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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

MAR 20 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Telephone Number Portability) CC Docket No. 95-116

TO: The Common Carrier Bureau

PETITION FOR EXTENSION OF TIME OF MEDIAONE, INC.

- I. DUE TO PEROT SYSTEMS, INC.'S REPEATED CONTRACTUAL BREACHES, ITS FAILURE TO PROVIDE A NUMBER PORTABILITY ADMINISTRATION CENTER SERVICE MANAGEMENT SYSTEM ("NPAC/SMS") THAT COULD PERFORM TO REQUIRED TECHNICAL AND PERFORMANCE STANDARDS, AND THE CHANGE OF NPAC/SMS VENDORS TO LOCKHEED-MARTIN, MEDIAONE, INC. WILL REQUIRE AN EXTENSION OF TIME TO DEPLOY LOCAL NUMBER PORTABILITY, COINCIDENT WITH THE EXTENSIONS GRANTED TO THE WEST COAST AND SOUTHEAST REGIONS

MediaOne, Inc. ("MediaOne") hereby requests an extension of time to accomplish the deployment of Local Number Portability ("LNP") in its territories lying within the West Coast and Southeast regions. As the Federal Communications Commission ("Commission") is aware,¹ LNP deployment in the above-referenced regions is being administered by Regional Limited Liability Companies ("Regional LLC" or "LLC"). Those Regional LLCs terminated their contracts with Perot Systems, Inc. ("Perot") around mid-February, 1998, due to

¹ See Letter to A. Richard Metzger, Jr., Chief, Common Carrier Bureau, Federal Communications Commission, from Alan C. Hasselwander, Chairman, North American Numbering Council, dated Feb. 20, 1998.

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repeated and continuing breaches of the Master Contract associated with the provision and delivery of a production-ready NPAC/SMS.² Around that same time, both Regional LLCs entered into a contract with Lockheed-Martin for the delivery of an NPAC/SMS. It is anticipated that a production-ready NPAC/SMS will be available on May 11, 1988. The West Coast region will be in a position to begin LNP deployment soon after that date, while the incumbent local exchange carrier ("ILEC") (i.e., BellSouth) will be unable to begin operations interfacing with that NPAC/SMS until around the beginning of September, 1998.

Because of the delays attendant to the numerous Perot breaches, the time necessary to renegotiate the vendor contract for the Lockheed-Martin NPAC/SMS, and the expected dates in the West Coast and Southeast regions for a production-ready NPAC/SMS, MediaOne will require a brief extension of time to fulfill the Commission's aggressive time mandates regarding the deployment of LNP in its operating areas in the West Coast and Southeast regions.

The most recently reviewed Lockheed-Martin Project Plan makes clear that

² The Commission has described the NPAC/SMS as "a hardware and software platform that will contain the database of information required to effect the porting of telephone numbers. In general, the [NPAC/SMS] will receive customer information from both the old and new service providers, validate the information received, and download the new routing information when an 'activate' message is received indicating that the customer has been physically connected to the new service provider's network. The [NPAC/SMS] will contain a record of all ported numbers and a history file of all transactions relating to the porting of a number. The [NPAC/SMS] will also provide audit functionality and the ability to transmit routing information to service providers to maintain synchronization of the service providers' network elements that support portability." In the Matter of Telephone Number Portability, Second Report and Order, 12 FCC Rcd. 12281, 12288 n.31 (1997) ("Second Report and Order").

those carriers affected by the contractual agreements between the Regional LLCs and Lockheed-Martin will be unable to complete Phase I of LNP deployment by March 31, 1998. The slippage in this Phase will also cause slippages in the subsequent phases, as well. The amount of time of the slippage will depend on the specific carrier. In some cases, while the specific dates associated with the Phases will slip or change, completion of all phases of LNP will be completed by December 31, 1998 (the current required end-date for Phase V). In other cases, the December 31, 1998 will not be met.

MediaOne understands that the largest ILECs will be filing Petitions for Extension outlining their respective needs with respect to additional time to deploy LNP across their territories. MediaOne would expect to deploy LNP along the same timelines as those presented by the largest ILECs. In the Los Angeles Metropolitan Service Area ("MSA"), where MediaOne must interface with both Pacific Bell and GTE Service Corporation ("GTE"). MediaOne requests that its schedule be extended to the dates granted to Pacific Bell or GTE.

To the extent that an end-date for Phase V will extend beyond December 31, 1998, MediaOne also asks that the Commission extend the date that entities can make Bona Fide Requests ("BFR") for LNP from carriers in the affected regions from the currently-mandated January 1, 1999 until the first day after the last date included in the Phase V implementation. MediaOne requests that the right to proffer a BFR not extend to a carrier until the next day after the final completion of Phase V. Such a change would be consistent with the Commission's prior establishment of January 1, 1999 date for BFRs, i.e., the first date after the

originally-expected final deployment date for Phase V, as well as with the policy reasons for establishing a BFR process in the first instance.

II. **THE FILINGS OF THE ILECS IN THE WEST COAST AND SOUTHEAST REGIONS DEMONSTRATE SOUND GROUNDS FOR GRANTING AN EXTENSION UNDER 47 SECTION 52.23(d), AS WELL AS "GOOD CAUSE" UNDER A MORE TRADITIONAL WAIVER ANALYSIS -- GIVEN THAT THE NEED FOR THE ADDITIONAL TIME STEMS FROM CIRCUMSTANCES BEYOND THE CONTROL OF THOSE ILECS, OR MEDIAONE'S CONTROL, THE LNP DEPLOYMENT DATES SHOULD BE EXTENDED**

Under 47 C.F.R. Section 52.23(d), the Common Carrier Bureau ("Bureau") has delegated authority to waive any of the dates in the implementation schedule for LNP "to ensure the efficient development of number portability" for a period not to exceed 9 months.³ MediaOne believes that the underlying facts associated with the Perot breaches and the change of NPAC/SMS vendor to Lockheed-Martin provide a substantial grounds on which to grant waivers of LNP deployment in the West Coast and Southeast regions. Certainly, the change of vendor to Lockheed-Martin was reasonable and prudent such that it "ensure[s] the efficient development of number portability" in a more predictable and reliable timeframe than would be the case had those Regions LLC's attempted to continue their contractual relationship with Perot. Thus, under Section 52.23(d), the Bureau should grant the instant Petition for Extension of Time.⁴

Additionally, however, MediaOne believes that the Petitions that will be filed by the ILECs in the West Coast and Southeast regions will also demonstrate "good

³ 47 C.F.R. § 52.23(d).

cause” for such an extension/waiver (under the more traditional waiver analysis).⁵ An applicant for a waiver must demonstrate that special circumstances warrant a deviation from the general rule and that such deviation will serve the public interest.⁶ The Commission has recognized that the unavailability of a product from a manufacturer is an appropriate ground for finding good cause. For example, the Bureau recently granted waivers to various small local exchange carriers in connection with the conversion to 4-digit Carrier Identification Code (“CIC”) implementation. In those waivers the Bureau recognized that the products these companies needed to accomplish the upgrade to their individual networks is not readily available from switch manufacturers, and that has caused the companies a delay in meeting the Commission-mandated schedule.⁷ Similarly, when carriers were attempting to implement Originating Line Screening (“OLS”) services, vendor delays (which included system/software problems identified during on-line testing) were held to constitute good cause to support an extension of time.⁸

⁴ Affected MediaOne switches include: Phase I; Atlanta and Los Angeles; Phase II Pompano; Phase III, none; Phase IV, Jacksonville.

⁵ 47 C.F.R. § 1.3.

⁶ Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F.2d 1153, 1158 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

⁷ See, e.g., Clarks Telecommunications Co., 1997 FCC LEXIS 6700, rel. Dec. 3, 1997; Cuba City Telephone Exchange Company, 1997 FCC LEXIS 7018, rel. Dec. 15, 1997; Order, DA 97-2691, rel. Dec. 24, 1997; Frontier Communications of Lakeshore, Inc., 1997 FCC LEXIS 7223, rel. Dec. 31, 1997; MoKan Dial, Inc., 1998 FCC LEXIS 80 ¶¶ 19-24, rel. Jan. 8, 1998.

⁸ See In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation Petitions Pertaining to Originating Line Screening Services, Memorandum Opinion and Order, 5 Comm. Reg. 1295, 1298-299 ¶ 7

Therefore, a delay in implementation due to vendor product availability is a recognized reason to grant waivers. As substantial, credible evidence filed with the Commission will show, the reason for the delay in LNP deployment in the affected regions is due to extraordinary circumstances beyond the control of the Regional LLCs, its member companies, and affected carriers; and occurred despite the vigilance of the Regional LLCs in monitoring the performance of Perot.

III. PROCEDURAL MATTER REGARDING REQUESTED EXTENSION

MediaOne believes that the completion dates that the ILECs will propose with respect to each Phase (after the availability of a production-ready NPAC/SMS) will be aggressive. As a matter of strict procedure, the current Petition for Extension of Time need only ask for an extension with respect to Phase I. Under the existing rules, a Petition for Extension of Time with respect to Phase II would not be required to be filed until 60 days before May 15th (or around March 15th). Similarly, a Petition for Extension of Time would not be required to be filed for Phase III until around April 30th; Phase IV around July 31st; and, depending upon any ILECs' proposed LNP deployment schedule, a Petition for Extension of Time regarding Phase V might not be required at all or might be required around October 31st.

(1996) (concluding that temporary waivers, granting extensions of time, were warranted for those carriers "whose . . . [Line Information Database] LIDB provider is not yet ready to offer enhanced [Originating Line Screening] OLS service"); Memorandum Opinion and Order, 12 FCC Rcd. 11606, 11608 ¶ 5 (1997) (where an OLS LIDB-based service provider outlined the problems it was having in the loading of data; the learnings associated with on-line testing; the need for future software modifications), and id. at 11609 ¶ 7 (grant of requested extension would "permit [the vendor] to address the technical issues" raised).

It is possible that the Bureau may determine that it is only appropriate to address the instant Petition for Extension of Time request with respect to Phase I. Obviously, such an approach would require that all affected carriers file repeated Petitions for Extension of Time as they get within 60 days of the completion dates currently mandated with respect to subsequent Phases.

MediaOne believes that it makes sense for the Bureau to rule on MediaOne's Petition for Extension of Time as a whole, granting us the full spectrum of extensions granted the underlying ILECs. Such would certainly be more efficient than requiring additional Petition filings in the future. However, should the Bureau take this approach, MediaOne would still expect to retain the ability to file Petitions for Extension of Time in the event we were unable to complete any particular Phase by the dates incorporated into the underlying ILEC deployment plan, or if the ILEC deployment plan itself required modification. Furthermore, it is a certainty -- since some of the proposed timeframes between Phases II through IV are less than 60 days, that an extension petition filed with respect to a granted-ILEC timetable could not be filed 60 days in advance. Thus, concomitantly with granting MediaOne's proposed timetable, the Bureau should waive the 60-day filing requirement at this time, requiring that carriers file as soon as possible if they are going to be unable to meet their represented (and granted) completion dates.

MediaOne believes that a "total package extension" would be the more efficient procedure and urge the Bureau to give it serious consideration.

III. CONCLUSION

For the above reasons, and for all the substantive reasons outlined in the filings of BellSouth Corporation ("BellSouth"), Pacific Bell, and GTE, MediaOne hereby requests that the Commission grant it an extension of time to deploy LNP in the West Coast (Pacific, GTE), and Southeast (BellSouth) regions, coincident with the extensions granted to the underlying carriers. We also request that, to the extent a carrier is unable to complete deployment of LNP by December 31, 1998, the Commission extend the BFR date out to the day after the last date for Phase V completion.

Respectfully submitted,

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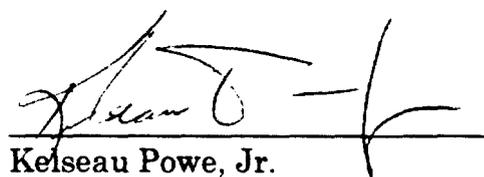
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March 2, 1998

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 2nd day of March, 1998, I have caused a copy of the foregoing **PETITION FOR EXTENSION OF TIME OF MEDIAONE, INC.** to be served, via hand delivery, upon the persons listed on the attached service list.


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March 2, 1998

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SUMMARY

USWC¹ hereby requests an extension of time to accomplish the deployment of LNP in its region for Phases I, II, III and IV. Because of Perot Systems, Inc.'s repeated contractual breaches and its failure to provide a NPAC/SMS that met technical and performance standards, the Western Region LLC, of which USWC is a member, terminated its contract with Perot on February 10, 1998. On February 13, 1998, the Western Region LLC entered into a contract with Lockheed-Martin for the delivery of an NPAC/SMS by May 11, 1998.

Because of this delay, USWC will not be able to meet its Phase I completion date of March 31, 1998. Based on the May 11 availability of the NPAC/SMS from Lockheed-Martin, USWC plans to begin Phase I testing by May 18, 1998 and complete it by July 17, 1998. As a result of this delay, Phases II, II and IV will also slip. These slips will range from 33 days to 108 days from the most recent schedule. However, USWC does plan to have all five Phases of deployment completed by December 31, 1998.

USWC has two basic rationales to support its extensive test plan. First, the company needs to conduct the same kind of basic testing in each of its three regions (former BOC territories) because each region has its own unique set of OSSs with which the NPAC/SMS must interface. Because each set of OSSs was developed by a different one of USWC's former BOCs, testing with one set of systems does not demonstrate that a successful interface will occur with either of the other sets of

¹ All abbreviations and acronyms are defined in the sections that follow.

systems. Second, USWC has limited personnel resources with the expertise needed to conduct these tests, thus the most expedient way to use these resources is to conduct the tests in one former BOC region at a time, rather than attempting to conduct simultaneous testing in two or three regions.

If the Commission grants this Petition for Extension of Time, the completion times for Phases I, II, III and IV will be extended for periods that run from 108 days to 33 days. This extension requested by USWC will permit USWC to conduct the appropriate level of testing, with experienced personnel, to ensure that implementation in each Phase is successful.

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U S WEST COMMUNICATIONS, INC.**

- I. DUE TO PEROT SYSTEMS, INC.'S REPEATED CONTRACTUAL BREACHES, ITS FAILURE TO PROVIDE A NUMBER PORTABILITY ADMINISTRATION CENTER SERVICE MANAGEMENT SYSTEM ("NPAC/SMS") THAT COULD PERFORM TO REQUIRED TECHNICAL AND PERFORMANCE STANDARDS, AND THE CHANGE OF NPAC/SMS VENDORS TO LOCKHEED-MARTIN, U S WEST COMMUNICATIONS, INC. WILL REQUIRE AN EXTENSION OF TIME TO DEPLOY LOCAL NUMBER PORTABILITY

U S WEST Communications, Inc. ("USWC") hereby requests an extension of time to accomplish the deployment of Local Number Portability ("LNP") in its region. As the Federal Communications Commission ("FCC" or "Commission") is aware,¹ the Western Region Telephone Number Portability Limited Liability Company ("Western LLC" or "LLC"), as well as the West Coast and Southeast LLCs, terminated their contract with Perot Systems, Inc. ("Perot") on February 10, 1998, due to repeated and continuing breaches of the Master Contract associated with the provision and delivery of a production-ready NPAC/SMS.² On February

¹ See Letter to A. Richard Metzger, Jr., Chief, Common Carrier Bureau, Federal Communications Commission, from Alan C. Hasselwander, Chairman, North American Numbering Council, dated Feb. 20, 1998.

² The Commission has described the NPAC/SMS as "a hardware and software platform that will contain the database of information required to effect the porting

13, 1998, the Western Region LLC (of which USWC is a member) entered into a contract with Lockheed-Martin for the delivery of an NPAC/SMS.

Because of the delays attendant to the numerous Perot breaches, the time necessary to renegotiate the vendor contract for the Lockheed-Martin NPAC/SMS, and the expectation that a production-ready NPAC/SMS will not be available until May 11, 1998, USWC will require a brief extension of time to fulfill the Commission's aggressive time mandates regarding the deployment of LNP in its territory.

Over and above the delays attendant to the switch of vendors, the most recently reviewed Lockheed-Martin Project Plan makes clear that USWC will be unable to complete Phase I of LNP deployment by March 31, 1998. Our current belief is that Phase I will be completed by July 17, 1998. The slippage with respect to Phase I also means that USWC will require an extension with respect to other Phases of LNP deployment as well (specifically Phases II through IV).

As USWC's schedule, outlined below, demonstrates, USWC is asking for 67 days from the delivery of a production ready NPAC/SMS to complete Phase I; 28

of telephone numbers. In general, the [NPAC/SMS] will receive customer information from both the old and new service providers, validate the information received, and download the new routing information when an 'activate' message is received indicating that the customer has been physically connected to the new service provider's network. The [NPAC/SMS] will contain a record of all ported numbers and a history file of all transactions relating to the porting of a number. The [NPAC/SMS] will also provide audit functionality and the ability to transmit routing information to service providers to maintain synchronization of the service providers' network elements that support portability." In the Matter of Telephone Number Portability, Second Report and Order, 12 FCC Rcd. 12281, 12288 n.31 (1997) ("Second Report and Order").

days after the completion of Phase I to complete Phase II; 38 days after the completion of Phase II to complete Phase III; 42 days after the completion of Phase III to complete Phase IV. Because we currently believe that Phase V will complete on schedule, under the Commission's current mandates, as a strict procedural matter an extension of time with respect to Phase V is not necessary, at this time.³

II. THE REGULATORY BACKGROUND ASSOCIATED WITH LNP ADMINISTRATORS, LIMITED LIABILITY CORPORATIONS, AND THE PROVIDERS OF NPAC/SMSs

A. Regional Databases and Their Administration

In the Commission's First Report and Order, it found that an LNP "architecture that uses regionally-deployed databases best serves the public interest," because such an architecture would facilitate the ability of local exchange carriers ("LEC") to provide LNP. In large part, this conclusion was based on the fact that the distance that carrier routing information would need to be transmitted would be reduced where regional databases were utilized, leading to concomitant cost reductions.⁴ Furthermore, such architecture would reduce the burden on

³ Should USWC's proposed schedule prove to be too aggressive, or should there be material problems in implementing prior Phases, USWC would need to seek an extension with respect to Phase V. At that time, we also expect we would seek an extension of the date when carriers can make Bona Fide Requests ("BFR") for LNP from January 1, 1999 until the first day after the last date included in the Phase V implementation. Such a change would be consistent with the Commission's prior establishment of January 1, 1999 date for BFRs, *i.e.*, the first date after the originally-expected final deployment date for Phase V of December 31, 1998, as well as with the policy reasons for establishing a BFR process in the first instance.

⁴ In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 8352, 8399-8400 ¶ 91 (1996) ("First Report and Order").

carriers of having to deploy databases over various geographic areas.⁵

The Commission further determined that, based on statutory requirements as well as efficiency and non-discrimination considerations, the administration of these databases was best left to “one or more neutral third parties.”⁶ The Commission directed the North American Numbering Council (“NANC”)⁷ to select one or more independent, non-governmental entities to manage the LNP regional databases.⁸ As a part of the neutral third-party selection process, the NANC was also to make determinations about the geographic coverage of the regional databases, the technical interoperability and operational standards, the user interfaces between telecommunications carriers and the selected administration entities, and the network interfaces between the SMS and the downstream databases.⁹

B. The Selection of Regional Database Administrators

In its Second Report and Order, the Commission adopted the NANC’s recommendations that there be seven regional LNP databases, coinciding with the boundaries of the seven original Bell Operating Company (“BOC”) regions and that Lockheed-Martin and Perot serve as administrators for the databases.

⁵ Id.

⁶ Id. at 8400-01 ¶ 92.

⁷ “The fundamental purpose of the NANC is to act as an oversight committee with the technical and operational expertise to advise the Commission on numbering issues.” Id. at 8401 ¶ 93, citing to In the Matter of Administration of the North American Numbering Plan, Report and Order, 11 FCC Rcd. 2588, 2609 (1995).

⁸ First Report and Order, 11 FCC Rcd. at 8401 ¶ 93.

⁹ Id. at 8402-03 ¶ 95.

Additionally, the Commission adopted, on an interim basis only, the NANC's recommendation that the regional LLCs,¹⁰ already established in each of the original BOC regions, manage and oversee the LNP administrators.¹¹

In its Second Report and Order, the Commission adopted "the NANC's recommendation that Lockheed Martin serve as [LNP] database administrator for the Northeast, Mid-Atlantic, Midwest and Southwest regions, and that Perot Systems serve as the [LNP] database administrator for the Southeast, Western and West Coast regions."¹² Even more specifically, the Commission held that "the criteria utilized by the NANC in reviewing and evaluating the selection process employed by the various service providers at the regional level were sufficient to ensure that the [LNP] database administrators ultimately recommended meet the Commission's requirements."¹³

Upon the identification of approved potential LNP database administrators, LLCs began negotiation of master contracts.¹⁴ These contracts "set the terms and

¹⁰ For a general description of the operation of, and participation in, LLCs, see Second Report and Order, 12 FCC Rcd. at 12334-337 ¶¶ 94-98, 12348 ¶ 121 and references in nn.263-83. The Western Region LLC was formed on Jan. 24, 1996.

¹¹ Id. at 12283-284 ¶ 3, 12296-297 ¶ 21, 12298 ¶ 25.

¹² Id. at 12303 ¶ 33.

¹³ Id. While neither the NANC nor the Commission specifically were required to resolve the policy matter of whether two LNP database administrators were better than one (since the facts as presented and the NANC recommendation included two administrators), the Commission did observe that there were clear advantages in having two LNP database administrators (id. at 12306 ¶ 38), with respect to cost-effectiveness and reliability in the provision of NPAC services.

¹⁴ Id. at 12299 ¶ 27. And see id. n.84, where the Commission noted the NANC's recommendation that service providers, rather than LLCs, handle most aspects of the selection of LNP administrators until the contracting state, "at which point the

conditions for individual 'user agreements' that would be executed by the [LNP] database administrator and each carrier that would use the regional database."¹⁵

The LLCs were also charged, at least on an interim basis, with the obligation for immediate oversight of the LNP database administrators.¹⁶ The Commission believed that "[b]ecause the LLCs were responsible for negotiating the master contracts with their respective [LNP] administrators, each LLC [was] the entity with the greatest expertise regarding the structure and operation of the database for its region."¹⁷

III. BREACHES OF THE MASTER/AMENDED CONTRACTS

The Western Region LLC did negotiate a master agreement with Perot. That agreement addressed, among other things, Test Environment Preparation, Interoperability testing and Turn-Up testing. Perot breached its agreement with respect to all these material matters, failing to live up to any of its proffered project plans, all of which were closely monitored by both the Western Region LLC and

LLCs became active." The "master contract would govern the obligations and rights of the parties and establish the conditions for the provision of [LNP] data to all utilizing carriers," quoting in part from the NANC *Working Group Report* at Section 4.2.4.

¹⁵ Second Report and Order, 12 FCC Rcd. at 12299 ¶ 27, 12335 ¶ 95.

¹⁶ Id. at 12346 ¶ 117.

¹⁷ Id. Since this decision, the Commission has adopted further recommendations of the NANC and endorsed Lockheed-Martin as the national North American Numbering Plan Administrator ("NANPA"). See In the Matters of Administration of the North American Numbering Plan, Toll Free Service Access Codes, CC Docket Nos. 92-237 and 95-155, Third Report and Order and Third Report and Order, rel. Oct. 9, 1997 ¶ 1.

the affected specific carriers.¹⁸

It became apparent in the December, 1997-January, 1998 timeframe that Perot -- who had missed its original contractual obligation to produce a production-ready NPAC/SMS by October 1, 1997, as well as its subsequent commitment to have such an NPAC/SMS available by December 15 -- would be unable to deliver a production-ready NPAC/SMS in time for the Western Region affected carriers to meet the Commission's mandated timeline. While there was an independent audit finding that, given time, Perot might well be able to produce such an NPAC/SMS,¹⁹ it was determined that enough time had already been expended in pursuit of a satisfactory Perot NPAC/SMS and that a change of vendor should occur.

A change of vendor has occurred, with the Western Region LLC voting to proceed with a contract with Lockheed-Martin for a production-ready NPAC/SMS to be available May 11, 1998. At the point at which a production-ready NPAC/SMS is

¹⁸ USWC was greatly concerned with Perot delays that occurred quite early in the stages of the project, fearing that such could suggest that the original contractual October 1, 1997 performance date for acceptance of the NPAC/SMS was in jeopardy. USWC's Tracie Muesing, then Vice President -- Mass Market and Operations, communicated with John Bavis, Perot Account Executive, on July 9, 1997 to express USWC's commitment to meet the Commission-mandated dates and to reinforce USWC's expectations of Perot that it meet the dates agreed upon in the contract. Again on August 14, 1997, Ms. Muesing, sent a letter to Mr. Bavis, informing him that USWC believed Perot was in breach of the contract. She **again** requested a plan identifying how Perot intended to meet the October 1, 1997 performance date.

¹⁹ On January 8, 1998, USWC hosted a meeting where specifics of an audit done by the sente Corporation regarding Perot's progress on a production-ready NPAC/SMS were disclosed and discussed. The sente audit identified several areas of risk involving Perot's organizational structure, sufficiency of resources, technical architecture, documentation, and project management processes. However, sente did conclude that Perot's NPAC/SMS was viable, progressing and could eventually yield a stable and reliable product.

made available, USWC can begin live carrier to carrier testing of the NPAC/SMS and the deployment of LNP, according to a phased-in schedule.

IV. THE INSTANT FILING DEMONSTRATES SOUND GROUNDS FOR GRANTING AN EXTENSION UNDER 47 SECTION 52.23(d), AS WELL AS "GOOD CAUSE" UNDER A MORE TRADITIONAL WAIVER ANALYSIS -- GIVEN THAT THE NEED FOR THE ADDITIONAL TIME STEMS FROM CIRCUMSTANCES BEYOND THE CONTROL OF THE WESTERN REGION LLC OR USWC, THE LNP DEPLOYMENT DATES SHOULD BE EXTENDED

Under 47 C.F.R. Section 52.23(d), the Common Carrier Bureau ("Bureau") has delegated authority to waive any of the dates in the implementation schedule for LNP "to ensure the efficient development of number portability" for a period not to exceed 9 months.²⁰ USWC believes that the underlying facts associated with the Perot breaches and the change of NPAC/SMS vendor to Lockheed-Martin provide substantial grounds on which to grant waivers of LNP deployment in the Western Region. Certainly, the change of vendor to Lockheed-Martin was reasonable and prudent such that it "ensure[s] the efficient development of number portability" in a more predictable and reliable timeframe than would be the case had the Western Region LLC attempted to continue its contractual relationship with Perot. Thus, under Section 52.23(d), the Bureau should grant the instant Petition for Extension of time.

Additionally, however, USWC believes that the instant Petition also demonstrates "good cause" for such an extension/waiver (under the more traditional

²⁰ 47 C.F.R. § 52.23(d).

waiver analysis).²¹ An applicant for a waiver must demonstrate that special circumstances warrant a deviation from the general rule and that such deviation will serve the public interest.²²

The Commission has recognized that the unavailability of a product from a manufacturer is an appropriate ground for finding good cause. For example, the Bureau recently granted waivers to various small LECs in connection with the conversion to 4-digit Carrier Identification Code ("CIC") implementation. In those waivers, the Bureau recognized that the products these companies needed to accomplish the upgrades to their individual networks were not readily available from switch manufacturers, and that was going to cause the companies a delay in meeting the Commission-mandated schedule.²³ Similarly, when carriers were attempting to implement Originating Line Screening ("OLS") Services, vendor delays (which included system/software problems identified during on-line testing) were held to constitute good cause to support an extension of time.²⁴

²¹ 47 C.F.R. § 1.3.

²² Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F.2d 1153, 1158 (D.C. Cir. 1969), cert. denied, 409 U. S. 1027 (1972).

²³ See, e.g., Clarks Telecommunications Co., 1997 FCC LEXIS 6700, rel. Dec. 3, 1997; Cuba City Telephone Exchange Company, 1997 FCC LEXIS 7018, rel. Dec. 15, 1997; Order, DA 97-2691, rel. Dec. 24, 1997; Frontier Communications of Lakeshore, Inc., 1997 FCC LEXIS 7223, rel. Dec. 31, 1997; MoKan Dial, Inc., 1998 FCC LEXIS 80, rel. Jan. 8, 1998.

²⁴ See In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation Petitions Pertaining to Originating Line Screening Services, Memorandum Opinion and Order, 5 Comm. Reg. 1295, 1298-299 ¶ 7 (1996) (concluding that temporary waivers, granting extensions of time, were warranted for those carriers "whose . . . [Line Information Database] LIDB provider

Therefore, a delay in implementation due to vendor product availability is a recognized reason to grant waivers. As USWC has shown throughout this filing, we have substantial, credible evidence that the reason for the delay is due to extraordinary circumstances beyond our control and despite the vigilance of both USWC and the Western Region LLC in monitoring the performance of Perot.

V. LENGTH OF EXTENSION OF TIME AND PROPOSED
NEW DEPLOYMENT DATES

As the attached Affidavit of Timothy E. Mason (“Mason Affidavit”), USWC Director, Local Number Portability and Infrastructure Availability Center, makes clear, the time frames necessary for final LNP deployment will need to change because of the change in NPAC/SMS vendors. The slippage for Phase I is the most materially affected with respect to length of days in each phase. The additional time is needed in Phase I because it is the first Phase and the one in which “glitches” can be expected to make themselves apparent.

As is clear from the Mason Affidavit, USWC does not propose doing simultaneous interoperability testing or collapsing phases. Primarily, this is due to the fact that such testing requires specialized skills and USWC must test with numerous national, regional and local carriers in each Metropolitan Service Area (“MSA”). While carriers who test in the first MSA will need only to do abbreviated

is not yet ready to offer enhanced OLS service”); Memorandum Opinion and Order, 12 FCC Rcd. 11606, 11608 ¶ 5 (1997) (where an OLS LIDB-based service provider outlined the problems it was having in the loading of data; the learnings associated with on-line testing; the need for future software modifications); and id. at 11609 ¶ 7 (grant of requested extension would “permit [the vendor] to address the technical issues” raised).