BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Petition of KLM Telephone Company for Suspension and Modification of the Federal Communications Commission Requirement to Implement Number Portability)	Case No. TO-2004-0401

POST-HEARING BRIEF OF KLM TELEPHONE COMPANY

I. INTRODUCTION

KLM Telephone Company (KLM) is a small rural telephone company that seeks suspension and modification of the Federal Communications Commission's wireline to wireless local number portability requirements. The Commission's Staff and the Office of Public Counsel both support KLM's request. The Missouri Public Service Commission (Commission) is authorized by federal law to grant the requested relief, and the clear majority of states that have addressed the issue have granted small company requests for relief.

The facts in this case demonstrate that suspension is necessary to avoid a requirement that will have an adverse economic impact on KLM customers of at least $1.23 per month for the next five years. Suspension will also prevent a requirement that is both an undue economic burden on the company and technically infeasible. The modification that KLM seeks in this case is the same relief that this Commission has already granted 18 other Missouri companies, and Western Wireless has voluntarily agreed to virtually the same modification in Utah. Therefore, the Commission should grant KLM's Petition.

II. DISCUSSION

A. LOCAL NUMBER PORTABILITY

As an incumbent local exchange carrier (ILEC), KLM is subject to the local number portability (LNP) requirements in the Telecommunications Act of 1996 ("the Act"). Specifically, the Act requires KLM to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Federal Communications Commission (FCC).[1]

On November 10, 2003, the FCC issued a decision that addressed LNP between wireline and wireless carriers (i.e. "intermodal" porting). According to the FCC's *Intermodal Order*, where KLM has received a bona fide request (BFR) from a wireless carrier, KLM must make its switches capable of porting a KLM subscriber's local landline telephone number to a requesting wireless carrier whose coverage area "overlaps the geographic location of the rate center in which the [ILEC] customer's wireline number is provisioned, provided that the porting-in [wireless] carrier maintains the number's original rate center designation following the port."[2] Although the FCC recognized the problem of designating different rating and routing points on LNP for small rural ILECs, the FCC has not yet resolved the issue.[3] As a result, there are no guidelines or rules to resolve outstanding issues related to LNP for rural carriers.

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[1] 47 U.S.C. §251(b). "Number portability" is defined by the Act as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 U.S.C. §153(30).

[2] *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, *Memorandum Opinion and Order*, issued Nov. 10, 2003.

[3] *Id.* at fn 75 ("[T]he rating and routing issues raised by the rural wireline carriers have been raised in the context of non-ported numbers and are before the Commission in other proceedings. Therefore, without prejudging the outcome of any other proceeding, we decline to address these issues at this time as they relate to intermodal LNP.")

B. STANDARD FOR SUSPENSION AND MODIFICATION

The Act grants the Missouri Commission authority to suspend and modify KLM's intermodal LNP requirements if KLM meets the following standard for suspension and modification set forth in Section 251(f)(2) of the Act:[4]

> 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 –
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> **(A)** is necessary –
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> **(i)** to avoid a significant adverse economic impact on users of telecommunications services generally;
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> **(ii)** to avoid imposing a requirement that is unduly economically burdensome; or
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> **(iii)** to avoid imposing a requirement that is technically infeasible; and
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> **(B)** is consistent with the public interest, convenience, and necessity.

State commissions are properly situated to determine whether suspension and/or modification are in the best interests of citizens in rural areas, and FCC Chairman Michael Powell has urged state Commissions "to consider the burdens on small businesses" associated with intermodal LNP and grant relief when appropriate.[5]

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[4] 47 U.S.C. §251(f).

[5] Ex. 11, Dietrich Rebuttal, Ex. B, June 18, 2004 letter from FCC Chairman Michael Powell to the Honorable Stan Wise, President of NARUC. (Emphasis added.)

The clear majority of state commissions to address intermodal LNP issues for small rural carriers have granted suspensions. A July 9, 2004 Arizona Public Service Commission decision indicates that most states have received requests for suspension of the FCC's LNP requirements.

> As of June 2, 2004, **36 states** have received 250 requests for suspensions and/or waivers of LNP. Of the 250 suspension requests, **40 have been granted and 8 have been denied**."[6]

On July 19, 2004 (after the Arizona *Order* was issued) the New Mexico Public Regulation Commission granted suspension for nine (9) small companies.[7] On July 20, 2004, the Nebraska Public Service Commission granted 31 rural company suspensions,[8] the Public Utilities Commission of Ohio granted 22 rural company suspensions,[9] and this Missouri Commission granted three (3) rural company suspensions.[10] In all, over 100 suspensions have been granted by state commissions, and the clear majority of state commissions that have addressed the FCC's intermodal LNP requirements have granted suspensions. Because KLM has demonstrated that it meets the federal standard, the Commission should grant KLM's requested suspension and modification.

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[6] *In the Matter of the Emergency Petition of Arizona Telephone Company for Suspension of the Local Number Portability Obligations of Section 251(b)*, Docket No. T-02063A-04-0010, *Order*, issued July 9, 2004. (Emphasis added.)

[7] *Petition for Suspension of Federal Communications Commission Requirements to Implement Local Number Portability*, Case No. 04-00017-UT, *Recommended Decision of Hearing Examiner*, issued June 2, 2004 and approved by New Mexico PRC *Final Order* on July 15, 2004.

[8] *In the Matter of the Application of Great Plains Communications, Inc. et al.*, Application Nos. C-3096 et al., *Order Granting Suspension*, entered July 20, 2004, p. 12.

[9] *See* Ex. 5, Warinner Surrebuttal, pp. 7-8, *Application of Vaughnsville Telephone Company to Suspend or Modify its LNP Obligations*, Case No. 03-1972-TP-UNC, 2004 Ohio PUC LEXIS 33, *Order*, entered Feb. 11, 2004.

[10] *In the Matter of the Petition of New London Telephone Company, Orchard Farm Telephone Company, and Stoutland Telephone Company*, Case No. TO-2004-0370, *Order Approving Unanimous Stipulation and Agreement*, Case No. TO-2004-0370.

C. SUSPENSION

On February 17, 2004, KLM filed a petition for a two-year suspension of the FCC's intermodal LNP requirements. Staff and Public Counsel support this request. Western Wireless opposes suspension and urges the Commission to deny KLM's Petition. KLM received a bona fide request (BFR) from Western Wireless on July 6, 2004. If the Commission denies suspension, then KLM will have to implement LNP 180 days after receipt of the BFR (i.e. by January 2, 2005). Thus, as a practical matter KLM's suspension would last less than one year and five months (i.e. to May 24, 2006). The Commission should suspend the FCC's intermodal LNP requirements for the following reasons.

1. Adverse Economic Impact on KLM Customers

a. Customer Impact

Under the FCC's rules, KLM may assess a monthly, long-term LNP charge on customers to offset the initial and ongoing costs incurred in providing number portability.[11] Although the implementation costs and ongoing costs associated with LNP may be similar across Missouri, customers of smaller companies may face substantially higher surcharges because there is only a small customer base over which to spread these costs. KLM has 1,625 subscribers,[12] and KLM's estimated customer surcharge is $1.23 per customer, per month for the next five (5) years if KLM is required to upgrade its existing switch and implement LNP.[13]

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[11] 47 CFR §52.33.
[12] Ex. 1, Verified Petition, p. 2.
[13] Proprietary Ex. 2. The $1.23 figure is calculated by dividing KLM's estimated implementation costs by 1,625 customers and further dividing that number by the FCC's 60-month surcharge period. The resulting number is added to KLM's estimated ongoing monthly costs to arrive at $1.23 per customer, per month, over five years (60 months).

KLM's estimated LNP surcharge of $1.23 per customer, per month would impose a significant adverse economic impact on KLM's rural subscribers, and other state commissions have suspended LNP in order to avoid much lower customer charges. For example, the Illinois Commerce Commission applied a cost/benefit analysis and found that LNP cost scenarios between $0.38 and $0.82 would impose an adverse economic impact on a small company's subscribers.[14] The Illinois Commerce Commission granted a 2½ - year suspension of the LNP requirements. The Nebraska Commission found that end user surcharges as low as $0.64 were significant and granted suspension.[15]

When the New Mexico Commission weighed cost estimates as low as $0.22 against the uncertain demand and "negligible benefits" of intermodal LNP, the New Mexico Commission concluded that implementing intermodal LNP would cause an adverse economic impact on customers.[16] The Ohio Commission weighed the benefits against the costs of implementing LNP for a small rural carrier and suspended LNP, concluding that LNP costs of over $1.00 per customer would pose a significant adverse economic impact on customers.[17] Thus, the Illinois, Nebraska, New Mexico, and Ohio commissions have each granted suspension requests after finding that estimated LNP surcharges much less than KLM's estimated $1.23 surcharge constitute an adverse economic impact on customers.

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[14]*See* Ex. 5, Warinner Surrebuttal, pp. 7-8, *Harrisonville Telephone Company Petition for Suspension of Modification*, Case No. 03-0731, *Order*, issued May 11, 2004.
[15] *In the Matter of the Application of Great Plains Communications, Inc. et al.*, Application Nos. C-3096 et al., *Order Granting Suspension*, entered July 20, 2004, p. 12.
[16] *Petition for Suspension of Federal Communications Commission Requirements to Implement Local Number Portability*, Case No. 04-00017-UT, *Recommended Decision of Hearing Examiner*, issued June 2, 2004 and approved by New Mexico PRC *Final Order* on July 15, 2004.

b. Duplicative Costs

Suspension will prevent KLM's subscribers from immediately incurring LNP implementation costs and then, within the next few years, incurring duplicative costs when KLM replaces its switch.[18] The Commission's Staff agrees that subscribers should not incur duplicative costs, and Staff witness Natelle Dietrich testified, "By granting KLM a suspension to allow for switch replacement, all of KLM's subscribers will receive the benefit associated with the costs incurred for that switch replacement, as opposed to receiving little benefit from costs incurred for LNP implementation."[19] Thus, suspension will prevent KLM and its subscribers from the adverse economic impact of incurring duplicative costs.

c. Court Challenges

At least two federal court challenges are currently pending to examine the FCC's *Intermodal Order*.[20] A two-year suspension will prevent KLM and its customers from needlessly incurring LNP costs in the event that either one of these cases reverses or remands the FCC's *Intermodal Order*. The Mississippi Public Service Commission recognized that suspension was necessary to avoid an adverse and unjustified economic burden on customers while the federal appeals were pending:

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[17] *See* Ex. 5, Warinner Surrebuttal, pp. 7-8, *Application of Vaughnsville Telephone Company to Suspend or Modify its LNP Obligations*, Case No. 03-1972-TP-UNC, 2004 Ohio PUC LEXIS 33, *Order*, entered Feb. 11, 2004.
[18] Ex. 3, Copsey Direct, p. 5, lns 1-9 and p. 7, lns 4-11.
[19] Ex.12, Dietrich Surrebuttal, p. 3, lns 19-21.
[20] *See e.g.* United States Court of Appeals, D.C. Circuit, *US Telecom. Ass'n et al. v. FCC*, Case No. 03-1414, and *Nat'l Telecom. Coop. Ass'n et al. v. FCC*, Case No. 03-1443.

[T]he economic burden to the Independents and their respective end users is not justified until further issues resolution is forthcoming from the FCC and the courts with respect to the Independents' intermodal porting obligations.[21]

The Mississippi Commission's reasoning is equally applicable to prevent an adverse economic impact on KLM's customers in this case.

2. Undue Economic Burden on KLM

KLM provides service in rural areas of Missouri that are already challenging to serve because of high costs and low population density. The FCC's LNP requirements will force KLM to divert limited capital resources from the provision of high-quality services in order to implement an expensive service that has little (if any) subscriber demand or interest rather than applying those funds to implement services and/or upgrade infrastructure that will benefit a large number of subscribers. In a recent letter to the National Association of Regulatory Utility Commissioners (NARUC), FCC Chairman Michael Powell urged state commissions "**to consider the burdens on small businesses**" when addressing requests for suspension and grant the requested relief where appropriate.[22]

The Nebraska Public Service Commission cited Chairman Powell's letter when it granted suspensions for 31 rural telephone companies:

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[21] *In Re: Petition of Mississippi Incumbent Rural Telephone Companies for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 251(f)(2) of the Communications Act*, Case No. 03-UA-918, *Order*, issued May 24, 2004.
[22] Ex. 11, Dietrich Rebuttal, Ex. B, June 18, 2004 letter from FCC Chairman Michael Powell to the Honorable Stan Wise, President of NARUC. (Emphasis added.)

> Based on 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**.[23]

The West Virginia Public Service Commission also found that the *Intermodal Order* would impose a requirement on a small rural company "that is **unduly economically burdensome**."[24] In this case, suspension of the *Intermodal Order* is equally necessary to avoid an adverse economic impact on KLM.

The pending appeals of the *Intermodal Order* and the possibility of duplicate costs also make suspension necessary to avoid an undue economic burden on the company. First, suspension will prevent KLM from needlessly incurring costs in the event that the FCC's *Intermodal Order* is reversed or remanded by one of the two federal appeals.[25] Second, KLM's switching equipment will need to be replaced in the near future. This creates an additional economic burden because KLM will be forced to make LNP upgrades now to a switch that will only have vendor support for a few more years. Mr. Copsey's testimony explains, "Any new switch subsequently acquired by KLM will have LNP functionality and software translations included in the purchase

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[23] *In the Matter of the Application of Great Plains Communications, Inc. et al.*, Application Nos. C-3096 et al., *Order Granting Suspension*, entered July 20, 2004. (Emphasis added.)

[24] *Armstrong Telephone Company Petition*, Case No. 03-1749-T-PC, *Recommended Decision*, entered March 8, 2004. (Emphasis added.)

[25] *See e.g.* United States Court of Appeals, D.C. Circuit, *US Telecom. Ass'n et al. v. FCC*, Case No. 03-1414, and *Nat'l Telecom. Coop. Ass'n et al. v. FCC*, Case No. 03-1443.

price, thereby duplicating any LNP costs that KLM would incur to modify its existing switches." [26] Mr. Warinner testified, "Any expenditure of funds to update the current switches would be unduly burdensome if the existing switch with its LNP modifications are taken out of service in the next two years." [27]

The Arkansas Public Service Commission examined similar facts and found that this situation created an undue economic burden on a small rural company:

> Decatur is presented with a choice of unnecessary spending now for software upgrades versus inevitable spending for switch upgrades that will be in place later and which will satisfy the LNP obligations. . . . Decatur's current obligation to provide local number portability by May 24, 2004, will create a significant adverse economic impact on Decatur's ratepayers and an **undue economic burden on Decatur**.[28]

Accordingly, the Arkansas Commission granted suspension. In another similar case, the Oregon Public Utility Commission granted suspension for a small rural company until June, 2007 to allow for switch replacement.[29] In this case, KLM is facing inevitable spending in the near future for switch replacement, so suspending KLM's LNP requirements will avoid an adverse economic impact on KLM.

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[26] Ex. 3, Copsey Direct, p. 7, lns 7-11.
[27] Ex. 5, Warinner Surrebuttal, p. 19, lns 9-11.
[28] *In the Matter of the Emergency Petition of Decatur Telephone Company*, Docket No. 04-016-U, *Order*, April 20, 2004. (Emphasis added.)
[29] *In the Matter of Helix Telephone Company*, Order No. 04-052; UM 1125, 2004; Ore. PUC LEXIS 38, *Order*, entered Jan. 27, 2004.

3. Technical Feasibility

KLM faces a number of technical obstacles to implementing intermodal LNP. First, KLM's switches are not LNP capable.[30] Second, KLM does not have facilities outside of its local exchange areas and therefore cannot transport calls outside of its local exchanges.[31] Mr. Warinner testified that it would be technically infeasible to require KLM to transport calls outside of its local exchange area because KLM has neither the facilities or the legal authority to do so.[32]

On similar facts, the Nebraska Commission found that this lack of facilities between commercial mobile radio service (CMRS) providers (i.e. wireless carriers) makes intermodal LNP technically infeasible for small rural carriers:

> 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). . . . **[I]ntermodal LNP in the context of indirect connections between a CMRS provider and a local exchange carrier is technically infeasible at this time**.[33]

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[30] Ex. 3, Copsey Direct, p. 4.
[31] Ex. 5, Warinner Surrebuttal, p. 12.
[32] Tr. 306-08.
[33] *In the Matter of the Application of Great Plains Communications, Inc. et al.*, Application Nos. C-3096 et al., *Order Granting Suspension*, entered July 20, 2004, p. 12.

The Mississippi Commission observed that "unresolved matters related to the issue of whether ported numbers must remain within the rate center wherein they are currently assigned make immediate implementation of the FCC's wireless LNP mandate impractical," and the Mississippi Commission found that suspension "would avoid the imposition of a requirement that is technically infeasible."[34]

Because the FCC has yet to resolve the responsibilities of the carriers to transport local traffic between one another when no interconnection facilities or legal authority exists, it is technically infeasible to impose intermodal LNP requirements on KLM at this time.[35]

4. The Public Interest

Suspension is in the public interest because KLM's customers will see little benefit from the LNP surcharges, and there is little or no demand for wireline-to-wireless LNP in rural areas at this time. Suspension will prevent unwanted surcharges, and it will not impede wireless competition, which is already robust in rural areas.

a. *No Benefit*

Implementing wireline-to-wireless LNP will provide no tangible benefit for KLM's rural customers. Instead, the vast majority of these customers will bear burdensome and unnecessary costs. Ironically, the few customers (if any) that do port their numbers to a wireless carrier will avoid the LNP surcharges and may leave KLM's remaining customers paying even higher charges. Thus, when the high costs to KLM and its

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[34] *In Re: Petition of Mississippi Incumbent Rural Telephone Companies for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 251(f)(2) of the Communications Act*, Case No. 03-UA-918, *Order*, issued May 24, 2004. (Emphasis added.)
[35] Ex. 5, Warinner Surrebuttal, p. 12.

customers are weighed against the negligible benefits of intermodal LNP, KLM's request for suspension is in the public interest.

b. *No Demand*

In KLM's rural service area, there appears to little or no demand for wireline-to-wireless LNP at this time, and nationwide demand is also very low.[36] Other state commissions granting suspensions have taken notice of the lack of demand in rural areas. For example, the Mississippi Commission stated that "**no end user demand for intermodal has been demonstrated**."[37] The Utah Public Service Commission recognized: "Under existing FCC regulation, the costs of preparing for intermodal portability will be borne by all customers of the Rural Companies, even though **no customers have expressed a desire for the capability and, likely, few would avail themselves of the capability if made available**."[38]

c. *Unwanted charges*

It is unlikely that KLM's subscribers would welcome an additional surcharge on their bills, especially one that is being imposed to benefit wireless carriers. The estimated costs and $1.23 LNP surcharge clearly outweigh any intangible benefit to KLM's customers.

d. *Wireless Competition*

Wireless carriers are already competing in KLM's service area, and many of KLM's customers have both wireline and wireless service. Nothing prevents customers

[36] Ex. 5, Warinner Surrebuttal, p. 12.
[37] *In Re: Petition of Mississippi Incumbent Rural Telephone Companies for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 251(f)(2) of the Communications Act*, Case No. 03-UA-918, *Order*, issued May 24, 2004. (Emphasis added.)
[38] *In the Matter of the Utah Rural Telecom Association's Request for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 252(f)(2),* Docket No. 04-2424-01, *Order Granting Suspension*, issued March 17, 2004. (Emphasis added.)

from using both wireline and wireless service or from dropping their wireline service altogether. In fact, competition is already taking place, and the requested suspension will have no impact on the wireless carriers' ability to compete. Indeed, Western Wireless testified that it already has approximately 400 customers in KLM's service area, and Western Wireless also testified that it has 25% market share.[39] Thus, according to Western Wireless there are already 1,600 wireless customers in KLM's service area which has 1,625 KLM wireline subscribers. In other words, wireless carriers already have virtually the same number of subscribers as KLM does in the same service area. If anything, this nearly 100% penetration rate in KLM's service area indicates market saturation, not a lack of competition.

D. MODIFICATION

KLM's Petition seeks the same modification that this Commission has already found to be in the public interest and granted for 18 other small Missouri companies.[40] Specifically, KLM requests modification so that if wireline-to-wireless LNP is requested before the FCC has resolved the rating and routing issues associated with LNP, then KLM will notify the wireless carrier that it is not KLM's responsibility to establish facilities and/or arrangements with third party carriers to transport calls on a local basis outside of KLM's local service area. This suspension also would also apply if a wireless carrier

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[39] **Tr. 386-87.**

[40] On June 29, the Commission granted modifications for Chariton Valley Telephone Corporation (IO-2004-0467), Chariton Valley Telecom (CO-2004-0469), Choctaw Telephone Company (IO-2004-0546), Citizens Telephone Company of Higginsville (TO-2004-0486), Fidelity Telephone Company (TO-2004-0489) Goodman Telephone Company (TO-2004-0490), Granby Telephone Company (TO-2004-0493), Kingdom Telephone Company (TO-2004-0487), Le-Ru Telephone Company (TO-2004-0494), McDonald County Telephone Company (TO-2004-0491), Mid-Missouri Telephone Company (TO-2004-0455), MoKan Dial, Inc. (IO-2004-0545), Northeast Missouri Rural Telephone Company (IO-2004-0468), Ozark Telephone Company (TO-2004-0490), and Seneca Telephone Company (TO-2004-0490). On July 20, 2003, the Commission granted modification for New London Telephone Company, Orchard Farm Telephone Company, and Stoutland Telephone Company (TO-2004-0370).

that has established facilities or arrangements, or both, with third-party carriers to transport calls to a point outside of KLM's service area is requested to port numbers to another wireless carrier that has not established such facilities or arrangements.

This modification will only apply in the event that a wireless carrier has not already made arrangements for the transport of a ported call. KLM has agreed to establish an intercept message for seven-digit dialed calls to ported numbers where the facilities and/or the appropriate third party arrangements have not been established. The intercept message will inform subscribers that the call cannot be completed as dialed and provide information about how to complete the call.

KLM does not have arrangements or facilities in place that would allow KLM to transport a local call outside of its local exchange area.[41] KLM's estimated $1.23 LNP surcharge does not include any costs associated with establishing arrangements or facilities with third party carriers to transport calls on a local basis outside of KLM's local serving area. Although the FCC has yet to decide which carrier should bear these costs, if KLM and/or its customers are required to bear transport costs, then it would only serve to increase the already adverse economic impact on customers and undue economic burden on the companies. The Nebraska Commission found 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 impact on end users or would be an undue economic burden on the local exchange carriers were these extraordinary costs to become a responsibility of the Applicants**."[42]

[41] Ex. 5, Warinner Surrebuttal, p. 19, lns 19-20.
[42] *In the Matter of the Application of Great Plains Communications, Inc. et al.*, Application Nos. C-3096 et al., *Order Granting Suspension*, entered July 20, 2004, p. 12.

During the hearing, Western Wireless testified that KLM should bear the responsibility for transporting ported calls from KLM's local exchange to SBC's Springfield tandem and then possibly to CenturyTel's Branson tandem.[43] The adverse economic impact on customers and undue economic burden on companies that Western Wireless's position would create was highlighted by the Chairman Gaw's horse analogy during the May 5, 2004 consolidated hearing in this case and other similar LNP suspension request cases:

> [I]t sort of reminds me of a farmer with a horse and another farmer comes over and says, I like that horse, I want that horse. And the farmer says, Well, I – that's nice. What will you give me for him? He says, I'm not going to give you anything for him. And, Oh, by the way, I want you to buy a truck and trailer and haul him over to my house for nothing. . . . this scenario asks that local company to pay for the . . . continuing transfer of that new call and whatever maintenance there is. I guess he's got to pay for the feed and the hay too now that I think about it.[44]

Modification is necessary to avoid the adverse and undue economic burdens that this scenario would create.

The Commission should also made aware that although Western Wireless objects to KLM's proposed modification in Missouri, Western Wireless appears to have agreed to virtually the same modification in Utah. In fact, the Utah Commission's Order adopting the Stipulation between the Utah small companies (URTA), the Utah Staff, and Western Wireless states:

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[43] Tr. 361-62.
[44] *Tr. 67.*

> **Western Wireless will establish a direct two-way point of interconnection with all URTA member companies within each URTA member company network**. . . . **Alternatively**, Western WIreless may elect not to have a direct connection with a URTA member company. If such election is made, **Western Wireless will be financially responsible for any and all costs related to the routing of traffic outside a URTA member company network district**.[45]

Curiously, Western Wireless opposes what appears to be KLM's identical proposal for modification in Missouri.

Finally, modification is in the public interest because intermodal LNP is currently a one-way street. In other words, the FCC's *Intermodal Order* would require KLM to port its local customer numbers to wireless carriers, yet the wireless carriers would have no reciprocal obligation to port wireless customer numbers to KLM. During the hearing, Western Wireless witness Ron Williams testified to this fact:

> Q. If a resident in KLM's serving area works in Nevada [Missouri] today, has a Western Wireless phone with a Nevada, [NXX] but wants to drop the service but keep the number so his friends and family in Nevada can call him, you don't have to port or are not required to port that call in from Nevada to a KLM wireline in the area?
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> A. That's under the rate center rules, correct.[46]

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[45] *In the Matter of the Utah Rural Telecom Association's Request for Suspension of Wireline to Wireless Number Portability*, Docket No. 04-2424-01, *Order Adopting Stipulation*, 2004 Utah PUC LEXIS 141, issued July 7, 2004. (Emphasis added.)
[46] Tr. 368.

As a matter of competitive neutrality as well as fundamental fairness, KLM should not be required to pay for the transport of ported calls to Western Wireless customers while Western Wireless has no obligation to port numbers to KLM.

III. CONCLUSION

KLM has demonstrated that suspension and modification of the FCC's Intermodal porting requirements are necessary to avoid an adverse economic impact on customers, an undue economic burden on KLM, and a requirement that is technically infeasible. Suspension and modification are in the public interest because the minimal demand for intermodal LNP and the intangible benefits it might provide are outweighed by the high cost burdens on KLM and its customers. Moreover, there appear to be nearly as many wireless subscribers as KLM wireline subscribers in KLM's service area, and this nearly 100% penetration rate suggests market saturation, not a lack of competition. Staff and Public Counsel support KLM's request, and the clear majority of other state commissions to address similar small company requests have granted suspensions. For these reasons, KLM requests that the Commission grant its Petition for suspension and modification of the FCC's intermodal LNP requirements until May 24, 2006.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record as shown on the service list this 23rd of July 2004.

/s/ Brian T. McCartney
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