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February 8, 2008

Ms. Patricia Van Gerpen  
SD Public Utilities Commission  
500 E Capitol Ave  
Pierre SD 57501

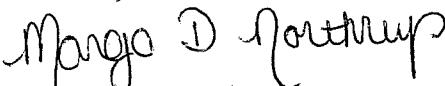
RE: In the Matter of the Petition of Valley Telecommunications Cooperative Association, Inc. for Suspension or Modification of Section 251(b)(2) of the Communication Act of 1934, as amended

Dear Patty:

Attached please find Valley Telecommunications Cooperative Association, Inc.,'s Petition in the above entitled matter. By copy of this letter, service is intended on the parties identified on the Certificate of Service.

If you have any questions, please contact me.

Sincerely yours,  
RITER, ROGERS, WATTIER, BROWN &  
NORTHROP, LLP

By:   
Margo D. Northrup

MDN/lma  
Enclosure  
cc: Client

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BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Petition )  
of Valley Telecommunications )  
Cooperative Association, Inc. )  
Suspension or Modification of )  
Section 251 (b)(2) of the ) Docket No. \_\_\_\_\_  
Communications Act of 1934, )  
as amended )

**I. PRELIMINARY STATEMENT**

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, Valley Telecommunications Cooperative Association, Inc. (Valley or Petitioner) 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, Valley’s requested modification of intermodal LNP and LNP to VoIP providers concerns the transport of ported calls. Valley’s requested suspension is necessary because, at present not all of the necessary transport arrangements are in place with wireless carriers and VoIP providers to properly route calls to ported local numbers. Petitioner also requests immediate temporary suspension of the Section 251(b)(2) requirement pending this Commission’s consideration of this request, as more fully explained herein.

In Docket TC04-050, 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) Final Regulatory Flexibility Analysis (FRFA) 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 FRFA order. On November 8, 2007, as noted above, the FCC released a subsequent Report and Order related to intermodal LNP which included a FRFA<sup>1</sup> (FCC 07-188). This being the case, based on this Commission's previous Order in Docket TC05-137, the current applicable implementation date for LNP is May 8, 2008.

At the present time, neither all of the interconnection points nor facility arrangements are in place to permit the appropriate routing of wireline calls to local rated numbers that may be either ported to or among wireless carriers or VoIP providers. In addition, as the FCC has indicated in the FRFA issued as part of its recent Report and Order related to LNP, various rating and routing issues and, specifically, issues concerning the costs of transporting calls to ported numbers are still pending before the FCC in several other proceedings and have not yet been resolved.<sup>2</sup> Further, the FCC indicated in the FRFA that it was not prejudging "the ability of state commissions to consider rating and routing issues or transport costs in their review of petitions filed pursuant to Section 251(f)(2)" of the Federal Act.

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

<sup>2</sup> See Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, FCC 07-188, Final Regulatory Flexibility Analysis attached as APPENDIX D, CC Docket No. 95-116, Par. 4, Footnotes 9 and 10. It should also be noted that Commissioner Jonathan S. Adelstein in his statement attached to the Report and Order indicated expressly his concurrence with language in the FRFA clarifying the continued ability of rural carriers to seek relief pursuant to Section 251(f)(2) related to the transport costs associated with routing calls to ported numbers. He stated as follows: "While this Order checks a box by completing the final analysis required by the FRFA, we miss an opportunity here to address some of the critical and expensive underlying issues – such as the transport costs associated with calls to ported numbers – that are exacerbated by our porting requirements. . . . Although this Commission could do more to recognize and address the unique needs of small providers, I am pleased that small providers will have the ability to raise these issues before state commissions through the process set out by Congress in Section 251(f)(2) and I will concur to this portion of the Order."

Accordingly, at this time, Valley seeks the following from the Commission: (1) an immediate temporary suspension of the requirement to implement intermodal LNP that is sufficient to allow for the establishment of the necessary interconnection points and traffic routing arrangements in order to complete wireline originated calls to ported local numbers. Specifically, Valley seeks a suspension of the present implementation deadline of May 8, 2008, until 90 days after the Commission issues any order related to the requested suspension; and (2) a suspension and modification of intermodal LNP and LNP to VoIP providers clarifying that Valley will not be required to pay the costs associated with transporting traffic beyond its established local calling areas to numbers that have been ported to other carriers.

## **II. ARSD § 20:10:32:39 REQUIREMENTS**

This filing is made pursuant to both federal and state law. Under Section 251(f)(2) of the Federal Act any local exchange carrier serving fewer than two percent (2%) of the nations subscriber lines, in the aggregate, may petition their State Commission for a suspension or modification of any of the interconnection requirements falling under either Sections 251(b) and/or (c) of the Act. This same right is extended to local exchange carriers under the 2% threshold pursuant to SDCL § 49-31-80.

Pursuant to 47 U.S.C. § 251(f)(2) and SDCL § 49-31-80, this Commission may grant a petition for suspension and/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.

This Commission is directed under the provisions of Section 251(f)(2) to act upon any filed petition for suspension or modification within 180 days after receipt. Pending such action, the Commission is authorized to “suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.”

The Commission has adopted an administrative rule (ARSD § 20:10:32:39) setting forth the particular information that should be contained within a petition for suspension and/or modification that is filed pursuant to 47 U.S.C. § 251(f)(2) and SDCL § 49-31-80. In accordance with that rule, Valley offers the following in support of its Petition:

**ARSD 20:10:32:39(1)**

The applicant is Valley Telecommunications Cooperative Association, Inc., 102 Main Street S., PO Box 7, Herreid, South Dakota 57632. The designated contacts are:

John Tormoehlen, Chief Executive Officer and General Manager

and

Darla Pollman Rogers  
Riter, Rogers, Wattier, Brown & Northrup, LLP  
319 S. Coteau – P. O. Box 280  
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**ARSD 20:10:32:39(2)**

In 2007, Petitioner had an average of 3351 subscriber lines nationwide.

**ARSD 20:10:32:39(3)**

Petitioner seeks a suspension and modification related to the local number portability obligations which fall under the provisions found in § 251(b)(2) of the Federal Act.

**ARSD 20:10:32:39(4)**

Petitioner files this petition to request an immediate temporary suspension such that it is not required to implement intermodal LNP by May 8, 2008. Petitioner requests a temporary suspension of the requirement to implement intermodal LNP that is sufficient to allow for the establishment of the necessary interconnection points and traffic routing arrangements with all wireless carriers in order to properly complete wireline originated calls to ported local numbers. Specifically, Petitioner seeks a suspension of the present LNP implementation deadline of May 8, 2008, until 90 days after the Commission issues any order related to the requested suspension. Valley is also requesting a modification of intermodal LNP obligations to the extent that any wireless carriers or VoIP provider(s) seek to impose on Valley the costs associated with transporting traffic beyond its established local calling areas to ported numbers that are used by either wireless or VoIP subscribers. The Commission should clarify, with respect to implementing intermodal LNP and VoIP LNP, that Valley will not be required to pay the costs associated with transporting traffic beyond its established local calling areas to numbers that have been ported to other carriers. Petitioner also requests immediate temporary suspension of the § 251(b)(2) LNP requirement pending this Commission's consideration of this request. If methods to route, transport, and complete calls to ported numbers cannot be resolved with all affected carriers, Petitioner requests

that the Commission conduct a hearing to address any unresolved issues including issues related to transport costs and which carrier(s) are responsible for such costs.

**ARSD 20:10:32:39(5) and (7)**

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 resolve transport arrangements with all wireless carriers. Petitioner also requests the Commission to hold the regulatory proceeding in abeyance and delay any hearing until Petitioner's notification to the Commission, no later than May 8, 2008, of the status of transport arrangements. 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.

**ARSD 20:10:32:39(6)**

Valley offers the following information in support of its requested suspension and modification related to the LNP requirements:

**A. BACKGROUND**

1. Valley is a South Dakota cooperative with its principal office located at 102 Main Street S., PO Box 7, Herreid, South Dakota. Petitioner is engaged in the provisioning of general telecommunications services in the State of South Dakota subject to the jurisdiction of this Commission. Petitioner currently provides basic local exchange service in nine (9) exchanges and, in 2007, had an average of 3,351 access lines in

service. A list of Petitioner's switches for which the temporary suspension of LNP is requested is attached as Exhibit 1.

2. Petitioner received a request for LNP from Western Wireless (now Alltel). Pursuant to the FCC's rules and the Commission's Order in TC05-137, Petitioner must implement LNP in these switches and provide intermodal LNP throughout its service area to wireless carriers, absent a grant of the requested suspension, by May 8, 2008.

3. 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)).

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 December 2006, approximately 167.5 million local telephone lines)<sup>3</sup> 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 an average of 3351 access lines, Petitioner is a 2% carrier entitled to request suspension or modification of the LNP requirements pursuant to Section 251(f)(2).

5. In TC04-050, the Commission granted a suspension of LNP to Petitioner. The Commission found that 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

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<sup>3</sup> See "Federal Communications Commission Releases Study on Telephone Trends", FCC News Release (rel. December 31, 2007).



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 that 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, 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 that suspending the LNP obligation was necessary to avoid imposing a requirement that is unduly economically burdensome to Petitioner and its customers.

6. Since the Commission's Order in TC04-050, Valley has not installed LNP in any of its switches. In addition, issues related to transporting calls to numbers ported to a wireless carrier still have not been resolved. The FCC in neither its recent Report and Order on intermodal LNP (FCC 07-188) nor the Final Regulatory Flexibility Analysis accompanying its Order addressed issues surrounding the transport of wireline originated calls to ported numbers. Despite expectations on the part of Valley and many other rural telephone companies that the issues would be addressed with the release of any FRFA, the FCC has not yet taken action to resolve the disputes existing between wireline and wireless carriers related to the routing, rating and transport of local traffic exchanged between the carriers. The FCC did in its FRFA at least give recognition that issues raised concerning transporting calls to ported numbers are pending before the FCC in other proceedings "in the context of all numbers (without distinguishing between ported or

non-ported numbers).”<sup>4</sup> To this point, however, the FCC has not provided for any resolutions of the wireline-wireless transport issues that arise in the context of LNP implementation and as a result the same transport issues previously raised before this Commission in Docket TC04-050 are still present today. Accordingly, Valley seeks a suspension and modification of LNP in connection with the transport issues.

## **B. TRANSPORT TECHNICAL ISSUES AND COST**

7. Transport continues to be an obstacle to Valley’s ability to implement intermodal LNP because not all wireless carriers have direct connections to Valley’s local calling areas. Where a wireless carrier has a direct connection to a Valley local calling area, calls from a subscriber of Valley in that local calling area to a wireless subscriber with a telephone number rated to that local calling area can be routed as a local call. Where a wireless carrier does not have a direct connection to Valley’s local calling area, a Valley subscriber in that local calling area must dial the call as a toll call; Valley routes the call from its subscriber to the subscriber’s presubscribed interexchange carrier (IXC); and the IXC delivers the call to the wireless carrier.

8. Currently, there is a direct connection between Valley and Verizon in Valley’s Glenham exchange. There are no other direct connections between Valley and any other wireless carrier.

9. In the context of intermodal LNP, if Verizon maintains its direct connection, then Valley would be able to transport calls to numbers ported from a Valley subscriber in the local calling area associated with the Glenham exchange to Verizon. However, if a Valley subscriber in a different local calling area seeks to port a number to Verizon, or if a Valley subscriber seeks to port a number to any other wireless carrier in Petitioner’s

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<sup>4</sup> FCC 07-188, par. 4.

service area, then there would be no existing interconnection facilities that would allow Petitioner to route, transport, and complete a call to the ported number as a local call. A suspension of Petitioner's duty to provide intermodal LNP, as requested herein, is necessary because additional time is needed to determine what points of interconnection and routing and transport methods will be established with each of the wireless carriers operating in South Dakota that may need to receive traffic to ported numbers.

10. At this particular time, absent first obtaining additional information from the various wireless carriers operating in South Dakota, Valley is unable to determine with specificity the increased transport costs that would be associated with transporting wireline originated traffic to ported numbers. Very clearly, the transport costs associated with LNP implementation could vary significantly depending on the point of interconnection that is requested or at issue between the wireline and wireless carriers and also depending on the method of interconnection that may be used for the purpose of exchanging the traffic that is destined to ported numbers. Due to the previous suspension, Valley has not implemented LNP, thus Valley has no transport costs associated with LNP today. Valley believes that ultimately the increased transport costs brought on by intermodal LNP implementation could be significant, and could have an adverse economic impact on Petitioner and its customers. Once Valley determines what specific transport arrangements each wireless carrier is seeking, Valley will supplement this Petition with transport cost data.

### **C. LACK OF DEMAND FOR LNP**

11. Petitioner contends there is little, if any, benefit that would be brought to local telephone customers through the implementation of intermodal LNP. Petitioner has

received no requests for intermodal LNP from its subscribers. 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 customers who have ported wireless numbers to wireless carriers).

12. In ruling on Valley's earlier LNP suspension request in Docket TC04-050, the Commission found that 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. Valley contends that since the issuance of the Commission's final Order in that proceeding, consumer demand for intermodal LNP has not changed in any significant way.

#### **D. ECONOMIC BURDEN**

13. In TC04-050, 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.

14. It appears that the costs associated with the transport of ported calls may not be recovered through an LNP surcharge.

15. To the extent that transport costs associated with routing local traffic to ported numbers cannot be recovered through the LNP surcharge, Petitioner would be forced to recover these costs elsewhere in its operations. Depending on the amount of these costs, they may have to be assigned to Petitioner's subscribers through a local rate increase. If this occurs, 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.

16. Valley also is particularly concerned regarding the transport of wireline originated calls to ported numbers because, to date, it has never been required as a "local" exchange telecommunications company to deliver local traffic outside of its local calling areas or rural service area and to pay for the costs of such delivery. While the local wireline originated traffic destined to ported numbers being used by wireless carriers could initially be limited in scope, Valley is generally concerned with the precedent that may be set with respect to the routing of local traffic outside of its local calling areas or even outside of its network.

17. Further, wireline to wireless porting under current routing protocols could impose additional economic burdens by making the network less efficient and by confusing consumers. Currently, Petitioner does not carry local traffic to wireless points of interconnection beyond its 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.

18. For these reasons, given the additional transport costs, the current absence of customer requests for intermodal LNP, and the lack of demand for intermodal LNP and VoIP LNP, the Commission should find that a modification of the intermodal and VoIP LNP obligation, such that Valley 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 that a suspension of the intermodal and VoIP LNP obligation, giving Valley additional time to determine through additional contact with wireless carriers what points of interconnection and what facilities will be used for routing traffic to ported numbers, is necessary to avoid imposing a requirement that is unduly economically burdensome on Petitioner and its customers.

#### **E. PUBLIC INTEREST**

19. In TC04-050, 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 that 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.

20. 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 porting interval, the demand for number porting, particularly in areas where signal coverage is spotty or non-existent, 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 that the public interest decision appropriately considered the duty to provide and preserve universal service and Petitioner's responsibility for providing essential telecommunications services to all persons within its service territory as the carrier of last resort.

21. As previously discussed there is uncertainty in connection with the transport issue, and LNP will provide no benefit to consumers, as reflected in the total lack of demand for LNP.

22. In addition to a lack of demand for LNP, there also is no evidence that LNP is a factor in the consumer's purchasing decision for wireless service or that a lack of LNP prevents consumers from purchasing wireless service. On the contrary, even though the Commission granted a suspension of LNP in 2004 and most 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 service 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 service 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.<sup>5</sup> While Petitioner does not have wireless subscriber estimates specific to its service territory, it is likely that the wireless subscriber growth rates in Petitioner's service area mirror the South Dakota ILEC wireless subscriber growth estimates derived from the USAC reports.

23. In addition, the Petitioner's ability to provide and preserve universal service and to meet its responsibility for providing essential telecommunications services to all persons within its service territory as the carrier of last resort could be adversely impacted if Petitioner is required to implement LNP before the transport issues are resolved.

24. Further, if intermodal LNP is required to be implemented prior to the time that all of the necessary connections and routing arrangements have been established with the affected wireless carriers, wireline originated calls to ported local numbers will not be routed or rated appropriately, and the resulting customer confusion would also be contrary to the public interest.

25. Pursuant to Section 251(f)(2), SDCL § 49-31-80, and the Commission's order in Docket TC05-137, Petitioner requests an immediate temporary suspension of the Section 251(b)(2) requirements pending this Commission's consideration of this suspension and modification request. An immediate temporary suspension is necessary so that Petitioner

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<sup>5</sup> 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.



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.

### C. CONCLUSION

26. Based on all of the foregoing, Valley has met the criteria set forth in 47 U.S.C. § 251(f)(2)(A) and the suspension and modification requested in this proceeding are consistent with the public interest, convenience and necessity requirement set forth in 47 U.S.C. § 251(f)(2)(B).

27. As stated, Valley agrees to inform the Commission no later than May 8, 2008 of its ability to arrange transport with all wireless carriers. Accordingly, Valley requests the Commission hold this matter in abeyance and delay a hearing until after May 8, 2008. Valley also requests that the Commission grant an immediate suspension of the LNP requirements pending final action on this docketed filing. Without an immediate suspension, Valley would be required to take various implementation steps immediately in order to meet the May 8, 2008 implementation date. The immediate suspension should be imposed as soon as possible and, in any event, by no later than May 8, 2008.

WHEREFORE, Petitioner respectfully requests that the Commission:

(A) Issue an interim order by no later than May 8, 2008, which would suspend intermodal LNP implementation pending the issuance of a final order or orders on the separate requests for suspension and modification of the LNP requirements that are presented herein;

(B) Issue a final order granting an temporary suspension of the present LNP implementation deadline of May 8, 2008, as requested herein;

(C) Issue a final order granting a modification of intermodal LNP such that Valley will not be required to pay the costs associated with transporting traffic beyond its established local calling areas to numbers that have been ported to other carriers; and

(D) Grant Petitioner such other and further relief as the Commission may deem proper.

Dated: February 8, 2008.

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