BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Petition of Cass County Telephone Company for Suspension and Modification of the FCC's Requirement to Implement Number Portability	))))	Case No. ___________

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

COMES NOW Cass County Telephone Company ("Cass" or "Petitioner"), pursuant to the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §251(f)(2), and hereby petitions the Missouri Public Service Commission ("Commission") for suspension and modification 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. Specifically, Petitioner seeks suspension and modification of the FCC's LNP requirements to address the call rating and routing issues that were identified but not resolved by the Federal Communications Commission ("FCC") in its November 10, 2003 *Order*. As demonstrated herein, Petitioner is entitled to the requested relief pursuant to the criteria set forth in § 251(f)(2) of the Act, and the granting of this Petition will serve the public interest.

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**. In CC Docket No. 95-116, the FCC recently determined that local exchange carriers must port numbers to requesting wireless carriers by May 24, 2004.

2. **Suspension and Modification**. Petitioner plans to be LNP-capable within its local exchange serving area(s) by this May 24, 2004 deadline. However, Petitioner seeks suspension because the FCC's recent LNP decision has identified but left unresolved important call rating and routing issues for small rural carriers. Petitioner seeks modification because Petitioner does not presently own facilities that would allow Petitioner to port numbers and deliver associated calls outside of its exchange boundaries. Therefore, Petitioner seeks modification such that once LNP capability is achieved, Petitioner would notify requesting wireless carriers that Petitioner is fully LNP capable but that if the wireless carrier wants calls transported outside of Petitioners' local service area, 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 to the wireless carrier's point of presence (POP).

3. **Expedited Treatment**. Petitioner respectfully requests that this petition be processed on an expedited basis so that Petitioner will have reasonable time to implement LNP. As explained herein, Petitioner's Motion for Expedited Treatment satisfies Commission Rule 4 CSR 240-2.080(16).

DISCUSSION

A. WIRELINE-TO-WIRELESS LOCAL NUMBER PORTABILITY

4. Petitioner provides local exchange and other telecommunications services in Missouri to approximately 8,244 subscribers. Petitioner is a Maryland corporation with its principal office and place of business located at:

P.O. Box 398
260 W. First Street
Peculiar, MO 64078

In Case No. TC-2002-1077, Cass filed a Certificate of Good Standing from the Missouri Secretary of State which Cass requests be incorporated by reference in this case. Cass 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. Kenneth Matzdorff, President of Cass, 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).

5. 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

[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).

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.

6. 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 do not require location portability between wireline carriers.

7. 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. This appears

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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*").

to contradict the statutory requirement that number portability be implemented in a competitively neutral manner. *See* 47 U.S.C. §251(e)(2).

B. REQUEST FOR SUSPENSION

8. 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.[3]

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.

9. **Call Routing and Rating Issues**. 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 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.

C. <u>REQUEST FOR MODIFICATION</u>

10. 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.

11. 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

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[3] *Id.* at ¶40.

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.

12. 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.")

C. <u>SECTION 251(F)(2) SUSPENSION AND MODIFICATION</u>

13. 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, 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."[4]

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 specified conditions are met. As demonstrated herein, Petitioner is eligible for and entitled to relief under this provision.

14. 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.[5] Petitioner serves approximately 8,000 subscriber lines, which is far less than two percent of the national total, so Petitioner is eligible to seek modification under Section 251(f)(2).

15. 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. As detailed below, the wireless local number portability requirements from which Petitioner seeks relief are

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[4] 47 U.S.C. § 251(f)(2).

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

sufficiently burdensome in terms of adverse economic impact on customers and undue burden on Petitioner to justify a finding that the Section 251(f)(2) standard is satisfied and grant of the Petition is warranted.

16. **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, an ILEC may assess a monthly, long-term number portability charge on its customers to offset the initial and ongoing costs incurred in providing number portability.[6] Therefore, Petitioner may recover any applicable number portability implementation and ongoing monthly costs through a charge on its customers.

17. If the Commission does not grant suspension and modification, then Petitioner will be forced to recover additional transport costs from its end user customers. This would defy the regulatory principle of placing costs on the cost causer. Instead, those customers that did port their numbers would avoid the very costs (LNP end user charges) of carrying their calls outside of Petitioner's exchange boundaries. This economic burden is significant for Petitioners' subscribers, particularly in light of the fact that: (a) they will already bear the substantial implementation costs and ongoing costs of providing LNP to wireless

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[6] 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.

carriers; and (b) few if any of the subscribers are expected to take advantage of wireless LNP and port their local wireline numbers to a wireless carrier.

18. **Undue Economic Burden on Petitioner**. Requiring Petitioner to deliver calls outside of its exchange boundaries would impose a substantial economic burden upon Petitioner. The FCC has not resolved the issue, so it would be premature at this time to force Petitioner to divert limited capital resources from the provision of reliable, high-quality services in markets that are already challenging to serve. In addition, it would require Petitioners to devote limited resources to implement LNP for a small handful of subscribers (if any) rather than applying those funds to upgrade infrastructure that will benefit a large number of subscribers.

19. 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. Petitioner's subscribers should not bear the additional costs of carrying wireless calls to Kansas City or St. Louis. This would be an absurd and unfair shifting of costs away from the cost causer. Therefore, the public interest will best be served by granting suspension and modification.

20. **The Public Interest Will Be Served By Granting The Requested Relief**. Modification and suspension of Petitioner's LNP obligations will ensure that subscribers are not forced to bear all of the costs for something from which they are unlikely to benefit. Modification will prevent Petitioner from having to incur costs before the FCC has resolved the LNP routing and rating issues.

Modification will serve the public interest by requiring the cost causer to bear some of the costs and responsibility for porting numbers outside of Petitioner's service areas. Finally, modification will allow 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.

21. Increased costs and the potential waste of resources are not in the public interest. Therefore, the public interest would be best served by examining issues thoroughly and granting the modification.

MOTION FOR EXPEDITED TREATMENT

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

23. 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 expensive changes and ongoing costs. Therefore, granting the Petition will prevent Petitioner from incurring costs before the FCC has resolved these issues, thereby avoiding increased costs for rural customers.

24. Granting Petitioner's request will 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 Petitioner's 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.

CONCLUSION

The costs to implement LNP are substantial, and Petitioner's subscribers will absorb these costs. This concern falls within the criteria set forth in Section 251(f)(2) under which this Commission may suspend and/or modify Petitioner's LNP implementation obligations. Ultimately, the most compelling consideration in this matter 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. Suspension will prevent Petitioner's subscribers from having to bear these costs before the FCC has resolved the call rating and routing issues. Modification will serve the public interest by requiring the cost causer to bear some of the cost and responsibility for porting numbers outside of Petitioner's service areas. Suspension and modification will allow Petitioner to use its limited resources to benefit Petitioner's <u>entire</u> customer base. For these reasons, granting this petition is in the public interest.

Respectfully submitted,

By Brian T. McCartney

W.R. England, III | Mo. #23975
Brian T. McCartney | Mo. #47788
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue, P.O. Box 456
Jefferson City, MO 65102-0456
trip@brydonlaw.com
bmccartney@brydonlaw.com
(573) 635-7166
(573) 634-7431 (FAX)
Attorneys for Petitioners

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 5th day of ~~[illegible]~~ 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, Kenneth Matzdorff, the President of Cass County Telephone Company, hereby verify and affirm that I have read the foregoing **PETITION FOR 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.

Kenneth M. Matzdorff
Signature

STATE OF MISSOURI)

COUNTY OF CASS)

Subscribed and sworn to me, a Notary Public, on this 2nd day of ~~March~~ APRIL, 2004.

Katherine J. Whaley
Notary Public

My Commission expires 04/02/04

Katherine J. Whaley
Notary Public - Notary Seal
State of Missouri
Cass County
My Commission Expires: April 2, 2004

Attachment A