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December 19, 2003

Mr. Dale Hardy Roberts, Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

Re: Case No. IO-2004-0231

FILED

DEC 19 2003

Missouri Public
Service Commission

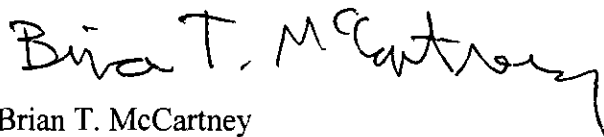
Dear Mr. Roberts:

Enclosed for filing please find the original and eight (8) copies of Petitioners' Response to Order Directing Filing in above-referenced matter.

Please note that this pleading contains information and attachments designated "proprietary" as it concerns confidential, private technical, financial, and business information. I would appreciate it if you would maintain the confidential nature of this information in accordance with the Commission's Protective Order.

Please bring this filing to the attention of the appropriate Commission personnel. A copy of this filing will be provided to parties of record. If there are any questions, please direct them to me at the above number. I thank you in advance for your cooperation in this matter.

Sincerely,



Brian T. McCartney

BTM/da
Enclosures
cc: Parties of Record

FILED

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

DEC 19 2003

Missouri Public
Service Commission

Petition for Suspension of the Federal)
Communications Commission Requirement)
to Implement Number Portability)

Case No. IO-2004-0231

Petitioners' Response to Order Directing Filing

COME NOW Cass County Telephone Company (Cass County), Citizens Telephone Company of Higginsville, Missouri Inc. (Citizens), Green Hills Telephone Corporation (Green Hills), and Lathrop Telephone Company (Lathrop), (hereinafter "Petitioners") and for their Response to the Missouri Public Service Commission's (Commission) *Order Directing Filings*, state to the Commission as follows:

SUMMARY

On November 10, 2003, the Federal Communications Commission (FCC) issued its order directing the implementation of wireline-to-wireles local number portability ("LNP") for carriers within the largest 100 Metropolitan Statistical Areas ("MSAs"). The FCC's order presents numerous financial, legal, and technical obstacles for the petitioning small rural local exchange companies that are located partially or entirely within an MSA. Therefore, Petitioners filed a request for suspension of the LNP requirements with the Commission pursuant to the Telecommunications Act of 1996 ("the Act"). See 47 U.S.C. §251(f). The Commission granted a temporary suspension on November 20, 2003.

On December 11, 2003, the Commission directed the Petitioners to provide documentation supporting their request for suspension. Accordingly, Petitioners have gathered company-specific information to document the financial and technical

obstacles associated with wireline-to-wireless LNP. The information is attached as Proprietary Attachments 1 through 5. This documentation, along with the information contained in this pleading, demonstrates that suspension is necessary to avoid imposing a requirement that: (1) will have a significant adverse economic impact on Petitioners' customers; (2) is unduly economically burdensome; and (3) is technically infeasible at this time. Therefore, the Commission should grant the Petition.

DISCUSSION

The Act authorizes the Commission to suspend or modify its number portability obligations for small local exchange carriers (LECs) such as Petitioners if the Commission determines that suspension or modification:

- (A) is necessary
 - (1) to avoid a significant adverse economic impact on users of telecommunications services generally;
 - (2) to avoid imposing a requirement that is unduly economically burdensome; or
 - (3) to avoid imposing a requirement that is technically infeasible; and
- (B) is consistent with the public interest, convenience, and necessity.

47 U.S.C. §251(f)(2). As explained below, Petitioners have provided documentation that their request for suspension meets these standards.

A. THE ACT'S STANDARD FOR SUSPENSION

1. Technically Infeasible

Technical issues and obstacles make implementing LNP technically infeasible at this time. For example, the FCC's November 10, 2003 *Memorandum Opinion and Order* recognized the problem of designating different routing and rating points on LNP for rural LECs, but the FCC declined to address the issues in its decision. (see ¶¶ 39-40) As a result of the FCC's decision to move forward before addressing these implementation issues, there are no rules, guidelines, or resolution of certain outstanding issues related to wireline-to-wireless portability for rural carriers, and this is especially problematic for call routing and rating issues.

a. Call Routing and Rating Issues

The different call routing schemes used by wireless and wireline carriers make wireline-to-wireless LNP technically infeasible at this time. Petitioners are small rural local exchange companies, and Petitioners' exchange boundaries have been defined by the Commission. Petitioners are unaware of any wireless carrier point of presence within their exchanges. Moreover, the responses of Sprint PCS to Petitioners' data requests indicate that at least one wireless carrier expects small rural ILECs (and their customers) to bear the cost of delivering ported numbers to the wireless carriers' points of presence which are beyond small company exchanges. The Sprint PCS data request response is reproduced below:

D.R. No. 11

Are there Sprint Missouri exchanges where there is no direct interconnection with Sprint PCS? If so, how do Sprint PCS and Sprint Missouri intend to port numbers between the non-connected exchanges of Sprint Missouri and the facilities of Sprint PCS? Further, which company will pay for the costs of porting numbers and transporting associated calls between the non-connected exchanges of Sprint Missouri and the facilities of Sprint PCS?

Sprint Response: Sprint objects to this Data Request on the grounds it seeks information pertaining to carriers that are not a party to this case. Sprint Missouri, Inc. is not a party to this case.

Without waiving the above objection, Sprint notes that only four of Sprint Missouri, Inc.'s 80 exchanges have direct connections with Sprint PCS. Direct connection is not a requirement nor technical limitation for number porting. **For indirect interconnections, Sprint's policy is that the originating carrier will pay transit fees to the tandem provider. For instance, if Sprint Missouri subtends a SBC-Missouri tandem where Sprint PCS is interconnected, Sprint Missouri will pay the SBC-Missouri transit costs for traffic it originates.**

(emphasis added) Thus, it appears that at least one wireless carrier – Sprint PCS – 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.

b. Possible Solutions

Petitioners do not presently own facilities that would allow them to deliver calls outside of their exchanges, and this is one of the many technical hurdles for implementing LNP. Nor do Petitioners have any arrangements with intermediate third party carriers to transport these calls. 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 their facilities are not interconnected. The FCC's *Order* recognized that number portability was a separate function from the exchange of traffic. (see ¶37) Although Petitioners are still examining the call rating and routing issues at this time, Petitioners offer the following three possibilities for the Commission to consider. All of these possibilities would require Petitioners to expend resources and time to become fully LNP capable.

The first option, once LNP capability is achieved, would be for Petitioners to notify the wireless carrier that the small ILEC is fully LNP capable but that if the wireless carrier wants calls transported to a point outside of the local serving area of the ILEC, 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.

A second alternative would be to program the small ILEC switches to route calls to the ported number to the calling party's presubscribed interexchange carrier (IXC) so that the call will be transported to the wireless carriers' facilities via the facilities of the IXC. That is currently how most of the calls from small ILEC customers to wireless customers are carried today, and the FCC recognized this in a November 20, 2003 decision.

We note that today, in the absence of wireline-to-wireless LNP, calls are routed outside of local exchanges and routed and billed correctly.¹

¹ *Telephone Number Portability*, CC Docket No. 95-116, *Order*, rel. Nov. 20, 2003.

This method would likely result in a scenario where the call would be dialed as a local call, but the IXC's toll rates would apply. As discussed in Petitioners' Proprietary Attachments, this method may result in customer expense and confusion.

Finally, a third alternative for porting a number and transporting an associated call outside the immediate rate center of the small ILEC is to characterize the service as a foreign-exchange type service. In other words, when a wireless carrier requests the porting of numbers and transport of associated calls from a small ILEC's rate center to a remote wire center where the wireless facilities are located, the wireless carrier, in essence, is seeking to establish a "virtual local" presence in the small ILEC's exchange without establishing the necessary facilities to do so.

Under existing foreign exchange terms and conditions, customers are allowed to establish virtual local presences in remote wire centers but are responsible for the associated transport of the call from the wire center where the customer wants to establish a presence to the customer's actual physical location. In this case, the wireless carrier would then be responsible for the costs associated with porting the number and transporting the call beyond the small ILEC's rate center. This method has the additional benefit of placing the costs on the carrier that caused them. Moreover, this would also be consistent with the FCC's order of clarification issued November 20, 2003, which noted that transport of calls could be handled as they are currently handled today.

Whichever method is ultimately chosen, Petitioners cannot implement LNP pursuant to the FCC's *Order* at this time and need the requested suspension and modification to address these issues.

2. Adverse economic impact on users of telecommunications

Granting the Petition will avoid significant adverse economic impacts on users of telecommunications services. As demonstrated in Petitioners' Proprietary Attachments, the costs of implementing LNP are substantial and include deployment of hardware and software necessary for LNP capability and ongoing administrative and data costs. Ultimately, Petitioners' end user customers will bear the costs of these initial non-recurring start-up costs and monthly recurring costs either through a direct increase to end user rates or a tariffed charge.² For example, when Petitioners implemented intraLATA dialing parity as required by the Act, the Commission approved Petitioners' dialing parity plans which included a revenue-neutral dialing parity cost recovery element.³ As a result, Petitioners' Carrier Common line rates were increased to ensure revenue neutrality.

² See e.g. *Telephone Number Portability*, CC Docket No. 96-116, *Third Report and Order*, rel. May 12, 1998, ¶135. Incumbent LECs subject to rate of return regulation are allowed to recover their carrier-specific costs directly related to providing number portability through a federally tariffed charge assessed on end-users.

³ *In the Matter of the Petition of Cass County Telephone Company for Approval of an IntraLATA Dialing Parity Plan and for Suspension and Modification of the FCC's Dialing Parity Rules*, Case No. TO-99-499, *Report and Order*, issued June 10, 1999; see also similar orders issued on that date approving intraLATA dialing parity cost recovery for the other four Petitioners in Case Nos. TO-99-500, TO-99-507, TO-99-511, and TO-99-512.

Under the FCC's LNP decisions, ILECs may recover query and LNP costs through an end-user charge collected over one five-year period, and they may recover the costs of equipping their networks with LNP through an end-user charge collected over a different five-year period. The five year periods may run consecutively or concurrently.⁴

The adverse economic impact that the FCC's LNP requirement will have on Petitioners' end-user customers in this case is real. For example, in Proprietary Attachment 4, KLM Telephone Company estimates that an additional monthly charge of *** *** to KLM's end-users would be necessary to cover ongoing costs alone to support wireline-to-wireless LNP, yet only part of those customers actually live within the Kansas City MSA. Moreover, as explained later in that same Attachment, KLM Telephone Company has received no customer inquiries or requests for wireline-to-wireless LNP.

Petitioners anticipate that the ultimate number of subscribers seeking to port to wireless carriers will be minimal or non-existent. Thus, the majority of Petitioners' customers will receive little or no benefit from the provision of wireline-to-wireless LNP, but all of the Petitioners' customers will be adversely impacted by an increase in rates in order to accommodate CMRS providers.

⁴ *Telephone Number Portability*, CC Docket No. 95-116, *Memorandum Opinion and Order on Reconsideration*, FCC 02-16, rel. Feb. 15, 2002, ¶¶55-58.

3. Undue economic burden

As explained in Petitioners' attached documentation, estimates for the one-time implementation costs to support wireline-to-wireless LNP total over *** _____ *** for the five Petitioners. For small carriers offering service in the rural areas of Missouri, these initial start up costs are substantial. Furthermore, in addition to the initial start up costs, Petitioners' documentation shows substantial ongoing monthly costs as follows:

Cass County	***	***
Citizens	***	

Green Hills	***	***
KLM	***	***
Lathrop	***	***

These ongoing monthly estimates add up to over *** _____ ***, and they do not include any costs involved with transporting calls outside of Petitioners' local rate centers – costs that Petitioners do not believe that they are obligated to incur. However, if this Commission or the FCC should determine that such transport costs must also be borne by Petitioners, then the ongoing monthly cost estimates will increase substantially because Petitioners do not have the necessary facilities or agreements with other carriers to perform this function.

As small rural companies, Petitioners have a limited customer base over which to spread their costs. Therefore, Petitioners' costs will be significantly higher on a per line basis than large carriers operating inside urban and metropolitan areas and serving large customer bases. Clearly, the initial start-up costs and ongoing monthly costs for Petitioners to implement LNP are substantial. After examining these costs and weighing them against the limited (if any) public benefits of an expedited implementation of LNP, the Commission should find that the requirement for Petitioners to implement LNP is an undue economic burden at this time.

4. Public Interest

Historically, the Commission has required that there be some minimal level of customer concern or a "community of interest" before requiring rate-of-return regulated companies to expend significant resources to offer a new service. In this case, there has been no such showing. Rather, Petitioners have demonstrated the potential for the FCC's LNP requirements to result in adverse economic impacts on end users and produce undue economic burdens on Petitioners.

Wireline-to-wireless LNP also raises public interest issues related to quality of service. First, although wireless providers are required to comply with the FCC's E911 requirements, these are not the same standards as required by the Commission. Second, it is unclear whether numbers ported to wireless carriers will retain the same quality and reliability as the voice grade circuits covering Petitioners' entire exchange areas. Most wireless towers located in or near rural service areas are located along highways, but wireless calls may become less reliable as the caller gets further away

from the highway. Thus, wireless calls may fail to provide the same quality of service in remote rural areas, and wireless carriers are not required to submit quality of service reports to the Commission.

Increased costs, the potential waste of resources, and the possibility of reduced quality of service are not in the public interest. Therefore, the public interest would be best served by examining issues thoroughly and avoiding possibility of increased rates and surcharges until the most economical and practical solution is developed. Other states have reached similar conclusions. For example, the Alabama Public Service Commission recently considered a similar suspension request filed by CenturyTel of Alabama and a group of small rural ILECs. In that case, the Alabama Commission made the following conclusions:

We have reviewed the Petitions of CenturyTel and the Rural ILECs in light of the statutory criteria established by §251(f)(2) of the Act and find that each of the petitioning carriers is indeed eligible to seek the relief set forth by §251(f)(2). **We further find that an immediate suspension of the wireline to wireless LNP requirements imposed by the FCC with respect to the Rural ILECs identified herein would be in the best interest of the consumers of Alabama.**

In particular, we find that the rather substantial cost and technical implementation issues documented by the petitioning parties in their respective pleadings demonstrate that the **suspension granted herein is necessary to avoid an undue economic impact to the customers of the petitioning parties as well as an undue economic burden to the petitioning carriers themselves.** The Joint Petitioners have also demonstrated that there are rather **substantial technical issues associated with the billing and routing of wireline to wireless local number portability which must be investigated further in order to avoid immediate and potentially irreparable economic consequences to the petitioning parties.**

* * *

We find that an immediate suspension of the wireline to wireless LNP requirements discussed herein will allow for more sufficient investigation and resolution of those issues.

In light of the serious implications that could result from a failure on our part to immediately suspend the wireline to wireless LNP requirements imposed by the FCC, we find the course of action set out herein to be mandated by the public interest, convenience and necessity. The suspension granted with respect to the carriers specified herein will remain in effect until further notice.

CenturyTel of Alabama, LLC and Additional Rural Incumbent Local Exchange Carriers Petition for Suspension, Docket No. 29138, *Notice of Suspension*, issued Nov. 25, 2003, <http://www.psc.state.al.us/orders/03nov/29138cen.html> (emphasis added).

After reviewing Petitioners' documentation, this Commission should reach the same conclusion as the Alabama Commission.

B. STAFF'S DEFINITION OF BONA FIDE REQUEST

The memorandum attached as Appendix A to Staff's December 4, 2003 Response and Recommendation quotes Black's Law Dictionary, 7th ed., as authority to definition of "bona fide" for the purposes of making a bona fide request for LNP. In this case, however, the FCC has already defined the requirements of a bona fide request for LNP. In the FCC's *Fourth Report and Order* on LNP (CC Docket No. 95-116, rel. June 18, 2003) the FCC explained:

Requesting carriers must specifically request portability, identify the discrete geographic area covered by the request, and provide a tentative date by which the carrier expects to utilize number portability to port prospective customers.⁵

Thus, the FCC has established a clear three-part test for a bona fide LNP request, and the FCC's definition controls over Black's Law Dictionary.

Moreover, as explained more thoroughly in the initial Petition for Suspension, any correspondence received by Petitioners before November 10, 2003 did not constitute a BFR because the wireless carriers were asking for a type of portability that was not required by the FCC's rules for wireline-to-wireline portability, and which was not required of small rural carriers up until the FCC's *Memorandum Opinion and Order* of November 10, 2003. It was only after this November 10, 2003 order that such a requirement was set forth by the FCC.

Also, the FCC's rules for wireless-to-wireless LNP indicate that a BFR had to be issued by February 24, 2003 (nine months before November 24, 2003) in order to trigger LNP by November 24.

Finally, the only wireless carrier that has sought intervention in this matter, Sprint PCS, does not object to Petitioners' requested temporary suspension.

⁵ *Local Number Portability*, CC Docket No. 95-116, *Fourth Report and Order*, rel. June 18, 2003, ¶10.

CONCLUSION

Based on the documentation and information presented in and attached to this pleading, the Commission should grant Petitioners' request for a temporary suspension of the FCC's wireline-to-wireless LNP obligations.

Respectfully submitted,

By Brian T. McCartney

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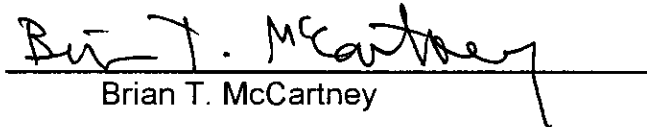
CERTIFICATE OF SERVICE

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 19th day of December, 2003, to the following parties:

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Brian T. McCartney

PROPRIETARY

ATTACHMENT 1

(FILED UNDER SEPARATE COVER)

PROPRIETARY

ATTACHMENT 2

(FILED UNDER SEPARATE COVER)

PROPRIETARY

ATTACHMENT 3

(FILED UNDER SEPARATE COVER)

PROPRIETARY

ATTACHMENT 4

(FILED UNDER SEPARATE COVER)

PROPRIETARY

ATTACHMENT 5

(FILED UNDER SEPARATE COVER)