

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

IN THE MATTER OF THE JOINT PETITION)	ORDER GRANTING JOINT
FOR EXTENSION OF SUSPENSION DATE)	PETITION FOR EXTENSION
AND THE DATE TO FILE FURTHER)	OF SUSPENSION DATE AND
SUSPENSION REQUEST)	THE DATE TO FILE
)	FURTHER SUSPENSION
)	REQUEST
)	TC05-137

On August 4, 2005, the Public Utilities Commission (Commission) received a Joint Petition for Extension of Suspension Date and the Date to File Further Suspension Request (Joint Petition) from Kennebec Telephone Company, Santel Communications Cooperative, Sioux Valley Telephone Company, Golden West Telecommunications Cooperative, Inc. (and Vivian Telephone Company and Kadoka Telephone Company), Armour Independent Telephone Company (and Bridgewater-Canistota Independent Telephone Company and Union Telephone Company), Swiftel Communications, Beresford Municipal Telephone Company, McCook Cooperative Telephone Company, Valley Telecommunications Cooperative Association, Inc., Faith Municipal Telephone Company, Midstate Communications, Inc., Western Telephone Company, Interstate Telecommunications Cooperative, Inc., Alliance Communications Cooperative, Inc. and Splitrock Properties, Inc., Roberts County Telephone Cooperative Association and RC Communications, Inc., Venture Communications Cooperative, West River Cooperative Telephone Company, Stockholm-Strandburg Telephone Company, and Tri-County Telcom, Inc. (collectively, Petitioners), requesting that the Commission extend the suspension of intramodal and intermodal Local Number Portability (LNP) for each Petitioner until six months after the Federal Communications Commission (FCC) completes its final regulatory flexibility analysis and publishes it in accordance with 5 U.S.C. Section 604(b). Petitioners further requested 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 months after the FCC completes its final regulatory flexibility analysis and publishes it in accordance with 5 U.S.C. Section 604(b).

On August 11, 2005, the Commission electronically transmitted notice of the filing and the intervention deadline of August 26, 2005, to interested individuals and entities. On August 15, 2005, the Commission received a Petition for Intervention from South Dakota Telecommunications Association (SDTA). On August 18, 2005, the Commission received a Petition to Intervene from Midcontinent Communications (Midcontinent). On August 25, 2005, the Commission received a Petition to Intervene from WWC License LLC (WWC). At its regularly scheduled meeting of August 31, 2005, the Commission granted intervention to SDTA, Midcontinent and WWC. On October 25, 2005, the Commission received a Motion to Limit the Scope of Issues from Petitioners. On October 28, 2005, the Commission received Western Wireless' Opposition to Motion to Limit the Scope of Issues. On October 31, 2005, the Commission received Midcontinent's Opposition to Petitioners' Motion to Limit Issues. On November 1, 2005, the Commission received a Supplemental Petition of RC Communications. At its regularly scheduled meeting of November 1, 2005, the Commission voted to grant the Motion to Limit the Scope of Issues but did not rule on Petitioners' request that it grant an immediate, temporary suspension of LNP requirements because it was not included in the hearing notice. On November 4, 2005, the Commission issued its Order Granting Motion to Limit the Scope of Issues. A hearing in this matter was held on December 6-7, 2005, in Room 468 of the State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota.

FINDINGS OF FACT

On September 30, 2004, the Commission issued final decisions pursuant to SDCL 49-31-80 and 47 U.S.C. §251(f)(2) in Dockets TC04-025, TC04-038, TC04-044 through TC04-056, TC04-060 through TC04-062 and TC4-084 suspending Petitioners' obligations to provide local number portability (LNP) to competing telecommunications companies until December 31, 2005 (LNP Suspension Orders). Special conditions were placed on Interstate Telecommunications Cooperative, Inc. (ITC) in Docket TC04-054 regarding ITC's intramodal LNP obligations in the Webster and Waubay local service areas in which Midcontinent is authorized to provide competitive local exchange services. On January 3, 2005, the Commission issued amended final decisions in Dockets TC04-038, TC04-044 through TC04-050, TC04-052, TC04-054 through TC04-056, TC04-060 and TC04-061 to correct clerical errors. The LNP Suspension Orders required Petitioners to file petitions to extend their suspensions of LNP obligations after the December 31, 2005 termination date by October 1, 2005.

Petitioners filed the Joint Petition on August 4, 2005. The Commission finds that the Joint Petition satisfied the filing deadline conditions for continuation of LNP suspensions in the LNP Orders.

During the hearing, Midcontinent and ITC submitted a Joint Motion resolving the case insofar as Midcontinent's interest in the case was concerned. Midcontinent agreed to an extension of the suspension of ITC's obligation to provide intramodal LNP until May 1, 2006, and ITC agreed to implement intramodal LNP in the Webster and Waubay exchanges, in which Midcontinent is certified to provide local exchange service, by May 1, 2006. TR 100-103.

On March 11, 2005, the United States Court of Appeals for the District of Columbia Circuit issued an order in *United States Telecom Ass'n v. FCC*, 400 F.3d 29 (D.C. Cir. 2005) remanding the FCC's *Intermodal Order*, 18 F.C.C.R. 23,697 (2003) and staying future enforcement of the *Intermodal Order* against carriers that are "small entities" under the Regulatory Flexibility Act, 5 U.S.C. § 604.

On April 22, 2005, 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. 2005 WL 937606, 20 F.C.C.R. 8616, 20 FCC Rcd. 8616, F.C.C., Apr 22, 2005, (NO. CC95-116, FCC05-87). The FCC has not yet issued its final RFA. The IRFA defines "small entities" as carriers with fewer than 1500 employees. It was not contested in this proceeding that each of Petitioners is a small entity under this definition, and the Commission finds that Petitioners' LNP obligations under the *Intermodal Order* are subject to the stay.

Petitioners further presented evidence that until the FCC's RFA is released, they will not know whether they will have intermodal LNP obligations at all or what changes the FCC may make with respect to their porting obligations on issues potentially having significant impact on implementation and interconnection, such as rating and routing responsibility. TR 23 - 24.

The Commission finds that to require Petitioners and their customers to expend funds on LNP implementation prior to knowing whether they will have the obligation to implement intermodal LNP and what the specifics of that obligation will be is unreasonable and that suspending Petitioners' LNP obligations until the FCC has issued its RFA and the stay has been lifted is consistent with the public interest, convenience and necessity and is necessary (i) to avoid a significant adverse economic impact on Petitioners' users of telecommunications services; and (ii) to

avoid imposing a requirement that would be unduly economically burdensome on Petitioners. SDCL 49-31-80; 47 U.S.C. § 251(f)(2).

With respect to the duration of the suspension, Petitioners presented evidence that it would take up to six months for each of them to implement LNP following the lifting of the stay. Petitioners' Exhibits 1 – 21. WWC presented evidence that it would take individual Petitioners from two months to a year to implement LNP depending on their current state of readiness. WWC Exhibit 3.

The FCC's LNP rules provide a six month time frame for implementation of LNP by a LEC following receipt of a specific request for LNP from a carrier. 47 CFR § 52.23(c). Furthermore, the *Intermodal Order* itself and the sequel *Rural Extension Order*, Docket No. 95-116, FCC04-12 (Rel. January 13, 2004) recognized a six month implementation period as appropriate for rural LECs.

The Commission finds that a six month suspension of Petitioners' LNP implementation following the public release of the FCC's RFA and resulting lifting of the stay is reasonable to enable Petitioners to implement LNP in an orderly manner and attempt to negotiate interconnection agreements with requesting carriers.

The Commission further finds that a three month period following the public release of the FCC's RFA is a reasonable period of time within which Petitioners should be required to file further requests for suspension. Petitioners will require some period of time to assess the costs of, and time required for, implementing LNP and negotiating related agreements, depending upon what the FCC ultimately does, and the Commission finds that three months will both afford Petitioners sufficient time to assess their situations in light of the FCC's action and provide time, prior to expiration of the suspensions granted herein, for the pre-hearing phase of any further suspension proceedings.

Petitioners will have access to the final RFA and any modifications to the *Intermodal Order* at such time as the FCC makes its public release of the complete printed documents, regardless of whether they are published in the Federal Register at such time or released as FCC public releases, and the suspension and filing time limits established in this order should therefore begin to run upon the first to occur of the FCC's public release or publication in full in the Federal Register.

CONCLUSIONS OF LAW

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

The Joint Motion made by Midcontinent and ITC is granted and the stipulation of settlement set forth therein is accepted by the Commission as reasonable and in the public interest.

Suspending Petitioners' LNP implementation obligations until after the FCC has rendered its final RFA and any associated modifications of the *Intermodal Order* is reasonable, is consistent with the public interest, convenience and necessity and is necessary (i) to avoid a significant adverse economic impact on Petitioners' users of telecommunications services; and (ii) to avoid imposing a requirement that is unduly economically burdensome on Petitioners.

A six-month suspension of Petitioners' LNP implementation obligations following the public release of the FCC's RFA and resulting lifting of the stay is reasonable to enable Petitioners to implement LNP in an orderly manner and attempt to negotiate interconnection agreements with requesting carriers.

A three month period following the public release of the FCC's RFA is a reasonable period of time within which Petitioners should be required to file further requests for suspension.

The suspension and filing time limits established in this order shall commence upon the first to occur of the FCC's public release of the complete RFA and associated order, if any, modifying the *Intermodal Order* or publication thereof in full in the Federal Register.

It is therefore

ORDERED, that the suspensions of Petitioners' intermodal local number portability obligations expiring on December 31, 2005, shall be extended until the date six months following the date of the FCC's public release of its regulatory flexibility analysis for the *Intermodal Order*, 18 F.C.C.R 23,697 (2003) and any associated modifications to the *Intermodal Order*; and it is further

ORDERED, that the date by which Petitioners shall be required to file petitions requesting further suspension of intermodal LNP obligations shall be extended from October 1, 2005, until the date three months following such public release; and it is further

ORDERED, that the Joint Motion made by Midcontinent and ITC is granted and the stipulation of settlement set forth therein is accepted by the Commission as resolving the case as between those two parties; and it is further

ORDERED, that this Order shall be effective as of December 31, 2005.

Dated at Pierre, South Dakota, this 4th day of January, 2006.

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>Melaine Koelbo</u>
Date:	<u>1/4/06</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman

Dustin M. Johnson
DUSTIN M. JOHNSON, Commissioner

Gary Hanson
GARY HANSON, Commissioner