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March 4, 2004

FILED

MAR 04 2004

Missouri Public
Service Commission

GREGORY C. STOCKARD (1904-1993)

PHIL HAUCK (1924-1991)

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

Re: In the Matter of the Petition of Mid-Missouri Telephone Company for Suspension and Modification of Local Number Portability Obligations and Motion for Expedited Treatment

Dear Mr. Roberts:

Enclosed for filing please find an original and eight (8) copies of Mid-Missouri Telephone Company's Petition for Suspension and Modification of Local Number Portability Obligations and Motion for Expedited Treatment and Motion for Protective Order.

Thank you for seeing this filed.

Sincerely,

Lisa Chase
Lisa Cole Chase

LCC:lw

Encl.

CC: General Counsel, MO Public Service Commission
General Counsel, Office of Public Counsel

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roberts

FILED⁴

MAR 04 2004

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

Missouri Public
Service Commission

In the Matter of the Petition of Mid-Missouri)
Telephone Company for Suspension of the)
Federal Communications Commission)
Requirement to Implement Number Portability)

Case No. _____

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

COMES NOW Mid-Missouri Telephone Company ("Mid-Missouri" 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 two-year 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).

Concurrently with this filing, Petitioner is filing a Motion for Protective Order.

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 two year suspension of the FCC's Local Number Portability (LNP) requirements in order to avoid a significant adverse impact on Petitioner's customers and an undue economic burden on Petitioner to comply with the FCC's orders by May 24, 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.** Due to the critical timing issues of obtaining and implementing necessary software upgrades and possible switch upgrades and/or replacements, Petitioner respectfully requests that this petition be processed on an expedited basis so that Petitioner will have reasonable time to implement LNP if so required. As explained herein, Petitioner's Motion for Expedited Treatment satisfies Commission Rule 4 CSR 240-2.080(16).

DISCUSSION

I. WIRELESS-TO-WIRELINE LOCAL NUMBER PORTABILITY.

5. Petitioner provides local exchange and other telecommunications services in Missouri to approximately 4195 subscribers. Petitioner is a Missouri corporation with its principal office and place of business located at:

215 Roe Street
Pilot Grove, MO 65276

A certificate of good standing from the Missouri Secretary of State is attached hereto as Attachment B. Mid-Missouri 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. Gary Romig, Co-CEO of Mid-Missouri, verifying the accuracy of this information is marked as Attachment A 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, 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

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).

wireline number is provisioned, provided that the porting-in [CMRS] carrier maintains the number's original rate center designation following the port."² Thus, according to the FCC's Order, 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. 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.

7. Petitioner's switches are not equipped for LNP. Therefore, implementing wireline-to-wireless LNP may require both software and hardware updates, and possible switch replacement. Petitioner is required to implement LNP on or before May 24, 2004. For the reasons set forth below, Petitioner hereby seeks suspension and an extension of this May 24, 2004, deadline as described herein 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.

8. Section 251(f)(2) of the Act requires a state public utility commission to suspend or modify a party's 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 —

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*").

(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

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 LOCAL NUMBER PORTABILITY OBLIGATIONS UNDER SECTION 251(F)(2).

9. 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 serves approximately 4195 subscriber 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

³ 47 U.S.C. § 251(f)(2).

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

obligation imposed by Section 251(b).⁵ Therefore, Petitioner may seek relief from the LNP obligations under Section 251(f)(2).

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

10. Under Section 251(f)(2), a state commission should 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. The wireless local number portability requirements from which Petitioner seeks relief are sufficiently burdensome to justify a finding that several of the criteria under Section 251(f)(2) are satisfied and grant of the Petition is warranted.

A. Implementing Wireless Local Number Portability Would Impose An Undue Economic Burden on Petitioner's Subscribers.

11. 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.

12. 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

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).

and ongoing costs incurred in providing number portability.⁶ In addition to any applicable number portability database query costs, Petitioner will be forced to recover substantial implementation costs from their end user customers, as well as ongoing monthly recurring charges for implementing LNP. Petitioner is prepared to provide documentation regarding these costs as soon as a protective order is issued in this case.

13. 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. Petitioners are prepared to provide calculations to show the approximate LNP implementation recovery charge per month for each subscriber as soon as the protective order is issued in this case.

14. The economic burden is significant for the subscribers of Petitioner, 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. On a national level, analysts expect anywhere between two and six million people—between 1.06% and 3.2% of wireline subscribers nationwide—to replace their wireline telephones with wireless telephones in the next few years. If 3.2% of Petitioners' total subscribers were to port their telephone numbers to a wireless carrier (the top range of the estimate), that would equal only 134 of Petitioner's subscribers. The cost impact of implementing LNP when compared to the anticipated number of subscribers that will port numbers is dramatic.

⁶ 47 C.F.R. § 52.33.

15. Additionally, while the anticipated switch rate may be as high as 3.2% nationally, 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 the national average. In fact, Petitioner has received no inquiries or requests from its customers to have a telephone number ported to a wireless carrier.

16. In summary, only a very small number 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. First, Petitioner will be forced to divert limited capital funds to implement LNP for a small handful of subscribers rather than applying those funds to upgrade infrastructure that will benefit a large number of subscribers. Second, all of Petitioner's subscribers will be asked to directly bear a portion of those costs. Third, implementation of LNP may necessitate basic local rate increases for Petitioner's subscribers. Thus, implementation will have an undue economic impact on Petitioner and its subscribers.

B. Implementing Wireless Local Number Portability Would Impose An Undue Economic Burden on Petitioner.

17. Wireline-to-Wireless LNP obligations impose an undue economic burden on Petitioner. Requiring Petitioner to comply with these obligations would force Petitioner to divert limited capital resources from the provision of reliable, high-quality services in markets that are already challenging to serve so that a high-cost service could be implemented that has little if any subscriber interest or demand. Petitioner has been proactively examining switch replacement options along with options for network advancements with the goal of obtaining a

switching platform and network system for Petitioner's subscribers that will be both cost effective and feature-rich. However, this is a critical decision for the Petitioner, as the decisions reached will be serving the Petitioner's subscribers for years to come.

18. Mid-Missouri Telephone Company's facilities currently use a Lucent 5ESS CDX switch. Lucent discontinued this product in 2001. Lucent's practice has been to continue support of a discontinued product for five years. Mid-Missouri has just recently been informed that Lucent will not discontinue support of its CDX products, but will continue to support such products for an unspecified time. The cost of upgrading Mid-Missouri's Lucent 5ESS CDX switch to make it LNP capable is alone over \$37,000.

19. Due to the cost of the switch upgrade and the uncertain time period left for support of the switch, Mid-Missouri has been investigating the cost to upgrade its switch, or undertake more significant network changes to benefit its customers long term. This investigation, in and of itself, has required substantial time simply to assess the costs and benefits of a switch upgrade versus switch replacements.

20. Even under ideal circumstances, a six-month timeframe for implementation is not enough. As it is, there are approximately 1,250 small, rural telephone companies.⁷ Due to the large number of switch modifications, and possible switch replacements, not only by Petitioner but also by other carriers nationally, both Petitioner and its vendors risk missing the May 24, 2004, deadline at this time. Mid-Missouri has acted with prudence in its efforts to

⁷ see *FCC Adopts Further Measures to Reform Interstate Access Charge System for Rural Carriers*, FCC News, issued February 12, 2004.

comply with the FCC Order, and to act in the best interest of its customers in ascertaining its options with respect to becoming LNP capable.

21. Regulatory uncertainty also makes wireline-to-wireless LNP unduly economically burdensome. 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. There are additional costs associated with call routing and rating outside of the rural LEC's network, and there is uncertainty with respect to how those costs are to be borne. In the face of this regulatory uncertainty, Petitioner may also incur costs associated with negotiations and/or litigation.

22. A Commission determination under Section 251(f) to grant suspension to avoid a significant adverse economic impact on Petitioner's end users, or to avoid imposing a requirement that is unduly economically burdensome on Petitioner, will not be contrary to any FCC findings. The FCC has not made a cost/benefit analysis as to the economic impact of intermodal

LNP on small rural ILECs.⁸

V. THE PUBLIC INTEREST WILL BE SERVED BY GRANTING THE REQUESTED RELIEF.

23. The two-year suspension of Petitioner's LNP obligations will ensure that subscribers are not forced to bear significant costs for something from which they are unlikely to benefit, or to incur duplicative costs for two upgrades. Suspension 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.

24. 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, Petitioner has demonstrated the potential for the FCC's LNP requirements to result in adverse economic impacts on end users and produce undue economic burdens on Petitioner.

25. Increased costs, the potential waste of resources, and the possibility of reduced quality of service are not in the public interest. Therefore, the public

⁸ see *In the Matter of Telephone Number Portability CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, *Reply Comments of the Office of Advocacy, U.S. Small Business Administration on the Further Notice of Proposed Rulemaking and Initial Regulatory Flexibility Analysis*, filed Feb. 4, 2004 ("The FCC released a Memorandum Opinion and Order ("MO&O") as part of the same document as the *Further Notice*. The MO&O addressed wireline-to-wireless porting while the *Further Notice* addressed wireless-to-wireline porting. Both actions, however, dealt with important issues relating to intermodal portability and both imposed requirements and costs on small rural wireline carriers. The FCC did not conduct a regulatory flexibility analysis for the MO&O on the basis that it was an interpretative rule. Advocacy does not agree with this assessment and believes that regulatory requirements imposed by the MO&O are similar in nature and scope to those in the *Further Notice* and require a notice and comment rulemaking and an RFA analysis." fn. 12).

interest would be best served by examining issues thoroughly and avoiding the possibility of increased rates and surcharges until the most economical and practical solution is developed.

VI. REQUEST FOR MODIFICATION

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

A. CALL ROUTING AND RATING ISSUES

27. The different call routing schemes used by wireless and wireline carriers make wireline-to-wireless LNP technically infeasible at this time. Petitioner is a small rural local exchange company, and Petitioner's exchange boundaries have been defined by the Commission. Petitioner is unaware of any wireless carrier point of presence within its exchanges.

B. MODIFICATION

28. Petitioner does not presently own facilities that would allow Petitioner to deliver calls outside of its exchanges, nor does Petitioner have any arrangement 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 Petitioner is still examining the call rating and routing issues at this time, Petitioner believes that modification will be necessary.

29. Petitioner seeks modification the FCC's LNP requirements to address the call

rating and routing issues. Specifically, Petitioner seeks 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 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. This 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. Moreover, it is also consistent with the FCC's order of clarification issued on November 20, 2003 which notes that transport of calls can be handled as it is currently handled today.

VII. MOTION FOR EXPEDITED TREATMENT

30. Pursuant to 4 CSR 240-2.080(16), Petitioner seeks a Commission order on or before April 1, 2004 because of the impending FCC deadline. Petitioner also respectfully requests that any Commission decision denying a two-year suspension 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 require costly software updates and possibly switch replacement. These updates and possible switch replacements will result in higher costs for rural customers, and it will be difficult for small rural carriers to complete these updates 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 equipment vendors.


CONCLUSION

The costs and technical challenges to either upgrade or 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. The 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,

**ANDERECK, EVANS, MILNE
PEACE & JOHNSON**

By:



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**ATTORNEYS FOR
PETITIONER**

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 4~~th~~ day of March, 2004, to the following parties:

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

General Counsel
Office of the Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102



Lisa Cole Chase

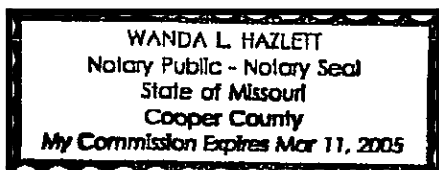
VERIFICATION

I, Gary Romig, Co-CEO of Mid-Missouri 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.

Gary Romig Co-CEO
Signature

STATE OF MISSOURI)
COUNTY OF Cooper)

Subscribed and sworn to me, a Notary Public, on this 4th day of March, 2004.



Wanda L. Hazlett
Notary Public

My Commission expires 3-11-05

Attachment A

STATE OF MISSOURI



Matt Blunt
Secretary of State


CORPORATION DIVISION
CERTIFICATE OF GOOD STANDING

I, MATT BLUNT, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

MID-MISSOURI TELEPHONE COMPANY
T00000530

was created under the laws of this State on the 18th day of May, 1928, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 18th day of February, 2004


Secretary of State



Certification Number: 6419957-1 Page 1 of 1 Reference:
Verify this certificate online at <http://www.sos.mo.gov/businessentity/verification>