

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) **Case No. TO-2004-0401**
Federal Communications Commission)
Requirement to Implement Number Portability.)

REPORT AND ORDER

Issue Date: August 12, 2004

Effective Date: August 22, 2004

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APPEARANCES

W.R. England and Brian McCartney, Counsel, Brydon, Swearingen & England P.C., Post Office Box 456, 312 East Capitol Avenue, Jefferson City, Missouri 65102, for Petitioner KLM Telephone Company.

William D. Steinmeier, and Mary Ann (Garr) Young, Counsel, WILLIAM D. STEINMEIER, P.C., 2031 Tower Drive, Post Office Box 104595, Jefferson City, Missouri 65110, for Intervenor WWC License L.L.C., a/k/a Western Wireless d/b/a Cellular One.

David A. Meyer, Associate General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: **Kennard L. Jones, Judge.**

REPORT AND ORDER

SUMMARY

After reviewing KLM Telephone Company's petition for suspension and modification, the Missouri Public Service Commission concludes that implementation of local-number portability is technically feasible, would pose a significant adverse economic impact, but is not an undue economic burden. Finding also that suspension of KLM's obligation to implement local-number portability is consistent with the public interest, convenience and necessity, the Commission will grant KLM's request for suspension. Additionally, the Commission concludes that it is necessary to modify KLM's obligation to transport calls to ported numbers to avoid an undue

economic burden and that modification of KLM's obligation is in the public interest. Finally the Commission directs that where a wireless carrier has not made provisions to transport calls to ported numbers, an intercept message should be in place to instruct the caller of the attending circumstances.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

KLM Telephone Company filed a petition with the Missouri Public Service Commission on February 17, 2004, requesting that the Commission suspend for two years KLM's obligation to implement intermodal number portability. KLM also seeks modification of its duty under federal law to provide facilities to transport calls to ported numbers. KLM is a rural incumbent local exchange carrier, providing service to 1625 customers in Bates and Vernon counties in western Missouri.

The Staff of the Commission filed its memorandum on March 3, 2004, recommending that the Commission grant suspension but deny modification. Staff later recommended that the Commission grant modification and authorize KLM to intercept calls from its customers to ported numbers with a message informing the caller that because the person being called has changed telephone companies, the call will be treated as a long distance call.

On April 29, 2004, the Commission granted a petition to intervene filed by WWC License L.L.C., a/k/a Western Wireless d/b/a Cellular One. Western Wireless opposes KLM's requests for suspension and modification. KLM's service territory is wholly within Western Wireless' service territory. In light of intermodal number portability, the two companies are in direct competition for KLM's customers.

On May 11, 2004, a prehearing conference was held with a number of other LNP cases, whereupon industry representatives fielded questions from the Commission. And, on June 4, 2004, the Commission further suspended, until August 15, 2004, the enforcement of KLM's intermodal porting obligations. The Commission then held an evidentiary hearing on July 21, 2004. KLM, Western Wireless and Staff were present. Although the Office of the Public Counsel entered its appearance, it subsequently filed a Notice of Nonparticipation and was not present at the hearing. The parties filed post-hearing briefs on July 23, 2004.

Is it technically feasible for KLM to implement local number portability?

KLM's switch is not local-number-portability capable.^[1] However, it would take only 90 days for KLM to implement local-number portability.^[2] Although KLM cannot now provide local-number portability due to technical limitations of its current switch, that limitation can be overcome by the purchase and installation of additional software.^[3] Therefore, the Commission finds that it is technically feasible for KLM to implement local-number portability.

If KLM implements local number portability will there be a significant adverse impact on users of telecommunications services generally?

KLM serves 1,625 customers.^[4] The cost of upgrading its switch to be local-number-portability capable will be approximately \$12,833.^[5] And with recurring costs, each customer would have to pay an additional \$1.23 per month for five years.^[6]

KLM does not, however, base its request for suspension solely on the fact that its customers will be charged an additional \$1.23 per month for five years. KLM also asserted that "immediate implementation of local number portability will have an adverse impact on customers because KLM will have to duplicate costs when it becomes necessary to replace its switch due to technical support expiration."^[7] Technical support for the switch will expire on December 31, 2007. KLM will have to replace its switch prior to that time.^[8] Upon this premise, KLM rests its request for suspension.^[9]

Staff also asserted that suspension for two years is necessary to allow KLM more time

to use existing switch before replacing it.^[10] If, however, switch replacement were not an issue, then Staff's recommendation would have been to deny the suspension, based on its analysis of cost and its recommendation in other cases.^[11]

KLM purchased its current switch for \$751,954.21 in 1999.^[12] Switch replacement will cost from \$600,000 to \$700,000.^[13] With the initial cost to upgrade KLM's system being \$12,883, an immediate local-number-portability upgrade would represent 2% of a total switch replacement.^[14] The Commission notes that implementation of local-number portability, alone does not cause a significant adverse impact. However, the Commission finds that the economic impact on KLM's customers would be significantly adverse, if they are required to bear both the costs associated with implementing local-number portability now and the cost of a total switch replacement later.

Will implementation of local number portability cause an undue economic burden?

That KLM must replace its switch prior to December 31, 2007, due to the expiration of technical support, also drives its assertion that implementation of local-number portability would be unduly burdensome.^[15] The argument being that KLM must replace its switch in two years and that it would be unduly economically burdensome to require KLM to implement local-number portability by upgrading its switch only to replace it in. The Commission notes that it would be unduly economically burdensome for KLM to bear the cost of implementing local-number portability now and the cost of replacing its switch in two years. However, an analysis of an undue economic burden does not allow for contemplation of a switch replacement in two years. Therefore, the Commission makes no finding on this issue.

Is suspension consistent with the public interest, convenience, and necessity?

KLM argued that customers will see little, if any, benefit from a local-number portability surcharge and that there is little demand for wireline-to-wireless local-number portability in rural areas.^[16] Staff opines that it is in the public interest to allow KLM the opportunity to replace its switch as opposed to creating a situation where KLM subscribers incur local-number portability

implementation costs and then, within the next two years, incur duplicative costs for switch replacement. ^[17] On the other hand, Western Wireless argued that the public interest would not be served by suspending KLM's local-number-portability obligations because the provision of local-number portability is a critical component of a competitive local telephone market. ^[18] The Commission finds that it is consistent with the public interest, convenience, and necessity to suspend KLM's obligation to implement local number portability.

Is it technically feasible for KLM to transport calls outside of its service area?

KLM does not have the facilities or necessary agreements in place to transport calls to ported numbers outside of its service area. Nor is KLM legally authorized to transport calls outside of its exchange boundaries. ^[19] Transporting calls to numbers that have been ported to a wireless carrier with no point of presence in the KLM local service area could result in KLM inappropriately operating like an interexchange carrier instead of a local exchange carrier. ^[20] But if KLM did not route ported numbers through agreement or facilities, a call to a number that was local before being ported would either not be completed or would be required to be dialed as a toll call. ^[21] Although the Commission recognizes the concerns of the parties on this issue, none of these positions show that it is not possible for KLM to transport calls outside of its exchange area to ported numbers. Just as it is technically feasible for KLM to make its equipment local-number-portability capable, the Commission finds that it is technically feasible for KLM to make arrangements or build facilities to transport calls to ported numbers.

If KLM must transport calls outside of its service area, will there be a significant adverse economic impact on users of telecommunications services generally?

KLM does not know what the costs will be to transport calls outside of its exchange boundaries. ^[22] Western Wireless pays 3/10 of a cent to transport calls through SBC to KLM. ^[23] Western offered to reimburse KLM, at this same rate, for costs associated with routing calls to numbers that have been ported to Western. ^[24] However, it is not certain that 3/10 of a cent will be adequate to cover KLM's costs. ^[25] Although it is certain that there will be

some economic impact on KLM's customers if KLM must transport calls outside of its service area, the evidence does not show that such impact will be significant. The Commission therefore finds that there will be no significant impact on KLM's customers if KLM is required to transport calls outside of its service area.

If KLM must transport calls outside of its service area, will there be an undue economic burden?

KLM argued that there would be an undue economic burden to it and its customers if KLM must route calls outside of its local exchange area.^[26] Neither KLM nor its customers should be responsible for the costs of transporting calls outside of KLM's exchange area.^[27] Western stated that because it bears the cost of transporting calls to KLM, KLM should bear the costs of transporting calls to Western.^[28] KLM does not have facilities, arrangements or regulatory authority to transport calls outside of its service area.^[29] The FCC has yet to determine which carrier should bear the burden of transporting calls to ported numbers. In light of this uncertainty and the costs of securing facilities, arrangements and regulatory approval to transport calls to ported numbers, the Commission finds that there would be an undue economic burden if KLM must transport calls outside of its service area.

Is modification of KLM's obligation to transport calls outside of its service area consistent with the public interest, convenience, and necessity?

KLM seeks modification so that if intermodal porting is requested prior to the FCC resolving the rating and routing issues, then KLM will notify the wireless carrier that KLM is not responsible for establishing facilities or arrangements with third-party carriers to transport calls outside of its local service area.^[30] KLM argued that it is not in the public interest to incur costs today for an unknown demand, especially when all of the costs are still unknown since the FCC has not addressed the issue of carrier responsibility for the transporting calls to ported numbers.^[31] Staff supports modification until such time as the FCC addresses the outstanding rating and routing issues.^[32] In its recommendation, Staff suggested that KLM implement an intercept message alerting callers of the circumstances surrounding calls to ported numbers.

The Commission finds that modification of KLM's obligation to transport calls outside off its service area is consistent with the public interest, convenience, and necessity.

CONCLUSIONS OF LAW

KLM is a local exchange telecommunication company providing telecommunications services between points within the State of Missouri.^[33] KLM is therefore subject to the Commission's jurisdiction.^[34]

Section 251(b) of the Telecommunications Act of 1996 (the Act) states that incumbent local exchange providers have a duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the FCC.^[35] "Number Portability" is defined by the Act as "the ability of users of telecommunications service to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."^[36]

On November 10, 2003, the Federal Communications Commission (FCC) issued a *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* (the LNP Order) addressing local number portability (LNP) between wireline and wireless telecommunications carriers.^[37] Among other things, the Local-Number Portability Order concludes that, by November 24, 2003, local exchange carriers 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. This requirement applies even though the wireless carrier's point of presence is in another rate center and has no physical interconnection with the wireline carrier. Although the Local-Number Portability Order recognized the problem of designating different routing and rating points on local-number portability for small rural local exchange carriers, the FCC did not resolve these issues in its decision.

Section 251(f)(2) of the Act does, however, provide that a state commission shall suspend or modify number portability requirements for rural carriers, if 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 a requirement that is technically infeasible; and
- (B) is consistent with the public interest, convenience, and necessity. [\[38\]](#)

Suspension: The Commission reasons that the word “requirement,” referred to in “(i)” and “(ii)” above, refers to that of local-number portability implementation. The Commission therefore concludes that it is the implementation of local-number portability that must cause the undue burden or the technical infeasibility. However, the word “requirement” is not included in the factor concerning a significant economic adverse impact. The Commission notes that the word “generally” is found in that subsection. Because the word “requirement” is found in “(ii)” and “(iii)”, above, but not in “(i)”, different treatment must be afforded.

The Commission questions whether the word “generally” in “(i)”, above, modifies “telecommunications users” or whether it refers to the “significant economic adverse impact.” If “generally” modifies telecommunications users, this shows an intent to consider users other than KLM’s customers and could be construed to include *all* telecommunications users. This is an unreasonable conclusion. The word “generally” must therefore modify significant adverse economic impact. Having concluded that the word “requirement” refers to that of implementation of local number portability, the Commission concludes that the consideration of a significant adverse impact includes more than the costs of local number portability implementation but also the general impact on telecommunications users. This general impact includes the imminent costs of switch replacement.

Evidence was presented that showed the cost of a new switch could be from \$600,000 to \$700,000. It does not make economic sense for KLM and its customers to upgrade its switch now only to replace the switch in two years. Further, it would be convenient to wait for two years and then replace the switch, which will be local-number-portability capable. There is also little, if any, demand for porting in KLM’s service area. There is no necessity to require

KLM to implement local number portability. If KLM were required to upgrade its switch now, its customers would incur unnecessary duplicative costs. The direct effect on KLM's customers outweighs any other interests, including that of Western Wireless, who may see little benefit from requiring KLM to implement local-number portability now, rather than in two years when it replaces its switch. The Commission therefore concludes that there would be a significant adverse economic impact on telecommunications users were KLM required to upgrade its switch now, then in two years have to replace the same switch, incurring duplicative costs.

Modification: The Commission concludes that modification of KLM's obligation to transport calls to ported numbers is necessary to avoid an undue economic burden. In light of the FCC not yet resolving the issue of which carrier will bear the costs of transporting calls, it is not certain that KLM will have to bear these costs. If KLM were required to bear the costs of implementing local-number portability and the costs of transporting calls to Western , KLM would shoulder all of the costs of intermodal porting while losing customers and getting no benefit. Furthermore, KLM would incur the additional costs of modifying its regulatory certificates and tariffs. And, if necessary, the costs of making arrangements with third-party carriers to transport calls outside of KLM's service area. All of these circumstances combine to create what would be an undue economic burden.

DECISION

Suspension: KLM can implement local-number portability within 90 days with the purchase and installation of additional software. Therefore, the Commission finds that it is technically feasible for KLM to implement LNP. However, there would be a significant adverse impact upon KLM's customers if they are forced to pay for a switch upgrade now and in two years, through costs included in a switch replacement, pay for that same switch upgrade. The Commission finds that it has been shown that implementation of LNP would cause a significant adverse economic impact and that suspension is consistent with the public interest, convenience and necessity.

Modification: The Commission determines that modification is necessary to avoid an undue economic burden for several reasons. First, it is uncertain whether Western Wireless or

KLM will ultimately be required to bear the costs of transporting calls to ported numbers. Also, in order to transport calls outside of its service area, KLM will have to bear the costs of new facilities, third-party arrangements and regulatory processes. Lastly, KLM stands to gain no benefit from these costs. These factors combine to create an undue economic burden.

Modification of KLM's obligation to transport calls to ported numbers is consistent with the public interest, convenience and necessity. Modification is certainly consistent with the interest, convenience and necessity of KLM's customers. KLM's customers would otherwise have to bear the cost of transporting calls, while receiving no benefit. It is also uncertain that KLM's customers will have to bear these costs because the FCC is currently considering whether the wireless or wireline carrier should bear the cost of transporting calls.

If Western Wireless does not facilitate the transportation of calls to ported numbers, then calls to ported numbers from KLM's service area will be treated like long distance calls. Therefore, in order to prevent KLM's customers who call ported numbers from incurring unexpected long distance charges, the Commission will direct KLM to inform customers of that possibility through an intercept message. This message is also consistent with the public interest. It may not be convenient to reach a message rather than the person being called, but the surprise of long distance charges outweighs the inconvenience of an intercept message.

IT IS THEREFORE ORDERED:

1. That KLM Telephone Company's request to suspend until May 26, 2006, the requirement established by the Federal Communications Commission's November 24, 2003, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* to implement local number portability is granted.

2. That the Federal Communications Commissions local number portability requirements for KLM Telephone Company is modified to provide that if wireline-to-wireless local number portability is requested after KLM has become fully LNP-capable, then KLM shall notify the wireless carrier that it is not the responsibility of KLM to establish facilities or arrangements with third-party carriers to transport call son a local basis to a point outside of KLM's local service area.

3. That KLM Telephone Company shall establish an intercept message for seven-digit dialed calls to ported numbers where the required facilities or appropriate third-party arrangements have not been established. The intercept message will inform subscribers that the call cannot be completed as dialed and to the extent possible, provide information about how to complete the call and whether long distance charges will apply.

4. That KLM Telephone Company shall notify the Commission ten days from the date the Federal Communications Commission issues any further decision addressing the rating and routing issues associated with porting numbers.

5. That the modifications made in this order will remain in effect only until 30 days after the Federal Communications Commission further addresses the rating and routing issues associated with porting numbers, unless otherwise ordered.

6. That this order shall become effective on August 22, 2004.

7. That this case may be closed on August 23, 2004.

BY THE COMMISSION

(S E A L)

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Gaw, Ch., Clayton, Davis, and
Appling, CC., concur;
Murray, C., dissents;
and certify compliance with the
provisions of Section 536.080,
RSMo 2000.

Dated at Jefferson City, Missouri,
on this 12th day of August, 2004.

[\[1\]](#) Direct testimony of KLM's Bruce Copsey p.4 line 21 and surrebuttal testimony of KLM's William Warinner p. 12, lines 1-6.

[\[2\]](#) Direct testimony of Bruce Copsey p. 6 lines 8-9 and Transcript p. 242 lines 11-13 and 17-20.

- [\[3\]](#) Post-hearing brief filed by Staff.
- [\[4\]](#) See verified petition filed by KLM Telephone Company, Transcript, p. 389 line 13.
- [\[5\]](#) Proprietary information filed by KLM on February 24, 2004 and rebuttal testimony of Ron Williams (Wireless) p. 14, lines 8-9.
- [6](#) Transcript p. 219, lines 15-22. Initially filed as proprietary, these figures were openly discussed in the hearing and in post-hearing briefs.
- [\[7\]](#) Post-hearing brief filed by KLM.
- [\[8\]](#) Direct testimony of Bruce Copsey (KLM) p. 5, line 4 and Transcript p. 242 line 25.
- [\[9\]](#) Surrebuttal testimony William Warinner (KLM) p.17, lines 7-11.
- [\[10\]](#) Staff's recommendation, filed March 3, 2004.
- [\[11\]](#) Transcript, p.406, lines 10-13.
- [\[12\]](#) Direct testimony of Bruce Copsey (KLM), p. 5, line 2.
- [\[13\]](#) Transcript, p.289, lines 22-23.
- [\[14\]](#) Rebuttal testimony of Ron Williams (Wireless), p. 14, lines 8-9.
- [\[15\]](#) Surrebuttal testimony of William Warinner (KLM), p19, lines 8-9.
- [\[16\]](#) Post-hearing brief filed by KLM.
- [\[17\]](#) Surrebuttal testimony of Natelle Dietrich, p. 3, lines 16-19.
- [\[18\]](#) Rebuttal testimony of Ron Williams (Wireless), p.21, lines 5-9.
- [\[19\]](#) Surrebuttal testimony of William Warinner (KLM), p.12, lines 1-6.
- [\[20\]](#) Rebuttal testimony of Natelle Dietrich, p.6, lines 4-7.
- [\[21\]](#) Rebuttal testimony of Ron Williams (Wireless), p. 24, line 25.
- [\[22\]](#) Transcript, p. 289, lines 9-14.
- [\[23\]](#) Transcript, p. 375, line 19.
- [\[24\]](#) Rebuttal testimony of Ron William (Wireless), p.24, lines 8-12.
- [\[25\]](#) Transcript p. 308, lines 10-12.
- [\[26\]](#) Transcript p. 308, lines 10-12.
- [\[27\]](#) Rebuttal testimony of Natelle Dietrich, p.5, lines 20-23.
- [\[28\]](#) Rebuttal testimony of Ron Williams (Wireless), p. 17, lines 2-3.
- [\[29\]](#) Surrebuttal testimony of Ron Williams (Wireless), p. 17, line 2-3.

[30] Post-hearing brief of KLM.

[31] Surrebuttal testimony of William Warinner (KLM), p.28, lines 15-18.

[32] Surrebuttal testimony of Natelle Dietrich, p. 5, lines 21-23.

[33] Transcript, p. 221, lines 9-10.

[34] Section 286.250(2), RSMo 2000.

[35] 47 U.S.C §251(b).

[36] 47 U.S.C. §153(30).

[37] *Id.*

[38] 47 U.S.C. §251(f)(2).