to admissible evidence, unduly burdensome and overly broad and vague. Without waiving said objection, Western Wireless answers as follows: Such costs are not kept by State.

B. DOCUMENT PRODUCTION

1. At page 13, lines 15-21, you cite the testimony of Steven D. Metts. Provide a complete copy of Mr. Metts’ testimony that includes the cited language.

ANSWER:

1) Q. “On Page 2 Line 21, beginning on 20 and 21 you state the purpose of your testimony. Is it your contention that suspension of the FCC requirements is based upon technological incapability for any of your companies?”

A. “No.”

See attached Exhibit C.

2. Provide all documents referenced in your responses to Interrogatories 1-25.

ANSWER: Documents previously provided otherwise. Also, see attached Exhibits A, B and C.

DATED this _____ day of June, 2004.

WWC License, LLC

By _____
Ron Williams

Its _____

State of _____)
County of _____) ss.

On this, the _____ day of _____ 2004, before me, the undersigned officer, personally appeared _____ as _____ of WWC License LLC, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

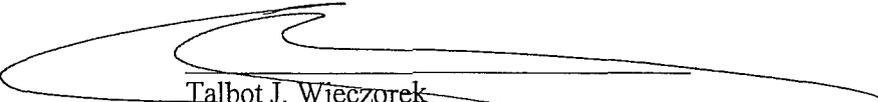
Notary Public

(SEAL)
My Commission Expires:

Dated this 11 day of June, 2004.

AS TO OBJECTIONS:

GUNDERSON, PALMER, GOODSSELL
& NELSON, LLP



Talbot J. Wiczorek

Attorneys for WWC License LLC
440 Mt. Rushmore Road, Fourth Floor
P.O. Box 8045
Rapid City SD 57709
Phone: 605-342-1078
Fax: 605-342-0480

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

CERTIFICATE OF SERVICE

The undersigned certifies that on the 11 day of June, 2004, I served a true and correct copy of WWC's Responses to Petitioners Supplemental Discovery Requests in LNP Dockets, by email and Next Day Delivery, postage paid to:

dprogers@riterlaw.com

Darla Pollman Rogers
Riter, Rogers, Wattier & Brown
319 South Coteau Street
PO Box 280
Pierre, SD 57501

Attorney for:

Kennebec Telephone Co.
Sioux Valley Telephone Co
Golden West, Vivian Telephone Co and Kadoka
Armour, Bridgewater-Canistota Tele Co and Union Tele Co
Beresford Municipal Telephone Company
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Alliance Communications Inc. and Splitrock Properties
RC Communications, Inc., and Roberts County Telephone Cooperative Assn.
Venture Communications Cooperative
West River Cooperative Telephone Company
Stockholm-Strandburg Telephone Company
Tri-County Telcom
Cheyenne Sioux Tribe

jdlarson@santel.net

Jeffrey D. Larson
Larson and Nipe
205 Dumont Avenue
PO Box 277
Woonsocket, SD 57385-0277

Attorney for:

Santel Communications

rjh1@brookings.net

Richard J. Helsper
100 22nd Avenue, Suite 200
Brookings SD 57006

And

Benjamin Dickens
Blooston, Mordkofsy
2120 L. Street, NW #300
Washington, DC 20037

Attorneys for:

Brookings Municipal Utilities d/b/a Swiftel Communications

jcremer@midco.net

James Valley Cooperative Telephone Company
James Cremer
Bantz, Gosch & Cremer
305 6th Avenue, SE
PO Box 970
Aberdeen, SD 57402

Attorney for:

James Valley Cooperative Telephone Company

dag@magt.com

David Gerdes
503 S. Pierre Street
Pierre, SD 57501

Attorney for:

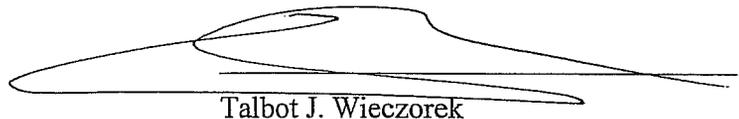
Midcontinent

richcoit@sdtsonline.com

Richard Coit
SD Telecommunications Assoc.
PO Box 57
320 E Capitol Ave
Pierre SD 57501-0057

Attorney for:

South Dakota Telecommunications Assoc.



Talbot J. Wiczorek

EXHIBIT A TO WWC REPLY TO PETITIONERS' SUPPLEMENTAL DISCOVERY REQUEST

Similarly Situated Carriers

ND LEC's with Similar Profiles to SD Petitioners

| STATE | NAME | STATUS | ICA | Suspension Filed? | LNP DATE | ACCESS LINES | Number of Switches |
|-------|---|----------|-----|-------------------|-----------|--------------|--------------------|
| ND | NORTHWEST COMMUNICATIONS COOPERATIVE | SENT BFR | Y | No | 5/24/2004 | 5,302 | 15 |
| ND | CONSOLIDATED TELCOM | SENT BFR | Y | No | 5/24/2004 | 8,713 | 19 |
| ND | DAKOTA CENTRAL TELECOMMUNICATIONS COOP. | SENT BFR | Y | No | 5/24/2004 | 5,228 | 8 |
| ND | DICKEY RURAL TELEPHONE COOPERATIVE | SENT BFR | Y | No | 5/24/2004 | 5,400 | 17 |
| ND | GRIGGS COUNTY TELEPHONE CO. | SENT BFR | Y | No | 5/24/2004 | 2,171 | 4 |
| ND | INTER-COMMUNITY TELEPHONE COMPANY, LLC | SENT BFR | Y | No | 5/24/2004 | 2,626 | 9 |
| ND | BEK COMMUNICATIONS COOPERATIVE | SENT BFR | Y | No | 5/24/2004 | 7,267 | 18 |
| ND | MOORE & LIBERTY TELEPHONE CO. | SENT BFR | Y | No | 5/24/2004 | 998 | 2 |
| ND | POLAR COMMUNICATIONS MUTUAL AID CORP. | SENT BFR | Y | No | 5/24/2004 | 9,233 | 22 |
| ND | POLAR TELECOMMUNICATIONS, INC. | SENT BFR | Y | No | 5/24/2004 | 1,604 | 7 |
| ND | RESERVATION TELEPHONE COOPERATIVE | SENT BFR | Y | No | 5/24/2004 | 7,812 | 20 |

EXHIBIT B TO WWC'S RELY TO SUPPLEMENTAL DISCOVERY
Western Wireless Corp.

| LEC | Projected Port Requests (first 5 years of porting) |
|--|--|
| ALLIANCE/SPLITROCK TOTAL | 660 |
| BERESFORD MUNICIPAL TELEPHONE CO. | 96 |
| CHEYENNE RIVER SIOUX TRIBAL TELEPHONE AUTH. | 230 |
| CITY OF BROOKINGS MUNICIPAL TELEPHONE DEPT. | 1117 |
| CITY OF FAITH MUNICIPAL TELEPHONE CO. | 0 |
| FORT RANDALL TELEPHONE COMPANY/MT. RUSHMORE | 458 |
| GOLDEN WEST COMPANY - KADOKA TELEPHONE CO. | 42 |
| GOLDEN WEST COMPANY - UNION TELEPHONE CO. | 122 |
| GOLDEN WEST COMPANY-BRDGWATER-CANISTOTA TELEPHONE CO. (Armour) | 224 |
| GOLDEN WEST TELEPHONE COOPERATIVE, INC. | 1101 |
| INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA | 1019 |
| JAMES VALLEY COOPERATIVE TELEPHONE COMPANY | 284 |
| KENNEBEC TELEPHONE CO. | 54 |
| MCCOOK COOPERATIVE TELEPHONE COMPANY | 154 |
| MIDSTATE COMMUNICATIONS, INC. | 323 |
| RC COMMUNICATIONS, INC./ROBERTS COUNTY | 147 |
| SANTEL COMMUNICATIONS COOPERATIVE, INC.-SD | 348 |
| SIOUX VALLEY TELEPHONE CO.- GOLDEN WEST COMPANY | 397 |
| STOCKHOLM - STRANDBURG TELEPHONE CO. | 52 |
| TRI-COUNTY TELCOM, INC. | 31 |
| VALLEY TELECOM COOPERATIVE ASSOCIATION, INC. | 253 |
| VENTURE COMMUNICATIONS COOPERATIVE | 173 |
| VIVIAN TELEPHONE CO. | 1279 |
| WEST RIVER COOPERATIVE TELEPHONE COMPANY | 272 |
| WEST RIVER TELECOMMUNICATIONS COOP (MOBRIDGE) - SD | 181 |
| WESTERN TELEPHONE CO. | 77 |

1 implementation.

2 Q. Do you have any sense or any feel for what
3 the additional charges incurred by each of these
4 companies is?

5 A. No. Those companies withdrew before we had
6 the data request for the costs and did not submit any
7 costs to me.

8 Q. On Page 2 Line 21, beginning on 20 and 21 you
9 state the purpose of your testimony.

10 Is it your contention that suspension of
11 the FCC requirements is based upon technological
12 incapability for any of your companies?

13 A. No.

14 Q. If you would, turn to Page 5, as well.

15 A. (Witness complies.)

16 Q. When was the FCC Order -- referring to Page
17 5, when was the FCC Order issued?

18 A. November 10th, 2003.

19 Q. So all of the NMECG members have known since
20 then that they were going to have to be within
21 compliance?

22 A. Yes.

23 Q. When did ENMR and ValleyTel apply for a
24 request of waiver to the FCC?

25 A. I don't know that.



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

JUN 14 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

June 14, 2004

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

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

Dear Ms. Bonrud:

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

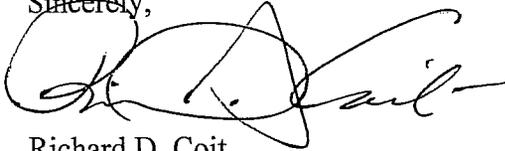
- TC04-025 – Kennebec Telephone Company
- TC04-038 – Santel Communications Cooperative
- TC04-044 – Sioux Valley Telephone Company
- TC04-045 – Golden West Telecommunications Cooperative
Vivian Telephone Company
Kadoka Telephone Company
- TC04-046 - Armour Independent Telephone Company
Bridgewater-Canistota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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Richard D. Coit", written over a large, loopy flourish.

Richard D. Coit
Executive Director and General Counsel
SDTA

CERTIFICATE OF SERVICE

I hereby certify that an original and ten (10) copies of the enclosed document were hand-delivered to the South Dakota PUC on June 14, 2004, directed to the attention of:

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

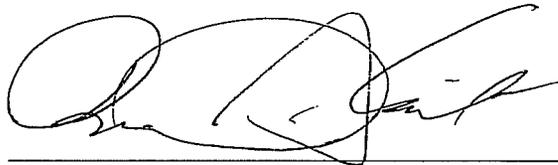
A copy was sent via e-mail and overnight Federal Express to the following individual:

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

A copy was sent via e-mail and US Postal Service First Class mail to the following individual:

David Gerdes
May Adam Gerdes & Thompson
503 S. Pierre Street
Pierre, SD 57501

Dated this 14th day of June, 2004.



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

LAW OFFICES
RITER, ROGERS, WATTIER & BROWN, LLP
Professional & Executive Building
319 South Coteau Street
P.O. Box 280
Pierre, South Dakota 57501-0280
www.riterlaw.com

ROBERT C. RITER, Jr.
DARLA POLLMAN ROGERS
JERRY L. WATTIER
JOHN L. BROWN

MARGO D. NORTHRUP, Associate

RECEIVED
JUN 15 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

OF COUNSEL
Robert D. Hofe
E. D. Mayer
TELEPHONE
605-224-5825
FAX
605-224-7102

June 14, 2004

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

Re: Docket Number TC04-085 (CRSTTA)

Dear Pam:

Enclosed are the original and ten copies of the REBUTTAL TESTIMONY OF DOUGLAS J. NEFF on behalf of Cheyenne River Sioux Tribal Telephone Authority for filing in the above docket.

By copy of this letter, I am also serving those persons named on the Certificate of Service.

Sincerely yours,



Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

CC: Talbot J. Wiczorek
Richard D. Coit
JD Williams

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

JUN 15 2004

**SOUTH DAKOTA PUB
UTILITIES COMMISSI**

IN THE MATTER OF THE PETITION
OF CHEYENNE RIVER SIOUX TRIBE
TELEPHONE AUTHORITY FOR SUS-
PENSION OR MODIFICATION OF
§ 251(b)(2) OF THE COMMUNICA-
TIONS ACT OF 1934 AS AMENDED

Docket No. TC04-085
REBUTTAL TESTIMONY OF
DOUGLAS J. NEFF

REBUTTAL TESTIMONY OF

DOUGLAS J. NEFF

ON BEHALF OF

CHEYENNE RIVER SIOUX TRIBE TELEPHONE AUTHORITY

June 14, 2004

1 Q: What is your name and address?

2 A: **My name is Douglas J. Neff. My business address is 1501 Regents Blvd., Suite 100,**
3 **Firecrest, WA 98466. My business phone number is (253) 566-7070.**

4 Q: What is the purpose of your testimony?

5 A: **I will provide rebuttal testimony on the Cheyenne River Sioux Tribe Telephone Au-**
6 **thority (“CRSTTA”) cost exhibit included in Mr. Ron Williams May 28, 2004 testi-**
7 **mony on behalf of Western Wireless.**

8 Q: Do you dispute any of the costs changed by Mr. Ron Williams in his May 28, 2004 cost
9 exhibit for CRSTTA?

10 A: **Yes. I dispute the highlighted cells noted on Mr. Ron Williams May 28, 2004 cost**
11 **exhibit as follows:**

12 *SOA Non-recurring set-up charge*

13 **Mr. Ron Williams’ cost exhibit shows no costs for SOA non-recurring set-up charge**
14 **because, according to Mr. Williams, this charge is for an automated SOA interface**
15 **which cannot be justified based on the estimated port volumes.**

16 **As noted in my earlier testimony, the CRSTTA cost estimate of \$1,000 for SOA non-**
17 **recurring set-up charge was based on a survey of SOA providers obtained under a**
18 **Non Disclosure Agreement. That survey of SOA providers did not differentiate the**
19 **estimated \$1,000 non-recurring fee from a manual or automated SOA interface. In**
20 **any event, it appears that Western Wireless does not challenge the dollar amount of**
21 **\$1,000 estimated by CRSTTA. Rather, it challenges whether an automated SOA in-**
22 **terface can be justified. (See, Western Wireless response to Interrogatory 10.b. at-**
23 **tached to the Rebuttal Testimony of Steven E. Watkins).**

24 *Non- recurring transport charges*

1 **Mr. Ron Williams' cost exhibit shows a cost of \$400, whereas the CRSTTA cost ex-**
2 **hibit shows a cost of \$2,306. Mr. Ron Williams provides the cost of \$400 with no**
3 **explanation as to how he arrived at that cost. However, in its response to Interroga-**
4 **tory 14.a., Western Wireless states that the \$400 is the estimated non-recurring**
5 **charge for reconfiguration of the existing trunk group to the Qwest tandem. As in-**
6 **dicated in my testimony, "in the case where a direct transport connection is unavail-**
7 **able, the cost estimate of \$2,306 was determined by estimating internal and external**
8 **central office technician labor costs with benefits to install, set-up and establish**
9 **transport paths at \$37.50 per hour for approximately 60 hours." This cost was es-**
10 **timated to not only reconfigure the existing trunk group to the tandem, but also es-**
11 **timate configuring local trunk groups from local wireless facilities to the CRSTTA**
12 **central office.**

13 *SOA Monthly Charge*

14 **Mr. Ron Williams' cost exhibit shows an amount of \$13 per month. Mr. Ron Wil-**
15 **liams indicates in his testimony that "Most of their other Petitioners have similarly**
16 **forecasted low porting volumes that do not justify an automated SOA interface and**
17 **a high minimum monthly recurring charges," with no support provided as to how**
18 **the \$13 SOA monthly charge was determined. In answer to Interrogatory 13.a.,**
19 **Western Wireless states that the estimated per port line charge for SOA services is**
20 **\$15. The CRSTTA estimate was based upon a survey of SOA providers and in-**
21 **cluded a monthly recurring fee and a yearly cost that totaled \$800 per month.**

22 *Switch Maintenance Costs*

23 **Mr. Ron Williams argues that there should be no switch maintenance costs assigned**
24 **to LNP. Each year, Nortel provides annual software upgrades to the CRSTTA**
25 **DMS-10. These annual upgrades replace or enhance many of the calling features or**

1 operational aspects of the software of the DMS-10. I assumed that approximately
2 5% of an annual software upgrade would be attributed to future LNP enhance-
3 ments, producing an estimated monthly cost associated with LNP to be approxi-
4 mately \$185.

5 *Transport*

6 Mr. Ron Williams estimates transport costs of \$49. Again, Mr. Ron Williams pro-
7 vides an estimate of \$49 for monthly recurring transport, but no calculations or
8 facts to support the cost. In response to Interrogatory 14, however, Western Wire-
9 less states that the monthly recurring cost was calculated using the following for-
10 mula: (Annual Ports x 2.5 years) x (local calls per day x length of calls x days per
11 month) x transit rate. The recurring monthly transport costs in my cost exhibit
12 equated the potential loss of subscribers and resulting cost shifts to the remaining
13 subscribers, interexchange access service providers and the impact on long distance
14 network service revenues to the cost to CRSTTA in the form of a lost monthly re-
15 curring revenue flow.

16 This lost recurring revenue was estimated by reviewing the 2002 publicly available
17 traffic study and calculating estimated revenues lost for an estimated 10 ported
18 numbers.

19 Q. Do you have any other comments about Mr. Williams testimony with respect to SOA
20 costs and transport costs?

21 A. Yes. Mr. Williams' revised cost estimates are based on the Petitioner's projection
22 that there will be a low volume of ports. Western Wireless, however, in response to
23 Interrogatory 13.f., estimates that it will port 230 numbers from CRSTTA over a
24 five (5) year period, which is 46 ports per year. If you assume that Verizon Wireless
25 will have a similar number of ports, the total number of ports per year would be 92.

1 Pursuant to Western Wireless' SOA methodology, the SOA cost would be \$115 per
2 month (as compared to \$13 per month in Mr. Williams' cost exhibit) and \$1380 per
3 year. Similarly, under Western Wireless' formula, transport costs, based on 46
4 ports, would be \$226.26 per month (as compared to \$49 per month in Mr. Williams'
5 cost exhibit) and \$2715 per year. (I have calculated transport costs to Verizon
6 Wireless only and not Western Wireless because Western Wireless has a direct con-
7 nection to CRSTTA.) Thus, under Western Wireless' assumptions and formulas,
8 the cost of LNP will be greater than that reflected in Mr. Williams' cost exhibit.

9 Q. Do you have any other comments?

10 A. Yes. If Western Wireless' estimate of the number of ports is correct, there will be
11 far fewer CRSTTA subscribers and, therefore, the per subscriber cost of LNP will
12 be much greater than the per subscriber cost projected by Western Wireless. For
13 example, if CRSTTA loses 230 lines, the per line cost of LNP as calculated by West-
14 ern Wireless would increase to \$0.9259 per line and if CRSTTA loses 230 lines to
15 each wireless carrier, for a total of 460 lines, the per line cost of LNP as calculated
16 by Western Wireless would increase to \$1.469 per line including transport.

17 Q. Is there a way to try to better estimate how many ports may occur and, therefore, more
18 accurately determine the per subscriber cost of LNP?

19 A. Yes. A review of the actual number of wireline to wireless ports in other rural areas
20 over some period of time may provide a better indication of how many CRSTTA
21 customers may chose to port their number to a wireless carriers.

22 Q: Does this conclude your rebuttal testimony?

23 A: Yes.

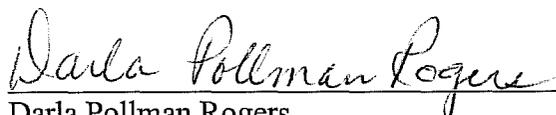
CERTIFICATE OF SERVICE

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

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

Talbot J. Wiczorek
tjw@gpognlaw.com
Gunderson, Palmer, Goodsell & Nelson, LLP
P. O. Box 8045
Rapid City, South Dakota 57709-8045

Dated this fourteenth day of June, 2004.



Darla Pollman Rogers
Riter, Rogers, Wattier & Brown
P. O. Box 280
Pierre, South Dakota 57501
Telephone (605) 224-788

LAW OFFICES
 Ritter, Rogers, Wattier & Brown, LLP
Professional & Executive Building
319 South Coteau Street
P.O. Box 280
Pierre, South Dakota 57501-0280
www.riterlaw.com

ROBERT C. RITER, Jr.
DARLA POLLMAN ROGERS
JERRY L. WATTIER
JOHN L. BROWN

MARGO D. NORTHRUP, Associate

OF COUNSEL:
Robert D. Hofer
E. D. Mayer
TELEPHONE
605-224-5825
FAX
605-224-7102

June 15, 2004

RECEIVED

JUN 15 2004

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

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

| | | |
|-----|--------------------------|-----------------------------|
| Re: | Docket Number TC04-056 | Roberts County and RC |
| | Docket Number TC04-045 | Golden West, Vivian, Kadoka |
| | Docket Number TC04-061 | West River |
| | Docket Number TC04-050 | Valley |
| | Docket Number TC04-052 | Midstate |
| | Docket Number TC04-085 | CRST |
| | Docket Number TC04-062 | Stockholm-Strandburg |
| | Docket Number TC04-025 | Kennebec |
| | Docket Number TC04-051 | Faith |
| | Docket Number TC04-055 | Alliance |
| | TC04-025, 48, 52, 53, 56 | |

Dear Pam:

Enclosed are the original and ten copies of REBUTTAL TESTIMONY on behalf of the above-named companies for filing in the above dockets.

By copy of this letter, I am also serving those persons named on the Certificate of Service.

Sincerely yours,



Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION

JUN 15 2004

OF THE STATE OF SOUTH DAKOTA

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

IN THE MATTER OF THE PETITION
OF CHEYENNE RIVER SIOUX TRIBE
TELEPHONE AUTHORITY FOR SUS-
PENSION OR MODIFICATION OF
§ 251(b)(2) OF THE COMMUNICA-
TIONS ACT OF 1934 AS AMENDED

Docket No. TC04-085
REBUTTAL TESTIMONY OF
J. D. WILLIAMS

REBUTTAL TESTIMONY OF

J. D. WILLIAMS

ON BEHALF OF

CHEYENNE RIVER SIOUX TRIBE TELEPHONE AUTHORITY

June 15, 2004

1 Q. Please state your name, business name and address.

2 A. **My name is J. D. Williams. I am the General Manager of Cheyenne River Sioux**
3 **Tribe Telephone Authority (“CRSTTA”), whose address is P. O. Box 810, Eagle**
4 **Butte, South Dakota 57625.**

5 Q. What is the purpose of your testimony?

6 A. **I will provide rebuttal testimony to various statements made by Ron Williams in his**
7 **testimony filed on May 28, 2004 on behalf of WWC License L.L.C. (Western Wire-**
8 **less).**

9 Q. At page 6, lines 8-10, Mr. Williams alleges that the Petitioners “waited 4 months to seek
10 a suspension of their LNP obligations, hopeful that this tactic would result in delay of
11 their legal obligations.” How do you respond?

12 A. **I dispute Mr. Williams’ characterization of events as baseless and inflammatory.**
13 **Once the FCC made it clear that wireline carriers would be required to port num-**
14 **bers to wireless carriers in areas outside the top 100 MSAs by May 24, 2004,**
15 **CRSTTA took immediate steps to investigate the cost and the processes involved**
16 **with LNP and to explore its legal options. Because CRSTTA had no experience with**
17 **LNP, it took time to gather the pertinent information and to make the decision to**
18 **seek a suspension of the requirement from the Commission. Further, the suspension**
19 **petition itself took time and effort to prepare because CRSTTA wanted to present as**
20 **complete a petition as possible, accompanied by cost information as complete as**
21 **possible.**

22 Q. Do you agree with Mr. Williams’ statement at page 14, lines 19-22, in which he states
23 that “LECs will need to route a call to a ported number to the serving tandem” and to Mr.

1 Williams' statement at page 15, lines 1-4 when he discusses the routing of allegedly "lo-
2 cal calls?"

3 **A. In its answer to Interrogatory 4., Western Wireless identifies the "serving tandem"**
4 **as the Qwest LATA or local tandem, which is outside of CRSTTA's service terri-**
5 **tory. (See Western Wireless Response to Interrogatory 4., attached to the Rebuttal**
6 **Testimony of Steven E. Watkins). Therefore, Mr. Williams' statement is not consis-**
7 **tent with CRSTTA's current call routing practices, because it would require**
8 **CRSTTA to route calls to a point outside of its service territory as local. Further,**
9 **Western Wireless admits that its interconnection agreement with CRSTTA does not**
10 **require CRSTTA to route calls to the Qwest tandem. Rather, calls that terminate**
11 **outside CRSTTA's service territory, including calls to Western Wireless within the**
12 **CRSTTA exchange(s) where Western Wireless does not have a direct connection,**
13 **are routed to interexchange carriers for termination. Only traffic routed to West-**
14 **ern Wireless via a direct connection within a CRSTTA exchange is routed as "local**
15 **traffic." Therefore, it appears that Western Wireless' argument really is a bad faith**
16 **attempt to change the agreement between the parties.**

17 **Q. At page 19, lines 8-10, Mr. Williams states that it is his belief that "the FCC views that it**
18 **is the originating carrier's responsibility to deliver local traffic for termination and that**
19 **the costs associated with fulfilling that responsibility are not a number portability cost."**

20 What is your response to this statement?

21 **A. Mr. Williams' statements are inconsistent and should be rejected. First he argues**
22 **that CRSTTA should be required to install new facilities to deliver ported calls to**
23 **Western Wireless and then he argues that the cost of those facilities are not number**

1 portability costs. Further, as discussed at lines 3-16 above, Mr. Williams' suggestion
2 that it is CRSTTA's responsibility to deliver traffic destined to Western Wireless
3 through a serving tandem is not consistent with the interconnection agreement be-
4 tween CRSTTA and Western Wireless.

5 Q. At page 20, lines 13-16, Mr. Williams states that "[t]he routing methods proposed by the
6 Petitioners are inefficient in that they make little or no utilization of existing equipment
7 and shared facilities currently used to exchange calls with other carriers." How do you
8 respond?

9 A. **The routing methods reflected in the cost exhibit attached to CRSTTA's Petition are
10 based on the current routing arrangements that CRSTTA has in place with other
11 carriers, namely, calls that are dialed on a local 7-digit basis are routed via direct
12 connections. For example, where there is a direct connection between CRSTTA and
13 Western Wireless, customers in that exchange can call a Western Wireless customer
14 on a local 7-digit basis. Therefore, if calls to numbers ported to a carrier are to be
15 dialed on a local 7-digit basis, a direct connection needs to be established between
16 the carriers.**

17 Q. Would Western Wireless' routing proposal have impacts to CRSTTA beyond LNP?

18 A. **Yes. It is my understanding that Western Wireless' proposal would increase
19 CRSTTA's costs. First, Western Wireless' proposal would require CRSTTA to pay
20 for new facilities to the tandem provider that it does not need for any purpose other
21 than to route calls to ported numbers to wireless carriers. Second, CRSTTA would
22 most likely have to pay transit traffic charges to the tandem provider for transport-
23 ing the traffic to the wireless carriers. Third, in response to Interrogatory 16.b.,**

1 **Western Wireless indicates that CRSTTA would be required to pay reciprocal com-**
2 **penensation on calls to ported numbers, even if CRSTTA does not pay compensation**
3 **on such calls today. (See Western Wireless Response to Interrogatory 16.b. at-**
4 **tached to the Rebuttal Testimony of Steven E. Watkins.)**

5 Q. Is there any other impact?

6 A. **Yes. It appears that Western Wireless' proposal would create a regulatory arbi-**
7 **trage scenario that could lead to the loss of access revenues. Today, certain calls to**
8 **wireless carriers are routed to interexchange carriers. For example, if CRSTTA**
9 **Customer A calls Western Wireless Customer B in an exchange where there is no**
10 **direct connection and no EAS arrangement, CRSTTA Customer A incurs a toll**
11 **charge. However, under Western Wireless' proposal, it is my understanding that if**
12 **CRSTTA Customer A calls Western Wireless Customer B, who now has a number**
13 **ported from CRSTTA, CRSTTA Customer A would be charged for a local call.**
14 **Customers may be encouraged to "give up" their existing wireless numbers and ob-**
15 **tain wireline numbers for the sole purpose of porting that number to avoid toll**
16 **charges. This is not only a bad public policy result, but also simply a bad faith at-**
17 **tempt to avoid an important contract provision upon which Western Wireless has**
18 **already agreed with our company.**

19 Q. Does this conclude your rebuttal testimony?

20 A. **Yes.**

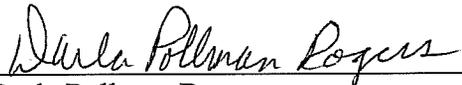
CERTIFICATE OF SERVICE

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

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

Dated this fifteenth day of June, 2004.



Darla Pollman Rogers
Riter, Rogers, Wattier & Brown
P. O. Box 280
Pierre, South Dakota 57501
Telephone (605) 224-788

**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 Kalles*

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:

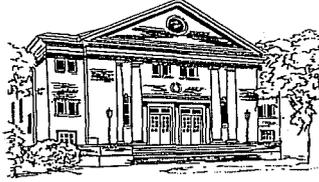
Robert K. Sahr
ROBERT K. SAHR, Chairman

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner

Bantz, Gosch & Cremer, L.L.C.
◆Attorneys at Law ◆

Douglas W. Bantz (1909-1983)
Kenneth L. Gosch
James M. Cremer
Rory King
Greg L. Peterson*
Richard A. Sommers
Ronald A. Wager
Melissa E. Neville
*Also Licensed in North Dakota



305 SIXTH AVENUE, S.E.
P.O. BOX 970
ABERDEEN, SD 57402-0970

Telephone (605) 225-2232
Fax (605) 225-2497

www.bantzlaw.com
Writer's E-mail: jcremer@bantzlaw.com

June 17, 2004

08416-009
Ms. Pamela Bonrud
Executive Director
S.D. Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

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JUN 18 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

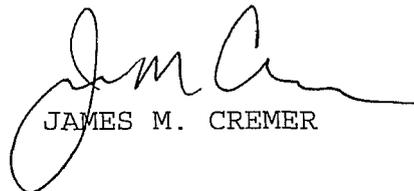
Re: In the Matter of the Petitions for Suspension or Modification
of § 251(b) (2) of the Communications Act of 1934 as Amended

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,


JAMES M. CREMER

JMC:mvs
\JVT\LNP Waiver\Bonrud10

Enclosures

pc James Groft
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 mistakes the discovery responses for some Petitioners. For instance, Western Wireless' Brief in Support of its Motion To Compel

purports to represent the response of “All Petitioners” to Question 4a(i) and (ii) (Brief, p. 2). Such is not the case. The Cheyenne River Sioux Tribe, which is subject to the Motion To Compel, did not supply the response attributed to them. Additionally, the answers to interrogatory no. 5 purport to apply to all of the Petitioners. This is not correct. For instance, the answers supplied by the City of Brookings/SWIFTEL and the Cheyenne River Sioux Tribe are at variance with the answers attributed to them in Western Wireless’ Brief. Questions 13, 16, 18, 19 and 21 suffer from more egregious error, in that Western Wireless did not even propound this question to all Petitioners. For example, question 13 only was addressed to the City of Brookings, Interstate Telecommunications Cooperative, Santel and a few others. And questions 18, 19 and 21 were only addressed to the Joint Petition filed by Armour, Union and Bridgewater-Canistota.

The Requested Proprietary Information Is Not In Dispute

Notwithstanding the factual errors discussed above, the Motion’s principal focus concerns proprietary data (held by non-parties) about which there is no dispute. In this respect, Western Wireless’ interrogatory questions number 4, 5, 13 and 16, and Production of Documents number 3, all sought SOA pricing information and documents. These items are all the subject of its Motion To Compel and Brief In Support. In Responses to Supplemental Discovery Requests of Petitioners (“Supplemental Responses”) dated June 11, 2004, Western Wireless made clear that it was not challenging SOA pricing, rather, it challenged whether port volumes justified the use of automated SOA. See Interrogatory 10.b. and answer of Western Wireless.

Against this background, the Motion To Compel appears to be a fishing expedition. The Brief In Support is heavily freighted with the notion that the cost information sought by Western

Wireless is so important that Petitioners' cost testimony should be stricken if it is not produced. Yet plainly, this is not an issue with Western Wireless, except in the Motion To Compel itself. This is an unwarranted use of the parties' and Commission's time, and the Motion should be denied as to these SOA cost items and documents.

Western Wireless Has Not Followed The Confidentiality Agreement

Paragraph 10 of the Agreement contemplates that a "non-party" will supply documents "pursuant to process issued by the Commission." All of the SOA cost information and documents sought in the Motion To Compel are the subject of non-disclosure agreements (NDA's) between the Petitioners and third-party SOA vendors. All of these vendors have now been contacted by Petitioners, or their representatives, for permission to supply the SOA information. The vendors have refused to release such information and no process has been requested by Western Wireless from the Commission, as contemplated by the Agreement. The third party SOA vendors have the right to claim a privilege and prevent other persons from disclosing trade secrets owned by them, and if disclosure is required the order shall take such protective measures as is in the interest of the holder of the privilege and the interest of justice required. SDCL 19-13-20. Under these circumstances, particularly in view of the fact that Western Wireless has no quarrel with the SOA costs themselves, the Motion should be denied.

Interrogatory Numbers 18 and 19 Directed to Armour, Union and Bridgewater-Canistota Will Be Supplied Pursuant To The Confidentiality Agreement

Interrogatories 18 and 19 requested certain switch investment information for Armour, Union and Bridgewater-Canistota. Objections were filed based on the confidential nature of the data. Such data has now been developed and will be produced, subject to the Confidentiality Agreement. Interrogatory 21 sought an explanation as to why local switching support resources

should not be used to offset LNP implementation costs. A relevancy objection was made, because there is no connection between the universal service support and LNP rate structure regimes, and Western Wireless' Motion To Compel attempts no explanation as to this interrogatory. The only argument Western Wireless does make concerned the parties' entry into the Confidentiality Agreement, but such Agreement clearly does not erase the discovery standard, which is not met here. Accordingly, the Motion To Compel should be denied in its entirety.

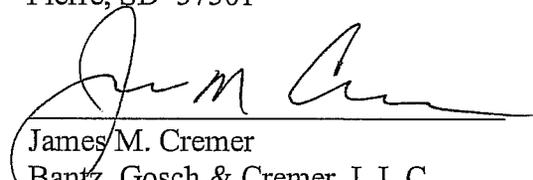
Dated this 17th day of June, 2004.

ATTORNEYS FOR PETITIONERS:

/s/ Jeffrey D. Larson
Jeffrey D. Larson
Larson & Nipe
P.O. Box 277
Woonsocket, SD 57385-0277

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

/s/Richard J. Helsper
Richard J. Helsper
Glover, Helsper & Rasmussen
100 22nd Ave. #200
Brookings, SD 57006


James M. Cremer
Bantz, Gosch & Cremer, L.L.C.
P.O. Box 970
Aberdeen, SD 57402-0970

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 17th day of June, 2004, a true and correct copy of the foregoing **PETITIONERS' RESPONSE IN OPPOSITION TO INTERVENOR'S MOTION TO COMPEL DISCOVERY OR IN THE ALTERNATIVE TO STRIKE PETITIONERS' PRE-FILED TESTIMONY REGARDING COSTS** was mailed electronically and by first class mail, postage prepaid, to:

Talbot J. Wiczorek
Gunderson, Palmer, Goodsell & Nelson
P.O. Box 8045
Rapid City, SD 57709
Email: tjw@gpgnlaw.com

Richard D. Coit
P.O. Box 57
Pierre, SD 57501-0057
Email: richcoit@sdtanonline.com

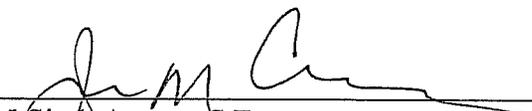
David A. Gerdes
May, Adam, Gerdes & Thompson LLP
P.O. Box 160
Pierre, SD 57501-0160
Email: dag@magt.com

Darla Pollman Rogers
Riter, Rogers, Wattier & Brown
P.O. Box 280
Pierre, SD 57501
Email: dprogers@riterlaw.com

Richard J. Helsper
Glover, Helsper & Rasmussen
100 22nd Ave. #200
Brookings, SD 57006
Email: rjhl@brookings.net

Jeffrey D. Larson
Larson & Nipe
P.O. Box 277
Woonsocket, SD 57385-0277
Email: jdlarson@santel.net

BANTZ, GOSCH & CREMER, L.L.C.



305 Sixth Avenue S.E.
P.O. Box 970
Aberdeen, SD 57402-0970
(605) 225-2232
Attorneys for James Valley Cooperative
Telephone Company

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

ATTORNEYS AT LAW

WYNN A. GUNDERSON
J. CRISMAN PALMER
G. VERNE GOODSSELL
JAMES S. NELSON
DANIEL E. ASHMORE
TERENCE R. QUINN
DONALD P. KNUDSEN
PATRICK G. GOETZINGER
TALBOT J. WIECZOREK
MARK J. CONNOT

AMERICAN MEMORIAL LIFE BUILDING
440 MT. RUSHMORE ROAD
POST OFFICE BOX 8045
RAPID CITY, SOUTH DAKOTA 57709-8045
TELEPHONE (605) 342-1078 • FAX (605) 342-0480
www.gundersonpalmer.com

JENNIFER K. TRUCANO
MARTY J. JACKLEY
DAVID E. LUST
THOMAS E. SIMMONS
TERRI LEE WILLIAMS
PAMELA SNYDER-VARNS
SARA FRANKENSTEIN
AMY K. SCHULDT
JASON M. SMILEY

ATTORNEYS LICENSED TO PRACTICE IN
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

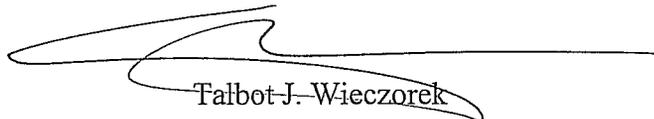
Dear Ms. Bonrud:

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 Juro

Deputy Clerk

**IN THE
SUPREME COURT OF
THE STATE OF SOUTH DAKOTA**

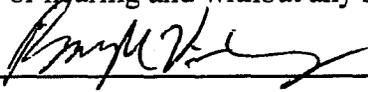
**IN THE MATTER OF THE
CERTIFICATION OF LAW STUDENT
AS LEGAL INTERN**

Court File No. _____
**CERTIFICATION OF DEAN
AND LAW STUDENT, ET AL.**

**TO THE CLERK OF THE ABOVE ENTITLED COURT:
CERTIFICATION OF DEAN OF LAW SCHOOL**

Pursuant to the provisions of SDCL 16-18-2.2, I do hereby certify to the Court that **Paul A. Lewis** is duly enrolled at the University of South Dakota School of Law, will have completed legal studies amounting to at least four semesters, or the equivalent, on May 07, 2004, and that said individual, according to my best knowledge, information, and belief, is of good moral character and competent legal ability and is adequately trained to perform as a Legal Intern. This certificate is valid until **August 13, 2004**, and shall not remain in effect in excess of eighteen months after it has been filed. Pursuant to SDCL 16-18-2.3, this certification may be terminated by the above entitled Court at any time without notice or hearing and without any showing of cause.

Dated April 16, 2004



Barry R. Vickrey, Dean
University of South Dakota School of Law
414 E. Clark St.
Vermillion, SD 57069-2390
Telephone (605) 677-5443

CERTIFICATION OF LAW STUDENT

Pursuant to the provisions of SDCL 16-18-2.2(6), I do hereby certify that I have read and am familiar with the South Dakota Rules of Professional Conduct of the State Bar of South Dakota, the provisions of SDCL Title 16, and the provisions of SDCL 19-13-2 to 19-13-5, inclusive, and I agree to govern my conduct accordingly as a Legal Intern.

Dated 04/20/04

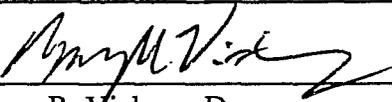


Legal Intern

DEAN'S APPROVAL OF SUPERVISING LAWYER PURSUANT TO SDCL 16-18-2.9:

Name of Supervising Lawyer: Mark I. Connot

Dated April 16, 2004



Barry R. Vickrey, Dean
University of South Dakota School of Law
414 E. Clark St.
Vermillion, SD 57069-2390
Telephone (605) 677-5443

**IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA**

**IN THE MATTER OF THE
CERTIFICATION OF LAW STUDENT
AS LEGAL INTERN**

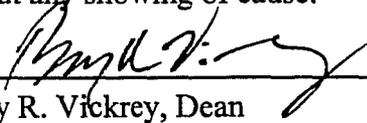
**Court File No. _____
CERTIFICATION OF DEAN
AND LAW STUDENT, ET AL.**

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

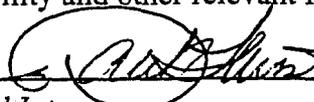


Barry R. Vickrey, Dean
University of South Dakota School of Law
414 E. Clark St.
Vermillion, SD 57069-2390
Telephone (605) 677-5443

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

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: Delaine Koels

Date: 7/13/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman *dk*

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner

LAW OFFICES
RITER, ROGERS, WATTIER & BROWN, LLP
Professional & Executive Building
319 South Coteau Street
P.O. Box 280
Pierre, South Dakota 57501-0280
www.riterlaw.com

OF COUNSEL:
Robert D. Hofer
E. D. Mayer
TELEPHONE
605-224-5825
FAX
605-224-7102

ROBERT C. RITER, Jr.
DARLA POLLMAN ROGERS
JERRY L. WATTIER
JOHN L. BROWN

MARGO D. NORTHRUP, Associate

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 11 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 know what rate SDN would charge.

¹¹ As indicated by the testimony of Mr. Watkins, Petitioners believe that Western Wireless in these LNP proceedings may be primarily interested in burdening the rural LECs with “extraordinary and unfair transport obligations . . . beyond those that actually apply.” (SDTA Ex. 2 p. 4). “It appears even that the wireless carriers’ interest in these issues may have more to do with transferring that responsibility of transporting local calls beyond the small and

Study Group Proposal

At the hearing, the Commission asked the parties if they would participate in a study group to examine the transport issue and possible alternatives. Given the complexity of the issue; the number of possible options; and the huge potential impact of the issue, Petitioners agree that a study group would be an appropriate mechanism to consider this issue. Accordingly, Petitioners urge the Commission to grant Petitioners a suspension of LNP until a study group can be convened and its findings on the transport issue reviewed.

E.

GRANT OF THE REQUESTED SUSPENSIONS/MODIFICATIONS IS CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY

In addition to meeting at least one of the criteria listed in 47 U.S.C. § 251(f)(2)(A) relating to adverse economic impacts or technical infeasibility, in order for any request for LNP suspension and/or modification to be granted, it must be “consistent with the public interest, convenience and necessity.” 47 U.S.C. § 251(f)(2)(B). As testified to by Petitioners’ and SDTA’s witness, Steven E. Watkins, a determination of the public interest inherently involves a cost/benefit analysis. The determination of the public interest “should involve an evaluation of the cost of LNP implementation and operation compared to the benefits that LNP implementation would present for consumers.” (SDTA Ex. 1 p. 8, Tr. pp. 497-505).¹²

Petitioners believe that the evidence presented in this matter leaves no doubt that the public interest will be served by granting the requested LNP suspensions. Fundamental to any analysis of LNP benefit is an assessment of demand for the service. It is clear from the record in

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.

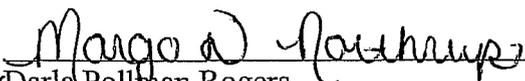
All of this, of course, does not contemplate the havoc that could be wreaked upon South Dakota’s intercarrier compensation regime of access charges, reciprocal transport and termination charges and potential transit charges charged by third parties, such as Qwest, if rural carriers are forced to carry 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


 for Darla Pollman Rogers

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

Benjamin H. Dickens, Jr.
 Mary J. Sisak
 BLOOSTON, MORDKOFKY,
 JACKSON & DICKENS
 2120 L Street, N.W.
 Washington, DC 20037

Counsel for:

Alliance and Splitrock
 Armour/Union/Bridgewater-Canistota
 Beresford Municipal Telephone
 Cheyenne River Sioux Tribe Telephone
 Faith Municipal Telephone
 GoldenWest/Vivian/Kadoka
 Interstate Telecommunications Coop.
 Kennebec Telephone Company
 McCook Cooperative Telephone Co.
 Midstate Communications, Inc.
 RC Communications and Roberts County
 Sioux Valley Telephone
 Stockholm-Strandburg Telephone
 Tri-County Telcom
 Valley Telecommunications Coop. Ass'n
 Venture Communications Cooperative
 West River – Bison
 Western Telephone Company

Richard J. Helsper
 Jody Odegaard Smith
 Glover, Helsper & Rasmussen
 100 22nd Avenue, #200
 Brookings, South Dakota 57006
 Telephone (605) 692-7775

Counsel for:

Brookings Municipal Utilities
 D/B/A Swiftel Communications

Richard D. Coit
Director of Industry Affairs
South Dakota Telecommunications Ass'n
P. O. Box 57
Pierre, South Dakota 57501
Telephone (605) 224-7629

Counsel for:
South Dakota Telecommunications Ass'n

Jeffrey D. Larson
Larson & Nipe
P. O. Box 277
Woonsocket, South Dakota 57385
Telephone (605) 796-4245

Counsel for:
Santel Communications Cooperative, Inc.

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:

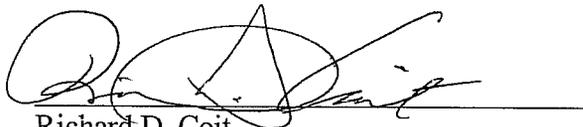
Ms. Pamela Bonrud
Executive Director
SD Public Utilities Commission
500 East Capitol Ave.
Pierre, South Dakota 57501

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:

Talbot J. Wiczorek (also via Federal Express)
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 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
Director of Industry Affairs
South Dakota Telecommunications Association
P. O. Box 57
Pierre, South Dakota 57501

LAW OFFICES
RITER, ROGERS, WATTIER & BROWN, LLP

Professional & Executive Building
319 South Coteau Street
P.O. Box 280
Pierre, South Dakota 57501-0280
www.riterlaw.com

ROBERT C. RITER, Jr.
DARLA POLLMAN ROGERS
JERRY L. WATTIER
JOHN L. BROWN

MARGO D. NORTHRUP, Associate

August 16, 2004

RECEIVED

AUG 16 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

OF COUNSEL
Robert D. Hofe
E. D. Mayer
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: CRST – WW Stipulation
Docket TC04-085

Dear Ms. Bonrud:

Please find enclosed herein original and ten copies of a Stipulation between CRST and WWC in the above-entitled docket.

It is my understanding this matter is on the agenda of the Commission meeting on August 17, 2004.

Sincerely yours,



Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

CC: J. D. Williams
Talbot Wieczorek
Mary Sisak

RECEIVED

AUG 16 2004

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)
CHEYENNE RIVER SIOUX TRIBE TELEPHONE) STIPULATION
AUTHORITY FOR SUSPENSION)
OF INTERMODAL LOCAL NUMBER)
PORTABILITY OBLIGATIONS) Docket No. TC04-085

This stipulation is made and entered into by and between the following parties through their attorneys of record:

Petitioner: Cheyenne River Sioux Telephone Authority (hereinafter "CRST")
Darla Pollman Rogers
Riter, Rogers, Wattier & Brown

Intervenors: WWC License LLC (hereinafter "WW")
Talbot J. Wiczorek
Gunderson, Palmer, Goodsell & Nelson, LLP

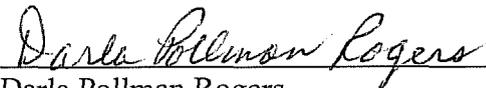
The above named parties orally presented the following stipulation to the Commission on June 30, 2004, and hereby request that the Commission adopt the stipulation for the purposes set forth herein. Wherefore, the parties hereby stipulate and agree as follows:

1. LNP Compliance. CRST shall be LNP capable by October 1, 2004, for all CRST customers. The Parties request that the Commission grant a suspension of Section 251(b)(2) to CRST until October 1, 2004.
2. Use of Interconnection. The 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. CRST shall use WW's existing point(s) of interconnection in Eagle Butte, for originating traffic from CRST landline customers to numbers that have been ported from CRST to WW.
3. Numbering resources. Porting carriers may only port active numbers from CRST and will return disconnected numbers within a reasonable time.
4. Non-intervenors. CRST shall offer the same terms and conditions as contained in Paragraph 2 to any other wireless carrier requesting LNP. If such other wireless carrier rejects such terms, CRST or the rejecting wireless carrier shall have the right to petition the Commission for modification of the Order entered pursuant to this Stipulation to seek relief or modification from the terms of Paragraphs 1 and 2 of this Stipulation.

5. Modification. Should CRST and WW in the future determine to route traffic in a different manner, the parties may, upon mutual agreement, provide for transport of ported numbers using existing or new facilities.

RITER, ROGERS, WATTIER & BROWN

Dated: 8/16/04



Darla Pollman Rogers
Attorney for CRST
P.O. Box 280
Pierre, South Dakota 57501

GUNDERSON, PALMER, GOODSSELL &
NELSON, LLP

Dated: 7/21/04



Talbot J. Wiczorek
Attorney for WWC License LLC
P.O. Box 8045
Rapid City, South Dakota 57709-8045

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

| | |
|---|----------------------------|
| IN THE MATTER OF THE PETITION OF) | FINAL DECISION AND |
| CHEYENNE RIVER SIOUX TRIBE TELEPHONE) | ORDER APPROVING AND |
| AUTHORITY FOR SUSPENSION OR) | INCORPORATING |
| MODIFICATION OF 47 U.S.C. § 251(B)(2) OF) | STIPULATION |
| THE COMMUNICATIONS ACT OF 1934 AS) | |
| AMENDED) | TC04-085 |

On April 23, 2004, Cheyenne River Sioux Tribe Telephone Authority (Cheyenne River) filed a petition pursuant to 47 U.S.C. § 251(f)(2) and SDCL 49-31-80 seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to 47 U.S.C. § 251(b)(2). On April 29, 2004, the Commission electronically transmitted notice of the filing and the intervention deadline of May 7, 2004, to interested individuals and entities. WWC License LLC d/b/a CellularOne (Western Wireless) filed to intervene on April 29, 2004, and the South Dakota Telecommunications Association (SDTA) filed to intervene on May 7, 2004. On May 13, 2004, the Commission issued (i) an order granting Cheyenne River's request for interim suspension of LNP obligations pending final decision pursuant to 47 U.S.C. § 251(f)(2) and SDCL 49-31-80 and granting intervention to Western Wireless and SDTA, (ii) a notice of intent to take judicial notice of the fact that Cheyenne River is a local exchange carrier serving less than two percent of the nation's subscriber lines installed in the aggregate nationwide and (iii) an order for and notice of hearing setting the multiple LNP cases for hearing on June 21 through July 2, 2004, and the company-specific hearing on Cheyenne River for June 30, 2004. On June 30, 2004, at the commencement of Cheyenne River's company-specific hearing, Cheyenne River advised the Commission that it had reached a settlement in principle with intervenors in this docket and requested a continuance of the hearing in Docket No. TC04-085 pending the filing of a written stipulation resolving the matter (Transcript, Vol. III, p. 1061 et seq.). The Commission granted Cheyenne River's request for continuance (Transcript for TC04-085, p. 1070).

On August 16, 2004, Cheyenne River filed a Stipulation signed by Cheyenne River and intervenor, Western Wireless (Stipulation). The matter was accordingly scheduled for stipulated disposition pursuant to SDCL 1-26-20 at the Commission's regular meeting on August 17, 2004. At the Commission's regular meeting on August 17, 2004, intervenor SDTA stated on the record that it had no objection to the Stipulation or to the Commission's disposition of the case pursuant to the Stipulation. Staff did not object to the Stipulation or the issuance of a dispositive order based thereon. The Commission thereupon voted unanimously to approve the Stipulation and enter a final decision in the docket incorporating its terms and closing the docket.

The Commission finds and concludes that it has jurisdiction to enter this order pursuant to SDCL 49-31-80, ARSD 20:10:32:39 and 47 U.S.C. § 251(f)(2) and SDCL 1-26-20. It is therefore

ORDERED, that the Stipulation attached hereto is approved in its entirety and is incorporated in this Order as if fully set forth herein; and it is further

ORDERED, that Cheyenne River's obligation to provide local number portability to requesting carriers pursuant to 47 U.S.C. § 251(b)(2) and 49-31-81 is modified consistent with the terms and conditions of the Stipulation and this Order; and it is further

ORDERED, that this Order shall constitute the final decision in this matter and upon the effective date hereof, Docket No. TC04-085 shall be closed.

PLEASE TAKE NOTICE that this Final Decision and Order was duly entered on the 26th day of August, 2004. Pursuant to SDCL 1-26-32, this Final Decision and Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition therefor and ten copies with the Commission within 30 days from the date of issuance of this Final Decision and Order. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Final Decision and Order to the appropriate Circuit Court by serving notice of appeal of this decision to the circuit court within thirty (30) days after the date of service of this Notice of Decision.

Dated at Pierre, South Dakota, this 26th day of August, 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>Rebecca Kaelbs</u> |
| Date: | <u>8/27/04</u> |
| (OFFICIAL SEAL) | |

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman

Gary Hanson
GARY HANSON, Commissioner

RECEIVED

JUN 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)
CHEYENNE RIVER SIOUX TRIBE TELEPHONE) STIPULATION
AUTHORITY FOR SUSPENSION)
OF INTERMODAL LOCAL NUMBER)
PORTABILITY OBLIGATIONS) Docket No. TC04-085

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Darla Pollman Rogers
Riter, Rogers, Wattier & Brown

Intervenor: WWC License LLC (hereinafter "WW")
Talbot J. Wiczorek
Gunderson, Palmer, Goodsell & Nelson, LLP

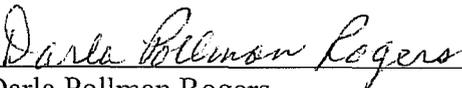
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RITER, ROGERS, WATTIER & BROWN

Dated: 8/16/04


Darla Pollman Rogers
Attorney for CRST
P.O. Box 280
Pierre, South Dakota 57501

GUNDERSON, PALMER, GOODSSELL &
NELSON, LLP

Dated: 7/21/04


Talbot J. Wieczorek
Attorney for WWC License LLC
P.O. Box 8045
Rapid City, South Dakota 57709-8045