

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Petition)
of Brookings Municipal Utilities)
d/b/a Swiftel Communications)
for Suspension or Modification) Docket No. _____
of Section 251(b)(2) of the)
Communications Act of 1934,)
as amended)

**PETITION FOR SUSPENSION AND MODIFICATION
OF NUMBER PORTABILITY OBLIGATIONS**

Pursuant to Section 251(f)(2) of the Telecommunications Act of 1996 (“the Act”), 47 U.S.C. § 251(f)(2), Section 49-31-80 of the South Dakota Codified Laws (SDCL), and the Commission’s Order in docket TC05-137, Brookings Municipal Utilities d/b/a Swiftel Communications (Petitioner or Swiftel) hereby respectfully petitions the South Dakota Public Utilities Commission (Commission) for a suspension and modification of the number portability requirement in Section 251(b)(2) of the Communications Act of 1934, as amended (the Act). As explained herein, Swiftel’s requested modification of intermodal LNP and LNP to Voice over Internet Protocol (VoIP) providers concerns the transport of ported calls. Swiftel’s requested suspension is for the purpose of negotiating transport arrangements with wireless carriers and VoIP providers, as necessary. Petitioner also requests an immediate suspension of Section 251(b)(2) pending this Commission’s consideration of the modification request until ninety (90) days following the Commission’s decision.

I. INTRODUCTION

In Docket TC04-047, this Commission granted Petitioner a suspension of local number portability (LNP). Subsequently, in docket TC05-137, this Commission granted various incumbent LECs (ILECs), including Petitioner, a suspension of intermodal LNP until six (6) months after the public release of the Federal Communications Commission's (FCC's) Regulatory Flexibility Analysis (RFA) in connection with intermodal LNP. The Commission further found that the ILECs, including Petitioner, would be allowed to file a petition requesting a further suspension of intermodal LNP within three (3) months following the public release of the FCC's RFA order. On November 8, 2007, the FCC's RFA order was publicly released.¹

Accordingly, Petitioner files this petition to request a suspension and modification of LNP such that it is not required to implement intermodal LNP and LNP to VoIP providers by May 8, 2008. Petitioner seeks a modification of intermodal LNP and LNP to VoIP providers such that it is not required to pay for the transport of ported calls beyond its local calling areas. Petitioner seeks a suspension of intermodal LNP and LNP to VoIP providers in order to negotiate with the wireless carriers and VoIP providers operating in its service territory a method to transport ported calls. Swiftel requests this suspension include a suspension of the requirement to route calls to numbers ported between other carriers properly.

¹ In re Telephone Number Requirements for IP-Enabled Service Providers, 22 FCC Rcd 19531 (FCC 2007).

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 Brookings Municipal Utilities d/b/a Swiftel Communications, 525 Western Avenue, Brookings, South Dakota, 57006. The designated contacts are:

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(2) In December 2007, Petitioner had 12,339 subscriber lines nationwide.

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

(4) Petitioner seeks a suspension of intermodal LNP and LNP to VoIP providers in order to negotiate with the wireless carriers and VoIP providers operating in its service territory a method to transport ported calls. Petitioner requests a suspension until 90 days after the transport issue is resolved. Petitioner seeks a modification of intermodal LNP

and LNP to VoIP providers such that it is not required to pay for the transport of ported calls beyond its local calling area. Petitioner also requests immediate temporary suspension of the 251(b)(2) requirement pending this Commission's consideration of this request.

(5) Section 251(f)(2) of the Act requires the Commission to act on this application within 180 days after receipt, or August 8, 2008. However, Petitioner waives its right to action by this date, such that Commission action is not required until November 8, 2008, in order to allow time for Petitioner to negotiate transport arrangements with wireless carriers and to allow the Commission to hold the regulatory proceeding in abeyance pending negotiations. It is Petitioner's intent to notify the Commission no later than May 8, 2008 of the status of negotiations. Therefore, Petitioner requests that the suspension and modification of Section 251(b)(2) be effective no later than November 8, 2008. Petitioner requests that the temporary suspension of Section 251(b)(2) be effective immediately and in any event, no later than May 8, 2008.

(6) The information supporting this petition is contained on pages 3 through 19 of this Petition.

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

III. BACKGROUND

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

1. Brookings Municipal Utilities d/b/a Swiftel Communications is a South Dakota municipal corporation with its principal office located at 525 Western Avenue, Brookings, South Dakota 57006. Petitioner 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. Petitioner currently provides basic local exchange service in one (1) exchange and, in December 2007, had 12,339 access lines in service. A list of Petitioner's switches for which a suspension and modification is requested is attached as Exhibit 1.²

2. In 2003 and 2004, Swiftel received requests for LNP from three wireless providers. Swiftel received a request from Verizon Wireless for LNP in Swiftel's host switch and two of its remote switches. Swiftel received a request from Western Wireless, now known as Alltel, for LNP in Swiftel's host switch and one of its remote switches. Swiftel received a request from Nextel, now known as Sprint, for LNP; however the request specified switches that are not Swiftel's.

3. In 2006, Swiftel received a request for LNP from Sprint. Sprint's request was associated with a request for negotiation of an interconnection agreement, which Sprint contends applies to the transmission of wireline and wireless traffic. An arbitration petition in connection with the interconnection agreement is pending at the Commission.³ Also pending at the Commission is a Petition for Suspension or Modification of Dialing Parity, Number Portability and Reciprocal Compensation Obligations filed by Swiftel, TC Docket No. 07-007. In the Petition, Swiftel has asked the Commission to modify the

² Swiftel has one host switch and three associated remote switches.

³ Although Swiftel's wireless service is affiliated with Sprint, Sprint seeks a separate connection for its wireless service in the pending arbitration docket.

intramodal LNP and dialing parity requirement such that Swiftel is not required to transport traffic beyond its local calling area. Swiftel notes that the Parties filed a Stipulation with the Commission to extend the time for a final decision by the Commission in TC Docket No. 07-007 until October 30, 2008.

4. Swiftel has not received any request for LNP from VoIP providers.

5. Swiftel has not implemented LNP. Pursuant to the FCC's rules and the Commission's order in TC05-137, Swiftel must implement LNP and provide intermodal LNP throughout its service area, absent a grant of this suspension petition, by May 8, 2008.

6. Petitioner is a rural telephone company as defined in 47 U.S.C. § 153(37). Petitioner 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)).

7. 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 December 2006, approximately 167.5 million local telephone lines)⁴ 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 12,339 access lines, Petitioner is a 2% carrier entitled to request suspension or modification of the LNP requirements pursuant to Section 251(f)(2).

8. According to 47 U.S.C. § 251(f)(2) and SDCL §49-31-80, the Commission shall

⁴ See "Federal Communications Commission Releases Study on Telephone Trends", FCC News Release (rel. December 31, 2007).

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.

9. Pursuant to Section 251(f)(2) of the Act, 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

10. In TC04-047, the Commission granted a suspension of LNP to Petitioner. The Commission found a suspension was in the public interest because the cost of LNP was significant, there was limited evidence of demand for LNP, and there were a number of uncertainties in connection with LNP implementation in Petitioner’s service territory. The uncertainties which the Commission found persuasive in granting a suspension included the appropriate technical solution for transport of calls to ported numbers, the respective responsibilities and attendant costs of providing transport for calls to ported numbers outside the local calling area, and the routing and rating of calls to ported numbers. The Commission also found a suspension was necessary to avoid a significant adverse economic impact on the users of Petitioner’s telecommunications services generally given the significant costs of implementing and providing LNP service, the

absence of customer requests for LNP, and the apparent low demand for the availability of LNP and the absence of any alternative wireline service. Based on the same findings the Commission further found suspending the LNP obligation was necessary to avoid imposing a requirement that is unduly economically burdensome to Petitioner and its customers.

11. Since the Commission's order in TC04-047, the issue of transporting calls to numbers ported to a wireless carrier still has not been resolved and the costs of such transport still are significant. Accordingly, Swiftel seeks a suspension and modification of LNP in connection with the transport issue.

12. As part of this request, Swiftel also seeks a suspension of the requirement to route calls to numbers ported to other carriers. Currently, although Swiftel does not provide intermodal LNP, customers can port numbers between wireless carriers. When a Swiftel subscriber dials a wireless number which has been ported, Swiftel relies on the wireless carrier that originally had the number to perform the LNP query and route the call. This is for two reasons. First, since Swiftel has not implemented LNP throughout its service territory, Swiftel cannot perform an LNP query to determine which numbers have been ported and to which carriers. Second, even when Swiftel implements LNP throughout its service territory and is able to perform a query on all calls, the transport issue prevents Swiftel from routing the call to the correct carrier as a local call. In other words, the same transport issue described in this petition which prevents Swiftel from correctly routing calls to numbers ported from its subscribers to a wireless carrier, also prevents Swiftel from correctly routing calls to numbers ported between wireless carriers.

13. Swiftel notes that in TC04-047, the Commission stated that the suspension granted to Swiftel did not relieve Swiftel “of its obligation to properly route calls to numbers ported between other carriers, including wireless carriers.” Swiftel believes it has satisfied this requirement through its reliance on the wireless carriers. Moreover, an interpretation of the Commission’s order that would require Swiftel to implement the mechanisms to query calls and transport calls as local where no facilities existed, would conflict with the suspension granted by the Commission. However, to remove any uncertainty, Swiftel intends its request for suspension and modification in this petition to apply to its obligation to properly route calls to numbers ported between other carriers.

14. Further, the FCC’s recently released order extends the obligation to provide LNP to VoIP providers. It is not clear how call routing will be performed in connection with numbers ported to VoIP providers. In fact, the North American Numbering Council will not meet until February 22, 2008, to discuss the implementation of the FCC’s order. However, to the extent a number is ported to a VoIP provider and the VoIP provider or its underlying carrier has no arrangement with Swiftel to transport calls as local, Swiftel would face the same transport issue as it faces with wireless carriers. Accordingly, Swiftel makes clear that the requests for suspension and modification discussed in this petition also apply to VoIP providers where a local call would have to be transported beyond Swiftel’s local calling area.

A. The cost of transport in connection with LNP Would Impose a Significant Adverse Economic Impact on Users of Telecommunications Services

15. Transport continues to be an obstacle to Swiftel’s ability to implement intermodal LNP, as found in TC04-047, because all wireless carriers do not have connections to Swiftel’s local calling area that would allow traffic to be routed as local. Where a

wireless carrier has a direct connection to Swiftel's local calling area, calls from a subscriber of Swiftel to a wireless subscriber with a telephone number rated to Swiftel's local calling area can be routed as a local call. Swiftel also can route a call to a wireless carrier as local where the wireless carrier is part of an extended area service (EAS) arrangement. Where a wireless carrier does not have such a connection to Swiftel's local calling area, a Swiftel subscriber must dial the call as a toll call; Swiftel routes the call from its subscriber to the subscriber's presubscribed interexchange carrier (IXC); and the IXC delivers the call to the wireless carrier.

16. Currently, Swiftel subscribers can call certain subscribers of Verizon Wireless and Alltel as local calls via the EAS arrangement between Swiftel and Interstate Telecommunications Cooperative (ITC). This is made possible due to the connection maintained by the wireless carriers with ITC in its Brookings Rural exchange and the EAS trunk between Swiftel and ITC's Brookings Rural exchange. There is no direct connection between Swiftel and Sprint over which calls to Sprint subscribers can be routed as local.⁵

17. In the context of intermodal LNP, if Verizon and Alltel maintain their connection to ITC (instead of establishing a direct connection with Swiftel), it is Swiftel's understanding that ITC must implement LNP in its Brookings Rural switch before a call to a number ported from a Swiftel subscriber to Alltel or Verizon could be routed to the correct carrier as a local call. Accordingly, because of the method of interconnection selected by Verizon and Alltel, it appears that the proper routing of calls to ported numbers will be impacted by ITC's implementation of LNP as well as Swiftel's

⁵ There is a direct connection between Swiftel's wireline switch and Swiftel's wireless switch. Although Swiftel's wireless service is affiliated with Sprint, Sprint seeks a separate connection for its wireless service in the pending arbitration docket.

implementation of LNP. Further, if a Swiftel subscriber seeks to port a number to Sprint, then there would be no existing interconnection arrangement that would allow Swiftel to route a call to the ported number as a local call. Because numbers can be ported between wireless carriers, Swiftel cannot ensure transport of all ported calls to any wireless carrier unless the transport issue has been resolved with all wireless carriers operating in Swiftel's service territory.

1. Cost of Transport

18. Confidential Exhibits 2 and 3 contain estimates for the recurring and non-recurring costs of transport associated with LNP. Exhibit 2 estimates the potential cost of transport based on the current network configurations of the wireless carriers and their current points of presence. This estimate reflects the cost of transport to Sioux Falls for calls to numbers ported to Sprint. Swiftel also has developed the potential cost of transport for calls to ported numbers if all wireless carriers seek to establish a point of interconnection in Sioux Falls, as shown in Exhibit 3.

19. Swiftel has estimated the cost of transporting traffic to Sprint in Sioux Falls because in the pending arbitration petition Sprint seeks to require Swiftel to transport all traffic, including wireless traffic, to a point of interconnection on Sprint's network in Sioux Falls.⁶ If Sprint is successful, it is likely the other wireless carriers would seek the same method of interconnection for competitive reasons. In addition, under the Act, the other wireless carriers could opt-in to the interconnection agreement and, thus obtain the same method of interconnection.

20. Confidential Exhibit 2 shows the estimated recurring and non-recurring cost of providing transport for calls to ported numbers from Petitioner's switch to Sprint. Based

⁶ TC Docket No. 06-176, Sprint Petition for Arbitration.

on Petitioner's number of access lines in South Dakota, this would equal a cost of \$.25 per line per month. Confidential Exhibit 3 shows the estimated recurring and non-recurring cost of providing transport for calls to ported numbers from Petitioner's switch to each of the wireless carriers in Sioux Falls. Based on Petitioner's number of access lines in South Dakota, this would equal a cost of \$.72 per line per month. Swiftel notes these exhibits do not include the cost to transport calls to numbers ported to VoIP providers because at this time such providers have not been identified. However, if Swiftel also must transport calls from its subscribers to a subscriber of a VoIP provider beyond its local calling area, the cost of transport would be even greater.

21. Swiftel also notes that in an arbitration petition against an ILEC in South Dakota, Alltel argued that it is entitled to interconnect with an ILEC at a single point in the MTA for the exchange of traffic. Petitioner's service territory is within the Minneapolis MTA, which includes the eastern two thirds of South Dakota, parts of northern Iowa, western Wisconsin, most of Minnesota and all of North Dakota. If Petitioner is required to transport a call from its subscriber to a subscriber of a wireless carrier as a local call to any point within the MTA, the cost of transport could be even greater.

2. There is no demand for LNP

22. In TC 04-47, the Commission found that the judgment of whether the cost of LNP imposed a significant adverse economic impact on customers is influenced by the benefits that flow to customers from the imposition of the impact. Petitioner contends there is no benefit to customers of intermodal LNP. Petitioner believes it has received two (2) inquiries concerning intermodal LNP from its subscribers during the past year.

On a nationwide basis, the number of customers who have ported wireline numbers to wireless carriers is a fraction of the number of intramodal ports that have occurred (customers who have ported wireline numbers to wireline carriers and customer who have ported wireless numbers to wireless carriers).

23. Further, the success of wireless service providers nationwide and in South Dakota decreases the likelihood of demand for intermodal LNP. Simply stated, South Dakotans who already have a wireless number have no need to port their wireline number to a wireless carrier.

24. With respect to demand for VoIP LNP, Swiftel has received no inquiries from individuals asking whether a telephone number could be ported to a VoIP provider.

25. In light of the cost of transport, the current absence of customer requests for intermodal LNP and VoIP LNP, and the lack of demand for intermodal and VoIP LNP, the Commission should find a modification of the intermodal and VoIP LNP obligation, such that Swiftel is not required to pay for the cost of transporting calls to ported numbers beyond its local service area, is necessary to avoid a significant adverse economic impact on the users of Petitioner's telecommunications services generally.

26. Confidential Exhibits 2 and 3 provide estimates of the cost of transport for calls to ported numbers. Exhibit 2 examines the cost assuming Verizon and Alltel will maintain their current connection with ITC and traffic to Sprint will be transported to Sioux Falls. Exhibit 3 examines the cost assuming traffic to Verizon, Alltel and Sprint will be transported to Sioux Falls. As discussed herein, the cost of transport could be greater than shown in Confidential Exhibits 2 and 3 if Verizon and/or Alltel do not maintain their current connection with ITC or if a point of interconnection other than

Sioux Falls is selected by a wireless or VoIP provider. In addition, no wireless carrier or VoIP provider has agreed to pay for the cost of transport. Swiftel requests a suspension of intermodal LNP and VoIP LNP 1) to allow Swiftel to determine whether Alltel and Verizon intend to maintain their current interconnection arrangement to ITC and Swiftel and whether such arrangement will create any obstacles to the correct routing of calls and 2) to negotiate with wireless carriers and VoIP providers, to the extent any are identified, concerning a method of transport for which they would pay. It is Swiftel's intent to inform the Commission no later than May 8, 2008, of its ability to negotiate transport with the wireless carriers. Swiftel asks the Commission to hold this proceeding in abeyance pending the outcome of the negotiation process. The Commission should find a suspension of the intermodal and VoIP LNP obligation to allow Swiftel to negotiate transport with wireless and VoIP providers is necessary to avoid a significant adverse economic impact on the users of Petitioner's telecommunications services generally.

B. LNP Would Be Unduly Economically Burdensome

27. In TC04-047, the Commission found that a determination as to whether the implementation of LNP would impose a requirement that is unduly economically burdensome should be applied to assess the burdensomeness of the requirement on both the consumer and the company. The Commission made this finding, in part, based on the uncertainty of how the costs of LNP will be distributed between the Petitioner and its consumers and the difficulty in determining the surcharge amount that could be charged by the Petitioner to its customers.

28. It appears the costs associated with the transport of ported calls may not be recovered through an LNP surcharge. To the extent transport costs cannot be recovered

through the LNP surcharge, Petitioner may be forced to increase local rates or curtail services or investment in the network. If the cost of transport is assigned to Petitioner's subscribers through a local rate increase, some segment of Petitioner's 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 transport, which, in turn, could lead to more rate increases followed by additional losses in lines.

29. Further, wireline to wireless porting under current routing protocols would impose an unduly economically burdensome requirement by making the network less efficient and by confusing consumers. Currently, for calls from a subscriber of Swiftel to a wireless carrier operating in Swiftel's service area, Petitioner does not carry local traffic to a wireless carrier's point of interconnection beyond Swiftel's local calling area. Therefore, if intermodal LNP is implemented before the transport issue has been resolved with all wireless carriers, in certain circumstances end users who continue to dial a ported number on a seven-digit basis will 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. It appears these issues also may be associated with calls to numbers ported to VoIP providers.

30. For these reasons, and in light of the cost of transport, the current absence of customer requests for intermodal LNP and VoIP LNP, and the lack of demand for intermodal LNP and VoIP LNP, the Commission should find a modification of the intermodal and VoIP LNP obligation, such that Swiftel is not required to pay for the cost of transporting ported calls beyond its local calling areas, is necessary to avoid imposing

a requirement that is unduly economically burdensome on Petitioner and its customers. The Commission also should find a suspension of the intermodal and VoIP LNP obligation to allow Swifitel to negotiate transport with the wireless and VoIP providers is necessary to avoid imposing a requirement that is unduly economically burdensome on Petitioner and its customers.

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

31. In TC04-047, the Commission found that at least part of the determination of whether a suspension is consistent with the public interest, convenience and necessity involves weighing the costs to the LEC and/or its users against the benefits to be derived from the incurrence of such costs. The Commission found the benefits to consumers from LNP in the rural area served by Petitioner had not been sufficiently demonstrated to outweigh the burden that imposing LNP implementation would place on Petitioner and its rural citizens who rely on Petitioner for essential, provider-of-last-resort telephone service.

32. For purposes of the public interest evaluation, the Commission also found significant the level of uncertainty that existed in connection with aspects of LNP, including the transport of ported calls, the demand for number porting, and the extent to which the presence of LNP is a marginal factor in the consumer's purchasing decision for alternative services such as wireless service. Further, the Commission found the public interest decision appropriately considered the duty to provide and preserve universal service and Petitioner's responsibility for providing essential telecommunications to all persons within their service territory as the carrier of last resort.

33. As shown herein, the cost of transport is significant; there is uncertainty in connection with the transport issue and in connection with the implementation of LNP for VoIP providers; and intermodal LNP will provide no benefit to consumers, as reflected in the total lack of demand for intermodal LNP.

34. On the other hand, in addition to a lack of demand for LNP, there also is no evidence intermodal LNP is a factor in the consumer's purchasing decision for wireless service or a lack of intermodal LNP prevents consumers from purchasing wireless service. On the contrary, even though the Commission granted a suspension of LNP in 2004 and many rural LECs in South Dakota have not implemented LNP, the number of consumers subscribing to wireless service has grown significantly and continues to increase. In the fourth quarter of 2006, the number of wireless subscribers in South Dakota was estimated at 270,210. Of this total, 176,502 wireless subscribers were estimated in current Qwest service areas and 93,708 wireless subscribers were estimated within ILEC services areas. For the first quarter of 2008, the number of wireless subscribers in South Dakota is estimated at 287,122. Of this total, 182,283 wireless subscribers were estimated in current Qwest service areas and 104,839 wireless subscribers were estimated within ILEC services areas. This increase in wireless subscribers represents approximately a three percent (3%) growth rate in wireless customers in Qwest areas and a twelve percent (12%) growth rate in wireless customers in ILEC service areas.⁷ While the Petitioner does not have wireless subscriber estimates specific to its service territory, it is likely the wireless subscriber growth rates in the

⁷ These wireless subscriber estimates were calculated using wireless loop data reported in USAC's High Cost Loop Projected by State Study Area (USAC Appendix HC05) and the USAC CETC Reported Lines by Incumbent Study Area – Interstate Access Support (USAC Appendix HC020) for the appropriate time periods.

Petitioner's service area are similar to the South Dakota ILEC wireless subscriber growth estimates derived from the USAC reports.

35. At this time, there also is no evidence of demand for VoIP LNP and no evidence that LNP is a factor in the consumer's purchasing decision for VoIP service.

36. In addition, the Petitioner's ability to provide and preserve universal service and to meet its responsibility for providing essential telecommunications to all persons within its service territory as the carrier of last resort will be adversely impacted if Petitioner is required to implement intermodal and VoIP LNP before the transport issue is resolved. If Petitioner is required to expend its available resources on intermodal and VoIP LNP transport, its investment in broadband or other network improvements and in the services it is able to provide to customers may be delayed or reduced.

37. Further, if intermodal and VoIP LNP is implemented before the transport issue is resolved, the rating and routing issue associated with LNP, and the resulting customer confusion, is contrary to the public interest.

38. As shown, while the costs of transport associated with intermodal and VoIP LNP are significant, intermodal LNP provides no benefit to consumers. Further, the uncertainties associated with VoIP LNP and the lack of evidence concerning demand for VoIP LNP demonstrates that there is no benefit to consumers of VoIP LNP. Accordingly, grant of the requested modification and suspension is consistent with the public interest, convenience and necessity.

V. IMMEDIATE TEMPORARY SUSPENSION REQUESTED

39. Pursuant to section 251(f)(2), SDCL 49-31-80, and the Commission's order in Docket No. TC05-137, Petitioner requests immediate temporary suspension of the 251(b)(2) requirement pending this Commission's consideration of this suspension and modification request. An immediate temporary suspension is necessary so the Petitioner is not required to implement intermodal and VoIP LNP by May 8, 2008, and while this proceeding is pending. Without immediate suspension, Petitioner may be required to take various implementation steps immediately in order to meet a May 8, 2008 implementation date.

VI. CONCLUSION

40. As demonstrated, Petitioner has met the criteria set forth in 47 U.S.C. § 251(f)(2)(A) and the modification and 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 and modification.

41. Petitioner also requests immediate temporary suspension of the 251(b)(2) requirement pending this Commission's consideration of this request until ninety (90) days following this Commission's final decision. Immediate temporary suspension is necessary so the Petitioner does not have to incur LNP implementation costs until after the Commission acts on the petition.

WHEREFORE, Petitioner respectfully requests the Commission to:

(A) Issue an interim order that suspends any obligation for Petitioner to provide intermodal or VoIP LNP;

(B) Issue a final order that grants a modification of Petitioner's obligation to provide intermodal and VoIP LNP as requested herein and a suspension of Petitioner's obligation to implement intermodal and VoIP LNP until the transport issue is resolved;
and

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

Dated: February 8, 2008.

**BROOKINGS MUNICIPAL UTILITIES
D/B/A SWIFTEL COMMUNICATIONS**

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