BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

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

COMES NOW Miller Telephone Company ("Miller" or "Petitioner"), pursuant to Section 251(f)(2) of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §251(f)(2), and hereby petitions the Missouri Public Service Commission ("Commission") for a temporary suspension of Petitioner's obligations under Section 251(b) of the Act to provide local number portability ("LNP") to requesting Commercial Mobile Radio Service ("CMRS" or "wireless") providers. As demonstrated herein, Petitioner is entitled to the requested relief pursuant to the criteria set forth in Section 251(f)(2) of the Act, and the granting of this Petition will serve the public interest. Petitioner also seeks modification of the FCC's LNP requirements to address the call rating and routing issues that were identified but not resolved by the FCC.

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

SUMMARY

1. **The FCC's Porting Requirements**. On November 10, 2003 and January 16, 2004, the FCC issued Orders in CC Docket No. 95-116 regarding wireline-to-wireless (i.e. intermodal) number portability. These orders conclude that 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 by May 24, 2004.

2. **Suspension**. Petitioner seeks a limited, temporary suspension of the FCC's Local Number Portability (LNP) requirements because Petitioner's existing switch is not LNP-capable. On March 31, 2004, Petitioner signed a purchase order for a new Taqua switch with a requested service date of November 19, 2004. Accordingly, if all goes well Petitioner should be prepared to support LNP in the Miller exchange by the end of 2004.

3. **Modification**. Petitioner seeks modification of the FCC's LNP requirements to address the call rating and routing issues for small rural carriers that were identified but left unresolved by the FCC's recent decisions.

4. **Expedited Treatment**. Petitioner will not be able to have its new switch installed and ready to support LNP by the May 24, 2004 deadline. Therefore, Petitioner respectfully requests that this petition be processed on an expedited basis. As explained herein, Petitioner's Motion for Expedited Treatment satisfies Commission Rule 4 CSR 240-2.080(16).

DISCUSSION

I. <u>WIRELINE-TO-WIRELESS LOCAL NUMBER PORTABILITY</u>

5. Petitioner provides local exchange and other telecommunications services in Missouri to approximately 1,150 access lines. Petitioner is a Missouri corporation with its principal office and place of business located at:

P.O. Box 7
213 East Main Street
Miller, MO 65707

A certificate of good standing from the Missouri Secretary of State was filed by Miller in Case No. TM-2001-448, and that information is still current and correct. Miller 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. The Affidavit of Mr. Charlie Moore, President of Miller, verifying the accuracy of this information is marked as <u>Attachment A</u> and attached hereto. Petitioner is a "rural telephone company" as defined in 47 U.S.C.§153(37).

6. As an incumbent local exchange carrier ("ILEC"), Petitioner is 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,

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[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 Petitioner has received a bona fide request ("BFR") from a CMRS provider, Petitioner must make its 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, Petitioner 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.

7. 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 prohibit location portability between wireline carriers.

8. Petitioner's existing Nortel DMS-10 switch is not equipped for LNP. Therefore, implementing wireline-to-wireless LNP will require either software and possible hardware updates, or switch replacement. Petitioner has determined that it would be so expensive to upgrade the existing switch to provide LNP that switch replacement is a better solution. Accordingly, on March 31, 2004, Petitioner signed a purchase order for a new Taqua switch with a requested

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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*").

service date of November 19, 2004. Assuming that the vendor can deliver, install, and test the switch on Petitioner's requested schedule, Petitioner should be prepared to support LNP by the end of 2004. Therefore, Petitioner seeks an extension of the FCC's May 24, 2004, deadline pursuant to Section 251(f)(2) of the Act.

II. SECTION 251(F)(2) OF THE ACT PROVIDES AN EXCEPTION FOR CERTAIN RURAL TELEPHONE COMPANIES.

9. Section 251(f)(2) of the Act requires a state public utility commission to suspend or modify 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."[3]

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

[3] 47 U.S.C. § 251(f)(2).

specified conditions are met. As demonstrated herein, Petitioner is eligible for and entitled to relief from the local number portability obligations under this provision.

III. PETITIONER IS ELIGIBLE TO SEEK RELIEF FROM WIRELESS LNP OBLIGATIONS UNDER SECTION 251(F)(2).

10. 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.[4] Petitioner serve approximately 1,150 access lines, which is far less than two percent of the national total. Thus, Petitioner's subscriber lines fall below the two percent threshold set in Section 251(f)(2). Accordingly, Petitioner is eligible to seek relief under Section 251(f)(2) from the obligations imposed under Section 251(b) and (c) of the Act. Further, Section 251(f)(2) "establishes a procedure for requesting suspension or modification of the requirements of Sections 251(b) and 251(c). Number portability is an obligation imposed by Section 251(b)."[5] Therefore, Petitioner may seek relief from the LNP obligations under Section 251(f)(2).

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

[5] *In re Telephone Number Portability*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7303 (1997) (*LNP First MO&O*). Section 251(b) states that telecommunications carriers have a "duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." 47 U.S.C. § 251(b).

IV. PETITIONER IS ENTITLED TO THE REQUESTED RELIEF UNDER SECTION 251(F)(2).

11. 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.

A. Adverse Economic Impact on Petitioner's Subscribers

12. 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 Petitioner's subscribers. Deploying wireless local number portability would impose such an adverse impact on Petitioner's subscribers.

13. Petitioner estimates that the costs of implementing number portability will be substantial. Section 52.33 of the FCC's rules, provides for an ILEC to assess a monthly, long-term number portability charge on its customers to offset the initial and ongoing costs incurred in providing number portability.[6] In addition to the substantial implementation costs from its end user customers, Petitioner will be forced to recover number portability database query costs as well as ongoing monthly recurring charges for implementing LNP.

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[6] 47 C.F.R. § 52.33.

14. The economic burden is significant for Petitioners' subscribers, particularly in light of the fact that few if any of the subscribers are expected to take advantage of wireless LNP and port their local wireline numbers to a wireless carrier. The cost impact of implementing LNP when compared to the anticipated number of subscribers that will port numbers is dramatic.

15. Additionally, wireless coverage makes service quality and signal reliability questionable in rural areas, leading Petitioner to believe that number porting rates in its service area will be significantly lower than in large urban areas.

16. In summary, only a very small number (if any) of Petitioner's subscribers are likely to take advantage of wireless local number portability, while all of Petitioner's subscribers will bear the substantial costs of making LNP available. Thus, the public interest will best be served by granting Petitioner a limited, temporary suspension of its obligations to implement LNP.

B. Implementing Wireless LNP Is Technically Challenging.

17. Petitioner's existing Nortel DMS-10 switch is not equipped for LNP. Therefore, implementing wireline-to-wireless LNP will require either software and possible hardware updates, or switch replacement. Petitioner has been working diligently to resolve all hardware and software issues related to the implementation of LNP.

18. After reviewing various switch upgrade or replacement options, Petitioner has determined that it would be so expensive to upgrade the existing switch to provide LNP that switch replacement is a better solution. Accordingly,

on March 31, 2004, Petitioner signed a purchase order for a new Taqua switch with a requested service date of November 19, 2004. Assuming that the vendor can deliver, install, and test the switch on Petitioner's requested schedule, Petitioner should be prepared to support LNP by the end of 2004.

19. Thus, Petitioner has proactively examined switch replacement options with the goal of obtaining a switching platform for Petitioner's subscribers that will be both cost effective and feature-rich. This was a critical decision for the Petitioner, as this switching platform will be serving the Petitioner's subscribers for years to come.

20. Regulatory uncertainty is another issue that makes wireline-to-wireless LNP technically challenging. 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 without 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.

V. The Public Interest Will be Served by Granting the Requested Relief.

21. A limited temporary suspension of Petitioner's LNP obligations will serve the public interest by allowing Petitioner to use its limited resources to continue to ensure high-quality customer service and network reliability and to deploy services that will benefit Petitioner's entire subscriber base. Petitioner

has signed a purchase order for a new switch, and Petitioner should be able to support LNP by the end of 2004.

22. Suspension of LNP implementation ultimately serves the public interest as it will allow Petitioner to replace its existing switch prior to LNP implementation as opposed to paying for LNP software twice—once now to upgrade the existing switching platform and again when switch replacement occurs.

23. 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 is no such customer interest. Rather, Petitioner has received no inquiries from subscribers for wireless porting.

24. 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 reciprocal burden of switching their customers to wireline carriers.[7] Therefore, granting a limited temporary suspension should raise no issues of competitive concern since wireless carriers have not yet been required to port numbers to wireline carriers.

VI. REQUEST FOR MODIFICATION

25. 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.[8]

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.

A. Call Rating and Routing Issues

26. The different call routing schemes used by wireless and wireline carriers make wireline-to-wireless LNP problematic. Petitioner is a small rural local exchange company, and Petitioner's exchange boundaries and the scope of its authorized telecommunications services have been defined by the Commission. However, recent data request responses of a wireless carrier in another case involving LNP indicate that at least one wireless carrier expects small rural ILECs (and their customers) to bear the cost of delivering ported

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[7] 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).
[8] *Id.* at ¶40.

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 Petitioner to arrange for the provision of facilities and to pay the costs of delivering ported calls from Petitioner's exchanges to wireless points of presence great distances beyond Petitioner's local exchange boundaries. At the very least, it is in the public interest to grant Petitioner's request for suspension until such time as these issues have been resolved by the FCC.

B. Request for Modification

27. Petitioner does not presently own facilities that would allow Petitioner to deliver calls outside of its exchanges. 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 to transport calls beyond Petitioner's 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. Petitioner is still examining these call rating and routing issues, but Petitioner believes that modification is necessary at this time.

28. Petitioner seeks suspension and modification of the FCC's LNP requirements to address these call rating and routing issues. Specifically, Petitioner seeks suspension and modification such that once LNP capability is achieved, Petitioner would notify the wireless carrier that Petitioner was fully LNP capable but that if the requesting wireless carrier wants calls transported to a

point outside of the local serving area of the Petitioner, 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.

29. 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.")

VII. MOTION FOR EXPEDITED TREATMENT

30. Pursuant to 4 CSR 240-2.080(16), Petitioner seeks a Commission order on or before May 7, 2004 because of the impending FCC deadline. Alternatively, if the Commission cannot issue a decision by May 7, 2004, then Petitioners respectfully request that any Commission decision issued after May 7, 2004 include a suspension of the FCC's wireline-to-wireless LNP requirements until at least six months after the effective date of the Commission's order.

31. 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 required Petitioner to investigate the costs of software and hardware updates and switch replacement.

Petitioner has determined that switch replacement is the better option, but it is not possible to complete this switch replacement by May 24, 2004. Therefore, granting the Petition will prevent Petitioner from being in violation of FCC orders and avoid increased costs for rural customers.

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

CONCLUSION

The costs and technical challenges to replace a switch are substantial. Both the Petitioner's subscribers and the company itself will absorb these costs. Each of the concerns raised in this Petition fall within the criteria set forth in Section 251(f)(2) under which this Commission may suspend or modify Petitioner's LNP implementation obligations. While each of these concerns is valid, the most compelling concern is that of public interest. Petitioner's 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. 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 6th day of April, 2004, to the following parties:

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Michael F. Dandino
Office of the Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102

Brian T. McCartney
Brian T. McCartney

VERIFICATION

I, Mr. Charles E. Moore, Jr., President of Miller 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.

Charles E Moore Jr

Signature

STATE OF Maryland)
COUNTY OF Anne Arundel)

Subscribed and sworn to me, a Notary Public, on this 5th day of April, 2004.

Notary Public

My Commission expires 7-1-05

Attachment A