BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Petition of Goodman Telephone Company, Ozark Telephone Company, and Seneca Telephone Company for Suspension and Modification of the FCC's Requirement to Implement Number Portability	))))))	Case No. ____________

PETITION FOR SUSPENSION AND MODIFICATION OF LOCAL NUMBER PORTABILITY OBLIGATIONS AND MOTION FOR EXPEDITED TREATMENT

COME NOW Goodman Telephone Company, Ozark Telephone Company, and Seneca Telephone Company ("Petitioners"), pursuant to the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §251(f)(2), and hereby petition the Missouri Public Service Commission ("Commission") for suspension and modification of Petitioners' obligations under Section 251(b) of the Act to provide local number portability ("LNP") to requesting Commercial Mobile Radio Service ("CMRS" or "wireless") providers. Specifically, Petitioners seek suspension and modification of the FCC's LNP requirements to address the call rating and routing issues that were identified but not resolved by the Federal Communications Commission ("FCC") in its November 10, 2003 *Order*. As demonstrated herein, Petitioners are entitled to the requested relief pursuant to the criteria set forth in § 251(f)(2) of the Act, and the granting of this Petition will serve the public interest.

Petitioners seek expedited treatment of this Petition and address the Commission's requirements for expedited treatment herein pursuant to 4 CSR 240-2.080(16).

SUMMARY

1. **The FCC's Porting Requirements**. In CC Docket No. 95-116, the FCC recently determined that local exchange carriers must port numbers to requesting wireless carriers by May 24, 2004.

2. **Suspension and Modification**. Petitioners plan to be LNP-capable within their local exchange serving areas by this May 24, 2004 deadline. However, Petitioners seek suspension because the FCC's recent LNP decision has identified but left unresolved important call rating and routing issues for small rural carriers. Petitioners seek modification because Petitioners do not presently own facilities nor does they have arrangements with third-party carriers that would allow Petitioners to port numbers and deliver associated calls outside of their exchange boundaries. Therefore, Petitioners seek modification such that once LNP capability is achieved, Petitioners would notify requesting wireless carriers that Petitioners are fully LNP capable but that if the wireless carrier wants calls transported outside of Petitioners' local service area, then the wireless carrier will need to establish the appropriate facilities and/or arrangements with third party carriers to transport the ported number and the associated call to the wireless carrier's point of presence (POP).

3. **Expedited Treatment**. Petitioners respectfully request that this petition be processed on an expedited basis so that Petitioners will have reasonable time to implement LNP. As explained herein, Petitioners' Motion for Expedited Treatment satisfies Commission Rule 4 CSR 240-2.080(16).

DISCUSSION

A. WIRELINE-TO-WIRELESS LOCAL NUMBER PORTABILITY

4. Petitioner Goodman Telephone Company (Goodman) provides local exchange and other telecommunications services in Missouri to approximately 1,980 access lines. Goodman is a Missouri corporation with its principal office and place of business located at:

P.O. Box 592
Seneca, MO 64865

In Case No. TK-2004-0165, Goodman filed a Certificate of Good Standing from the Missouri Secretary of State which Goodman requests be incorporated by reference in this case. Goodman has no pending actions or final, unsatisfied adverse judgments or decisions which involve customer service or rates that have occurred within the last three years from the date of this Petition.

5. Petitioner Ozark Telephone Company (Ozark) provides local exchange and other telecommunications services in Missouri to approximately 2,578 access lines. Ozark is a Missouri corporation with its principal office and place of business located at:

P.O. Box 547
Seneca, MO 64865

In Case No. TK-2004-0166, Ozark filed a Certificate of Good Standing from the Missouri Secretary of State which Ozark requests be incorporated by reference in this case. Ozark has no pending actions or final, unsatisfied adverse judgments or decisions which involve customer service or rates that have occurred within the last three years from the date of this Petition.

6. Petitioner Seneca Telephone Company (Seneca) provides local exchange and other telecommunications services in Missouri to approximately 3,465 access lines. Seneca is a Missouri corporation with its principal office and place of business located at:

P.O. Box 329
Seneca, MO 64865

In Case No. TK-2004-0167, Seneca filed a Certificate of Good Standing from the Missouri Secretary of State which Seneca requests be incorporated by reference in this case. Seneca has no pending actions or final, unsatisfied adverse judgments or decisions which involve customer service or rates that have occurred within the last three years from the date of this Petition.

7. The Affidavit of Mr. Jay Mitchell verifying the accuracy of the above information is marked as Attachment A and attached hereto. Petitioners are all "rural telephone companies" as defined in 47 U.S.C.§153(37).

8. As incumbent local exchange carriers ("ILECs"), Petitioners are subject to the requirements of Section 251(b) of the Act, which states that ILECs have "[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the [FCC]."[1] Effective as of May 24,

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

2004, the Act's number portability requirements include the obligation that, where Petitioners have received a bona fide request ("BFR") from a CMRS provider, Petitioners must make their switches capable of porting a subscriber's local telephone number to a requesting wireless carrier whose "'coverage area' overlaps the geographic location of the rate center in which the [ILEC] customer's wireline number is provisioned, provided that the porting-in [CMRS] carrier maintains the number's original rate center designation following the port."[2] Thus, Petitioners must port numbers to requesting wireless carriers where the wireless carrier's coverage area overlaps the geographic location of the rate center to which the number is assigned, even though the wireless carrier's point of presence is in another rate center and has no direct interconnection with the wireline carrier.

9. The FCC first made this requirement known on November 10, 2003, and the wireline-to-wireless (i.e. intermodal) requirements are very different from the FCC's rules which do not require location portability between wireline carriers.

10. Although recent FCC decisions now require wireline-to-wireless LNP, the FCC has not required wireless carriers to port their numbers to wireline carriers (*i.e.* "wireless-to-wireline LNP"). As a result, wireline carriers are required to port their customers' numbers to a competitor (at the expense of their remaining customers), yet wireless carriers are not required to shoulder the

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[2] *In re Telephone Number Portability*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 03-284 (Nov. 10, 2003) ("*Intermodal Portability Order*").

reciprocal burden of switching their customers to wireline carriers. This appears to contradict the statutory requirement that number portability be implemented in a competitively neutral manner. See 47 U.S.C. §251(e)(2).

B. REQUEST FOR SUSPENSION

11. Although the FCC has recognized the problem of designating different routing and rating points on LNP for small rural LECs, the FCC has not yet addressed the issue. Instead, the FCC's November 10, 2003 decision found that these issues were outside the scope of its order and stated:

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

As a result, there are no rules, guidelines, or resolution of certain outstanding issues related to wireline-to-wireless portability for rural carriers. This is especially problematic for call routing and rating issues.

12. **Call Routing and Rating Issues**. The different call routing schemes used by wireless and wireline carriers make wireline-to-wireless LNP problematic. Petitioners are small rural local exchange companies, and Petitioners' exchange boundaries and the scope of Petitioners' authorized telecommunications services have been defined by the Commission. However, recent data request responses of a wireless carrier in another case involving LNP

[3] *Id.* at ¶40.

indicate that at least one wireless carrier expects small rural ILECs (and their customers) to bear the cost of delivering ported numbers and associated calls to the wireless carriers' points of presence which are beyond small company exchange boundaries. Thus, it appears that at least one wireless carrier expects Petitioners to arrange for the provision of facilities and to pay the costs of delivering ported calls from Petitioners' exchanges to wireless points of presence great distances beyond Petitioners' local exchange boundaries. At the very least, it is in the public interest to grant Petitioners' request for suspension until such time as these issues have been resolved by the FCC.

C. REQUEST FOR MODIFICATION

13. Petitioners do not presently own facilities that would allow Petitioners to deliver calls outside of their exchanges, nor do Petitioners have any arrangement with intermediate, third party carriers to transport these calls. When one of Petitioners' subscribers calls a number outside of Petitioners' exchanges, that call is dialed as a "one plus" ("1+") call and carried by the subscriber's interexchange carrier ("IXC") of choice. Interexchange calls are not carried by Petitioners.

14. Therefore, one of the main technical obstacles is the issue of how to transport calls between ported numbers in different switches from a small ILEC to a wireless carrier where there are no facilities or arrangements with third parties to transport calls beyond Petitioners' exchange boundaries. Although the FCC's *Order* recognized that number portability was a separate function from the exchange of traffic (*See* ¶¶ 37-40), the FCC has not resolved the call rating and

routing issue. Petitioners are still examining these call rating and routing issues, but Petitioners believe that suspension and modification is necessary at this time.

15. Petitioners seek suspension and modification of the FCC's LNP requirements to address these call rating and routing issues. Specifically, Petitioners seek suspension and modification such that once LNP capability is achieved, Petitioners would notify the wireless carrier that Petitioners were fully LNP capable but that if the requesting wireless carrier wants calls transported to a point outside of the local serving area of the Petitioners, then the wireless carrier will need to establish the appropriate facilities and/or arrangements with third party carriers to transport the ported number and the associated call.

16. This suspension and modification would make the wireless carrier responsible for costs associated with transporting the call beyond the small ILEC rate center and thus place the costs on the carrier that caused them. It is also consistent with the FCC's November 20, 2003 *Order* which notes that transport of calls can be handled as it is currently handled today. *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, *Order*, rel. Nov. 20, 2003, ¶9. ("We note that today, in the absence of wireline-to-wireless LNP, calls are routed outside of local exchanges and routed and billed correctly.")

D. SECTION 251(F)(2) SUSPENSION AND MODIFICATION

17. Section 251(f)(2) of the Act requires a state public utility commission to suspend or modify the obligations under Section 251(b) or (c) of the Act, in the case of a local exchange carrier "with fewer than 2 percent of the Nation's

subscriber lines installed in the aggregate nationwide," where 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."[4]

Thus, state commissions have been given clear authority by Congress and the Act to modify or suspend the requirements of the Act or the FCC where the specified conditions are met. As demonstrated herein, Petitioners are eligible for and entitled to relief under this provision.

18. Section 251(f)(2) relief is available to any ILEC with fewer than two percent of the Nation's subscriber lines installed in the aggregate. As of December 2002, there were approximately 188 million local telephone lines in service nationwide.[5] Goodman serves approximately 1,980 access lines, Ozark serves approximately 2,578 access lines, and Seneca services approximately 3,465 access lines. Thus, each Petitioner serves far less than two percent of the national total, so Petitioners are eligible to seek modification under Section 251(f)(2).

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[4] 47 U.S.C. § 251(f)(2).

[5] FCC, *Federal Communications Commission Releases Study on Telephone Trends*, News Release (Aug. 7, 2003).

19. Under Section 251(f)(2), a state commission must grant an eligible ILEC relief from obligations imposed under Section 251(b) and (c) to the extent that the suspension or modification serves the public interest and is necessary: (1) to avoid an adverse economic impact on the ILEC's subscribers, ***or*** (2) to avoid an unduly burdensome economic requirement on the ILEC, ***or*** (3) to avoid a technically infeasible requirement. A petitioning ILEC need only show that one of these conditions applies to its circumstances. As detailed below, the wireless local number portability requirements from which Petitioners seek relief are sufficiently burdensome in terms of adverse economic impact on customers and undue burden on Petitioners to justify a finding that the Section 251(f)(2) standard is satisfied and grant of the Petition is warranted.

20. **Undue Economic Burden on Petitioners' Subscribers**. The Missouri Public Service Commission may suspend or modify local number portability requirements to the extent necessary to avoid the imposition of a significant adverse economic impact on Petitioners' subscribers. Under Section 52.33 of the FCC's rules, an ILEC may assess a monthly, long-term number portability charge on its customers to offset the initial and ongoing costs incurred in providing number portability.[6] Therefore, Petitioners may recover any applicable number portability implementation and ongoing monthly costs through a charge on customers.

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[6] 47 C.F.R. § 52.33. As small rural telephone companies, Petitioners have a small customer base over which to spread these implementation costs. Under the LNP surcharge cost-recovery formula, Petitioners would recover their LNP specific implementation costs by dividing the total costs incremental to providing LNP by the total number of subscribers on an exchange-specific basis, over a 60-month period.

21. If the Commission does not grant suspension and modification, then Petitioners will be forced to recover additional transport costs from their end user customers. This would defy the regulatory principle of placing costs on the cost causer. Instead, those customers that did port their numbers would avoid the very costs (LNP end user charges) of carrying their calls outside of Petitioners' exchange boundaries. This economic burden is significant for Petitioners' subscribers, particularly in light of the fact that: (a) they will already bear the substantial implementation costs and ongoing costs of providing LNP to wireless carriers; and (b) few if any of the subscribers are expected to take advantage of wireless LNP and port their local wireline numbers to a wireless carrier.

22. **Undue Economic Burden on Petitioners**. Requiring Petitioners to deliver calls outside of their exchange boundaries would impose a substantial economic burden upon Petitioners. First, the FCC has not resolved the issue, so it would be premature at this time to force Petitioners to divert limited capital resources from the provision of reliable, high-quality services in markets that are already challenging to serve. Second, it would force Petitioners to provide service outside of Petitioners' certificated service areas, which could lead to additional legal and regulatory issues. Finally, it would require Petitioners to devote limited resources to implement LNP for a small handful of subscribers (if any) rather than applying those funds to upgrade infrastructure that will benefit a large number of subscribers.

23. In summary, only a very small number (if any) of Petitioners' subscribers are likely to take advantage of wireless local number portability, while

all of Petitioners' subscribers will bear the substantial costs of making LNP available. Petitioners' subscribers should not bear the additional costs of carrying wireless calls to Kansas City or St. Louis. This would be an absurd and unfair shifting of costs away from the cost causer. Therefore, the public interest will best be served by granting suspension and modification.

24. **The Public Interest Will Be Served By Granting The Requested Relief**. Modification and suspension of Petitioners' LNP obligations will ensure that subscribers are not forced to bear all of the costs for something from which they are unlikely to benefit. Modification will prevent Petitioners from having to incur costs before the FCC has resolved the LNP routing and rating issues. Modification will serve the public interest by requiring the cost causer to bear some of the costs and responsibility for porting numbers outside of Petitioners' service areas. Finally, modification will allow Petitioners to use their limited resources to continue to ensure high-quality customer service and network reliability and to deploy services that will benefit Petitioners' entire subscriber bases.

25. Increased costs and the potential waste of resources are not in the public interest. Therefore, the public interest would be best served by examining these issues thoroughly and granting the modification.

MOTION FOR EXPEDITED TREATMENT

26. Pursuant to 4 CSR 240-2.080(16), Petitioners seek a Commission order on or before April 30, 2004 because of the impending FCC deadline. Alternatively, if the Commission cannot issue a decision by April 30, 2004, then

Petitioners respectfully request that any Commission decision issued after April 30, 2004 include suspension of the FCC's wireline-to-wireless LNP requirements until at least six months after the effective date of the Commission's order.

27. As explained above, the FCC's recent orders impose requirements that are substantially different from its prior LNP rules, and the FCC has yet to clarify a number of issues related to wireline-to-wireless LNP for small rural local exchange carriers. Moreover, the FCC's LNP orders require expensive changes and ongoing costs. Therefore, granting the Petition will prevent Petitioners from incurring costs before the FCC has resolved these issues, thereby avoiding increased costs for rural customers.

28. Granting Petitioners' request will provide more time for the FCC to clarify the LNP requirements for small, rural telephone companies. There will be no negative effect on Petitioners' customers or the general public. To Petitioners' knowledge, none of Petitioners' customers have requested porting. This pleading was filed as soon as it could have been after reviewing the FCC's recent decisions.

CONCLUSION

The costs to implement LNP are substantial, and Petitioners' subscribers will absorb these costs. This concern falls within the criteria set forth in Section 251(f)(2) under which this Commission may suspend and/or modify Petitioners' LNP implementation obligations. Ultimately, the most compelling consideration in this matter is that of public interest. The Petitioners' subscribers will bear a significant financial burden for the benefit of a handful of subscribers, and ironically, the few subscribers who might benefit from LNP by porting their numbers will, in so doing, avoid the very costs (*e.g.*, LNP end user charges) of implementing LNP. Suspension will prevent Petitioners' subscribers from having to bear these costs before the FCC has resolved the call rating and routing issues. Modification will serve the public interest by requiring the cost causer to bear some of the cost and responsibility for porting numbers outside of Petitioners' service areas. Suspension and modification will allow Petitioners to use their limited resources to benefit Petitioners' entire customer base. For these reasons, granting this petition is in the public interest.

Respectfully submitted,

By Brian T. McCartney

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 25th day of March, 2004, to the following parties:

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Brian T. McCartney

Brian T. McCartney

VERIFICATION

I, W. Jay Mitchell, the President of Ozark Telephone Company and Seneca Telephone Company and the Vice-President of Goodman Telephone Company, hereby verify and affirm that I have read the foregoing **PETITION FOR SUSPENSION AND MODIFICATION OF LOCAL NUMBER PORTABILITY OBLIGATIONS AND MOTION FOR EXPEDITED TREATMENT** and that the statements contained herein are true and correct to the best of my information and belief.

W. Jay Mitchell

Signature

STATE OF Missouri)

COUNTY OF Newton)

Subscribed and sworn to me, a Notary Public, on this 25th day of March, 2004.

Nancy L. Ritter

Notary Public

My Commission expires

NANCY L. RITTER
Notary Public - Notary Seal
State of Missouri
County of Newton
My Commission Exp. 03/02/2007

Attachment A