

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Petition of KLM)
Telephone Company for Suspension of the)
Federal Communications Commission)
Requirement to Implement Number)
Portability)

Case No. TO-2004-0401

STATEMENTS OF POSITION OF WESTERN WIRELESS

COMES NOW WWC License, LLC (“Western Wireless”) d/b/a Cellular One, by and through counsel and pursuant to the Procedural Schedules adopted by the Commission on June 4, 2004, and submits the following Statements of Position in this case.

ISSUES

ISSUE 1. Should the Commission grant a suspension and/or modification of the intermodal porting requirements?

Western Wireless Position: No. The Commission should deny KLM’s Petition for suspension and modification of the FCC’s Local Number Portability (“intermodal porting”) requirements. KLM has failed to meet its statutory burden of proof for such suspension or modification under 47 U.S.C. 251 (f) (2) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996.

Western Wireless Witness: Ron Williams Rebuttal of July 2, 2004, pp. 3-11, 18, 22; Surrebuttal of July 16, 2004, pp. 2-11.

ISSUE 1.a. Does the implementation of LNP by Petitioner impose a requirement that creates a significant adverse economic impact on users of telecommunication services generally?

Western Wireless Position: No. LNP can be implemented by KLM at a cost per end user line of 61 cents per month, which does not constitute a “significant adverse economic impact on users of telecommunications services generally.”

Western Wireless Witness: Ron Williams Rebuttal of July 2, 2004, pp. 13-18; Surrebuttal of July 16, 2004, pp. 2-6.

ISSUE 1.b. Does the implementation of LNP by Petitioner impose a requirement that is unduly economically burdensome?

Western Wireless Position: No. KLM has not presented any evidence of its financial situation (*e.g.*, balance sheet, income statement, cash flow, rate of return) that would be determinative of whether implementing LNP would be “unduly economically burdensome.” Furthermore, Western Wireless did present evidence that KLM’s transit costs would be minimal (*e.g.*, approximately \$270 per month), and there is no evidence that this cost would be “unduly economically burdensome” for KLM. Neither KLM nor Staff offered any evidence of what KLM’s transit costs would be.

Western Wireless Witness: Ron Williams Rebuttal of July 2, 2004, pp. 13-18; Surrebuttal of July 16, 2004, pp. 2-6.

ISSUE 1.c. Does the implementation of LNP by Petitioner impose a requirement that is technically infeasible?

Western Wireless Position: No. KLM’s existing switch is capable of providing Local Number Portability with relatively minor software upgrades. KLM asserts that, since it plans to replace its existing Mitel switch by December 31, 2007 due to reasons totally unrelated to LNP, it should not have to provide LNP until it replaces that switch. This is *not* a demonstration of “technical infeasibility.”

Western Wireless Witness: Ron Williams Rebuttal of July 2, 2004, pp. 12-13; Surrebuttal of July 16, 2004, pp. 6-7.

ISSUE 1.d. If a., b. and/or c. are true, is a suspension or modification of LNP obligations consistent with the public interest, convenience, and necessity?

Western Wireless Position: Since none of the three standards is met, this question is moot. Further, Western Wireless submits that denying the customers of KLM the benefits of competitive telecommunications choices in its service territory in rural Missouri would be inconsistent with the public interest, convenience and necessity, with the legislative policies of the State of Missouri which promote competition in telecommunications markets, with the Federal Telecommunications Act of 1996 and with Orders of the Federal Communications Commission.

Western Wireless Witness: Ron Williams Rebuttal of July 2, 2004, pp. 19-22.

ISSUE 2. If the Commission should grant a suspension and/or modification, what reasons support that suspension and/or modification?

Western Wireless Position: No suspension or modification should be granted.

Western Wireless Witness: Ron Williams Rebuttal of July 2, 2004, pp. 2-22; Surrebuttal of July 16, 2004, pp. 2-11.

ISSUE 3. If the Commission should grant a suspension, how long should the suspension last?

Western Wireless Position: KLM should be ordered to provide LNP to Western Wireless within six months of the submission by Western Wireless of a Bona Fide Request to KLM, or by December 30, 2004.

Western Wireless Witness: Ron Williams Rebuttal of July 2, 2004, pp. 5-9, 22.

ISSUE 4. If the Commission should grant a modification, what are the specific conditions of the modification?

Western Wireless Position: There should be no “modification” granted. The only “modification” that appears to be at issue, though never specifically requested in the pleadings in this case, is a “call intercept” that would allow KLM to give customers calling ported numbers a message stating that the call will be a toll call unless the wireless carrier does something different. Misrouting calls to ported numbers as toll calls is in clear violation of FCC Order.¹ Imposition of such call intercept messages would also be clearly inconsistent with the Telecom Act’s definition of LNP: “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.”²

¹ In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No. 95-116, FCC 03-284 ¶28 (rel. November 10, 2003) “*Intermodal Porting Order*” ¶ 27. (Attached to Rebuttal Testimony of Ron Williams (July 2, 2004) as Exhibit RW-1.

² 47 U.S.C. § 153(30)

Western Wireless Witness: Ron Williams Rebuttal of July 2, 2004, pp. 5-9, 22;
Surrebuttal of July 16, 2004, pp. 6-10.

WHEREFORE, Western Wireless submits the foregoing Statements of Position in response to the Commission's Order directing the submission of same in this case.

Respectfully submitted,

/s/ William D. Steinmeier

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CELLULAR ONE

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 this 19th day of July 2004.

/s/ William D. Steinmeier
