BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Petition of Cass County Telephone Company for Suspension and Modification of the Federal Communications Commission Requirement to Implement Number Portability)	Case No. TO-2004-0504
In the Matter of the Petition of Craw-Kan Telephone Cooperative, Inc. for Suspension and Modification of the Federal Communications Commission Requirement to Implement Number Portability)	Case No. TO-2004-0505

POST-HEARING BRIEF OF CASS COUNTY TELEPHONE COMPANY AND CRAW-KAN TELEPHONE COOPERATIVE, INC.

I. INTRODUCTION

Cass County Telephone Company (Cass County) and Craw-Kan Telephone Cooperative, Inc. (Craw-Kan) (collectively "Companies" or "Petitioners") are small rural telephone companies that seek modification of the Federal Communications Commission's wireline to wireless local number portability requirements. The Companies' facilities are currently LNP capable, and the Companies are willing to port numbers to wireless carriers and comply with the LNP mandate. However, the Companies seek modification to address the unresolved rating and routing issues that the new LNP requirements present.

Specifically, the Companies seek modification because the Companies do not presently own facilities that would allow them to port numbers and deliver associated calls outside of their exchange boundaries. The Companies also lack legal and regulatory authority to transport ported numbers outside of their local service areas. Therefore, the Companies seek modification such that once LNP capability is achieved, the Companies would notify requesting wireless carriers that the Companies are fully LNP capable but that if the wireless carrier wants calls transported outside of the Companies' local service areas, 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). This modification would also apply to a situation where a wireless carrier that has established facilities and/or arrangements with third party carriers to transport calls to a point outside of the Companies' local serving areas is requested to port numbers to another wireless carrier that has not established such facilities or arrangements.

The Commission's Staff and the Office of Public Counsel both support the Companies' request. Western Wireless opposes the requested modification. The Missouri Public Service Commission (Commission) is authorized by federal law to grant the requested relief to prevent a requirement that will have an adverse economic impact on customers and an undue economic burden on the Companies. The modification that the Companies seek in this case is the same relief that this Commission has already granted thirty-five (35) other small Missouri companies. Moreover, Western Wireless has voluntarily agreed to virtually the same modification in Utah. Therefore, the Commission should grant the Companies' Petitions.

II. DISCUSSION

A. LOCAL NUMBER PORTABILITY

As incumbent local exchange carriers (ILECs), Petitioners are subject to the local number portability (LNP) requirements in the Telecommunications Act of 1996 ("the Act"). Specifically, the Act requires Petitioners to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Federal Communications Commission (FCC).[1]

On November 10, 2003, the FCC issued a decision that addressed LNP between wireline and wireless carriers (i.e. "intermodal" porting). According to the FCC's *Intermodal Order*, where Petitioners have received a bona fide request (BFR) from a wireless carrier, Petitioners must make their switches capable of porting a subscriber's local landline 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 [wireless] carrier maintains the number's original rate center designation following the port."[2] Although the FCC recognized the problem of designating different rating and routing points on LNP for small rural ILECs, the FCC has not yet resolved the issue.[3] As a result, there are no guidelines or rules to resolve outstanding issues related to LNP for rural carriers.

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[1] 47 U.S.C. §251(b). "Number portability" is defined by 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).

[2] *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, *Memorandum Opinion and Order*, issued Nov. 10, 2003.

[3] *Id.* at fn 75 ("[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.")

B. STANDARD FOR SUSPENSION AND MODIFICATION

The Act grants the Missouri Commission authority to suspend and modify Petitioners' intermodal LNP requirements if Petitioners meet the following standard for suspension and modification set forth in Section 251(f)(2) of the Act:[4]

> The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification –
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> **(A)** is necessary –
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> **(i)** to avoid a significant adverse economic impact on users of telecommunications services generally;
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> **(ii)** to avoid imposing a requirement that is unduly economically burdensome; or
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> **(iii)** to avoid imposing a requirement that is technically infeasible; and
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> **(B)** is consistent with the public interest, convenience, and necessity.

State commissions are properly situated to determine whether suspension and/or modification are in the best interests of citizens in rural areas, and FCC Chairman Michael Powell has urged state Commissions "to consider the burdens on small businesses" associated with intermodal LNP and grant relief when appropriate.[5]

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[4] 47 U.S.C. §251(f).

[5] Ex. 2, Schoonmaker Surrebuttal, Schedule RCS-1 (June 18, 2004 letter from FCC Chairman Michael Powell to the Honorable Stan Wise, President of NARUC).

The clear majority of state commissions to address intermodal LNP issues for small rural carriers have granted suspensions and/or modifications.[6] In fact, this Missouri Commission has already granted the same relief requested by the Companies to thirty-five (35) other small Missouri companies.[7] As explained below, the Companies have demonstrated that they meet the federal standard for suspension, so the Commission should grant the Companies' request for modification.

C. MODIFICATION

The Petitioners seek the same modification that this Commission has already found to be in the public interest and granted for thirty-five (35) other small Missouri companies.[8] Specifically, the Petitioners request modification so that if wireline-to-wireless LNP is requested before the FCC has resolved the rating and routing issues

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[6] *See e.g. In the Matter of the Application of Great Plains Communications, Inc. et al.*, Application Nos. C-3096 et al., *Order Granting Suspension*, entered July 20, 2004 **(Nebraska)**; *Petition for Suspension of Federal Communications Commission Requirements to Implement Local Number Portability*, Case No. 04-00017-UT, *Recommended Decision of Hearing Examiner*, issued June 2, 2004 and approved by New Mexico PRC *Final Order* on July 15, 2004 **(New Mexixo)**; *In the Matter of the Application of the Small Companies in Ohio for Suspension or Modification of the FCC's Requirement to Implement LNP*, Case Nos. 04-428-TP-UNC et al., *Finding and Order*, entered July 20, 2004 (**Ohio**).

[7] On June 29, the Commission granted modifications for Chariton Valley Telephone Corporation (IO-2004-0467), Chariton Valley Telecom (CO-2004-0469), Choctaw Telephone Company (IO-2004-0546), Citizens Telephone Company of Higginsville (TO-2004-0486), Fidelity Telephone Company (TO-2004-0489) Goodman Telephone Company (TO-2004-0490), Granby Telephone Company (TO-2004-0493), Kingdom Telephone Company (TO-2004-0487), Le-Ru Telephone Company (TO-2004-0494), McDonald County Telephone Company (TO-2004-0491), Mid-Missouri Telephone Company (TO-2004-0455), MoKan Dial, Inc. (IO-2004-0545), Northeast Missouri Rural Telephone Company (IO-2004-0468), Ozark Telephone Company (TO-2004-0490), and Seneca Telephone Company (TO-2004-0490). On July 20, 2003, the Commission granted modification for New London Telephone Company, Orchard Farm Telephone Company, and Stoutland Telephone Company (TO-2004-0370). On July 27, 2004, the Commission granted suspensions for Alma Telephone Company (IO-2004-0453), Holway Telephone Company (TO-2004-0403), Farber Telephone Company (TO-2004-0437), Peace Valley Telephone Company (TO-2004-0438), New Florence Telephone Company (TO-2004-0503), and Miller Telephone Company (TO-2004-0511). On August 12, 2004, the Commission granted modification to KLM Telephone Company (TO-2004-0401). On August 17, 2004, the Commission granted modifications for Green Hills Telephone Cooperative (TO-2004-0428) and Rock Port Telephone Company (TO-2004-0439). On August 26, 2004, the Commission granted modifications for Steelville Telephone Exchange, Inc. (TO-2004-0454), Grand River Mutual Telephone Company (TO-2004-0456), Lathrop Telephone Company (TO-2004-0457), Mark Twain Rural Telephone Company (TO-2004-0458), Iamo Telephone Company (TO-2004-0459) Ellington Telephone Company (TO-2004-0480), BPS Telephone Company (TO-2004-0484), and Oregon Farmers Mutual Telephone Company (TO-2004-0526).

associated with LNP, then Petitioners will notify the wireless carrier that it is not Petitioners' responsibility to establish facilities and/or arrangements with third party carriers to transport calls on a local basis outside of Petitioners' local service areas. This modification also would also apply if a wireless carrier that has established facilities or arrangements, or both, with third-party carriers to transport calls to a point outside of Petitioners' service areas is requested to port numbers to another wireless carrier that has not established such facilities or arrangements.

This modification will only apply in the event that a wireless carrier has not already made arrangements for the transport of a ported call. Petitioners have agreed to establish an intercept message for seven-digit dialed calls to ported numbers where the facilities and/or the appropriate third party arrangements have not been established. The intercept message will inform subscribers that the call cannot be completed as dialed and provide information about how to complete the call. Modification is necessary to avoid an adverse economic impact on Petitioners' customers and undue economic burden on the Companies.

1. Adverse Economic Impact on Petitioners' Customers

a. Customer Impact and Transport Costs

Petitioners do not have agreements or facilities in place that would allow them to transport a local call outside of their local exchange areas.[9] Moreover, Petitioners do not have the legal or regulatory authority to transport ported numbers outside of their local service areas. Petitioners have already expended time and money to become LNP-capable, and Petitioners and their customers should not be expected to bear any

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[8] *Id.*

[9] Ex. 1, Schoonmaker Direct, pp. 16-18; Ex. 2, Schoonmaker Surrebuttal, pp. 11-12.

additional costs associated with establishing arrangements or facilities with third party carriers to transport calls on a local basis outside of their local serving areas. If Petitioners' customers are required to bear these additional transport costs, then it would create an adverse economic impact on customers.

The Nebraska Commission recognized that "transport costs would indeed be a part of the costs associated with implementation of LNP, and that such costs would either be **an additional significant adverse impact on end users or would be an undue economic burden on the local exchange carriers were these extraordinary costs to become a responsibility of the Applicants**."[10] The New Mexico Commission also recognized the rating and routing problems presented by the FCC's *Intermodal Order*:

> **There are important contractual and compensation issues associated with porting calls outside the rate center that need to be resolved before intermodal porting can be accomplished effectively.**
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> . . . The FCC also identified additional issues to be considered in the subsequent rulemaking, including the potential mismatch of rate centers; technical impediments to wireline-to-wireless porting under circumstances that make porting infeasible; the expected demand for ported numbers; and regulatory requirements that impact the porting of numbers where rate centers do not match. These FCC rulemaking proceedings are still pending. **Further rulings on these issues are likely to impact LNP**

[10] *In the Matter of the Application of Great Plains Communications, Inc. et al.*, Application Nos. C-3096 et al., *Order Granting Suspension*, entered July 20, 2004, p. 12.

implementation requirements and could result in additional costs to the Participating Members and their customers.[11]

Thus, both the Nebraska and New Mexico Commissions recognized the adverse impact on customers presented by additional LNP transport costs.

The possibility that a few customers may desire to port their numbers is outweighed at this time by the uncertainty surrounding the rating and routing issues. Until such time as a certain determination is made as to which company is responsible for contracting for and providing transport of calls outside of the Petitioners' local serving areas, neither the Petitioners nor their customers should not be required bear the financial burden of expensive negotiations to establish business relationships to carry such traffic. Likewise, Petitioners' customers should not be required to bear the ongoing costs of transporting traffic, especially since such costs may ultimately have to be borne by the remaining customers who do not want to have their numbers ported.[12]

b. Court Challenges

At least two federal court challenges are currently pending to examine the FCC's *Intermodal Order.*[13] Modification will prevent the Companies and their customers from needlessly incurring LNP costs in the event that either one of these cases reverses or remands the FCC's *Intermodal Order.* The Mississippi Public Service Commission recognized this and stated:

[11] *Petition for Suspension of Federal Communications Commission Requirements to Implement Local Number Portability*, Case No. 04-00017-UT, *Recommended Decision of Hearing Examiner*, issued June 2, 2004 and approved by New Mexico PRC *Final Order* on July 15, 2004. (Internal citations omitted.)
[12] Schoonmaker Direct, Ex. 1, pp. 24-25.
[13] *See e.g.* United States Court of Appeals, D.C. Circuit, *US Telecom. Ass'n et al. v. FCC*, Case No. 03-1414, and *Nat'l Telecom. Coop. Ass'n et al. v. FCC*, Case No. 03-1443.

[T]he economic burden to the Independents and their respective end users is not justified until further issues resolution is forthcoming from the FCC and the courts with respect to the Independents' intermodal porting obligations.[14]

The Mississippi Commission's reasoning is equally applicable to prevent an adverse economic impact on the Companies' customers in this case.

2. Undue Economic Burden on the Companies

The Companies provide service in rural areas of Missouri that are already challenging to serve because of high costs and low population density. In a recent letter to the National Association of Regulatory Utility Commissioners (NARUC), FCC Chairman Michael Powell urged state commissions "**to consider the burdens on small businesses**" when addressing requests for modification and grant the requested relief where appropriate.[15]

The Nebraska Public Service Commission cited Chairman Powell's letter when it granted suspensions for 31 rural telephone companies:

> Based on the information that the Applicants have been able to assemble relating to the costs to implement intermodal LNP, and the uncertainties that currently exist with regard to the extent to which currently identified or future costs of such implementation will fall upon the rural local exchange carriers, **suspension of the requirements of the *Intermodal Order***

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[14] *In Re: Petition of Mississippi Incumbent Rural Telephone Companies for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 251(f)(2) of the Communications Act*, Case No. 03-UA-918, *Order*, issued May 24, 2004.

[15] Ex. 11, Dietrich Rebuttal, Ex. B, June 18, 2004 letter from FCC Chairman Michael Powell to the Honorable Stan Wise, President of NARUC. (Emphasis added.)

appears necessary to avoid imposing a requirement on the Applicants that is unduly economically burdensome.[16]

In this case, modification of the FCC's *Intermodal Order* is equally necessary to avoid an undue economic burden on the Companies.

Because the FCC has yet to resolve the responsibilities of the carriers to transport local traffic between one another when no interconnection facilities or legal authority exists, modification is necessary to avoid an undue economic burden on Petitioners at this time. Indeed, this Missouri Commission recently explained, "The FCC has yet to determine which carrier should bear the burden of transporting calls to ported numbers. In light of this uncertainty and the costs of securing facilities, arrangements, and regulatory approval to transport calls to ported numbers, the Commission finds that there would be an undue economic burden if [a small LEC] must transport calls outside of its service area."[17]

If Petitioners are required to transport calls outside of their local service areas, then Petitioners would incur substantial costs of negotiating arrangements with large ILECs such as SBC and Sprint for the transport of traffic. Petitioners' witness Mr. Schoonmaker estimated that negotiations with SBC and Sprint to conduct and complete negotiations "would likely cost somewhere between $20,000 and $100,000 or more depending on whether the issues were settled without having to engage in a formal arbitration proceeding with one or both parties."[18]

[16] *In the Matter of the Application of Great Plains Communications, Inc. et al.*, Application Nos. C-3096 et al., *Order Granting Suspension*, entered July 20, 2004. (Emphasis added.)
[17] *In the Matter of the Petition of KLM Telephone Company*, Case No. TO-2004-0401, *Report and Order*, issued August 12, 2004.
[18] Schoonmaker Direct, Ex. 1, p. 19.

During the hearing, Western Wireless testified that Petitioners should bear the responsibility for transporting ported calls from Petitioners' local exchanges to SBC's LATA tandems and then possibly additional transport to a second tandem such as CenturyTel's Branson tandem or Sprint's Warrensburg Tandem.[19] The adverse economic impact on customers and undue economic burden on companies that Western Wireless's position would create was highlighted by Chairman Gaw's horse analogy during the May 5, 2004 consolidated hearing in this case and other similar LNP suspension request cases:

> [I]t sort of reminds me of a farmer with a horse and another farmer comes over and says, I like that horse, I want that horse. And the farmer says, Well, I – that's nice. What will you give me for him? He says, I'm not going to give you anything for him. And, Oh, by the way, I want you to buy a truck and trailer and haul him over to my house for nothing. . . . this scenario asks that local company to pay for the . . . continuing transfer of that new call and whatever maintenance there is. I guess he's got to pay for the feed and the hay too now that I think about it.[20]

Modification is necessary to avoid the adverse and undue economic burdens that this scenario would create.

The Missouri Commission recently recognized the undue economic burdens associated with LNP on small telephone companies in the KLM Telephone Company case and stated:

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[19] See Transcript in Case No. TO-2004-0401 of July 21 Hearing, pp. 361-63 (adopted by Commission and agreement of the parties at Tr. 254).

> If KLM were required to bear the costs of implementing local-number portability and the costs of transporting calls to Western, KLM would shoulder all of the costs of intermodal porting while losing customers and getting no benefit. Furthermore, KLM would incur the additional costs of modifying its regulatory certificates and tariffs. And, if necessary, the costs of making arrangements with third-party carriers to transport calls outside of KLM's service area. All of these circumstances combine to create what would be an undue economic burden.[21]

Because the same circumstances are present in the instant case, the Commission should reach the same conclusion and grant the Companies' requested suspension.

3. The Public Interest

Modification is in the public interest because the Companies' customers will see little benefit from intermodal LNP, and they should not bear the transport costs for wireless carriers and wireless customers. Moreover, there is little or no demand for wireline-to-wireless LNP in rural areas at this time, and modification will not impede wireless competition, which is already robust in rural areas. Finally, Western Wireless has voluntarily agreed to the same modification in Utah.

a. *No Benefit*

Implementing wireline-to-wireless LNP will provide no tangible benefit for the Companies' rural customers. Instead, the Companies and possibly their customers will bear the costs of implementing a service solely designed to benefit wireless carriers and their customers. This FCC mandate already turns on its head the traditional regulatory

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[20] *Tr. 67.*

policy that cost causers should bear the cost of providing service. In this case, the wireline companies and their customers are already saddled with the costs of implementing a service designed to encourage consumers to drop their wireline telephone service. The Companies and their customers should not be expected to bear the additional cost of transporting ported wireless calls outside of the Companies' exchanges.

b. *No Demand*

In Petitioners' rural service areas, there appears to little or no demand for wireline-to-wireless LNP at this time, and nationwide demand is also very low.[22] Other state commissions granting suspensions have taken notice of the lack of demand in rural areas. For example, the Utah Public Service Commission recognized: "Under existing FCC regulation, the costs of preparing for intermodal portability will be borne by all customers of the Rural Companies, even though **no customers have expressed a desire for the capability and, likely, few would avail themselves of the capability if made available**."[23]

c. *Wireless Competition*

Wireless carriers are already competing in the Companies' service areas, and many of the Companies' customers have both wireline and wireless service. Nothing prevents customers from using both wireline and wireless service or from dropping their wireline service altogether. The requested suspension will have no impact on the

[21] *In the Matter of the Petition of KLM Telephone Company*, Case No. TO-2004-0401, *Report and Order*, issued August 12, 2004.
[22] Ex. 1, Schoonmaker Direct, pp. 24-25; Ex. 2, Schoonmaker Surrebuttal, pp. 15-16; Tr. 231.
[23] *In the Matter of the Utah Rural Telecom Association's Request for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 252(f)(2)*, Docket No. 04-2424-01, *Order Granting Suspension*, issued March 17, 2004. (Emphasis added.)

Western Wireless's ability to compete. Indeed, in the KLM Telephone Company case, Western Wireless testified that it already has approximately 400 customers in KLM's service area, and Western Wireless also testified that it has 25% market share.[24] Thus, according to Western Wireless there are already 1,600 wireless customers in KLM's service area which has 1,625 KLM wireline subscribers. In other words, wireless carriers already have virtually the same number of subscribers as KLM does in the same service area. If anything, this nearly 100% penetration rate indicates market saturation, not a lack of competition.

d. Utah Stipulation

The Commission should be made aware that although Western Wireless objects to Petitioners' proposed modification in Missouri, Western Wireless appears to have agreed to virtually the same modification in Utah. In fact, the Utah Commission's Order adopting the Stipulation between the Utah small companies (URTA), the Utah Staff, and Western Wireless grants limited suspensions of the LNP implementation date and specifically adopts the following modification:

> **Western Wireless will establish a direct two-way point of interconnection with all URTA member companies within each URTA member company network**. . . . **Alternatively**, Western Wireless may elect not to have a direct connection with a URTA member company. If such election is made, **Western Wireless will be financially responsible**

[24] *See* Transcript in Case No. TO-2004-0401 of July 21 Hearing, pp. 386-87 (adopted by Commission and agreement of the parties at Tr. 254).

for any and all costs related to the routing of traffic outside a URTA member company network district.[25]

Curiously, Western Wireless opposes what appears to be Petitioners' identical proposal for modification in Missouri.

III. CONCLUSION

Petitioners are both LNP capable and willing to port numbers and comply with FCC mandate. However, the Companies have demonstrated that modification of the FCC's intermodal porting requirements is necessary to avoid an adverse economic impact on customers and an undue economic burden on the Companies. Staff and Public Counsel support the Companies' request, and this Commission has already granted the same relief for thirty-five (35) other small Missouri companies. Modification will not inhibit competition, and intercept messages will only be necessary in the event that a wireless carrier fails to make transport arrangements before it moves forward with LNP in the Companies' rural exchanges. Western Wireless has voluntarily agreed to virtually the same modification in a Utah proceeding. For these reasons, the Companies request that the Commission grant their Petition for modification of the FCC's intermodal LNP requirements.

[25] *In the Matter of the Utah Rural Telecom Association's Request for Suspension of Wireline to Wireless Number Portability*, Docket No. 04-2424-01, *Order Adopting Stipulation*, 2004 Utah PUC LEXIS 141, issued July 7, 2004. (Emphasis added.)

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 as shown on the service list this 31st day of August 2004.

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