

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Petition of New London)
Telephone Company, Orchard Farm)
Telephone Company, and Stoutland)
Telephone Company for Suspension of the)
Federal Communications Commission)
Requirement to Implement Number Portability)

Case No. _____

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

COME NOW New London Telephone Company (New London), Orchard Farm Telephone Company (Orchard Farm), and Stoutland Telephone Company (Stoutland) ("Petitioners") and pursuant to Section 251(f)(2) of the Telecommunications Act of 1996 (the "Act"),¹ hereby petition the Missouri Public Service Commission ("Commission") for a two-year suspension of Petitioners' obligations under Section 251(b) of the Act to provide local number portability ("LNP") to requesting Commercial Mobile Radio Service ("CMRS") providers. As demonstrated herein, Petitioners are 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. Petitioners seek expedited treatment of this Petition and address the Commission's requirements for expedited treatment herein pursuant to 4 CSR 240-2.080(16).

¹ 47 U.S.C. § 251(f)(2).

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 concludes 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. **Relief Requested.** Petitioners seek a two year suspension of the FCC's Local Number Portability (LNP) requirements in order to avoid a significant adverse impact on Petitioners' customers and an undue economic burden on Petitioners and because it is technically challenging for Petitioners to comply with the FCC's orders by May 24, 2004.

3. **Expedited Treatment.** Due to the critical timing issues of obtaining and implementing necessary software upgrades and possible switch upgrades and/or replacements, Petitioners respectfully request that this petition be processed on an expedited basis so that Petitioners will have reasonable time to implement LNP if so required. As explained herein, Petitioners' Motion for Expedited Treatment satisfies Commission Rule 4 CSR 240-2.080(16).

DISCUSSION

I. PETITIONERS' OBLIGATIONS TO IMPLEMENT WIRELESS LOCAL NUMBER PORTABILITY.

4. Petitioners provide local exchange and other telecommunications services in Missouri to approximately 1,021 New London subscribers, 851 Orchard Farm subscribers and 1,574 Stoutland subscribers. Petitioners are Missouri corporations, and their principal office and place of business is located at:

P.O. Box 369
501 S. Main Street
New London, MO 63459

Petitioners' certificates of good standing from the Missouri Secretary of State are attached to this Petition as Attachments A, B, and C. Petitioners have 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. John Zeiler, External Relations Manager for Petitioners, verifying the accuracy of this information is marked as Attachment D and attached hereto. Each Petitioner is a "rural telephone company" as defined in 47 U.S.C. §153(37).

5. As incumbent local exchange carriers ("ILECs"), Petitioners are 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 [Federal Communications] Commission."² Effective as of May 24, 2004, the Act's number portability

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).

requirements include the obligation that, where Petitioners have received a bona fide request ("BFR") from a CMRS provider, Petitioners must make their 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."³ Thus, Petitioners 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.

6. Petitioners have received four BFR's from wireless carriers (one from Sprint and three from US Cellular) seeking wireless local number portability in three markets, encompassing three switches. None of the three switches is equipped for LNP and will require both software and hardware updates, and possibly switch replacement. Petitioners are required to implement LNP on or before May 24, 2004. For the reasons set forth below, Petitioners hereby seek an extension of the May 24, 2004, deadline as described herein pursuant to Section 251(f)(2) of the Act.

³ *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*").

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

7. 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 —

(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

As demonstrated herein, Petitioners are eligible for and entitled to relief from the local number portability obligations under this provision.

III. PETITIONERS ARE ELIGIBLE TO SEEK RELIEF FROM WIRELESS LOCAL NUMBER PORTABILITY OBLIGATIONS UNDER SECTION 251(F)(2).

8. 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 Petitioners serve approximately 3,446 subscriber lines collectively, and at the holding company level TDS Telecom serves approximately 667,078 lines, which is less than two percent of the national total.

⁴ 47 U.S.C. § 251(f)(2).

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

Thus, Petitioners' subscriber lines fall below the two percent threshold set in Section 251(f)(2). Accordingly, Petitioners are eligible to seek relief under Section 251(f)(2) from 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)."⁶ Therefore, Petitioners may seek relief from their LNP obligations under Section 251(f)(2).

IV. PETITIONERS ARE ENTITLED TO THE REQUESTED RELIEF UNDER SECTION 251(F)(2).

9. 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. Nonetheless, as detailed below, the wireless local number portability requirements from which Petitioners seek 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 Petitioners' Subscribers.

10. 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 Petitioners' subscribers.

⁶ *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).

Deploying wireless local number portability would impose such an adverse impact on Petitioners' subscribers.

11. 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.⁷ In addition to any applicable number portability database query costs, Petitioners estimate that they will be forced to recover \$109,500 in implementation costs from their end users. 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. As shown on Attachment E attached hereto, those calculations translate into monthly LNP implementation recovery charges between \$.39 and \$.71 for each subscriber.

12. The economic burden is significant for the subscribers of Petitioners, 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 110 of Petitioners' subscribers.

13. The cost impact of implementing LNP when compared to the anticipated number of subscribers that will port numbers is dramatic.

⁷ 47 C.F.R. § 52.33.

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 Petitioners to believe that number porting rates in their service areas will be significantly lower than the national average.

14. In summary, only a very small number of Petitioners' subscribers are likely to take advantage of wireless local number portability, while all of Petitioners' subscribers will bear the substantial costs of making LNP available. Thus, the public interest will best be served by granting Petitioners a two-year suspension of their obligations to implement LNP. Even if the Commission does not fully grant Petitioners' request, subscribers would certainly benefit by some temporary suspension of the LNP requirements to allow the companies to implement LNP in a cost-efficient manner as described below.

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

15. Wireline-to-Wireless LNP obligations impose a substantial economic burden on Petitioners. Requiring Petitioners to comply with these obligations would force Petitioners 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. The high cost of implementing LNP will impact subscribers in at least two ways. First, Petitioners 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 Petitioners' subscribers will be asked to directly bear a portion of those costs. Additionally, implementation of LNP may necessitate basic local rate increases for Petitioners' subscribers.

C. Implementing Wireless Local Number Portability Requirements by the Applicable May 24, 2004, Deadline is Technically Challenging.

16. Petitioners have been working diligently to resolve all hardware and software issues related to the implementation of LNP, but for reasons outlined below, these issues have not yet been resolved.

- The Petitioners' exchanges are currently served by Siemens DCO switches. However, due to technical limitations of the Siemens DCO switches—which have no ongoing vendor investment in research and development of customer features—Petitioners believe that switch replacement at this time represents the best investment on behalf of its end users. TDS Telecom's network engineers are investigating the cost to replace such switches system-wide, including the Petitioners' Missouri switches, and have sent out Requests For Proposals ("RFPs") seeking such data.⁸ This investigation, in and of itself, requires substantial time simply to assess the costs and benefits of a switch upgrade versus a switch replacement. Additionally, these same network engineers must study alternative switch platforms that would provide the best long term solution for the needs of the customers, including both a typical physical switch or, alternatively, a "soft" switch. Neither option is without technical, operational and financial challenges.
- Due to the large number of switch modifications, and possible switch replacements, not only by Petitioners but also by other carriers nationally, both Petitioners and its vendors risk missing the May 24, 2004, deadline at this time. The high number of switch replacements and switch upgrades will place undue burdens on the technical staff of Petitioners. These same

⁸ An RFP was sent out to various switch vendors to get pricing on viable alternatives. Responses are expected by February 21, 2004.

staffing burdens, as well as associated production burdens, exist for switch vendors as well and are completely out of the control of Petitioners.

17. Petitioners are proactively working through the RFP process with the goal of obtaining a switching platform for Petitioners' subscribers that will be both cost effective and feature-rich. However, this is a critical decision for the Petitioners, as this switching platform will be serving the Petitioners' subscribers for years to come. Even under ideal circumstances, a six-month timeframe for implementation is not enough.

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

18. The two-year suspension of Petitioners' LNP obligations will ensure that subscribers are not forced to bear significant costs for something from which they are unlikely to benefit. Suspension will serve the public interest by allowing Petitioners to use their limited resources to continue to ensure high- quality customer service and network reliability and to deploy services that will benefit Petitioners' entire subscriber base.

19. Suspension of LNP implementation ultimately serves the public interest as it will allow Petitioners to replace their 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 the necessary switch replacement occurs.

MOTION FOR EXPEDITED TREATMENT

20. Pursuant to 4 CSR 240-2.080(16), Petitioners seek a Commission order on or before March 1, 2004 because of the impending FCC deadline. Alternatively, if the Commission cannot issue a decision by March 1, 2004, then Petitioners respectfully request that any Commission decision issued after March 1, 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.

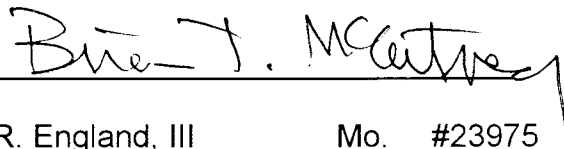
21. As explained above, the FCC's recent orders impose requirements that are substantially different from its prior LNP rules, and the FCC has yet to clarify a number of issues related to wireline-to-wireless LNP for small rural local exchange carriers. Moreover, the FCC's LNP orders require costly software and hardware 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 Petitioners from being in violation of FCC orders and avoid increased costs for rural customers.

22. Granting Petitioners' request will allow Petitioners 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 Petitioners' customers or the general public. To Petitioners' knowledge, none of Petitioners' 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 Petitioners' subscribers and the Petitioners themselves 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 Petitioners' LNP implementation obligations. While each of these concerns is valid, the most compelling concern is that of public interest. The Petitioners' 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 

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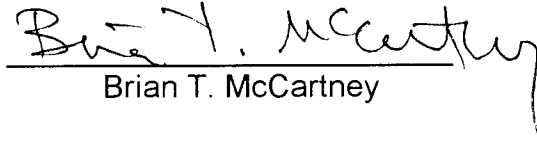
Attorneys for Petitioners

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 9th day of February, 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

STATE OF MISSOURI



Matt Blunt
Secretary of State


**CORPORATION DIVISION
CERTIFICATE OF GOOD STANDING**

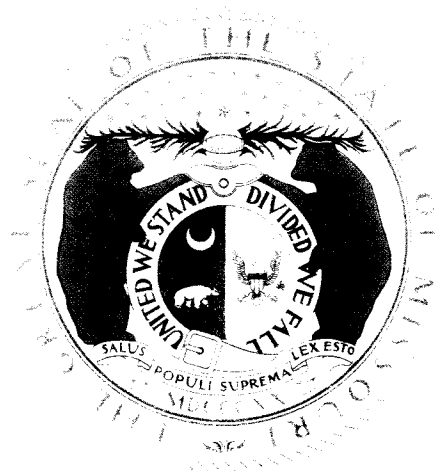
I, MATT BLUNT, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

**NEW LONDON TELEPHONE COMPANY
T00280833**

was created under the laws of this State on the 24th day of September, 1985, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and an imprinted the GREAT SEAL of the State of Missouri, on this, the 3rd day of February, 2004


Secretary of State



Certification Number: 6387461-1 Page 1 of 1 Reference:
Verify this certificate online at <http://www.sos.mo.gov/businessentity/verification>

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

**ORCHARD FARM TELEPHONE CO.
T00000621**

was created under the laws of this State on the 17th day of December, 1957, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and an imprinted the GREAT SEAL of the State of Missouri, on this, the 3rd day of February, 2004


Secretary of State



Certification Number: 6387460-1 Page 1 of 1 Reference:
Verify this certificate online at <http://www.sos.mo.gov/businessentity/verification>

Attachment B

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

**THE STOUTLAND TELEPHONE COMPANY
T00000644**

was created under the laws of this State on the 2nd day of May, 1962, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and an imprinted the GREAT SEAL of the State of Missouri, on this, the 3rd day of February, 2004


Secretary of State



Certification Number: 6387459-1 Page 1 of 1 Reference:
Verify this certificate online at <http://www.sos.mo.gov/businessentity/verification>

Attachment C

VERIFICATION

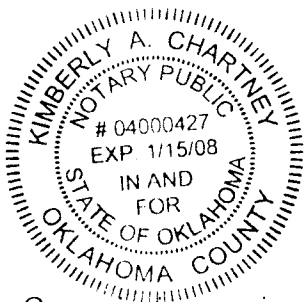
I, John Zeiler, the External Relations Manager of New London Telephone Company, Orchard Farm Telephone Company, and Stoutland Telephone Company, hereby verify and affirm that I have read the foregoing **PETITION FOR SUSPENSION OF LOCAL NUMBER PORTABILITY OBLIGATIONS AND MOTION FOR EXPEDITED TREATMENT** and that the statements contained herein are true and correct to the best of my information and belief.

John Zeiler

STATE OF Oklahoma)

COUNTY OF Oklahoma)

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



Kimberly A Chartney
Notary Public

My Commission expires 1-15-08

Missouri LNP Switch Status Cost Summary
as of 1/13/04

	Host Access Lines	Switch Device	Switch Upgrade Costs							(1)		End User Direct Cost (3)/AL/60	Porting Rate 0.032	
			(2)			(2)				Distributed Cost Total/AL/60				
			Release	Software	LNP	NP	Software	Vendor	Other					Translations
New London	1,021	DCO_SE	102,000	15,000		10,000		13,500		8,000	148,500	\$ 2.42	\$ 0.60	33
Orchard Farm	851	DCO-SE	102,000	15,000		10,000		13,500		8,000	148,500	\$ 2.91	\$ 0.71	27
Stoutland (Eldridge - remote)	1,574	DCO-SE	102,000	15,000		10,000		13,500		8,000	148,500	\$ 1.57	\$ 0.39	50
														110

- (1) Costs distributed at host level
(2) Directly recovered End User costs, to distribute over 60 months