

Exhibit No.:  
Issues: Suspension &  
Modification of LNP  
Requirements  
Witness: Natelle Dietrich  
Sponsoring Party: MO PSC Staff  
Type of Exhibit: Rebuttal Testimony  
Case No.: TO-2004-0401  
Date Testimony Prepared: July 2, 2004

**MISSOURI PUBLIC SERVICE COMMISSION**

**UTILITY OPERATIONS DIVISION**

**REBUTTAL TESTIMONY**

**OF**

**NATELLE DIETRICH**

**KLM TELEPHONE COMPANY**

**CASE NO. TO-2004-0401**

**Jefferson City, Missouri  
July 2004**

**FILED**

JUL 29 2004

Missouri Public  
Service Commission

Exhibit No. 11  
Case No(s) TO-2004-0401  
Date 7-21-07 Rptr XF

**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


**AFFIDAVIT OF NATELLE DIETRICH**

STATE OF MISSOURI     )  
                                      ) ss  
COUNTY OF COLE     )

Natelle Dietrich, of lawful age, on her oath states: that she has participated in the preparation of the following Rebuttal Testimony in question and answer form, consisting of   7   pages of Rebuttal Testimony to be presented in the above case, that the answers in the following Rebuttal Testimony were given by her; that she has knowledge of the matters set forth in such answers; and that such matters are true to the best of her knowledge and belief.

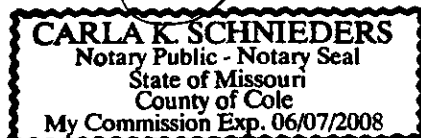
  
\_\_\_\_\_  
Natelle Dietrich

Subscribed and sworn to before me this 1<sup>st</sup> day of July, 2004.

  
\_\_\_\_\_  
Notary Public

My commission expires

June 7, 2008



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

12

13  
14  
15

16

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Rebuttal Testimony of  
Natelle Dietrich

1 suspension/modification cases. I have also prepared comments and testified in several  
2 proposed rulemakings before the Commission.

3 As supervisor of the Telecommunications Department economic/competitive  
4 analysis group, I have reviewed many cost studies and have had testimony prepared at  
5 my direction and under my supervision on many cost related dockets including, but not  
6 limited to TO-2001-437, TO-2001-438 and TO-2001-440 (the SWBT 271 "spin-off  
7 cases); TR-2001-65, an investigation into the cost of providing switched access service in  
8 Missouri; TO-2001-455, the AT&T/SWBT arbitration; TO-2001-222, the MCI/SWBT  
9 arbitration; and, TO-2004-0207, the Triennial Review Order proceeding.

10 Through an appointment to the National Association of Regulatory Utility  
11 Commissioners Staff Subcommittee on Telecommunications and as Assistant Chair to the  
12 Federal Regulatory Policy Sub-Group, I am responsible for monitoring federal  
13 telecommunications activity and informing the Commission of relevant federal activity. I  
14 have prepared comments on behalf of the Commission to be filed at the Federal  
15 Communications Commission (FCC) on several occasions. These comments included  
16 such issues as the Coalition for Affordable Local and Long Distance Service's (CALLS)  
17 modified access charge reform proposal; the Multi-Association Group's ("MAG")  
18 interstate access reform and universal service support proposal for incumbent local  
19 exchange carriers subject to rate-of-return regulation; and, the feasibility of a bill-and-  
20 keep approach as means of attaining a unified regime for the flows of payments between  
21 carriers. I have also prepared congressional testimony on behalf of the Commission on  
22 number conservation efforts in Missouri.

Rebuttal Testimony of  
Natelle Dietrich

1 I also worked for over 13 years in lending, analyzing customer credit, financial  
2 histories and payment capabilities of individuals and businesses. The last five plus years  
3 were spent working in the risk asset unit where I was responsible for and successful in  
4 reducing the bank's risk exposure by several million dollars per year through  
5 restructuring high-risk customer debt using means that continue to meet the customer's  
6 financial needs and payment abilities.

7 Q. Please describe your educational background.

8 A. I hold a Bachelor of Arts Degree in English from the University of  
9 Missouri-St. Louis and a Master's Degree in Business Administration from William  
10 Woods University.

11 Q. Are you the same Natelle Dietrich that provided testimony during the  
12 May 5, 2004 local number portability on-the-record-presentation in Case Nos.  
13 TO-2004-0370, IO-2004-0467, TO-2004-0505, et al.?

14 A. Yes I am.

15 Q. What is the purpose of your testimony?

16 A. The purpose of my testimony is to respond to the Direct Testimonies of  
17 Mr. Bruce Copsey and Mr. William Warriner on behalf of KLM Telephone Company  
18 (KLM) and to support KLM's request for a two-year suspension of the FCC's intermodal  
19 porting obligations.

20 Q. What are the issues in this case?

21 A. The issues in this case are whether KLM should be granted a suspension  
22 and modification of the FCC's Local Number Portability (LNP) requirements, and for  
23 how long such suspension or modification should be granted.

Rebuttal Testimony of  
Natelle Dietrich

1           Q.     Has the FCC provided any guidance to state commissions when reviewing  
2 requests for suspension of the intermodal porting requirements?

3           A.     Yes. In my opinion, in its November 2003 Memorandum Opinion and  
4 Order and Further Notice of Proposed Rulemaking (Order), the FCC made it clear that  
5 intermodal porting was required as a means for advancing competition. In its Order, the  
6 FCC stated, "the public interest is served by requiring the provision of number portability  
7 by CMRS providers because number portability will promote competition between  
8 providers of local telephone services and thereby promote competition between providers  
9 of interstate access services."<sup>1</sup> On May 6, 2004, Dane Snowden, Chief of the FCC's  
10 Consumer and Governmental Affairs Bureau sent a letter to Stan Wise, NARUC  
11 President, indicating the FCC's expectations that state commissions carefully consider  
12 requests for suspension. On June 18, 2004, Chairman Powell sent a letter to  
13 President Wise indicating the FCC's intent to allow state commissions limited latitude in  
14 reviewing requests for suspension. This letter encouraged state commissions to consider  
15 relevant cost information when addressing requests for suspension. These letters are  
16 attached to my testimony as Exhibits A and B.

17           Q.     In your opinion, is a two-year suspension necessary to avoid a significant  
18 adverse economic impact on users of telecommunications generally and also in the public  
19 interest?

20           A.     Yes, it is. The FCC indicated that the intermodal porting obligations will  
21 promote competition, and in my opinion made it clear that it expected carriers to comply  
22 with the May 24, 2004, deadline. For this reason, Staff has only supported suspensions  
23 of the FCC's requirements in limited circumstances. As Mr. Copsey states on page 6 of

---

<sup>1</sup> Id. at para. 153.

Rebuttal Testimony of  
Natelle Dietrich

1 his Direct Testimony, KLM exchanges are served by Mitel GX 5000 switches. Technical  
2 support for Mitel switches will cease on December 31, 2007. In my opinion, it does not  
3 make economic sense for KLM to implement local number portability, only to replace the  
4 switches in the next few years. Therefore, Staff recommended in its Memorandum filed  
5 March 3, 2004, that the Commission grant KLM a two-year suspension to allow time to  
6 pursue switch replacement prior to implementing local number portability. The Staff  
7 Recommendation is incorporated and attached as Exhibit C.

8 Q. Does Mr. Warriner or Mr. Copsey indicate any other reason for requesting  
9 the suspension?

10 A. Yes. Mr. Warriner, in the summary of his Direct Testimony beginning on  
11 page 11, indicates that KLM also requests the suspension until the FCC addresses the  
12 issue of carrier responsibility for the transport of local calls to wireless providers with  
13 rate centers outside the local exchange areas of KLM.

14 Q. You said Staff filed its recommendation in March 2004. Does Staff have  
15 any changes to its recommendation?

16 A. Yes, it does. In its recommendation, Staff stated that modification was not  
17 necessary if the Commission granted KLM a two-year suspension of the intermodal  
18 porting requirements. The Staff recommends granting modification also. Regardless of  
19 when the FCC resolves the routing and rating issues and regardless of when a Petitioner  
20 implements intermodal porting, it is, and was, the Staff's position that neither the  
21 Petitioner, nor its wireline customers, should be responsible for any transport or long  
22 distance charges associated with porting numbers and any associated calls outside  
23 Petitioner's local service area.

Rebuttal Testimony of  
Natelle Dietrich

1           Q.     What are the possible implications of the FCC directing intermodal  
2 porting prior to addressing the rating and routing issues?

3           A.     KLM has intrastate tariffs on file with the Missouri Public Service  
4 Commission. These tariffs outline KLM's local service area. Transporting calls to  
5 numbers that have been ported to a wireless carrier with no point of presence in the KLM  
6 local service area could result in KLM inappropriately operating much like an  
7 interexchange carrier instead of a local exchange carrier.

8           Q.     Are you suggesting it should be the responsibility of the wireless carrier,  
9 in this case, Western Wireless, to bear the transport costs associated with intermodal  
10 porting?

11          A.     No, I am not. In its Order, the FCC clearly mandated that intermodal  
12 porting should have been implemented by May 24, 2004. Mr. Copsey, on page 7,  
13 beginning at line 5, of his Direct Testimony indicates KLM switches could be LNP  
14 capable with the appropriate hardware, software and translations. In its Third Report and  
15 Order, issued May 1998, the FCC established local number portability (LNP) cost  
16 recovery mechanisms allowing incumbent local exchange carriers to recover the costs  
17 associated with implementing LNP from its end users. By design KLM can recover the  
18 implementation costs from its customers if it so chooses. However, as previously  
19 indicated, the FCC left unresolved issues associated with rating and routing calls once a  
20 number has ported, creating additional economic issues associated with intermodal  
21 porting. In order to complete calls to ported numbers, a company must either build  
22 facilities or establish business arrangements with other carriers such as Southwestern Bell  
23 Telephone, L.P., d/b/a SBC Missouri or Sprint Missouri, Inc.



Rebuttal Testimony of  
Natelle Dietrich

1           Q.     Are you recommending the Commission order wireless carriers, including  
2 Western Wireless, to establish a point of presence in the KLM service territory?

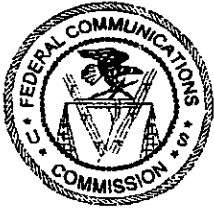
3           A.     No, I am not. My recommendation typically has been that the  
4 Commission find that the companies and/or their end user subscribers are not responsible  
5 for establishing facilities or business relationships to transport ported calls. This  
6 recommendation would allow the wireless carriers to determine the appropriate method  
7 for transporting calls.

8           Q.     What is your recommendation in this case?

9  
10          A.     I continue to support Staff's recommendation in its Memorandum filed  
11 March 3, 2004, that the Commission grant KLM a two-year suspension to allow time to  
12 pursue switch replacement prior to implementing local number portability. The Staff  
13 recommends granting modification also.

14          Q.     Does this end your testimony?

15          A.     Yes it does.



Federal Communications Commission  
Consumer & Governmental Affairs Bureau  
Office of The Bureau Chief

**CGB**

06 May 2004

Via MAIL and FASCIMILE

The Honorable Stan Wise  
Commissioner, Georgia Public Service Commission  
President, National Association of Regulatory Utility Commissioners  
244 Washington Street, S.W.  
Atlanta, GA 30334

Dear Stan:

I want to express my deep appreciation for the efforts of National Association of Regulatory Utility Commissioners (NARUC) and its members in making the initial deployment of wireless number portability such a success. Since November 24, 2003, more than three million consumers have been able to choose a new wireless carrier or switch between a wireless and wireline carrier without having to sacrifice their telephone number. As you know, after May 24, 2004, consumers outside of the top markets will possess the power to make the same choice. In light of the approaching opportunity for *all* American consumers to take their phone numbers with them, I wanted to write you out of concern about certain rural wireline carriers' requests for waivers of their porting obligations that are pending in many states.

When considering requests to waive these important, consumer-friendly obligations, states should remain mindful of the tremendous customer benefits that porting generates. I know that NARUC and the FCC agree that the ability of wireless and wireline consumers to port their numbers remains central to producing competition, choice, lower costs, and increased innovation. These benefits are particularly important in rural areas where competition may be less robust than in more urban markets.

It is with those policies in mind that I hope that you, in your capacity as NARUC's president, will encourage state commissions to hold carriers that seek waivers of their porting obligations to the appropriate standard of review. At this point, I understand that many rural wireline carriers have sought waivers of their obligations, and that, in some cases, waivers have been granted. Of course, states have jurisdiction to waive porting obligations for certain rural telephone companies under Section 251(f) of the Telecommunications Act of 1996, where carriers demonstrate undue economic burden or technological infeasibility. I think we can agree that the State commissions should strictly apply that statutory standard so that the rights of consumers are protected. I encourage the State commissions to ensure that carriers seeking waivers demonstrate that they are on a path to compliance so that customers of these

**Exhibit A**

carriers will not be forever denied the rights their fellow consumers enjoy. If relief were to be granted in the absence of extraordinary circumstances, or for indefinite periods, it would be a setback for rural consumers. It should be noted that some of the same carriers that now seek to have their porting obligations waived have long known that they would, absent a demonstration of undue burden, be required to provide porting to both wireline and wireless carriers.

As we approach the May 24, 2004 deadline for nationwide local number portability deployment, the FCC looks forward to working with NARUC and the State Commissions to make sure that the interests of the American consumer are protected. Because of the publicity regarding the nationwide implementation of wireless and intermodal LNP, consumers in all markets will expect to receive its benefits. Where it is deemed appropriate to grant relief, it is important that consumers be educated so that they can make informed decisions as to their telephone service.

I would be happy to discuss this issue further with you or any of your members in the coming weeks.

Sincerely yours,

A handwritten signature in black ink, appearing to read "K. Dane Snowden", with a long horizontal flourish extending to the right.

K. Dane Snowden  
Chief  
Consumer & Governmental Affairs Bureau



**Federal Communications Commission  
Consumer & Governmental Affairs Bureau  
Office of The Bureau Chief**

**CGB**

06 May 2004

*Via MAIL and FASCIMILE*

The Honorable Stan Wise  
Commissioner, Georgia Public Service Commission  
President, National Association of Regulatory Utility Commissioners  
244 Washington Street, S.W.  
Atlanta, GA 30334

Dear Stan:

I want to express my deep appreciation for the efforts of National Association of Regulatory Utility Commissioners (NARUC) and its members in making the initial deployment of wireless number portability such a success. Since November 24, 2003, more than three million consumers have been able to choose a new wireless carrier or switch between a wireless and wireline carrier without having to sacrifice their telephone number. As you know, after May 24, 2004, consumers outside of the top markets will possess the power to make the same choice. In light of the approaching opportunity for *all* American consumers to take their phone numbers with them, I wanted to write you out of concern about certain rural wireline carriers' requests for waivers of their porting obligations that are pending in many states.

When considering requests to waive these important, consumer-friendly obligations, states should remain mindful of the tremendous customer benefits that porting generates. I know that NARUC and the FCC agree that the ability of wireless and wireline consumers to port their numbers remains central to producing competition, choice, lower costs, and increased innovation. These benefits are particularly important in rural areas where competition may be less robust than in more urban markets.

It is with those policies in mind that I hope that you, in your capacity as NARUC's president, will encourage state commissions to hold carriers that seek waivers of their porting obligations to the appropriate standard of review. At this point, I understand that many rural wireline carriers have sought waivers of their obligations, and that, in some cases, waivers have been granted. Of course, states have jurisdiction to waive porting obligations for certain rural telephone companies under Section 251(f) of the Telecommunications Act of 1996, where carriers demonstrate undue economic burden or technological infeasibility. I think we can agree that the State commissions should strictly apply that statutory standard so that the rights of consumers are protected. I encourage the State commissions to ensure that carriers seeking waivers demonstrate that they are on a path to compliance so that customers of these

**Exhibit A**

carriers will not be forever denied the rights their fellow consumers enjoy. If relief were to be granted in the absence of extraordinary circumstances, or for indefinite periods, it would be a setback for rural consumers. It should be noted that some of the same carriers that now seek to have their porting obligations waived have long known that they would, absent a demonstration of undue burden, be required to provide porting to both wireline and wireless carriers.

As we approach the May 24, 2004 deadline for nationwide local number portability deployment, the FCC looks forward to working with NARUC and the State Commissions to make sure that the interests of the American consumer are protected. Because of the publicity regarding the nationwide implementation of wireless and intermodal LNP, consumers in all markets will expect to receive its benefits. Where it is deemed appropriate to grant relief, it is important that consumers be educated so that they can make informed decisions as to their telephone service.

I would be happy to discuss this issue further with you or any of your members in the coming weeks.

Sincerely yours,

A handwritten signature in black ink, appearing to read "K. Dane Snowden", with a long horizontal flourish extending to the right.

K. Dane Snowden  
Chief  
Consumer & Governmental Affairs Bureau

CC: Commissioner Robert Nelson, Chair, Telecommunications Committee, NARUC  
Commissioner Carl Wood, Chair, Consumer Affairs Committee, NARUC  
John Muleta, Chief, Wireless Telecommunications Bureau  
William Maher, Chief, Wireline Competition Bureau



CHAIRMAN

Federal Communications Commission

Washington, D.C.

June 18, 2004

The Honorable Stan Wise  
President, National Association of Regulatory Utility Commissioners  
Commissioner, Georgia Public Service Commission  
225 Washington Street, S.W.  
Atlanta, GA 30334

Dear President Wise:

I am writing you, as the president of the National Association of Regulatory Utility Commissioners and representative of NARUC's member commissioners, in connection with requests that small local exchange carriers (LECs) have made to various state commissions for waivers of intermodal number porting obligations.

As you know, the FCC concluded in its *Telephone Number Portability Proceeding* (CC Dkt. No. 95-116) that, by November 24, 2003, LECs generally had to port numbers to wireless carriers where the requesting wireless carrier's coverage area overlaps the rate center with which the customer's wireline number is associated. Wireline carriers that operate in areas outside the 100 largest Metropolitan Statistical Areas had to provide such number porting no later than May 24, 2004. The FCC granted certain LECs serving fewer than two percent of the nation's subscriber lines a limited waiver of the November 24, 2003 deadline until May 24, 2004.

The Commission has emphasized on many occasions the important competitive and consumer benefits of number portability. The Chief of the FCC's Consumer & Governmental Affairs Bureau noted the benefits of wireline-to-wireless porting in his May 6, 2004, letter to you. The Small Business Administration's Office of Advocacy, however, has raised concerns about the possible economic burden that intermodal number porting may place on LECs that are small businesses, particularly those in rural areas. Those concerns may warrant flexibility in evaluating pending waiver requests by small LECs under Section 251(f)(2). Accordingly, and notwithstanding Chief Snowden's letter, 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. I also request that you share with NARUC's membership this letter encouraging state commissioners to closely consider the concerns raised by small LECs petitioning for waivers.

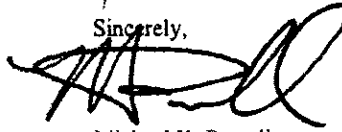
I further urge state commissions, in the course of their deliberations on the pending waiver requests, to encourage parties to develop and submit data relating to the benefits of wireline-to-wireless number portability and the costs of complying with those

The Honorable Stan Wise  
June 18, 2004  
Page 2

obligations, including upgrade costs to the network and routing costs for calls forwarded to carriers. Finally, I encourage parties to submit such information to the FCC for inclusion in our ongoing proceeding in CC Docket No. 95-116 regarding intermodal porting intervals.

Please do not hesitate to call if you would like to discuss these issues further.

Sincerely,

A handwritten signature in black ink, appearing to be "Michael K. Powell", written over the word "Sincerely,".

Michael K. Powell

cc: Commissioner Robert Nelson, Chair, NARUC Telecommunications Committee  
Commissioner Carl Wood, Chair, NARUC Consumer Affairs Committee  
William Maher, Chief, Wireline Competition Bureau  
John Muleta, Chief, Wireless Telecommunications Bureau  
K. Dane Snowden, Chief, Consumer & Governmental Affairs Bureau

# MEMORANDUM

To: Missouri Public Service Commission Official Case File  
Tariff File No. n/a Case No. TO-2004-0401

From: Natelle Dietrich  
Telecommunications Department

John Van Eschen/March 3, 2004  
Utility Operations Division/Date

General Counsel's Office/Date

Subject: Staff Recommendation on Petition for Suspension and Modification of Local  
Number Portability Obligations and Motion for Expedited Treatment

Date: March 2, 2004

On February 17, 2004, KLM Telephone Company (KLM), an incumbent local exchange carrier, filed a Petition for Suspension and Motion for Expedited Treatment (Petition). On February 24, 2004, KLM filed cost and implementation information and on March 1, 2004, KLM filed additional implementation information.

## Background

Section 251(b) of the Telecommunications Act (Act) requires local exchange carriers to provide local number portability (LNP), to the extent technically feasible, in accordance with requirements prescribed by the FCC. Local number portability is defined 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."<sup>1</sup> In 1996, the FCC released the Local Number Portability *First Report and Order*<sup>2</sup>, noting that "section 251(b) requires local exchange carriers to provide number portability to all telecommunications carriers, and thus to Commercial Mobile Radio Service (CMRS) providers as well as wireline service providers."<sup>3</sup> The FCC concluded that "the public interest is served by requiring the provision of number portability by CMRS providers because number portability will promote competition between providers of local telephone services and thereby promote competition between providers of interstate access services."<sup>4</sup>

In 1997, the FCC adopted recommendations for wireline-to-wireline number portability, limiting porting, due to technical limitations, to carriers with facilities or numbering resources in the same rate center. At the same time, the FCC directed the North

<sup>1</sup> 47 U.S.C. § 153(30); 47 C.F.R. §52.21(k).

<sup>2</sup> Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996).

<sup>3</sup> Id. at para. 152.

<sup>4</sup> Id. at para. 153.



American Numbering Council (NANC) to develop standards and procedures to provide for wireless carrier participation in local number portability.

In 1998, the NANC submitted a report on the technical issues associated with wireless-to-wireline porting. The report discussed such issues as: the differences between the local service areas of wireless and wireline carriers and the differences in associating a subscriber's number to a particular rate center. Because of the differences noted in the report, the NANC indicated that if a wireless subscriber, with an NPA-NXX outside of the wireline rate center where the subscriber is located, seeks to port his or her number to a wireline carrier, that wireline carrier may not be able to receive the ported number. Additional reports were issued in subsequent years.

On January 23, 2003, and again on May 13, 2003, the Cellular Telecommunication and Internet Association (CTIA) filed petitions with the FCC seeking a declaratory ruling that wireline carriers have an obligation to port their customers' numbers to wireless carriers whose service areas overlap the wireline rate center that is associated with the number. In its petitions, CTIA claims, "some LECs have narrowly construed their LNP obligations with regard to wireless carriers, taking the position that portability is only required where the wireless carrier receiving the number already has a point of presence or numbering resources in the wireline rate center."<sup>5</sup> In response to these petitions, on November 10, 2003, the FCC released its Memorandum Opinion and Order and Further Notice of Proposed Rulemaking (Opinion). In its Opinion, the FCC established a May 24, 2004 deadline by which "LECs [outside the top 100 MSAs] must port numbers to wireless carriers where the requesting wireless carrier's coverage area overlaps the geographic location of the rate center in which the customer's wireline number is provisioned, provide that the porting-in carrier maintains the number's original rate center designation following the port."<sup>6</sup>

#### KLM's Petition

KLM requests that the Missouri Public Service Commission grant a two-year suspension of their wireless (intermodal) porting obligations. KLM also requests a modification of the FCC's LNP requirements to address call rating and call routing issues discussed more fully under the technical feasibility section below. KLM further requests a Commission decision on or before March 17, 2004. However, if the Commission is not able to issue a decision by March 17, 2004, Petitioners request a suspension of at least six-months after the effective date of the Commission's order.

Petitioners state that according to 47 U.S.C. §251(f)(2), a rural local exchange carrier with fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide can petition a state commission for a suspension or modification of the application of requirements found in Section 251(b) and (c). The FCC Opinion requires the petitioning carrier to provide substantial, credible evidence that there are special circumstances to justify the suspension. Section 251(f)(2) states:

---

<sup>5</sup> CTIA Petition for Declaratory Ruling, CC Docket No. 95-116, filed Jan. 23, 2003.

<sup>6</sup> *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, November 10, 2003 at para. 22.

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
  - iii. to avoid imposing a requirement that is technically infeasible; and
- (B) is consistent with the public interest, convenience, and necessity.

Staff offers the following analysis of the Petition to assist the Commission in making its determination under Section 251(f)(2).

#### **Adverse Economic Impact on Users of Telecommunications Services**

KLM provided cost data on the implementation and recurring costs associated with switch software and hardware upgrades. KLM also filed supplemental implementation information to indicate it was a more economical and practical solution to replace its switches as opposed to performing the upgrades, recovering the upgrade costs from customers, only to replace the switches in a couple years and incur duplicate costs. In its proprietary cost data KLM indicates an amount per subscriber to recover the costs associated with upgrades. KLM indicates this is especially burdensome since few of their subscribers are expected to take advantage of the wireline/wireless porting ability.

#### **Undue Economic Burden on Petitioners**

The Petition states the May 24 requirement imposes an undue burden on KLM by forcing it to divert capital resources to implement local number portability. KLM argues the funds should be used for upgrading infrastructure that will benefit a large number of subscribers, not just a small number that may take advantage of the ability to port.

#### **Technical Feasibility**

While KLM does not claim most of the requirements are technically infeasible, they do indicate meeting the May 24 deadline would be a challenge. KLM's exchanges are currently served by switches, which no longer have ongoing vendor investment in research and development of customer features. Therefore, KLM believes switch replacement represents the best investment alternative for all of its end users. KLM states it is actively examining switch replacement options, but since this is a critical decision impacting subscribers for years to come, additional time beyond May 24, 2004 is needed.

KLM also requests a modification of the FCC's LNP requirements to address call rating and routing issues. Since it does not appear that any wireless carrier has a point of presence within the KLM exchanges, additional facilities may need to be provisioned and arrangements with third party carriers may need to be negotiated. KLM would like a modification to the requirement to state that wireless carriers will need to establish the

facilities and/or arrangements, thus making the wireless carrier responsible for the costs associated with transporting the call beyond the ILEC rate center.

**Public Interest**

KLM claims the two-year suspension will ensure subscribers are not forced to bear significant costs while receiving little benefit. KLM also states suspension benefits the public interest because it allows Petitioners to use resources in a manner that will benefit the entire subscriber base in the future. Finally, the suspension will allow KLM to replace its existing switches prior to LNP implementation instead of incurring related expenses twice, once when current switches are upgraded and again when switches are replaced.

The Telecommunications Department Staff (Staff) has reviewed the request and recommends the Commission grant a suspension for two years, until May 24, 2006, to allow Petitioners time to replace existing switches. KLM points out the Commission typically requires there be some minimal level of customer concern or demand before requiring rate-of-return regulated companies to expend significant resources to offer a new service. In this case, the FCC has mandated the implementation of the new LNP service and KLM has demonstrated that it would be in the public interest to delay that implementation date for two years to allow it to purchase new switches, the most economical use of its resources.

As Staff recommends the Commission grant the two-year suspension, Staff further recommends the Commission deny KLM's request for modification. In its Opinion, the FCC recognized the concerns with routing and rating of calls, but found these issues outside the scope of its order. The FCC noted the ruling with respect to wireline-to-wireless porting is limited to ported numbers that remain rated in their original rate centers. The FCC declined to make a determination on routing because "the requirements of [the] LNP rules do not vary depending on how calls to the number will be routed after the port occurs. Moreover, as CTIA notes, the rating and routing issues raised by the rural Wireline carriers have been raised in the context of non-porting numbers and are before the [FCC] in other proceedings."<sup>7</sup> Therefore, these issues, while not addressed in the context of the immediate Opinion, remain a matter for federal determination in other pending cases. This issue may be resolved at the federal level prior to the expiration of the recommended two-year suspension.

☒ The Company is not delinquent in filing an annual report and paying the PSC assessment.

☐ The Company is delinquent. Staff recommends the Commission grant the requested relief/action on the condition the applicant corrects the delinquency. The applicant should be instructed to make the appropriate filing in this case after it has corrected the delinquency.

☐ No annual report ☐ Unpaid PSC assessment. Amount owed:     )

---

<sup>7</sup> Id. at par. 40.