BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Petition of Lathrop Telephone Company for Suspension and Modification of the FCC's Requirement to Implement Number Portability	))))	Case No. TO-2004-0457

PETITIONER'S RESPONSE TO STAFF RECOMMENDATION

COMES NOW Lathrop Telephone Company ("Lathrop" or "Petitioner"), and for its Response to Staff Recommendation, states to the Missouri Public Service Commission ("Commission") as follows:

SUMMARY

Petitioner agrees with Staff's recommendation for modification to address the rating and routing issues for small rural carriers that were left unresolved by the FCC, and Petitioner urges the Commission to adopt Staff's recommended modification along with language to clarify that Petitioner is not foreclosed from seeking additional modification in the future.

Petitioner disagrees with Staff's conclusion that the costs of implementing wireline-to-wireless Local Number Portability (LNP) and the related monthly charges on subscribers are "not unreasonable." When the Commission weighs the miniscule benefits of implementing LNP in small rural exchanges against even minimal costs to customers, the Commission should find that Petitioner's request for a two-year suspension of the FCC's LNP requirements is reasonable. In addition, the lack of demand for LNP and the anti-competitive aspects of the FCC's May 24 deadline both weigh in favor of granting suspension.

DISCUSSION

A. MODIFICATION

1. Petitioner appreciates and concurs with Staff's recommendation to grant Petitioner's request for modification. However, Petitioner should not be foreclosed from seeking additional modification if the FCC issues a subsequent opinion to address the rating and routing issues associated with porting numbers that would produce an adverse economic impact on Petitioner's subscribers, an undue economic burden on Petitioner, or a technically infeasible requirement. Therefore, Petitioner urges the Commission to adopt Staff's recommendation for modification and expressly state that Petitioner "is not foreclosed from seeking additional modification if and when the FCC issues a subsequent decision to address the rating and routing issues associated with porting numbers."

B. SUSPENSION

2. Staff recommends that Petitioner implement wireline-to-wireless LNP because the implementation and recurring charges and associated customer LNP surcharges are "not unreasonable." Petitioner respectfully disagrees. After weighing the costs of implementing LNP against the questionable "benefit" received by Petitioner's subscribers, the Commission should suspend the FCC's wireline-to-wireless LNP requirements for two years.

3. **Existing customers will receive no benefit from the charges**. Implementing wireline-to-wireless LNP will not result in any tangible benefit for Petitioner's rural customers. Instead, the vast majority of rural customers will

bear burdensome and unnecessary costs. And ironically, those few customers (if any) that do port their number to a wireless carrier will avoid the LNP charges, which may leave the remaining customers paying even higher charges.

4. **There is little or no demand for wireline-to-wireless LNP**.

Petitioner has received no subscriber requests for porting to a wireless carrier, and it is unlikely that rural service areas will experience any great demand for this service in the near future. Even large incumbent local exchange carriers serving in urban areas are seeing little demand for wireline-to-wireless porting. For example, at the end of 2003 BellSouth served roughly 23.7 million access lines.[1] But in a recent *ex parte* presentation before the FCC, BellSouth indicated that through February 18, 2004, its total ports were "approximately 1458 wireline to wireless ports with valid LSRs."[2] This is only .006% (far less than 1%) of BellSouth's access lines. A recent *ex parte* presentation before the FCC by Cingular Wireless noted that 97.5% of Cingular's porting was wireless-to-wireless, while wireline-to-wireless was only 2.5% of total porting.[3] These figures indicate that there is currently very little demand for wireline-to-wireless porting, and it is likely that this is even more true in rural areas.

5. **The LNP costs and customer surcharges are not reasonable**.

Staff concludes that the estimated monthly recurring charges for LNP are "not unreasonable." However, Staff offers no corresponding benefit other than a

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[1] *See* www.bellsouth.com
[2] http://svartifoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6515784315
[3] http://svartifoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516083945

general reference to "promoting competition." It is unlikely that Petitioner's subscribers would view as "reasonable" an additional surcharge on their bills, especially one that is being imposed to benefit wireless carriers. Moreover, the question of "reasonableness" is relative, especially in rural areas of Missouri where median household incomes are lower than Missouri's statewide average. After weighing the estimated costs and LNP monthly recurring charges against the minimal (if any) benefit to Petitioner's customers, the Commission should grant suspension.

6. **LNP will do little or nothing to promote competition**. The only possible benefit cited by Staff is that wireline-to-wireless porting "would be in the spirit of the FCC's porting order by promoting competition." Staff's argument is flawed for three reasons.

a. The first, and perhaps most fatal flaw in Staff's "promoting competition" argument is that the FCC's November decision only required porting in one direction: wireline-to-wireless. The FCC has not required wireless carriers to port to wireline companies (i.e. wireless-to-wireline). Rather, the FCC has simply issued a "Further Notice of Proposed Rulemaking" which could take years to complete. Thus, if anything, the FCC's decision is anti-competitive because wireless carriers are not required to shoulder the reciprocal burden of switching their numbers to wireline carriers. In essence, Petitioners are being ordered to subsidize their fiercest competitors. This is contrary to the statutory requirement that

number portability be implemented in a competitively neutral manner. 47 U.S.C. §251(e)(2).

b. Second , wireless carriers already have a number of other competitive advantages over Petitioner. For example, wireless service areas are much larger than Petitioner's wireline exchange(s), and wireless calling scopes are much wider than rural exchange calling scopes.

c. Third, and finally, wireless carriers are already competing in rural areas, and some of Petitioner's customers have both wireline and wireless service. Nothing prevents customers from using both wireline and wireless service or from dropping their wireline service altogether. In other words, competition is already taking place.

7. **Suspension is in the public interest**. At this time, wireline-to-wireless LNP is an unnecessary expenditure of effort and expense for small rural carriers. Furthermore, it will needlessly raise costs for rural customers. For this reason, state commissions across the country are granting suspensions for small rural carriers such as Petitioner. For example, the West Virginia Public Service Commission recently held:

> Since imposing the wireline to wireless number portability requirements under Section 251(f)(2) of the Act on Armstrong-Northern at this time would cause a significant adverse economic impact on users of telecommunications generally; would impose a requirement on Armstrong-Northern that is unduly economically burdensome, and would impose a requirement that is technically infeasible; and since Federal law does not preempt the Commission from making the decision in this matter and permits the Commission to exempt Armstrong-Northern for a temporary

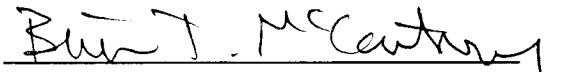
> period of time, it is reasonable to suspend Armstrong-Northern's wireline to wireless number portability requirements under Section 251(f)(2) of the Act to a date certain, i.e., for one year . . . and requiring Armstrong-Northern to petition the Commission annually for so long as it wants the suspension to remain in effect and for so long as the basis for such exemption continues to exist.

Armstrong Telephone Company-Northern Petition for Consent and Approval for Suspension of Wireline to Wireless Number Portability Obligations, Case No. 03-1749-T-PC. Similarly, the Nebraska Public Service Commission recently granted interim relief from the wireline-to-wireless LNP requirements to a group of small Nebraska companies. *See e.g. In the Matter of Great Plains Communications, Inc., Blair,* Application No. C-3096, *Order Granting Interim Relief*, issued March 3, 2004. After weighing the benefits against the costs, this Commission should do the same.

CONCLUSION

WHEREFORE, Petitioner respectfully requests that the Commission: (1) GRANT Petitioner's request for a two-year suspension of the FCC's wireline-to-wireless LNP requirements; and (2) GRANT Petitioner's request for modification and expressly state that Petitioner "is not foreclosed from seeking additional modification if and when the FCC issues a subsequent decision to address the rating and routing issues associated with porting numbers."

Respectfully submitted,

By 

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic mail, U.S. Mail, postage prepaid, or hand-delivered on this 5th day of April, 2004, to the following parties:

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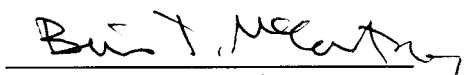
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