



Robert C. Riter, Jr.  
Darla Pollman Rogers  
Jerry L. Wattier  
John L. Brown  
Margo D. Northrup

Associate:  
Lindsey Riter-Rapp

Of Counsel:  
Robert D. Hofer

February 8, 2008

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

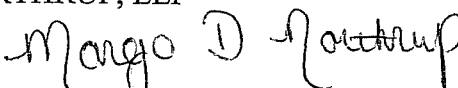
RE: In the Matter of the Petition of West River Cooperative Telephone Company for  
Suspension or Modification of Section 251(b)(2) of the Communication Act of 1934,  
as amended

Dear Patty:

Attached please find West River Cooperative Telephone Company'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 &  
NORTHTRUP, LLP

By:   
Margo D. Northrup

MDN/Ima  
Enclosure  
cc: Client

Law Office  
Riter, Rogers, Wattier, Brown & Northrup, LLP  
Phone: 605-224-5825 • Fax: 605-224-7102 • www.riterlaw.com  
319 South Coteau Street • P.O. Box 280 • Pierre, South Dakota 57501-0280

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Petition )  
of West River Cooperative )  
Telephone Company )  
for Suspension or Modification ) Docket No. \_\_\_\_\_  
of Section 251(b)(2) of the )  
Communications Act of 1934, )  
as amended )

**I. INTRODUCTION**

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, West River Cooperative Telephone Company (Petitioner or West River) 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, West River’s requested modification of intermodal LNP and LNP to Voice Over Internet Protocol (VoIP) providers concerns the transport of ported calls. West River’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.

In Docket TC04-061, 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, the FCC's FRFA order was publicly released.<sup>1</sup>

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 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. West River requests that this suspension include a suspension of the requirement to route calls to numbers ported between other carriers properly.

## **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 West River Telephone Company, 801 Coleman Ave, PO Box 39, Bison, South Dakota 57620 (605) 244-7288. The designated contacts are:

Jerry Reisenauer  
West River Telephone Company  
801 Coleman Avenue  
P.O. Box 39  
Bison, South Dakota 57620

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

and

Darla Pollman Rogers  
Riter, Roger, Wattier, Brown and Northrup, LLP  
319 S Coteau  
PO Box 280  
Pierre SD 57501  
(605) 224-5825

(2) In December 2007, Petitioner had 3,676 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 areas. 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 4 through 17 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 that:

1. West River is a South Dakota cooperative with its principal office located at 801 Coleman Avenue, Bison, South Dakota 57620. 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 8 exchanges in South Dakota and, in 2007, had an average of 3,676 access lines in service for all of its exchanges. A list of Petitioner's switches for which a suspension of intermodal LNP is requested is attached as Exhibit 1.

2. Petitioner received a request for intermodal LNP from Verizon Wireless. Petitioner has not implemented LNP in any of its switches. Pursuant to the FCC's rules and the Commission's Order in TC05-137, West River must implement LNP and provide intermodal LNP throughout its service area, absent a grant of this suspension petition, 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>2</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 3,676 access lines, Petitioner is a 2% carrier entitled to request suspension or modification of the LNP requirements pursuant to Section 251(f)(2).

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

6. 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.

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<sup>2</sup> See “Federal Communications Commission Releases Study on Telephone Trends”, FCC News Release (rel. December 31, 2007).

#### IV. ARGUMENT

7. In TC04-061, 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 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, 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 that suspending the LNP obligation was necessary to avoid imposing a requirement that is unduly economically burdensome to Petitioner and its customers.

8. Since the Commission's Order in TC04-061, West River has not implemented LNP in any of its switches but plans to do so later in the year. However, 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, West River seeks a suspension and modification of LNP in connection with the transport issue.

9. As part of this request, West River also seeks a suspension of the requirement to route calls to numbers ported to other carriers. Currently, although West River does not

provide intermodal LNP, customers can port numbers between wireless carriers. In addition, West River does not currently have any direct connections with wireless carriers. When a West River subscriber dials a wireless number which has been ported, West River relies on the interexchange carrier that the subscriber has selected for toll calls to perform the LNP query and route the call. This is for two reasons. First, since West River has not implemented LNP throughout its service territory, West River cannot perform an LNP query to determine which numbers have been ported and to which carriers. Second, even when West River implements LNP throughout its service territory and is able to perform a query on all calls, the transport issue prevents West River 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 West River from correctly routing calls to numbers ported from its subscribers to a wireless carrier, also prevents West River from correctly routing calls to numbers ported between wireless carriers.

10. West River notes that in TC04-061, the Commission stated that the suspension granted to West River did not relieve West River “of its obligation to properly route calls to numbers ported between other carriers, including wireless carriers.” West River believes it has satisfied this requirement through its reliance on the IXCs. Moreover, an interpretation of the Commission’s Order that would require West River 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, West River intends that its request for suspension and modification in this petition apply to its obligation to properly route calls to numbers ported between other carriers.



11. 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 (NANC) 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 West River to transport calls as local, West River would face the same transport issue as it faces with wireless carriers. Accordingly, West River 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 West River'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**

12. Transport continues to be an obstacle to West River's ability to implement intermodal LNP, as found in TC04-054, because no wireless carrier has direct connections to West River's local calling areas. If a wireless carrier has a direct connection to a West River local calling area, calls from a subscriber of West River 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 West River's local calling area, a West River subscriber in that local calling area must dial the call as a toll call; West River routes the call from its subscriber to the subscriber's presubscribed interexchange carrier (IXC); and the IXC delivers the call to the wireless carrier.

13. If a West River subscriber seeks to port a number to a wireless carrier, then there would be no existing interconnection arrangement that would allow West River to route a

call to the ported number as a local call. Because numbers can be ported between wireless carriers, West River cannot ensure transport of all ported calls to any wireless carrier unless the transport issue has been resolved with all wireless carriers operating in West River's service territory.

### **1. Cost of Transport**

14. Confidential Exhibit 2 contains an estimate for the recurring and non-recurring cost of transport. The estimate reflected in Confidential Exhibit 2 attempts to show the potential cost of the transport issue. West River does not have any direct connections with any wireless carriers. All wireless calls are currently routed as toll calls. West River has developed the potential cost of transport if the wireless carriers seek to establish one point of interconnection in the MTA. This estimate reflects the estimated cost of transport if all calls are routed to wireless carrier to a point of interconnection in Sioux Falls.

15. West River has included this transport methodology because in a pending arbitration petition, Sprint seeks to require LECs to transport all traffic, including wireless traffic, to a point of interconnection on Sprint's network, which West River believes to be in Sioux Falls.<sup>3</sup> If Sprint is successful, it is likely that Sprint or the other wireless carriers would seek the same method of interconnection from West River. Under the Act, other wireless carriers could opt-in an interconnection agreement and, thus obtain the same method of interconnection.

16. The estimated recurring and non-recurring cost of providing transport from Petitioner's switches to the wireless carriers under this scenario is shown in Confidential Exhibit 2. Based on Petitioner's number of access lines in South Dakota, this would

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<sup>3</sup> Docket TC 06-175, Sprint Petition for Arbitration at 20.

equal a cost of \$2.77 per line per month. West River notes that this exhibit does not include the cost to transport calls to VoIP providers because at this time such providers have not been identified. However, if West River also must transport calls from its subscribers to a subscriber of a VoIP provider beyond its local calling areas, the cost of transport would be even greater.

17. West River also notes that in an arbitration petition with Venture Communications, Inc., Alltel argued that it is entitled to interconnect with a LEC at a single point in the MTA for the exchange of traffic. 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**

18. In TC04-061, 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 that there is no benefit to customers 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).

19. Further, it is unlikely that there will be demand for intermodal LNP in Petitioner's service area any time soon, if ever, because wireless service signal coverage is not available throughout Petitioner's service territory. The success of wireless service providers nationwide and in South Dakota also 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.

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

21. 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 that a modification of the intermodal and VoIP LNP obligation, such that West River is not required to pay for the cost of transporting ported calls beyond its local service area, is necessary to avoid a significant adverse economic impact on the users of Petitioner's telecommunications services generally.

22. Confidential Exhibit 2 shows one method of providing transport for ported calls. Further, as discussed herein, the cost of transport could be greater than shown in Confidential Exhibit 2 if a point of interconnection other than Sioux Falls is selected by a wireless or VoIP provider. There may be other ways to transport calls to ported numbers. However, at this time, there are no other transport services available and no wireless carrier or VoIP provider has agreed to pay for the cost of transport. West River requests a suspension of intermodal LNP and VoIP LNP to allow West River to negotiate with wireless carriers and VoIP providers, to the extent any are identified, concerning a method of transport for which they would pay. West River will contact the wireless carriers operating in its service territory to begin this process. It is West River's intent to inform the Commission no later than May 8, 2008, of its ability to negotiate transport with the wireless carriers. West River asks the Commission to hold this proceeding in abeyance pending the outcome of the negotiation process.

**B. LNP Would Be Unduly Economically Burdensome**

23. In TC04-061, 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.

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

25. 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 West River to a wireless carrier operating in West River's service area, Petitioner does not carry local traffic to a wireless carrier's point of interconnection beyond West River'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 that these issues also may be associated with calls to numbers ported to VoIP providers.

26. 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 that a modification of the intermodal and VoIP LNP obligation, such that West River 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 to allow West River 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.**

27. In TC04-061, 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.

28. 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 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.

29. 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.

30. On the other hand, in addition to a lack of demand for LNP, there also is no evidence that intermodal LNP is a factor in the consumer's purchasing decision for wireless service or that 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 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>4</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.

31. 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.

32. 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 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 that it is able to provide to customers may be delayed or reduced.

33. 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.

34. As shown, while the costs of transport associated with intermodal and VoIP LNP are significant, intermodal LNP provides no benefit to consumers. Further, the

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<sup>4</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.



uncertainties associated with VoIP LNP and the lack of evidence concerning demand for VoIP LNP demonstrate 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**

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

36. 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.

37. Petitioner also requests immediate temporary suspension of the Section 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 that Petitioner does not have to incur LNP implementation costs until after the Commission acts on the petition.

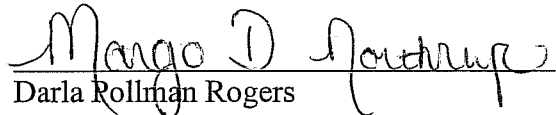
WHEREFORE, Petitioner respectfully requests the Commission to:

(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.



Darla Rollman Rogers

Margo D. Northrup

Riter, Rogers, Wattier, Brown, & Northrup, LLP

P. O. Box 280

Pierre, South Dakota 57501

Telephone (605) 224-7889

Fax (605) 224-7102