

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

In the Matter of the Petition for Green Hills Telephone Corporation for Suspension of the FCC's Requirement to Implement LNP )	Case No. TO-2004-0428
In the Matter of the Petition of Rock Port Telephone Company for Suspension and Modification of the FCC's Requirement to Implement LNP )	Case No. TO-2004-0439
In the Matter of the Petition of Steelville Telephone Exchange, Inc. for Suspension and Modification of the FCC's Requirement to Implement LNP )	Case No. TO-2004-0454
In the Matter of the Petition of Grand River Mutual Telephone Corporation for Suspension and Modification of the FCC's Requirement to Implement LNP )	Case No. TO-2004-0456
In the Matter of the Petition of Lathrop Telephone Company for Suspension and Modification of the FCC's Requirement to Implement LNP )	Case No. TO-2004-0457
In the matter of the Petition of Mark Twain Rural Telephone Company for Suspension and Modification of the FCC's Requirement to Implement LNP )	Case No. TO-2004-0458
In the Matter of the Petition of Iamo Telephone Company for Suspension and Modification of the FCC's Requirement to Implement LNP )	Case No. TO-2004-0459
In the Matter of the Petition of Ellington Telephone Company for Suspension and Modification of the FCC's Requirement to Implement LNP )	Case No. TO-2004-0480
In the Matter of the Petition of BPS Telephone Company for Suspension and Modification of the FCC's Requirement to Implement LNP )	Case No. TO-2004-0484
In the Matter of the Petition of Oregon Farmers Mutual Telephone Company for Suspension and Modification of the FCC's Requirement to Implement LNP )	Case No. TO-2004-0526

**PETITIONERS' POST HEARING BRIEF**

## **I. FACTS**

### **A. Petitioners**

Petitioners are facilities-based incumbent local exchange companies (ILECs) that provide local exchange services in rural Missouri. Petitioners are authorized to provide telephone service to the public under certificate of service authority from the Commission and consistent with existing tariffs and exchange boundary maps on file with the Commission. Petitioners are all "rural telephone companies" as defined by federal law and Federal Communications Commission (FCC) rule.<sup>1</sup>

### **B. Local Number Portability and the FCC's November Order**

As ILECs, Petitioners are subject to the local number portability (LNP) requirements in the Telecommunications Act of 1996 ("the Act"). Specifically, Section 251(b) of the Act states that ILECs have "[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the [FCC]."<sup>2</sup> On November 10, 2003, the FCC issued a decision that addressed LNP between wireline and wireless carriers (also known as "intermodal" porting). According to the FCC's wireline-to-wireless LNP decision, where a Petitioner has received a bona fide request (BFR) from a wireless carrier, the Petitioner must make its 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

---

<sup>1</sup> See 47 U.S.C. §153(37) and 47 C.F.R. §51.5.

<sup>2</sup> 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).

[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."<sup>3</sup>

Although the FCC recognized the problem of designating different rating and routing points on LNP for small rural ILECs, the FCC has not yet addressed the issue.<sup>4</sup> As a result, there are no guidelines or rules to resolve outstanding issues related to LNP for rural carriers. Court challenges are currently pending to examine various aspects of the FCC's orders imposing wireline-to-wireless LNP on small carriers.<sup>5</sup>

### **C. The Petitions**

Petitioners' facilities are not presently able to provide LNP, and Petitioners do not presently own facilities that would allow Petitioners to complete/terminate local calls outside of their exchanges. After reviewing the FCC's November 10, 2003 decision and examining estimated LNP implementation and ongoing costs, the small rural ILECs filed verified Petitions for suspension and modification of the FCC's wireless LNP requirements pursuant to Section 251(f)(2) of the Act. Specifically, Petitioners seek a two-year suspension of the FCC's LNP requirements on the grounds that suspension is necessary to avoid an adverse economic impact on customers and an undue economic burden on the companies. Petitioners also seek suspension and modification of the

---

<sup>3</sup> *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, *Memorandum Opinion and Order*, issued Nov. 10, 2003.

<sup>4</sup> *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.")

<sup>5</sup> 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.

LNP requirements to address the call rating and routing issues that were identified but not resolved by the FCC in its November 10, 2003 *Order*.<sup>6</sup>

#### **D. Stipulated Facts**

These facts are not in dispute and are set forth in more detail in the June 18, 2004 Stipulation and Agreement between the Commission Staff, the Office of Public Counsel, and Petitioners.

### **II. DISCUSSION**

#### **A. Uncontested Issue – Rating and Routing**

On June 18, 2004, the parties filed a unanimous stipulation to address the rating and routing issues that were not resolved by the FCC. The stipulation recommends that the Commission grant modification so that if wireline-to-wireless LNP is requested and a Petitioner has become LNP capable, then the Petitioner will notify the wireless carrier that it is not the Petitioner's responsibility to establish facilities and/or arrangements with third party carriers to transport calls on a local basis outside of Petitioner's local serving area. As a part of this agreement, Petitioners agreed to establish an intercept message for seven-digit dialed calls to ported numbers where the facilities and/or the appropriate third party arrangements are not in place. This intercept message will inform customers that the call cannot be completed as dialed. Where possible, the intercept message will also provide information about how to complete the call.

---

<sup>6</sup> *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, *Memorandum Opinion and Order*, issued Nov. 10, 2003, at ¶¶ 37-40.

## **B. Contested Issue – Two Year Suspension**

All parties agree that Petitioners should have some suspension of the FCC's LNP requirements. Simply put, the question is whether the suspension should be for six months or two years. Petitioners and the Office of Public Counsel agree that the costs of implementing LNP at this time will cause an adverse economic impact on subscribers and/or an undue economic burden on the Petitioners, particularly when compared to the negligible benefits that will accrue to rural subscribers. Therefore, Petitioners and Public Counsel recommend a two-year suspension.

### **1. The Commission should grant a suspension of the intermodal porting requirements.**

If Petitioners are required to implement LNP, it will result in substantial implementation costs and monthly recurring costs that Petitioners may recover in accordance with FCC rules from end user customers. These LNP surcharges are as high as \$1.68 per line, per month, for five years.<sup>7</sup> On the other side of the equation is the intangible benefit of wireline-to-wireless LNP to rural customers and the limited demand for LNP in rural Missouri. Federal law allows the Missouri commission to modify or suspend Petitioners' intermodal porting requirements where it is in the public interest and necessary to avoid an adverse economic impact on customers or undue economic burden on the company.<sup>8</sup> Therefore, the Commission has the authority to weigh the costs to customers and Petitioners against the questionable "benefit" of LNP and grant Petitioners' requested two-year suspension.

---

<sup>7</sup> Ex. 18.

<sup>8</sup> 47 U.S.C. §251(f).

**2. The Commission should grant a two-year suspension.**

Petitioners have requested a two-year suspension until May 24, 2006. A two-year suspension will allow Petitioners, Public Counsel, and Staff to gain more information about the level of demand for wireline-to-wireless LNP and the costs associated with LNP. The two-year suspension will also prevent customers and Petitioners from incurring LNP costs and surcharges only to have the FCC's LNP requirements later reversed or otherwise remanded by the federal courts:

Q. [I]f an appeals court determines that the FCC made an error, whether it's on a lawful or factual basis and reverses it, it would be a shame for these companies to have implemented LNP only to find out that on appeal or on remand from the appeal that they don't have that obligation, wouldn't it?

A. It would definitely cause some confusion.<sup>9</sup>

Other state commissions have granted similar suspensions. For example, the Illinois Commission granted a 2½ - year suspension of the LNP requirements.<sup>10</sup> In Missouri, a two-year suspension is reasonable, and as explained in more detail below, a two-year suspension is warranted to avoid an adverse economic impact on customers and an undue burden on Petitioners.

---

<sup>9</sup> Tr. 251.

<sup>10</sup> *Harrisonville Telephone Company Petition for Suspension of Modification*, Case No. 03-0731, Order, issued May 11, 2004.

**3. Suspension is necessary to avoid an adverse economic impact on customers and/or and undue economic burden on the Petitioners, and suspension is in the public interest.**

**(a) Adverse Economic Impact on Customers**

Under the FCC's rules, Petitioners may assess a monthly, long-term LNP charge on customers to offset the initial and ongoing costs incurred in providing number portability.<sup>11</sup> As small rural telephone companies, Petitioners have small customer bases over which to spread these costs. The adverse economic impact on these rural customers outweighs any questionable "benefit" that Petitioners' subscribers will receive from wireline-to-wireless LNP, and many other state Commissions have granted similar suspensions.<sup>12</sup>

For example, the Public Utilities Commission of Ohio weighed the benefits against the costs of implementing LNP for a small rural carrier and concluded that LNP costs of over \$1.00 per customer would pose a significant adverse economic impact on customers.<sup>13</sup> Accordingly, the Ohio Commission granted suspension. The Illinois Commerce Commission applied a cost/benefit analysis and found that cost scenarios between \$0.38 and \$0.82 would impose an adverse economic impact on a small company's subscribers.<sup>14</sup> The Illinois Commission also granted suspension.

---

<sup>11</sup> 47 CFR §52.33.

<sup>12</sup> State commissions in Alaska, Arkansas, Colorado, Georgia, Idaho, Illinois, Mississippi, Ohio, Oregon, Utah, Washington, Wisconsin, and West Virginia have suspended the FCC's LNP requirements for small rural carriers. Suspension requests are currently pending before a number of other state commissions.

<sup>13</sup> *Application of Vaughnsville Telephone Company to Suspend or Modify its LNP Obligations*, Case No. 03-1972-TP-UNC, 2004 Ohio PUC LEXIS 33, *Order*, entered Feb. 11, 2004.

(i) **Cost/Benefit Analysis – Higher Costs**

Staff's testimony shows that the LNP surcharges for Missouri's three largest ILECs ranged from approximately \$0.50 to \$0.80 for the past five years.<sup>15</sup> Exhibit 18 shows that **Staff's proposed cut off point for small rural companies is more than twice the high end of this range – an estimated monthly recurring charge of \$1.68 per customer, per month, for the next five years.**

Staff's cut off point would also result in rural customers paying a much higher percentage of monthly rate increase. Staff states, **"\$1.68, with a 40 percent or greater monthly rate increase"** appears to be the point at which any greater increase could result in a significant economic impact if subscribers are required to bear the costs associated with local number portability."<sup>16</sup> At the hearing, Staff testified that the LNP surcharge percentage relative to rates for customers of large ILECs is lower than Staff's recommended 40% cut off for small companies:

Q. Okay. So at least with respect to the large companies, if we just want to ballpark what an LNP surcharge is relative to R-1 rates, it's in the neighborhood of 3 to 4 percent on the low end or 10 to 11 percent on the high end?

A. That sounds about right.<sup>17</sup>

Thus, the range of the surcharges as compared to residential rates for customers of large ILECs (3-11%) is much lower than Staff's proposed 40% cut off point for small rural ILECs.

---

<sup>14</sup> *Harrisonville Telephone Company Petition for Suspension of Modification*, Case No. 03-0731, Order, issued May 11, 2004.

<sup>15</sup> Testimony of Staff Witness Natelle Dietrich, filed June 18, 2004, page 9.

<sup>16</sup> *Id.* at p. 10. (Emphasis added.)



(ii) **Cost/Benefit Analysis – No Demand**

In Petitioners' rural exchanges, there appears to little or no demand for wireline-to-wireless LNP at this time, and it is unlikely that rural service areas will experience any great demand for this service in the near future. In Missouri, Staff concedes that expected demand for LNP is lower in Petitioners' rural service areas:

Q. Just based on your general understanding, would you agree with me that, relatively speaking, the percent of subscribers that would take advantage of wireline to wireless LNP would probably be greater for Southwestern Bell, Sprint, CenturyTel than the small rural areas?

A. I think that's a fair statement.<sup>18</sup>

Other state commission 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."<sup>19</sup> Likewise, the Mississippi Commission stated that "no end user demand for intermodal has been demonstrated."<sup>20</sup>

The lack of demand for LNP is also indicated by the lack of complaint about suspensions of the FCC's May 24, 2004 LNP deadline. In Missouri, the FCC's wireline-

---

<sup>17</sup> Tr. 234.

<sup>18</sup> Tr. 231.

<sup>19</sup> *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.)

to-wireless LNP requirements were suspended for all of Missouri's small rural ILECs, but Public Counsel and Staff both testified that they were unaware of any complaints from customers in rural telephone company exchanges about the unavailability of wireline-to-wireless LNP since May 24, 2004. Staff witness Natelle Dietrich testified:

Q. Do you know if you've received any complaints from customers in rural telephone – rural company exchanges about their inability to port numbers since May 24<sup>th</sup>?

A. Not to my knowledge.<sup>21</sup>

The answer was the same for Office of Public Counsel witness Barbara Meisenheimer:

Q. Ms. Meisenheimer, do you know if your office has received any consumer complaints about the lack of wireline to wireless LNP in small rural company exchanges?

A. Not to my knowledge.<sup>22</sup>

Thus, there has been no wave of complaints from rural Missouri customers about the lack of LNP.

Finally, the Commission should take into account the small fraction of rural Missouri telephone lines that will be impacted by suspending LNP for the ten Petitioners. According to the Commission's 2003 Annual Report, there over 3.3 million Missouri access lines (including Petitioners' lines) for ILECs alone.<sup>23</sup> The ten

---

<sup>20</sup> *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. (Emphasis added.)

<sup>21</sup> Tr. 231.

<sup>22</sup> Tr. 259.

<sup>23</sup> <http://www.psc.state.mo.us/annual2003/statisticalinformation.pdf> (Page 51 shows 3,332,413 access lines based on ILEC access line counts from 2002 Annual Reports. This does not include CLEC lines.)

Petitioners seeking suspension here serve approximately 40,000 lines combined,<sup>24</sup> or roughly 1% of the total ILEC lines in the state of Missouri.<sup>25</sup> If only a small fraction (perhaps 1-2%) of customers of the 1% of Missouri lines at issue in these cases actually want LNP service, then at some point the costs of LNP must outweigh the benefits for rural Missouri. Petitioners believe that the cost estimates for LNP far outweigh the benefits, especially in light of the low demand.

**(b) Undue Economic Burden on Company**

Petitioners provide service in rural areas that are already challenging to serve because of high costs and low population density. The FCC's LNP requirements will create an undue economic burden by forcing Petitioners to divert limited capital resources from the provision of high-quality services in order to implement an expensive service that has little (if any) subscriber demand. Moreover, this economic burden on Petitioners is not justified until the numerous legal challenges and technical uncertainties are resolved by the FCC. The Mississippi Public Service Commission recognized these problems when it granted suspension to a group of small rural ILECs:

The Commission finds that the costs associated with deploying and properly implementing intermodal porting may be significant, that no end user demand for intermodal has been demonstrated, and that certain of the costs are not yet known. Further, the Commission finds that the **economic burden to the Independents and their respective end users is not justified until further issues resolution is forthcoming from the**

---

<sup>24</sup> See Ex. 18, Group Three. The total of the ten Petitioners' access/subscriber lines is 40,085.

<sup>25</sup>  $40,085/3,332,413 = 0.012028821$

**FCC and the courts with respect to the Independents' intermodal  
porting obligations.**<sup>26</sup>

The Mississippi Commission's reasoning is equally applicable for Missouri customers and companies in this case.

**(c) Public Interest**

Implementing wireline-to-wireless LNP will not result in any tangible benefit for Petitioners' rural customers. Instead, the vast majority of these rural customers will bear burdensome and unnecessary costs. Ironically, those few customers (if any) that do port their numbers to a wireless carrier will avoid the LNP surcharges and may leave Petitioners' remaining customers paying even higher charges. A two-year suspension is in the public interest because rural consumers will see little benefit from the LNP surcharges, and there is little or no demand for wireline-to-wireless LNP in rural areas at this time. In addition, suspension will stay implementation of the FCC's LNP requirements while they are being examined by the D.C. Circuit Court of Appeals.<sup>27</sup>

Suspension is also in the public interest because it will prevent unwanted surcharges on customer bills. It is unlikely that Petitioners' subscribers would welcome an additional surcharge on their bills, especially one that is being imposed to benefit wireless carriers. The estimated costs and LNP surcharges clearly outweigh any intangible benefit to Petitioners' customers. Public Counsel witness Barbara Meisenheimer testified:

---

<sup>26</sup> *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.

<sup>27</sup> See 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.

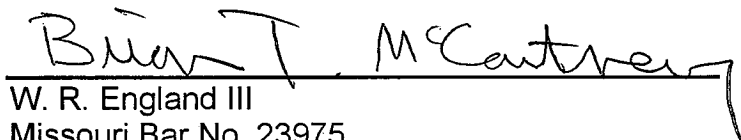
- A. I think that some of these charges are outrageous. The concept of a 40 percent – potentially up to a 40 percent surcharge when there are huge and numerous complaints at the federal level regarding universal service surcharge that, in some cases, went to the 9 to 12 percent range, it's ridiculous that for a single modification to the network, a single new element to service, we're going to request up to 40 percent, I think the staff is willing to accept, on a customer's bill that they have to pay every month for service. . . . So I would say that even \$1.68 impact could potentially be unaffordable.
- Q. Do you believe that the numbers going on the range down to \$1.68, the \$1.03, the 37 cents and the 11 cents are equally unaffordable or is your perspective from a different direction on those?
- A. The FCC has determined that companies can recover their costs through a surcharge. . . . Certainly we are concerned about surcharges and who is it recovered from. I mean, the concept of cost causation would say those who cause the cost should pay for the cost. So in that sense, I don't think necessarily even an 11 cent surcharge on a landline customer when it will primarily benefit those who leave the landline service is necessarily a reasonable or acceptable charge.<sup>28</sup>

Public Counsel's analysis indicates that the negligible benefits of LNP are outweighed by the costs at this time, whether the surcharge is \$1.68 or \$0.11.

### III. CONCLUSION

Petitioners have demonstrated through their verified Petitions and exhibits filed at hearing that suspension and modification of the FCC's wireline-to-wireless LNP requirements are in the public interest and necessary to avoid an adverse economic impact on customers and/or undue economic burden on the companies. Accordingly, Petitioners respectfully request that the Commission grant a two-year suspension of the FCC's intermodal LNP requirements.

Respectfully submitted,



W. R. England III  
Missouri Bar No. 23975  
Brian T. McCartney  
Missouri Bar No. 47788  
Brydon, Swearngen & England, P.C.  
312 East Capitol Avenue, P. O. Box 456  
Jefferson City, MO 65102  
(573) 635-7166 (Telephone)  
(573) 635-0427 (Fax)  
[trip@brydonlaw.com](mailto:trip@brydonlaw.com)  
[bmccartney@brydonlaw.com](mailto:bmccartney@brydonlaw.com)

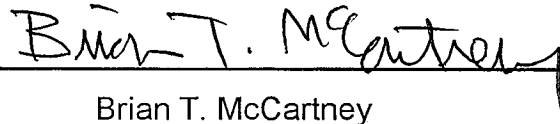
**ATTORNEYS FOR PETITIONERS**

---

<sup>28</sup> Tr. 271-73. (Emphasis added.)

**Certificate of Service**

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 13<sup>th</sup> day of July 2004.

  
Brian T. McCartney