BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of Great Plains Communications, Inc., *et al.* for Suspension or Modification of the Federal Communications Commission Requirement to Implement Wireline-Wireless Number Portability Pursuant to 47 U.S.C. §251(f)(2).[1]	)	Application Nos. C-3096, C-3110, C-3111, C-3112, C-3113, C-3114, C-3115, C-3116, C-3117, C-3118, C-3119, C-3120, C-3121, C-3122, C-3128, C-3146, C-3153, C-3154
In the Matter of the Application of Arapahoe Telephone Company, *et al.* for Suspension or Modification of the Local Number Portability Requirements of the Federal Communications Commission, pursuant to §251(f)(2) of the Telecommunications Act of 1996, as Amended.[2]	)	Application Nos. C-3132, C-3133, C-3134, C-3135, C-3136, C-3137, C-3138, C-3139, C-3140, C-3141, C-3142, C-3143, C-3147 ORDER GRANTING SUSPENSION Entered: July 20, 2004

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[1]Applicants Clarks Telecommunications Co.; Consolidated Companies; Dalton Telephone Company, Inc.; Eastern Nebraska Telephone Company; Elsie Communications, Inc.; Great Plains Communications, Inc.; Hamilton Telephone Company; Hartington Telecommunications Co., Inc.; Hemingford Cooperative Telephone Company; Hershey Cooperative Telephone Company, Inc.; K&M Telephone Company, Inc.; Nebraska Central Telephone Company; Northeast Nebraska Telephone Company; Pierce Telephone Co.; Rock County Telephone Company; Sodtown Telephone; Stanton Telecom, Inc.; and Three River Telco are represented by Woods & Aitken, LLP.

[2]Applicants Arapahoe Telephone Company; Benkelman Telephone Company; Cozad Telephone Company; Curtis Telephone Company; Diller Telephone Company; Glenwood Telephone Membership Corporation; Hartman Telephone Company; Hooper Telephone Company, d/b/a WesTel Systems; Keystone-Arthur Telephone Company; Mainstay Communications; Plainview Telephone Company; Southeast Nebraska Telephone Company; and Wauneta Telephone Company are represented by Rembolt Ludtke & Berger, LLP.

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BY THE COMMISSION:

B A C K G R O U N D

By 31 separate applications filed by rural telephone companies beginning with Great Plains Communications, Inc. (Great Plains) on January 27, 2004, and most recently filed by Elsie Communications, Inc., on March 9, 2004, said carriers are seeking a suspension or modification of the Federal Communications Commission (FCC) requirement to implement local number portability (LNP). Notice of the filing of each of the applications was published in The Daily Record, Omaha, Nebraska, in accordance with Nebraska Public Service Commission (Commission) Rules of Procedure. Petitions for Formal Intervention were filed by WWC License, LLC (Western Wireless) in each of the 31 applications. Similarly, a Petition for Formal Intervention was filed by Verizon Wireless in Application No. C-3096, and Petitions for Formal Intervention were filed by Sprint Corporation in Application Nos. C-3096, C-3112, C-3116, C-3117 and C-3119. AT&T Wireless Services, Inc. filed Petitions for Informal Intervention in each of the 31 applications.

On February 23, 2004, Great Plains filed a Motion for Order Granting Interim Relief Pursuant to 47 U.S.C. § 251(f)(2) and Request for Oral Argument. On February 25, 2004, the Commission issued a notice of oral argument regarding such Motion, and oral argument was held on March 2, 2004, with all parties represented by counsel. By Order dated March 3, 2004, the Commission granted interim relief to Great Plains pursuant to Section 251(f)(2) from the requirements of 47 U.S.C. § 251(b)(2) and the *Intermodal Order* "until a date later to be determined by the Commission."

On March 12, 2004, Sprint Corporation filed a Motion for Rehearing and/or Clarification of the Commission's March 3, 2004, Order granting interim relief to Great Plains. On April 6, 2004, the Commission entered its Order Denying Motion for Rehearing and/or Clarification.

Subsequent to March 3, 2004, the Commission entered Orders granting the motions for interim relief from the requirements of 47 U.S.C. § 251(b)(2) and the *Intermodal Order* to each of the Applicants pursuant to Section 251(f)(2) "until a date later to be determined by the Commission" based on reasoning consistent with the Order granting interim relief to Great Plains.

On March 16, 2004, the Commission issued an Order Setting Planning Conference to be held on March 22, 2004. In recognition of the requirement of Section 251(f)(2) that the Commission shall act on a petition filed under such provision within 180 days after receiving such petition,[3] the Commission entered its Order on March 30, 2004, that established a schedule for completion of discovery, submission of pre-filed direct and rebuttal testimonies, scheduled a hearing and provided for the submission of proposed orders by the parties, all to be completed by July 6, 2004.

By Motion dated April 16, 2004, Verizon Wireless sought leave to withdraw its Petition for Formal Intervention filed in Application No. C-3096. Similarly, on April 27, 2004, Sprint Corporation sought leave to withdraw all of its Petitions for Formal Intervention. By Orders dated May 4, 2004, the Commission granted such requests to withdraw.

A public hearing on these applications was held on June 2-4, 2004. The Applicants offered testimony by Steven E. Watkins, Dan Davis and David P. McElhose. Intervener, Western Wireless, offered testimony by Ron Williams.

O P I N I O N A N D F I N D I N G S

We have for consideration a total of 31 applications filed by rural telephone companies pursuant to 47 U.S.C. § 251(f)(2) seeking suspension or modification of the requirements of 47 U.S.C. § 251(b)(2) concerning number

[3]The 180-day period following the Commission's receipt of the Great Plains Petition expires on July 26, 2004.

portability, and in particular, suspension or modification of the requirements set forth *In the Matter of Telephone Number Portability,* CC Docket 95-116, Memorandum Opinion and Order and the Further Notice of Proposed Rulemaking, FCC 03-284 (rel. November 10, 2003) (the *Intermodal Order*)[4], insofar as the Order requires these Applicants to implement wireline-to-wireless LNP.[5]

The *Intermodal Order* obligates local exchange carriers located outside the top 100 metropolitan statistical areas (MSAs) to provide LNP and to port numbers to wireless carriers when certain conditions have been met. Such obligation commenced on May 24, 2004, or commences within six months of the date that the wireline carrier receives a bona fide request for LNP from a commercial radio service (CMRS) provider.[6]

In Section 251(f)(2), Congress granted state commissions jurisdiction to suspend or modify the application of a requirement of Section 251(b) or (c) for rural carriers.[7] The language of Section 251(f)(2) reads, in pertinent part, as follows:

> (2) Suspensions and modifications for rural carriers . . . The State commission shall grant such petition to the extent that, and for such duration as, the State 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

[4]The Commission notes that the appeal of the *Intermodal Order* is pending in *United State Telecom Association v. FCC,* Cases No. 03-1414 & 03-1443 (D.C. Cir.) and that a copy of the Brief of Petitioners as filed in such appeal was entered in this record as Exhibit 149.
[5]The parties have agreed that the record shall be a consolidated record that is available for use in connection with all 31 applications (T520:13-521:3), and the Hearing Officer confirmed that the record should apply to all 31 applications. (T521:4-6)
[6]*See,* Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8394, ¶ 80 (1996) and *Intermodal Order* at ¶ 29.
[7]It is undisputed that each of the applicants in the 31 pending applications is a "rural telephone company" as such term is defined in 47 U.S.C. § 153(37).

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

Commission Jurisdiction Over these Dockets

The Congress delegated jurisdiction to state commissions to receive petitions by rural telephone companies for suspension or modification of the requirements of Section 251(b) and (c). No persuasive challenge to the Commission's jurisdiction to act upon these applications has been made,[8] and the Commission finds that it possesses jurisdiction to hear and dispose of each of the applications filed herein.

The Rural Telephone Companies' Burden of Proof

In the *First Report and Order* issued by the FCC that contains the FCC's findings and rules pertaining to implementation of the Telecommunications Act of 1996 (the Act),[9] the FCC addressed the standard that state commissions were to follow in determining whether rural telephone companies are entitled to suspensions or modifications as set forth in Section 251(f)(2) of the Act. In paragraph 1262 of the *First Report and Order* the FCC found that "to justify suspension, or modification of the Commission's section 251 requirements, a local exchange carrier must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry." This finding, with regard to Section 251(f)(2) applications, was codified in 47 C.F.R. § 51.405(d).

Section 51.405(d) was among the provisions challenged in *Iowa Utils. Bd. v. F.C.C.,* 120 F.3d 753 (8th Cir. 1997) (*IUB I*). In its review of the Eighth Circuit's decision in *IUB I,* the United States Supreme Court in *AT&T Corp. v. Iowa Utils. Bd.,* 525 U.S. 366 (1999), directed the Eighth Circuit to review, on its merits, 47 C.F.R. § 51.405 regarding rural exemptions.[10] In *IUB II,* the Eighth Circuit made the following finding concerning

[8] *See,* Exhibit 101, p. 3.
[9] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, 11 FCC Rcd 15499 (1996), FCC 96-325 (*First Report and Order*).
[10] *See, Iowa Utils. Bd. v. F.C.C.,* 219 F.3d 744, 748 (8th Cir. 2000) (*IUB II*).

Section 51.405: "Subsections (c) and (d) of rule 51.405 are an unreasonable interpretation of the statute's requirement that a § 251(b) or § 251(c) request made by a competitor must not be "unduly economically burdensome" to the small or rural ILEC."[11] Accordingly, the Eighth Circuit vacated Section 51.405(d). Although *IUB II* was again appealed to the United States Supreme Court, and was reversed in part,[12] the Court allowed the Eighth Circuit's holding that vacated Section 51.405(d) to stand. The Applicants therefore argued the Eighth Circuit's decision in response to the *Verizon* decision left standing the vacation of Section 51.405(d)[13] and the FCC has not amended or otherwise re-enacted Section 51.405(d).[14]

On the basis of the Applicants' argument, we find that the burden of proof is on each of the Applicants to establish entitlement to a suspension or modification of the requirements of the *Intermodal Order* in accordance with 47 U.S.C. § 251(f)(2) without reference to Section 51.405(d). The Applicants are required to establish at least one of the criteria listed in Section 251(f)(2)(A), and that the suspension or modification "is consistent with the public interest, convenience and necessity" as provided in Section 251(f)(2)(B).

Section 251(f)(2)(A)(iii) Technical Infeasibility

The Applicants and Western Wireless present very divergent assessments as to whether intermodal LNP is technically feasible for the Applicants in view of the existing network and trunking arrangements.[15] We observe that the North American Number Council (NANC) advised the FCC in its Report dated May 18, 1998, that unresolved issues exist as a consequence of the differences in the local serving areas of wireless and wireline carriers.[16] The Applicants provided testimony that neither the FCC itself, nor with the assistance of NANC, resolved the issues presented in the 1998 Report prior to releasing the *Intermodal Order.*

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[11] *Id.* at 762.
[12] *Verizon Communications, Inc. v. F.C.C.,* 535 U.S. 467 (2002) (*Verizon*).
[13] *Iowa Utils. Bd. v. F.C.C.,* 301 F.3d 957 (2002).
[14] T.125:8-11.
[15] For example, Mr. Watkins states in his prepared direct testimony, Exhibit 100, p. 16, that absent a direct connection between the CMRS provider and a particular Applicant, calls to a ported number will require completion through use of an interexchange carrier. On the other hand, Mr. Williams states in his prepared direct testimony, Exhibit 216, 11:8-13:5, that routing issues are not a real barrier to implementation of intermodal LNP.
[16] *See,* Exhibit 101, pp. 6-8.

We believe that absent a direct connection between the network of the CMRS provider and the rural local exchange carrier, that facilities are not currently in place in the Nebraska telecommunications network architecture that allow the implementation of intermodal LNP absent imposition of a requirement on the Applicants to transport local exchange traffic outside of the rural local exchange carrier's service area to a distant point (typically the tandem switch at which the CMRS provider has a point of interconnection). Calls to a point outside of the carrier's network are generally carried by interexchange carriers.[17] We gave in depth consideration to this issue in Application No. C-2872 and concluded that in the Great Plains exchanges where Western Wireless had not requested a direct connection to Great Plains, Great Plains shall continue to route calls originating from its exchanges to Interexchange Carriers in compliance with its equal access and toll dialing parity requirements.[18]

We conclude that in light of our decision in Application No. C-2872, the Commission's current rules, the existing network architecture, intermodal LNP in the context of indirect connections between a CMRS provider and a local exchange carrier is technically infeasible at this time. We note that a determination as to which carrier is responsible for transport costs when the routing point for the wireless carrier's switch is located outside the wireline local calling area in which the number is rated,[19] is pending before the FCC.

Because we conclude that the applicants have met their burden to prove that intermodal LNP is technically infeasible, we do not need to address sections 251(f)(2)(A)(i) or (ii) which turn on the economic impact on the users and the applicants. Nevertheless, we will generally discuss and analyze the evidence produced by the parties with respect to those issues.

Section 251(f)(2)(A)(i) Significant Adverse Economic Impact on Users

Each of the Applicants in the pending dockets submitted pre-filed testimony of either Mr. Dan Davis (Davis) or Mr. David P. McElhose (McElhose) and testimony at the hearing setting

[17]Exhibit 101, pp. 8-10.
[18]*In the Matter of the Petition of Great Plains Communications, Inc.*, Application No. C-2872, Interconnection Agreement as Modified (Sept. 23, 2003) at paras. 44-52.
[19]*See, Intermodal Order* at FN. 75 and paras. 39-40.

forth the costs associated with the implementation of LNP.[20] Western Wireless' witness, Mr. Ron Williams (Williams), submitted pre-filed rebuttal testimony to which revised cost estimates for each of the Applicants' implementation of LNP were attached.[21]

In an effort to assimilate the rather considerable amount of cost data contained in the Davis and McElhose exhibits, the Commission has created a spreadsheet attached to this Order as Appendix I. Similarly, to assimilate and display Williams' revisions to the Applicants' cost data, the Commission has created a second spreadsheet attached to this Order as Appendix II. Both Appendix I and Appendix II contain confidential and proprietary information that is subject to the Protective Order entered by the Commission in these Applications. Thus, these Appendices will be redacted from copies of this Order made available to persons that are not parties to the Protective Order. Reference to these appendices will facilitate a comparison of the parties' cost calculations.

We believe that our consideration of the applications for suspension or modification filed pursuant to Section 251(f)(2) should be on the basis of company-specific cost data rather than multi-company data when multiple applications are involved. This position is consistent with the holding of the North Carolina Utilities Commission in intermodal LNP cases that it considered pursuant to Section 251(f)(2).[22]

The Applicants have presented their cost data separated as non-recurring costs of LNP implementation without and including transport costs, and recurring costs of LNP implementation without and including transport costs. The methodology utilized by the Applicants in preparing the cost data for each Applicant's implementation of LNP is explained on a line-by-line

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[20]The pre-filed direct testimonies, cost exhibits and company-specific cost data sponsored by Davis are Exhibits 102 through 122. The pre-filed direct testimonies, cost exhibits and company-specific cost data sponsored by McElhose are Exhibits 127 through 143. The pre-filed rebuttal testimony of Davis is Exhibit 123, and the pre-filed rebuttal testimonies of McElhose are Exhibits 143 and 145. In addition, Exhibit 144 consists of cost exhibits produced to Western Wireless in 18 of the pending dockets.

[21]Williams' pre-filed rebuttal testimony is Exhibit 217 and the cost estimates originally attached thereto were separately marked and received in evidence as Exhibit 215.

[22]*See,* Exhibit 157, *In the Matter of Petition by the Alliance of North Carolina Independent Telephone Companies for Limited Modification of the Requirement to Provide Number Portability,* Docket No. P-100, Sub. 133r (N.C. Util. Comm., Oct. 7, 2003) at p. 3.

basis in the Davis Direct Testimony.[23] The FCC allows recovery of carrier-specific costs directly related to providing LNP from users of telecommunications service over a 5-year period.[24]

Based on the cost data submitted by each of the Applicants, and the revisions thereto by Western Wireless, all as compiled in Appendix I and II attached hereto, we find that the differences in the Applicants' monthly non-recurring costs per user calculations when compared to Western Wireless' monthly non-recurring costs per user calculations are not material to our consideration as to whether LNP implementation creates a "significant adverse economic impact" on users of telecommunications. By way of illustration only since our evaluation of these applications is proceeding on a company-specific basis, Williams' calculation of the non-recurring implementation costs for all Applicants, excluding transport, is $2,546, 670 versus Applicants' calculation of $2,796,556 – a difference of $249,886.[25] When this amount is divided by the total access lines served by all of the Applicants (92,055), and the resulting amount is recovered over a 60-month period using an 11.25 percent discount rate, the differential is less than $0.06 per month.

With regard to monthly recurring costs, excluding transport, Williams criticized the amounts included in the Applicants' cost calculations for service order administration (SOA) monthly charges, LNP query costs and switch maintenance costs.[26] We find that the explanation of SOA monthly charges provided by Davis is reasonable.[27] We realize that with the limited customer base of the Applicants, and the currently small demand for LNP (further discussed below), the applicants may need to account for a "learning plateau" that will create efficiency and reduce the time required to perform ports in their cost estimates. Based on the foregoing, we believe that the calculations of LNP monthly recurring costs for each of the Applicants may represent fair and reasonable estimates of such costs.

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[23]Exhibit 102 at pp. 5-12. McElhose adopted and agreed with Davis' description of the process utilized to compile and develop the costs to implement LNP for the Applicants on whose behalf McElhose submitted pre-filed direct testimony. *See, e.g.,* Exhibit 130 at p. 3.
[24]*See,* 47 C.F.R. § 52.33.
[25]*See* Appendix I and II.
[26]Exhibit 217, 6:13-7:7 and T.353:2-362:2.
[27]T.163:12-164:10 and Exhibit 123, pp. 6-7.

The matter of non-recurring and recurring transport costs is problematical. First, the parties are in agreement that the FCC has yet to determine the party that should bear the costs of transport outside of the local exchange area of the local exchange carrier.[28] Thus, at this point, irrespective of the amount of transport costs to be recovered, it is not possible to conclude whether such costs may be included in the end user surcharge. However, it appears that such costs may be borne either by the end users by inclusion in the surcharge, or by the local exchange carrier.[29] Although we cannot resolve the issue of who will bear the costs of transport, we are in a position to evaluate the evidence in the record addressing the amount of such costs.

The Applicants have included amounts in their non-recurring cost estimates for constructing direct connections between the CMRS providers and the Applicants' networks, and have included amounts in their recurring cost estimates for the monthly costs of such direct connections. Davis testified that this trunking arrangement is necessary to avoid customer confusion and dropped calls, and to comply with the interconnection principles previously ordered by this Commission in Application No. C-2872.[30] On the other hand, Williams criticized the Applicants' use of direct connections as inefficient and proposed to use an interconnection arrangement that he described as more efficient.[31]

The Commission agrees with Mr. Watkins' testimony that the Applicants do not currently have a duty to construct transport facilities for the purpose of transporting wireline-wireless traffic outside of their local exchange service areas.[32] The Commission further believes that direct connections between CMRS providers and the Applicants' networks are properly required in order to route LNP traffic. However, in light of the uncertainties surrounding transport obligations and the entities that will bear transport costs, we will not engage in speculation as to whether Western Wireless' or the Applicants' position regarding transport costs should be accepted. In taking this position, however, we nonetheless find that transport costs would indeed be a part of the costs associated with implementation of LNP, and that such costs would either be an additional significant adverse economic impact on end users

[28]T.238:2-13 and 405:2-9.
[29]T.237:18-238:1 and 402:3-15.
[30]T.166:2-167:25. and Exhibit 123, pp. 7-8.
[31]Exhibit 217, T.7:8-19 and 8:12-9:16.
[32]*See,* Exhibit 101, pp. 8-10.

or would be an undue economic burden on the local exchange carriers were these extraordinary costs to become a responsibility of the Applicants.

The residential 1-party rate benchmark in Nebraska is $17.50 per month (without taxes and surcharges).[33] The monthly costs of LNP implementation, excluding transport, calculated by Williams ranges between $0.49 and $7.65.[34] We have included in these amounts taxes and surcharges of 12 percent. The monthly costs of LNP implementation based on the Applicants' calculations, and inclusive of a 12 percent tax and surcharge amount, range from $0.64 to $12.23.[35]

We believe that the range of end user charges established by the evidence in the record, even excluding costs of transport, is significant in light of the absence of demand for intermodal LNP as demonstrated by evidence in this record. (Demand is discussed in greater detail below.) Based on the foregoing, we believe suspension of the requirements of the *Intermodal Order* would be necessary for the Applicants in order to avoid a significant adverse economic impact on users of telecommunications services generally.

Section 251(f)(2)(A)(ii) Undue Economic Burden on Carrier

In its consideration of the "undue economic burden" language of Section 251(f)(2)(A)(ii), the Eighth Circuit Court of Appeals stated: "In the Act, Congress sought both to promote competition and to protect rural telephone companies as evidenced by the congressional debates."[36] The Court continued by stating: "It is the full economic burden on the ILEC of meeting the request that must be assessed by the state commission."[37]

As stated above,[38] it appears that any expenses associated with implementation of intermodal porting that are not recovered by the Applicants from the end users may be borne by the Applicants. The Applicants testified to a number of circumstances that may result in implementation costs that are

[33]*See,* T.236:18-237:10 and Exhibit 143, Attachment A.
[34]Williams testified that the monthly cost of LNP implementation that he calculated for Sodtown Telephone Company's subscribers would not be appropriately imposed under Section 251(f)(2)(A)(i). T.325:20-326:25.
[35]T.158:3-6.
[36]*IUB II* at 761.
[37]*Id.*
[38]*See,* paragraph 22 *supra.*

not recoverable from the end users. These include costs incurred, but not includable in tariffs filed with the FCC pursuant to 47 C.F.R. § 52.33; and additional costs that are identified after the end user tariff rate for the 5-year recovery is established.[39]

Further, as the Applicants submit, transport costs may be determined by the FCC to be unrecoverable from end users through the surcharge. As illustrated by Appendix I hereto, the non-recurring and recurring costs of transport relating to direct connections are significant. Even the costs estimated by Western Wireless for the "efficient" transport that Western Wireless promotes may be material as illustrated by Appendix II.

An additional pending issue that will have a significant impact on the costs of LNP implementation relates to the Further Notice of Proposed Rulemaking included in the *Intermodal Order* concerning shortening of the porting interval. The evidence in the record demonstrates that in the event the FCC determines that the interval for intermodal porting should be shortened, the economic burden on the Applicants could be very significant.[40]

In connection with our consideration of the economic burden of implementing intermodal LNP, we are also mindful of the precautionary statements contained in FCC Chairman Michael Powell's June 18, 2004 letter to the President of NARUC, a copy of which is attached hereto as Appendix III. In such letter, Chairman Powell states: ". . . I urge state commissions to consider the burdens on small businesses in addressing those waiver requests and to grant the requested relief if the state commissions deem it appropriate."

Based upon the information that the Applicants have been able to assemble relating to the costs to implement intermodal LNP, and the uncertainties that currently exist with regard to the extent to which currently identified or future costs of such implementation will fall upon the rural local exchange carriers, suspension of the requirements of the *Intermodal Order* appears necessary to avoid imposing a requirement on the Applicants that is unduly economically burdensome.

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[39]T.242:21-243:16, 423:4-424:19; Exhibit 101, pp. 10-11; and Exhibit 102, pp.16-17

[40]*See,* Exhibit 102, pp. 14-15; Exhibit 123, pp. 4-5; and T.168:16-170:19, 487:25-488:19.

Section 251(f)(2)(B) Consistent with Public Interest, Convenience and Necessity

On the basis of the foregoing analysis and findings, the Commission concludes that the Applicants have each sustained their burden to prove the requirements of 47 U.S.C. §§ 251(f)(2)(A) with regard to the Applicants' requested suspensions of the implementation of the *Intermodal Order*. However, the Applicants must also establish that the requested suspensions are consistent with the public interest, convenience and necessity pursuant to 47 U.S.C. § 251(f)(2)(B).

The Commission believes that its determination of the public interest in these cases inherently involves a cost versus benefit analysis. The costs to end users of telecommunications services and to these Applicants of implementing intermodal LNP has been thoroughly analyzed previously in this Order. An analysis of the benefits of such implementation turns on whether there is a demand for intermodal LNP among the telecommunications users served by the Applicants. As will be discussed more fully below, the Commission finds that the evidence in the record establishes that no such demand exists.

The Applicants' witness, Mr. Steven E. Watkins (Watkins), testified that all of the Applicants had been canvassed with regard to any request by any end user or wireless carrier to port a wireline number to a wireless telephone, and that no such request had been received by any Applicant as of the date of the hearing.[41] When Williams was asked whether Western Wireless possessed any data that contradicted this absence of demand, he testified that he did not.[42]

In balancing the costs and benefits at stake in this case, we believe that an 18-month suspension of the LNP implementation requirement is appropriate. We believe that the Applicants continue to face the technical obstacles observed by the FCC in its January 16, 2004 Order which held that,

> . . .[I]n order to offer intermodal portability to their subscribers, these smaller carriers must acquire the hardware and software necessary to provide porting, make the necessary network upgrades, and ensure that their upgraded networks work

[41]T.35:20-36:7.
[42]T.450:11-18.

> reliably and accurately. Some of the Petitioners also assert that Two Percent Carriers often lack the experience and technical experience with number porting to quickly implement the necessary upgrades to their systems to ensure accurate porting. Accordingly, we conclude that special circumstances exist to grant Two Percent Carriers who have not previously upgraded their systems to support LNP a limited amount of additional time to overcome the technical obstacles they face to successfully meet a request for wireline-to-wireless porting.[43]

An 18-month suspension of the LNP requirements should give the Applicants adequate time to make necessary upgrades and to prepare for intermodal portability. In addition, we do not believe that the limited 18-month suspension would adversely impact consumers. According to the Applicants, they have seen no demand for intermodal LNP from its wireline customers.

Mr. Williams testified that public interest means consumer choice and that LNP is about elimination of a barrier for consumer choice.[44] While the Commission acknowledges that introduction of competition into telecommunications markets is a key policy of the 1996 Telecommunications Act, without any evidence that demand for intermodal LNP exists and thus, that consumer choice is being thwarted, this Commission must assign greater weight to another Congressional policy of the Act. Further, by granting the suspension requested, the carriers may avoid wasting resources while the clarification necessary to effectively and efficiently implement wireline to wireless number portability is undertaken on the federal level.

Based on the evidence in the record before the Commission, we find that each of the Applicants has sustained its burden of proof pursuant to 47 U.S.C. § 251(f)(2)(B) that suspension of the requirements of the Intermodal Order is consistent with the public interest, convenience, and necessity.

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[43] *See* In Re Telephone Number Portability, CC Docket No. 95-116 (January 16, 2004).
[44] T.313:7-15.

Decisions by Other State Commissions Regarding Section 251(f)(2) Petitions

Although not a part of our consideration of the 251(f)(2) test, we believe the decisions of other state commissions regarding Section 251(f)(2) petitions for suspension of the implementation of the *Intermodal Order* by rural telephone companies are also persuasive. The NeuStar matrix introduced by the Applicants lists decisions and pending cases regarding Section 251(f)(2) applications before state commissions. While a number of the listed cases are pending for decision, suspensions of LNP implementation have been granted by some state commissions including: Colorado (suspension through May 24 2006); Illinois, (suspension to November 24, 2006); Utah, (suspension to May 24, 2005); and West Virginia, (suspension to April 20, 2005).[45] Subsequent to the date of the NeuStar matrix, the Mississippi Public Service Commission granted suspensions to a group of 17 rural telephone companies.[46] A number of other state commissions have reached decisions consistent with our findings granting rural telephone companies suspensions of the duty to implement the *Intermodal Order.*

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that based on the findings set forth herein, each of the Applicants has met its burden of proof to receive a suspension of its obligation to implement intermodal local number portability pursuant to 47 U.S.C. § 251(b)(2), as such obligation has been interpreted and ordered for implementation by the FCC pursuant to the *Intermodal Order,* and such implementation obligations are hereby suspended in accordance with 47 U.S.C. § 251(f)(2).

IT IS FURTHER ORDERED that such suspensions shall remain in effect until January 20, 2006, unless otherwise ordered by the Commission. Prior to the expiration of such suspension period, the Applicants may seek further relief under 47 U.S.C. § 251(f)(2) based upon the circumstances that prevail at that time. An application for further relief shall be filed on or before July 20, 2005, to give the Commission time to decide whether additional time is appropriate pursuant to 47 U.S.C. § 251(f)(2).

[45]Exhibit 147.
[46]Exhibit 148.

MADE AND ENTERED in Lincoln, Nebraska on this 20th day of July, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director