M E M O R A N D U M

To: Missouri Public Service Commission Official Case File
Tariff File No. n/a Case No. IO-2004-0231

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Telecommunications Department

/s/John Van Eschen 1/7/04 /s/William K. Haas 01/07/04
Utility Operations Division/Date General Counsel's Office/Date

Subject: Staff Response and Recommendation on Petition for Suspension of the Federal Communications Commission Requirement to Implement Number Portability

Date: January 7, 2004

On November 19, 2003, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri Inc., Green Hills Telephone Corporation, KLM Telephone Company and Lathrop Telephone Company (collectively Petitioners), incumbent local exchange carriers, filed a Petition for Suspension and Motion for Expedited Treatment (Petition). On November 20, 2003, the Commission issued an Order Granting Temporary Suspension until January 24, 2004 and directed Staff to file its response and recommendation by December 4, 2003. In its Response and Recommendation, Staff requested the Commission direct the parties to provide additional information as evidence in support of their request. On December 11, 2003, the Commission issued its Order Directing Filing of the additional documentation and directing Staff to file an additional recommendation or status report by January 7, 2004.

Section 251(f)(2) states:

The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification –

(A) is necessary –
   i. to avoid a significant adverse economic impact on users of telecommunications services generally;
   ii. to avoid imposing a requirement that is unduly economically burdensome; or
   iii. to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

In its initial Response and Recommendation, Staff requested the Commission direct Petitioners to provide additional information on such things as technical feasibility, cost of implementing LNP, cost of deploying additional facilities, cost of accessing and/or maintaining the LNP database, operational issues, consumer welfare issues, a date certain by which wireline/wireless LNP would be operational, anticipated cost recovery methodology, etc. in order to provide the Commission with information it would need to make the determinations under Section 251(f)(2)(A) and (B). In its Response to the Commission's order directing filing of such additional information, Petitioners filed a pleading outlining general concerns to address the points delineated by Section 251(f)(2)(A) and (B) and also filed company-specific support for these concerns. These concerns are summarized below.

1. Adverse economic impact on users of telecommunications

Petitioners identify concerns over cost-recovery for LNP charges. The FCC allows ILECs to recover query and LNP costs through an end-user surcharge collected over a five-year period. In addition, the costs for modifying networks to accommodate LNP can be recovered through a separate five-year period that can run consecutively or concurrently. The current LNP mandate is for those wireline/wireless carriers in the top 100 MSAs. As outlined in Petitioners' company-specific responses, not all Petitioner customers live within one of the top 100 MSAs. Because of the location of the carriers, some customers live within the top 100 MSAs, while others live in areas that will not be required to be LNP capable until May 24, 2004. Yet, any potential monthly increase to recover LNP costs will be passed on to <u>all</u> end-users for the company despite LNP availability.

The Petitioners also indicate that only a minimal number of customers have inquired about local number portability, let alone expressed an interest in participating in LNP. Therefore, Petitioners have concerns that there will be large monetary outlays with corresponding rate increases to implement and provide LNP, while having minimal interest from customers in receiving benefit from wireline-to-wireless portability.

2. Undue economic burden

Petitioners estimate the cost for implementing LNP to be approximately ** <u>HC</u>_____ **. In addition, they estimate ongoing costs, which range from approximately ** <u>HC</u>__ ** per month to approximately ** <u>HC</u>___ ** per month. These costs do not include the recovery of on-going costs to transport calls outside Petitioners' local rate centers, which according to Petitioners is still at issue. Since Petitioners typically have a smaller customer base than other carriers operating in the top 100 MSAs, the per line cost for Petitioners will be greater than the per line cost for the other carriers required to provide wireline-to-wireless LNP by the November 24, 2003, deadline.

3. Technical infeasibility

In the Petition for Suspension, Petitioners raised technical feasibility issues, such as rating and routing of calls, facility availability and wireless points of presence. As indicated in Staff's Response and Recommendation, the FCC in its November 10, 2003 Memorandum Opinion and Order and Further Notice of Proposed Rulemaking acknowledged many of these issues; however, in its Response to Filing, the Petitioners offer some possible solutions to the issues they raise. For instance, in the Petitioners' opinion, for proper routing of calls, wireless carriers may need to establish appropriate facilities or arrangements, interexchange carriers may need to carry the calls, or the calls may need to be characterized as a foreign-exchange type service creating a "virtual local" presence in the small ILEC's exchange without actually establishing facilities. These are all issues and/or solutions that still need to be addressed according to Petitioners.

4. Public interest

Petitioners express concerns with quality of service standards. Petitioners have concerns that wireless carriers are not subject to the Commission's quality of service rules in 4 CSR 240-32. Petitioners also have concerns with the quality and reliability of calls once the customer's number is ported to a wireless carrier from the wireline network. In other words, there are general concerns that once a wireline number is ported, the wireless carrier, and ultimately the customer's service, is not subject to any Commission rules or regulations.

Petitioners have outlined several areas of concerns that will need to be considered prior to the availability of wireline/wireless local number portability in their respective areas. Because of these concerns, Staff has no objection to the Petitioners being granted a temporary suspension for an additional four months, until May 24, 2004, and suggests the Petitioners have provided sufficient documentation for the Commission to issue such a decision. However, Staff has concerns that the issues raised by the Petitioners will not be resolved by May 24, 2004 and cautions the Commission that the Petitioners may have to seek additional relief in the near future. If such further action is necessary, Staff is of the opinion that an evidentiary hearing will be needed to resolve any outstanding cost recovery or implementation issues.