

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

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

August 4, 2005

RECEIVED

AUG 04 2005

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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

Re: LNP Dockets

Dear Pam:

Enclosed herein please find original and ten copies of the JOINT PETITION FOR EXTENSION OF SUSPENSION DATE AND THE DATE TO FILE FURTHER SUSPENSION REQUEST.

Sincerely yours,


Darla Pollman Rogers
Attorney at Law

DPR/ph

Enclosures

CC: Petitioners

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

AUG 04 2005

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITIONS
FOR SUSPENSION OR MODIFICA-
TION OF 47 U.S.C. §251(b)(2) OF THE
COMMUNICATIONS ACT OF 1934
AS AMENDED

- TC04-025 KENNEBEC
- TC04-038 SANTEL
- TC04-044 SIOUX VALLEY
- TC04-045 GOLDEN WEST ET AL
- TC04-046 ARMOUR ET AL
- TC04-047 SWIFTEL
- TC04-048 BERESFORD MUNICIPAL
- TC04-049 McCOOK COOPERATIVE
- TC04-050 VALLEY TELECOM
- TC04-051 FAITH MUNICIPAL
- TC04-052 MIDSTATE
- TC04-053 WESTERN
- TC04-054 INTERSTATE
- TC04-055 ALLIANCE/SPLITROCK
- TC04-056 ROBERTS COUNTY/RC
- TC04-060 VENTURE
- TC04-061 WEST RIVER COOP.
- TC04-062 STOCKHOLM-STRANDBURG
- TC04-084 TRI-COUNTY

**JOINT PETITION FOR EXTENSION OF SUSPENSION DATE
AND THE DATE TO FILE FURTHER SUSPENSION REQUEST**

The above-identified Petitioners, by their attorneys, hereby request that the Commission extend the date by which Petitioners must file their requests to extend the suspension of the LNP requirement and extend the date of the LNP suspensions granted to each Petitioner.

With the issuance of its Final Decisions and Orders in each of the above-referenced dockets, the Commission granted each of the Petitioners a suspension of its obligation to implement intramodal and intermodal local number portability (LNP)¹, im-

¹ Intramodal LNP is wireline to wireline LNP and intermodal LNP is wireline to wireless and wireless to wireline LNP.

posed by 47 U.S.C. §251(b)(2), SDCL 49-31-81 and the rules and orders of the Federal Communications Commission (FCC), until December 30, 2005.² The Commission further ordered that, should any of the Petitioners wish to continue their suspension following December 31, 2005, a further petition for suspension would have to be filed by October 1, 2005. The Commission granted the current suspensions based on independent findings for each Petitioner, concluding that the granting of a suspension of intramodal and intermodal LNP obligations until December 31, 2005, is necessary to avoid a significant adverse economic impact on the users of the Petitioners' telecommunications services generally; is necessary to avoid imposing a requirement that is unduly economically burdensome on the Petitioners and their customers; and is in the public interest. Based on the Commission's Orders, none of the Petitioners has implemented intramodal or intermodal LNP.³

On March 11, 2005, the United States Court of Appeals for the District of Columbia Circuit issued an Order⁴ remanding the FCC's *Intermodal Order*, in which the FCC required wireline carriers to port numbers to wireless carriers that do not have a physical point of interconnection or numbering resources in the rate center where the number is assigned, and stayed future enforcement of that order as applied to carriers that qualify as "small entities." The Court's actions were the result of its finding that the FCC failed to perform the regulatory flexibility analysis required by law when it ordered porting between wireline and wireless carriers. Pursuant to the Court's Order, the "stay will remain

² The Commission's Orders granted a suspension of long-term LNP to all Petitioners. However, Interstate Telecommunications Cooperative, Inc. (ITC) was required to implement interim intramodal LNP to Midcontinent Communications (Midcontinent) in the Webster and Waubay exchanges.

³ Except that, as required by the Commission's Order, ITC has implemented interim intramodal LNP to Midcontinent in the Webster and Waubay exchanges.

⁴ *United States Telecom Ass'n v. FCC*, 400 F. 3d 29 (D.C. Cir. 2005).

in effect until the FCC completes its final regulatory flexibility analysis and publishes it in accordance with 5 U.S.C. §604(b).”⁵

On April 22, 2005, and in response to the Court’s Order, the FCC released a Public Notice requesting comment on the Initial Regulatory Flexibility Analysis (IRFA) in the Telephone Number Porting Proceeding. Comments in this proceeding are due to be filed at the FCC on August 19, 2005, and reply comments are due on September 6, 2005. According to the FCC, the comments will assist the FCC “in preparing a Final Regulatory Flexibility Analysis in connection with the *Intermodal Order* and in determining whether to modify the intermodal porting rules with respect to their application to small entities in light of the requirements of the RFA.”⁶

The Public Notice also makes clear that the Petitioners are included in and will be impacted by the FCC’s RFA analysis. In the Public Notice, the FCC states that it has included “small incumbent local exchange carriers (LECs) in this RFA analysis.”⁷ According to the FCC, a “small business” under the RFA is one that meets the pertinent small business size standard of having 1,500 or fewer employees and is not dominant in its field of operation. The FCC further states that, “[t]he 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.”⁸ The FCC concludes, therefore, that it has included small incumbent LECs in its RFA analysis.

All of the Petitioners are incumbent LECs with fewer than 1,500 employees. Therefore, the FCC’s proceeding will determine the intermodal LNP obligations of the

⁵ *Id.* at

⁶ Public Notice, CC Docket No. 95-116, FCC 05-87, rel. April 22, 2005. (copy attached, Appendix B omitted.)

⁷ Public Notice, Appendix A at ¶7.

⁸ *Id.* at ¶7.

Petitioners, and enforcement of the *Intermodal Order* is stayed with respect to all of the Petitioners.

Until the FCC concludes the RFA, it is unknown how the obligation to implement intermodal LNP for Petitioners could be affected. As stated by the FCC, intermodal porting rules with respect to their application to small entities may very well be modified as a result of the FCC's pending RFA proceeding.⁹ Therefore, it is not possible to know whether, to what extent, or how the Petitioners will be required to provide intermodal LNP until the FCC's proceeding is concluded. Moreover, it is not possible to accurately estimate the cost of providing LNP until the intermodal LNP obligations are established. Accordingly, Petitioners ask that the Commission extend the suspension of intramodal and intermodal LNP for each Petitioner until six (6) months after the FCC completes its final regulatory flexibility analysis and publishes it in accordance with 5 U.S.C. §604(b). The Petitioners request a six-month extension in order to allow sufficient time after the parameters to implement intermodal LNP become known to order and install the necessary network upgrades and operating systems, to update various company procedures and to train company personnel as required to implement LNP. Petitioners note that a six-month timeframe is in line with FCC precedent, in that the FCC's rules allow carriers six months to implement LNP after receiving a request. Further, Petitioners request that, should they wish to continue the suspension beyond the six-month period, the Commission extend the time for filing such a petition for suspension until three (3) months after the FCC completes its final regulatory flexibility analysis and publishes it in accordance with 5 U.S.C. §604(b). Petitioners note that the Commission's current Suspension Orders

⁹ Public Notice, CC Docket No. 95-116, FCC 05-87, rel. April 22, 2005. (copy attached, Appendix B omitted.)

require the filing of new suspension petitions three (3) months before the expiration of the suspension period, and the instant request would maintain that timeframe.

Dated this 4th day of August, 2005.

Darla Pollman Rogers

Darla Pollman Rogers
Riter, Rogers, Wattier & Brown, LLP
P. O. Box 280
Pierre, South Dakota 57501
Telephone (605) 224-7889
Fax (605) 224-7102

Richard J. Helsper
Glover, Helsper and Rasmussen, P.C.
100 Twenty-second Ave., Suite 200
Brookings, South Dakota 57006
Telephone (605) 692-7775

Mary J. Sisak
Benjamin H. Dickens, Jr.
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L. Street NW #300
Washington, DC 20037
Telephone (202) 828-5554

Attorneys for Petitioners



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

APR 22 2005

FCC 05-87

Released: April 22, 2005

Federal Communications Commission Seeks Comment on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding

CC Docket No. 95-116

Comment Date: 30 days after publication in the Federal Register

Reply Comment Date: 45 days after publication in the Federal Register.

On March 11, 2005, the United States Court of Appeals for the District of Columbia Circuit remanded to the Commission the *Intermodal Order*, 18 FCC Rcd 23697 (2003), concerning porting between wireline and wireless carriers. *See United States Telecom Ass'n v. FCC*, 400 F.3d 29 (D.C. Cir. 2005). The Court determined that the Commission had failed to prepare a Final Regulatory Flexibility Analysis regarding the impact of the *Intermodal Order* on small entities, as defined by the Regulatory Flexibility Act (RFA), which the Court found to have been required by the RFA, 5 U.S.C. § 604. The Court accordingly directed the Commission to prepare the required Final Regulatory Flexibility Analysis, and stayed future enforcement of the *Intermodal Order* "only as applied to carriers that qualify as small entities under the RFA" until the agency prepares and publishes that analysis. 400 F.3d at 43.

In order to prepare to comply with the Court's direction, we hereby seek comment on the attached Initial Regulatory Flexibility Analysis (IRFA) (*see* Appendix A). As indicated above, comments are due 30 days after publication of this Public Notice in the Federal Register, and replies, if any, are due 45 days after Federal Register publication. The specific IRFA comments will assist us in preparing a Final Regulatory Flexibility Analysis in connection with the *Intermodal Order* and in determining whether to modify the intermodal porting rules with respect to their application to small entities in light of the requirements of the RFA. For the convenience of commenting parties, we attach the *Intermodal Order* as Appendix B.

This is a "permit but disclose" proceeding pursuant to § 1.1206 of the Commission's Rules.¹ Ex parte presentations that are made with respect to the issues involved in the IRFA will

¹ 47 C.F.R. § 1.1206.

be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's Rules.²

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated above. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers 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, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking 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). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., 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, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

² 47 C.F.R. § 1.1206(b).

People with Disabilities: Contact the FCC to request materials in accessible formats (braille, large print, electronic files, audio format, etc.) by e-mail at FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY).

For further information contact: Jennifer Salhus, Attorney Advisor, Spectrum and Competition 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) 418-7705 (voice) or (202) 418-0484 (TTY).

Action by the Commission on April 19, 2005: Chairman Kevin J. Martin; Commissioners Kathleen Q. Abernathy, Michael J. Copps, Jonathan S. Adelstein.

-FCC-

APPENDIX A

Initial Regulatory Flexibility Analysis
CC Docket No. 95-116

1. As required by the Regulatory Flexibility Act, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the rules and policies described in the Intermodal Order concerning wireline-to-wireless number portability (*Intermodal Order*) (See Appendix B).² 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 indicated on the Public Notice. The Commission will send a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. § 603(a). In addition, this will be published in the *Federal Register*.³

A. Need for, and Objectives of, the Rules

2. The *Intermodal Order* involved rules and policies aimed at ensuring wide availability of number portability for consumers across the country. By making it easier for greater numbers of consumers to switch freely among carriers, the *Intermodal Order* was intended to promote competition and encourage carriers to provide new services and lower prices for consumers. To obtain these objectives, the order required porting to any wireless carrier whose "coverage area" overlaps the geographic location of the original rate center associated with the number to be ported, provided that the porting-in carrier maintains the number's original rate center designation following the port. The order defined wireless "coverage area" as the area in which wireless service can be received from the wireless carrier.

B. Legal Basis for Rules

3. The *Intermodal Order* was 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 Rules Would 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.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.⁶ Under the

¹ 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).

² 18 FCC Rcd 23697 (2003).

³ See 5 U.S.C. § 603(a).

⁴ See 5 U.S.C. § 603(b)(3).

⁵ 5 U.S.C. § 601(6).

⁶ 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

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 by the Small Business Administration (SBA).⁷

5. In this section, we describe and estimate the number of small entities that may be affected by our action. The most reliable source of information regarding the total numbers of certain common carriers and related providers nationwide appears to be the data that the Commission publishes in its *Trends in Telephone Service* report.⁸ In addition, the SBA has developed size standards for small businesses within the commercial census category of Wired Telecommunications Carriers.⁹ Under this category, a business is small if it has 1,500 or fewer employees. Below, we discuss the total estimated numbers of small businesses that might be affected by our actions.

6. **Wired Telecommunications Carriers.** The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.¹⁰ According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.¹¹ Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.¹² Thus, under this size standard, the majority of firms can be considered small. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.¹³

7. **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*

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 definition(s) in the Federal Register."

⁷ 15 U.S.C. § 632.

⁸ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at Table 5.3, Page 5-5 (May 2004) (*Trends in Telephone Service*). This source uses data that are current as of October 22, 2003.

⁹ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

¹⁰ 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

¹¹ 1997 Economic Census, Establishment and Firm Size, Table 5, NAICS code 513310 (issued Oct. 2000).

¹² *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

¹³ See U.S. Census Bureau, 2002 Economic Census, Industry Series: "Information," Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 513310 (issued Nov. 2004). The preliminary data indicate that the total number of "establishments" increased from 20,815 to 27,891. In this context, the number of establishments is a less helpful indicator of small business prevalence than is the number of "firms," because the latter number takes into account the concept of common ownership or control. The more helpful 2002 census data on firms, including employment and receipts numbers, will be issued in late 2005.

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."¹⁴ 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.¹⁵ 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.

8. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁶ According to Commission data,¹⁷ 1,310 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small entities.

9. **Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁸ According to Commission data,¹⁹ 563 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive LEC services. Of these 563 carriers, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees. In addition, 14 carriers have reported that they are "Shared-Tenant Service Providers," and all 14 are estimated to have 1,500 or fewer employees. In addition, 37 carriers have reported that they are "Other Local Service Providers." Of the 37, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities.

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

10. Requiring porting beyond wireline rate center boundaries could impose compliance burdens on small entities. First, by making porting more widely available, the requirement may increase the amount of telephone numbers that small carriers may be required to port. To handle this increased porting volume, small carriers may need to add personnel, update porting procedures, or upgrade software. In

¹⁴ 5 U.S.C. § 601(3).

¹⁵ 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).

¹⁶ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110 (changed from 513310 in October 2002).

¹⁷ *Trends in Telephone Service* at Table 5.3.

¹⁸ 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

¹⁹ *Trends in Telephone Service* at Table 5.3.

addition to the compliance burdens associated with increased porting volume, porting beyond wireline rate center boundaries may cause small or rural carriers to incur transport costs associated with delivering calls to ported numbers served by distant switches.²⁰ We seek comment on the costs associated with these potential compliance burdens.

11. In addition to the impacts associated with transporting calls to ported numbers, by making it easier for more consumers to port, the requirements may cause small or rural carriers to lose customers. Small carriers have expressed concern that permitting porting beyond wireline rate center boundaries would give large wireless carriers an unfair competitive advantage over smaller LECs by making it easier for more consumers to port numbers to larger nationwide carriers.²¹

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

12. 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.²²

13. The Commission has previously addressed concerns raised by small and rural carriers when considering intermodal portability issues. Specifically, the *Intermodal Order* considered limiting the scope of intermodal porting based on the small carrier concern that requiring porting to a wireless carrier that does not have a physical point of interconnection or numbering resources in the rate center associated with the ported number would give wireless carriers an unfair competitive advantage. The order found, however, that these considerations did not justify denying wireline consumers the benefit of being able to port their numbers to wireless carriers. In addition, the order noted that each type of service offers its own advantages and disadvantage and that consumers would consider these attributes in determining whether or not to port their numbers. (See Appendix B, *Intermodal Order* at para. 27). The *Intermodal Order* also considered the concern expressed by small carriers that requiring porting beyond wireline rate center boundaries would lead to increased transport costs. The order concluded that such concerns were outside the scope of the number portability proceeding and noted that the rating and routing issues raised by the rural wireline carriers were also implicated in the context of non-ported numbers and were before the Commission in other proceedings. (See Appendix B, *Intermodal Order* at paras. 39-40).

14. The order also, for wireline carriers operating in areas outside of the 100 largest MSAs, waived, 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. (See Appendix B, *Intermodal Order* at para. 29). The order noted that the transition period would help ensure a smooth transition for carriers operating outside of the 100 largest

²⁰ We note that, in its comments addressing the Commission's November 10, 2003, Further Notice of Proposed Rulemaking on wireless-to-wireline porting issues, the Small Business Administration (SBA) stated that requiring wireless-to-wireline porting where there is a rate center mismatch could impose costs on small entities associated with transporting calls to ported numbers. See *SBA Reply Comments on Commission's November 10, 2003, Further Notice of Proposed Rulemaking* at 7.

²¹ *Id.* In its comments on the Commission's November 10, 2003, Further Notice of Proposed Rulemaking, SBA also stated that requiring wireless-to-wireline porting could create an unfair competitive advantage between wireline and wireless carriers.

²² See 5 U.S.C. § 603.

MSAs and provide them with sufficient time to make necessary modifications to their systems. The order also noted that carriers could file petitions for waiver of their obligation to port numbers to wireless carriers, if they could provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules. (See Appendix B, *Intermodal Order* at para. 29).²³

15. In addition to the steps taken by the Commission, pursuant to section 251(f)(2) of the Communications Act of 1934, as amended, carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide may petition a state commission to suspend or modify the LNP requirements. Under the terms of section 251(f)(2), the state commission shall grant such petition to the extent that, and for such duration as, the state commission determines that such suspension or modification: (A) is necessary to avoid a significant adverse economic impact on end users, to avoid imposing an unduly economically burdensome requirement, or to avoid imposing a technically infeasible requirement; and (B) is consistent with the public interest, convenience, and necessity.²⁴ Numerous petitions have been filed with state commissions since the *Intermodal Order's* release and in many of these cases, states have granted temporary or permanent relief from LNP requirements to small carriers. We seek comment on the effectiveness of this mechanism for addressing any potential burdens on small carriers.

F. Overlapping, Duplicating, or Conflicting Federal Rules

16. None.

²³ Since the order's release, the Commission granted several requests for waiver of the porting deadline. For example, the Commission granted a limited waiver, until May 24, 2004, of the wireline to wireless porting requirement for carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide. Telephone Number Portability, CC Docket No. 95-116, 19 FCC Rcd 875.

²⁴ See 47 U.S.C. § 251(f)(2).