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October 28, 2005

**VIA FAX: 605-773-3809 and
NEXT DAY DELIVERY**

Pamela Bonrud
Executive Director
SD Public Utilities Commission
500 E Capitol Avenue
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RECEIVED
OCT 31 2005
SOUTH DAKOTA PUBLIC
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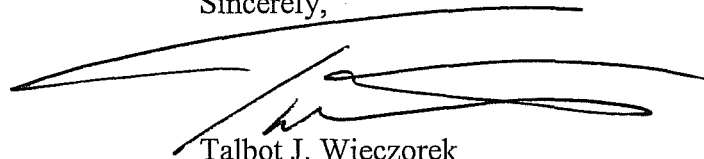
RE: WWC's Petition to Intervene
In the Matter of the Joint Petition for Extension of the Suspension Date and the
Date to File Further Suspension Request TC05-137
GPGN File. No. 5925.040157

Dear Ms. Bonrud:

Enclosed for filing please find the original and ten copies of WWC's Opposition to Motion to Limit the Scope of Issues in the above-entitled matter.

If you have any questions, please call me.

Sincerely,



Talbot J. Wiczorek

TJW:klw

Enclosures

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

OCT 31 2005

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

<p>In the Matter of the Joint Petition for Extension of the Suspension Date and the Date to File Further Suspension Request</p>	<p>Docket No. TC 05-137</p> <p>WESTERN WIRELESS' OPPOSITION TO MOTION TO LIMIT THE SCOPE OF ISSUES</p>
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WWC License, LLC, ("WWC"), by and through its undersigned attorney, Talbot J. Wieczorek of Gunderson, Palmer, Goodsell, & Nelson, LLP, Rapid City, South Dakota, hereby submits its Opposition to Petitioners' Motion to Limit the Scope of Issues in the above-joint Petition.

PROCEDURAL STATUS

Petitioners have submitted a Motion to Limit the Scope of Issues. Essentially, Petitioners argue they do not have to make any showing as to their current capabilities to provide local number portability and this Commission is required to automatically grant them an additional six (6) months suspension from when the FCC completes its Regulatory Flexibility Analysis ("RFA"). Petitioners have asked this Commission to move immediately on this motion because Petitioners wrongfully claim they have recently discovered that the Intervenors are of the position the Petitioners have to make some individual showing by company to be entitled to an automatic six month extension of the suspension after FCC's final RFA analysis.

WWC seeks intermodal porting. The decision relied upon by the Petitioners to seek the extension, United States Telecom Association v. FCC, 400 F.3d 29 (D.C. Circuit 2005), dealt with intermodal porting. The Petitioners do not provide any analysis why this continued suspension should apply to intramodal porting.

ARGUMENT

It seems the timing of this motion was generated by a pending discovery deadline in this matter. The parties are to reply to discovery by November 1, 2005. WWC served discovery on Petitioners on September 28, 2005. Prior to the serving discovery, WWC made clear its position that the Intervenors as a group could not simply ask for a six month suspension or receive a six month suspension beyond the RFA determination by the FCC as a blanket suspension extension. Rather, 47 U.S.C. § 251(f)(2) requires individual findings for each company for this additional extension just as this Commission determined individual findings were required in the initial LNP proceedings.

Even though WWC made its position obvious from the beginning, the Petitioners waited to hand-deliver a motion to this Commission one week prior to their discovery date.¹ If the intent of this motion is to limit discovery, the motion should simply be denied outright as the motion was not provided as a request for a protection order. It is anticipated that Petitioners will object to a great deal of the discovery when they file their response on November 1, 2005, under the argument that the Commission has not decided the scope of these issues or that the scope of these issues is not relevant.

Regarding the Petitioners' position that they simply are entitled to six months because the RFA analysis has not been completed, this is incorrect. Certainly, at least in intermodal porting, the Petitioners may have an argument for a continuance until the RFA is completed. However, an additional automatic blanket suspension of an additional six months for each one of the Petitioners without a showing under 47 U.S.C § 251(f)(2) is meritless.

¹ It should be noted that Petitioners hand-delivered their motion to the Commission but mailed it to both counsel for WWC and Midcontinent, the two Intervenors, ensuring that the Intervenors would even have less time to respond to the motion.

As was recognized by the Commission's Staff in the original local number portability action, the Petitioners varied greatly in their ability to immediately provide local number portability. A year ago the Staff made a determination that a number of these companies should not have even received an extension. These Petitioners were Brookings (Swiftel), ITC, Venture, Golden West/Vivian/Kadoka and Alliance/Splitrock. The Staff further made a determination that Armour/Bridgewater/Union, Roberts County/RC, Beresford, McCook, West River, Valley, Midstate, Sioux Valley and Santel could provide local number portability by May 24, 2005. It was only for those companies that needed very expensive upgrades, usually some of the smallest companies such as the City of Faith, that the Commission Staff concluded would not yet have to provide intermodal LNP until May 2006.

It should also be remembered that various Commissioners, at the time this decision was made to grant a blanket suspension, specifically instructed these companies to begin working towards easing the transition to LNP requirement.

In their petition, the Petitioners state that six months is a necessary and reasonable time frame because the FCC rules allow carriers six months to implement LNP after receiving a request.² What the Petitioners ignore is that most of these companies received a request almost two years ago. Since then, all of the Petitioners have performed an analysis of what it would take them to provide local number portability. All of the Petitioners have been told by this Commission that they should begin preparing for the inevitable day when they will have to provide portability. Still, the Petitioners now have the temerity to assert that each of them is guaranteed an additional six months to prepare after the RFA analysis is completed because the FCC allows someone, when starting from scratch, six months to provide portability.

² See Petition at page 4.

In their motion, the Petitioners state that their “current petition does not ask the Commission to re-examine the information presented in the original request for suspension.”³ While the Petitioners do not want this the law requires it for Petitioners to receive the relief requested. The Petitioners do not want the Commission to actually look at the evidence from the past hearing or even ask what the Petitioners have done to prepare for LNP or what actual upgrades they have made that may make LNP easier because the Petitioners simply want to never be obligated to provide portability, either intra or intermodal.⁴

Instead, Petitioners seek six months for every company no matter its capabilities. Under the Petitioners’ scenario, Swiftel, the City of Brookings, is entitled to an automatic six months after the RFA is completed, even though its switches are LNP compliant, it already does intramodal porting on its wireless service and has the employee “know how” to provide LNP. The same length of automatic additional suspension would also be provided the City of Faith who, a year ago, at the time of the hearing, needed major switch upgrades, had no personnel familiar with LNP and had a small base over which to spread LNP costs.

CONCLUSION

The Petitioners do not articulate in their motion what exactly they want. They simply seem to imply that they can ask for the six months and automatically receive it without any showing at all. The Petitioners do not cite to any authority that allows them this automatic six month extension without the need of showing some need for this additional extension. At a minimum, Petitioners have to make a prima facie showing they each meet the 47 U.S.C. § 251(f)(2) elements to get any extension beyond the FCC’s final RFA determinations. It would

³ See Motion, page 2.

⁴ The Commission might recall that LNP software is now standard in switches and as switches are upgraded, the cost of providing LNP drops significantly.

be inappropriate to simply give all the Petitioners an additional six months just because they are asking for it.

Dated this 20 day of October, 2005.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 28 day of October, 2005, I served a true and correct copy of the **Western Wireless' Opposition to Petitioners' Motion to Limit the Scope of Issues** via fax and by U.S. Mail, postage prepaid, to the following:

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