

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

IN THE MATTER OF THE PETITION OF)	ORDER FOR AND NOTICE
MIDSTATE COMMUNICATIONS, INC. FOR)	OF PROCEDURAL
SUSPENSION OR MODIFICATION OF 47)	SCHEDULE AND HEARING
U.S.C. § 251(B)(2) OF THE COMMUNICATIONS)	AND OF INTENT TO TAKE
ACT OF 1934 AS AMENDED)	JUDICIAL NOTICE
)	TC04-052

On March 12, 2004, Midstate Communications, Inc. (Midstate or Petitioner) filed a petition pursuant to 47 U.S.C. Section 251(f)(2) and SDCL 49-31-80 seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. The petition requests the Commission to (1) issue a final order that grants a permanent suspension for Midstate's obligation to implement LNP until conditions are met as described in the petition; and (2) grant Midstate such other and further relief that may be proper. On April 19, 2004, the Commission issued an order granting intervention to WWC License LLC d/b/a CellularOne and the South Dakota Telecommunications Association and granting Midstate's request for interim suspension of its obligation to implement LNP pending final decision pursuant to 47 U.S.C. Section 251(f)(2) of the Telecommunications Act of 1996 and SDCL 49-31-80.

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

Procedural Schedule

The due dates for pre-filing of testimony are as follows (all dates 2004):

- May 14 Petitioner's direct testimony and exhibits
- May 28 Intervenors' and Staff's reply testimony and exhibits
- June 14 Petitioner's rebuttal testimony and exhibits

The schedule for discovery is as follows (all dates 2004):

- April 28 General interrogatories, document requests and other general discovery requests by all parties
- May 11 Responses to general discovery requests by all parties
- May 18 Supplemental discovery requests by intervenors and Staff following Petitioner's pre-filed testimony
- May 24 Petitioner's responses to supplemental discovery requests
- June 3 Supplemental discovery requests by Petitioner following intervenors' and Staff's pre-filed testimony

June 10 Intervenors' and Staff's responses to Petitioner's supplemental discovery requests

Judicial Notice

The Commission hereby gives notice pursuant to SDCL 1-26-19(3) that it intends to take judicial notice of the fact that Petitioner is a local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide. Any party objecting to this taking of judicial notice shall serve notice of such objection on the Commission and the parties prior to the hearing.

Notice of Hearing

A hearing will be held beginning at 10:00 A.M. on June 21, 2004, and continuing at 9:00 A.M. on June 22 - 25 and on June 28 - July 2, 2004, in the Second Floor Conference Room of the Soldiers and Sailors War Memorial Building (across Capitol Avenue from the Capitol Building), Pierre, South Dakota, on this matter and the other pending dockets in which the petitioners have requested suspensions of LNP requirements. To the extent that the issues and the witnesses and documentary evidence are materially identical in more than one LNP suspension docket, the parties are encouraged to present such common evidence in a consolidated manner that will minimize repetition and opposing parties are encouraged to reasonably stipulate to such consolidated presentation of evidence. The hearing will commence on June 21, with consideration of Midcontinent Communications' Motion to Compel, Docket No. TC03-192. Following the hearing on this related docket, the remaining dockets will be heard in docket number order except to the extent that the parties otherwise agree or the Commission shall otherwise order, either prior to or during the hearing. Petition of Santel Communications Cooperative, Inc., Docket No. TC04-038, will be heard on July 1, 2004.

As provided in SDCL 49-31-80 and 47 U.S.C. Section 251(f)(2), the issues at the hearing will be:

- (i) whether and the extent to which the suspension of LNP requirements requested by Petitioner
 - (a) is necessary:
 - (1) To avoid a significant adverse economic impact on users of telecommunications services generally;
 - (2) To avoid imposing a requirement that is unduly economically burdensome; or
 - (3) To avoid imposing a requirement that is technically infeasible; and
 - (b) is consistent with the public interest, convenience, and necessity;
- (ii) if a suspension is found to be justified, what the duration of the suspension should be; and

(iii) whether any other relief should be granted.

The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights will be forfeited if not exercised at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, the Final Decision may be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision. As a result of the hearing, the Commission may either grant or deny the request of Petitioner to suspend the requirement of 47 U.S.C Section 251(b)(2) that it provide local number portability to requesting carriers and, if so, for what duration and subject to what conditions. The Commission's Final Decision may be appealed to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that the parties shall comply with the procedural schedule and discovery schedule set forth above; and it is

FURTHER ORDERED, that a hearing shall be held at the time and place specified above on the issue of whether Petitioner's request to suspend its local number portability obligations under 47 U.S.C Section 251(b)(2) should be granted and, if so, for what duration and whether other relief should be granted.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 4th day of May, 2004.

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: _____</p> <p>Date: _____</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

ROBERT K. SAHR, Chairman

GARY HANSON, Commissioner

JAMES A. BURG, Commissioner