

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application or)
Petition of MoKAN DIAL, INC. for)
Modifications of the Federal)
Communications Commission)
Requirements to Implement Number)
Portability and Dialing Parity for)
Indirectly Interconnected Voice over)
Internet Protocol Providers.)

Case No. IO-2008-0207

**UNANIMOUS STIPULATION AND AGREEMENT
REGARDING A MODIFICATION TO LOCAL NUMBER PORTABILITY
OBLIGATION**

COME NOW the Staff of the Missouri Public Service Commission ("Staff"), the Office of Public Counsel ("Public Counsel"), and MoKAN DIAL, INC. ("Petitioner"), and for their unanimous Stipulation and Agreement, state to the Missouri Public Service Commission ("Commission") as follows:

Introduction

Local Number Portability (LNP) allows customers to retain their telephone number when switching from Petitioner to another provider. When a customer has switched providers, and retained his or her number, Petitioner is obligated to complete calls its remaining customers make to the departing customer. When the departing customer's carrier has no local presence within Petitioner's service area, such calls cannot be completed without making arrangements to transport the call outside the local exchange carrier's (LEC's) service area. Petitioner does not have the facilities for this.

This Stipulation, if approved, would grant Petitioner a modification from having to pay for transport facilities to interconnected voice over the internet protocol providers (I-VoIP providers) that have no local presence in Petitioner's service area. A similar modification concerning "intermodal" porting between Petitioner and commercial radio

service providers was approved by this Commission on June 29, 2004 in Case No. IO-2004-0545.

I. BACKGROUND

1. **FCC's Order.** On November 8, 2007, the Federal Communications Commission ("FCC") issued a *Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking* ("the Order") addressing local number portability ("LNP") between Interconnected Voice over Internet Protocol providers ("I-VoIP") and other carriers.¹ The *Order* recognized the problem of designating different routing and rating points on LNP for small rural local exchange carriers, but the FCC did not resolve these issues in its decision. As a result, there are currently no rules, guidelines, or resolution of certain outstanding issues related to LNP between I-VoIP providers and rural carriers.

2. **LNP between I-VoIP providers and rural carriers:** As a local exchange carrier ("LEC"), Petitioner is subject to the requirements of Section 251(b) of the Act, which states that LECs have "[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the [FCC]."² With the effective date of the Order, the Act's number portability requirements include the obligation that, where Petitioner has received a bona fide request ("BFR") from an I-VoIP provider or its numbering partner, Petitioner must make its switches capable of porting a subscriber's local telephone number to:

¹ *In the Matter of Telephone Number Requirements for IP-Enabled Services Providers, Telephone Number Portability, et al.*, WC Docket No. 07-243 and 95-116, et al, released November 8, 2007.

² 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).

(1) an I-VoIP provider that partners with a wireless carrier for number resources where the partnering wireless carrier's coverage area overlaps the geographic location of the porting-out wireline carrier's rate center; or

(2) an I-VoIP provider that partners with a wireline carrier for number resources in the same rate center as the porting-out wireline carrier.³

I-VoIP Provider Partnering with Wireless Carrier

3. According to the Order, Petitioner must port numbers to an I-VoIP provider that partners with a wireless carrier for number resources where the wireless carrier's coverage area overlaps the geographic location of the rate center to which the number is assigned. This requirement applies even though the wireless carrier's point of presence is in another rate center and has no physical interconnection with the wireline carrier. The FCC previously clarified that this requirement is limited to porting within the Local Access and Transport Area ("LATA") where the wireless carrier's point of interconnection is located, "and does not require or contemplate porting outside of LATA boundaries."⁴

4. In the event an I-VoIP provider with a wireless numbering partner requests LNP with Petitioner, it is likely that the numbering partner will not have a local presence within the Petitioner's local exchange area.⁵ This produces a situation where Petitioner cannot complete a call from its local customers to the ported number without having to transport the call beyond Petitioner's service area. As LNP does not

³ The Order, ¶ 35.

⁴ See footnote 75, to FCC's "Intermodal LNP" Order of November 10, 2003, in the Matter of Telephone Number Portability and CTIA Petitions for Declaratory Rulings on Wireline-Wireless Porting Issues, CC Docket No. 95-116.

⁵ As used in this Stipulation and Agreement, the term "local presence" means the physical presence of telecommunications facilities and specifically excludes a situation where a presence may be established only through telephone number assignment whether or not rating and routing of telephone numbers remain within the same rate center after porting.

necessarily require the existence of an approved interconnection agreement, it is expected that there will be an issue of what carrier is responsible to provide transport in the absence of an approved interconnection agreement addressing the provision of transport.

I-VoIP Provider Partnering with Wireline Carrier

5. LNP between ILECs and an I-VoIP provider that partners with a wireline carrier for number resources is somewhat different. There is no FCC prescribed “overlapping coverage area”, such as Major Trading Areas, that determine the scope within which LNP between a LEC and VoIP provider utilizing a wireline numbering partner must be conducted.

6. In the event an I-VoIP provider with a wireline carrier numbering partner requests LNP with Petitioner, it is likely that the numbering partner will not have a local presence within Petitioner’s local exchange area. This produces a situation where Petitioner cannot complete a call from its local customers to the ported number without having to transport the call beyond Petitioner’s service area. As LNP does not necessarily require the existence of an approved interconnection agreement, it is expected that there will be an issue of what carrier is responsible to provide transport in the absence of an approved interconnection agreement addressing the provision of transport.

7. In its intermodal LNP Order of November 10, 2003, the FCC 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.⁶

⁶ Id. at ¶40.

On remand in the November 8, 2007 I-VoIP Order, the FCC concluded that the issue of transport costs associated with calls to ported numbers was outside the scope of the proceeding and not relevant to the application of LNP obligations under the Act., as indicated by the following excerpt from paragraph 4 of Appendix D to the FCC Order:

“Further, as the Commission found in the *Intermodal Number Portability Order*, the issue of transport costs associated with calls to ported numbers is outside the scope of this proceeding and not relevant to the application of the LNP obligations under the Act.”

The FCC specifically recognized that carriers such as Petitioner could request modifications of LNP obligations for this reason.⁷

8. Petitioner desires the modification herein in order to allow Petitioner to inform the I-VoIP provider or its numbering partner that Petitioner will not be required to transport a call to the ported number unless and until either the I-VoIP provider or its numbering partner has local interconnection facilities within the Petitioner’s local exchange area, or there is a Commission-approved interconnection agreement providing otherwise, or the I-VoIP provider or its numbering partner has made arrangements with third party carriers to transport the ported number and associated call to the I-VoIP provider or its wireless carrier number partner’s point of presence.

9. **Standard for Section 251(f)(2) Suspension and Modification:** 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 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

⁷ ¶ 50-51, Appendix D, ¶ 4-6

(B) is consistent with the public interest, convenience, and necessity."⁸

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.

10. **The Petition:** On December 7, 2007, Petitioner filed with the Commission pursuant to the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §251(f)(2), a verified Petition for modification of Petitioner's obligations under Section 251(b) of the Act to provide local number portability ("LNP") to a requesting I-VoIP provider or its numbering partner. Specifically, Petitioner seeks modification of the LNP requirements so that Petitioner is not responsible to provide transport of calls beyond its local exchange area to an I-VoIP provider with a wireless or wireline numbering partner that does not have a local presence within the Petitioner's local exchange area.

11. On June 29, 2004 in Case No. IO-2004-0545, the Commission granted Petitioner a modification specifying Petitioner was not responsible to transport calls to a number ported to a wireless carrier that did not have a local presence in the Petitioner's local exchange area. The modification requested herein is similar to, and not inconsistent with, this prior modification.

II. FACTS

12. Many of the facts detailed below were included in the December 7, 2007 verified Petition, which is incorporated by reference.

13. **The Petitioner:** Petitioner is a facilities-based ILEC providing local exchange services in Missouri. Petitioner serves one exchange in Missouri.

⁸ 47 U.S.C. § 251(f)(2).

14. **Certificate of Service Authority:** Petitioner is authorized to provide telephone service to the public consistent with its existing tariffs on file with the Commission (including the exchange boundary maps contained therein) and its certificate of service authority. Petitioner provides basic local exchange service within its local exchange boundaries. Petitioner does not provide local exchange telecommunications services outside of its certificated area.

15. **Rural Telephone Company:** Petitioner's service area is predominantly rural in character, and Petitioner is a "rural telephone company" as defined in 47 U.S.C. §153(37) and 47 C.F.R. §51.5.

16. **Petitioner's Facilities:** Petitioner does not presently own facilities that would allow Petitioner to transport local calls outside of its exchange, nor does Petitioner have any arrangement with intermediate, third party carriers to transport these local calls outside of Petitioner's exchange(s). Petitioner's facilities are currently LNP-capable, and Petitioner is presently prepared to port numbers to wireless carriers with facilities or points-of-presence (POPs) within its local exchange.

17. **Wireless Facilities:** Most wireless carriers that may be an I-VolP provider's number partner do not have facilities or POPs within Petitioner's local exchange area.

18. **Wireline Facilities:** No wireline carrier that may be an I-VolP provider's number partner has facilities or POPs within Petitioner's local exchange area.

19. **Relief Requested:** Petitioner is presently LNP capable. Petitioner seeks modification because the FCC's decisions that have recognized but have not resolved important call rating and routing issues regarding transport of calls to ported numbers

outside the service areas of small rural carriers. Petitioner seeks modification because Petitioner does not presently own facilities nor does it have arrangements with third-party carriers that would allow Petitioner to deliver calls to a number ported to an I-VoIP provider with a wireless carrier number partner, or one with a wireline carrier number partner, outside of its exchange boundaries. Petitioner seeks modification such that Petitioner would notify such requesting I-VoIP provider or its number partner that Petitioner is fully LNP capable but that if they want local calls transported outside of Petitioner's local service area, then they 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 I-VoIP provider or its wireless carrier number partner's point of presence (POP), or obtain an approved interconnection agreement with Petitioner providing otherwise.

20. **Undue Economic Burden on Petitioner's 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 Petitioner's subscribers. Under Section 52.33 of the FCC's rules, a LEC may assess a monthly, long-term number portability charge on its customers to offset the initial and certain ongoing costs incurred in providing number portability.⁹

21. If the Commission does not grant modification, then Petitioner will incur additional costs, either in the form of additional facilities or negotiated or tariffed rates

⁹ 47 C.F.R. § 52.33. As a small rural telephone company, Petitioner has a small customer base over which to spread these implementation costs. Under the LNP surcharge cost-recovery formula, Petitioner would recover its 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.

with third party carriers to provide transport. Petitioner may ultimately seek to recover the additional transport costs from its subscribers.

22. **Undue Economic Burden on Petitioner.** Delivering calls outside of Petitioner's local exchange boundaries could impose a substantial economic burden upon Petitioner. If Petitioner is required to transport calls outside of its certificated local service area, then, additional legal and regulatory issues are expected to arise with regard to the facilities or arrangements with third party carriers.

III. POSITION OF PUBLIC COUNSEL

23. Public Counsel believes the best course of action would be to approve the modifications set forth in this Stipulation.

IV. STIPULATION AS TO RESULT

24. The parties agree that the requested modification is necessary at this time to avoid the possibility of an undue economic burden being imposed upon Petitioner's customers.

25. The parties agree that the requested modification is necessary at this time to avoid an undue economic burden upon Petitioner.

26. The parties agree that the Commission should enter an order granting Petitioner's requested modification of the FCC's LNP requirements until such time as the FCC or the Commission addresses the call rating and routing issues discussed in the FCC's November 10, 2003 LNP *Order*, and also discussed in the FCC's November 8, 2007 I-VoIP LNP *Order*; or until an interconnection agreement between Petitioner and the I-VoIP provider or its numbering partner addressing such issue is approved; or until the Commission otherwise terminates the modification requested herein.

27. Specifically, the parties agree that the Commission should grant modification such that if LNP is requested by an I-VoIP provider with a wireless carrier number partner, or an I-VoIP provider with a wireline carrier number partner, Petitioner would notify the requesting I-VoIP provider or its requesting number partner that Petitioner is fully LNP capable but that it would represent an undue economic burden at this time to transport calls beyond its exchange boundary, unless and until the I-VoIP provider or its numbering partner has either a point of presence in Petitioner's local exchange area or there is an approved interconnection agreement between Petitioner and the requesting carrier providing otherwise.

28. The parties agree that granting the requested modification is consistent with the public interest, convenience and necessity at this time, as it will avoid imposing additional economic burdens on customers of telecommunications services and reduce customer confusion prior to the FCC or the Commission resolving rating and routing issues.

29. The parties agree that the Commission should enter an order authorizing Petitioner to establish an intercept message for seven-digit dialed calls to such ported numbers where the facilities and arrangements necessary to transport such calls from Petitioner's facilities to the I-VoIP provider's number partner's point of presence have not been established. The intercept message will inform subscribers that the call cannot be completed as dialed and, if possible, provide information about how to complete the call.

30. The Parties agree that the modification is a conditional modification until such time as the FCC further addresses the rating and routing issues associated with

porting numbers, or until an interconnection agreement between Petitioner and the I-VoIP provider or its numbering partner providing for such transport is approved, or until the Commission otherwise terminates the modification requested herein. The Parties also agree that Petitioner should not be foreclosed from seeking additional or differing modification if and when the FCC issues any subsequent decisions to address the rating and routing issues associated with porting numbers.

31. This Stipulation has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation shall be void, and no signatory shall be bound by any of the agreements or provisions hereof. The Stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the signatories to take other positions in other proceedings.

32. In the event the Commission accepts the specific terms of this Stipulation, the parties and participants waive, with respect to the issues resolved herein the following rights: their respective rights to present testimony and to cross examine witnesses pursuant to Section 536.070(2) RSMo. 2000; their respective rights to present oral argument or written briefs pursuant to Section 536.080.1 RSMo. 2000; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo. 2000; and their respective rights to seek rehearing pursuant to §386.500 RSMo. 2000; and to seek judicial review pursuant to §386.510 RSMo. 2000. The parties agree to cooperate with each other in presenting this Stipulation for approval to the Commission and shall take no action, direct or indirect, in opposition to Petitioner's request for modification and suspension of the FCC's LNP requirements.

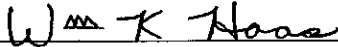
33. Should it be so directed, the Staff shall file suggestions or a memorandum in support of the Stipulation and the other Parties shall have the right to file responsive suggestions or prepared testimony. All responsive suggestions, prepared testimony or memorandum shall be subject to the terms of 4 CSR 240-2.135 Confidential Information.

34. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to 4 CSR 240-2.135 Confidential Information.

V. CONCLUSION

WHEREFORE, the signatories respectfully request the Commission to issue its Order adopting the terms and conditions of this Stipulation and Agreement and granting the relief requested by the parties.

Respectfully submitted,



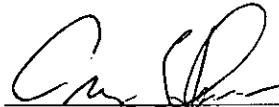
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 31st day of July 2008.

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