BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Petition of Grand River Mutual Telephone Corporation for Suspension and Modification of the FCC's Requirement to Implement Number Portability	))))	Case No. TO-2004-0456

FILED
JUL 13 2004
Missouri Public Service Commission

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

COMES NOW Grand River Mutual Telephone Corporation ("Grand River" or "Petitioner"), pursuant to Section 251(f)(2) of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §251(f)(2), and hereby petitions the Missouri Public Service Commission ("Commission") for a two-year suspension 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. As demonstrated herein, Petitioner is 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. Petitioner also seeks modification of the FCC's LNP requirements to address the call rating and routing issues that were identified but not resolved by the FCC.

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).

Concurrently with this filing Petitioner is filing a Motion for Protective Order.

Exhibit No. 44
Case No(s). TO-2004-0456
Date 7-07-04 Rptr. KK

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 conclude 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. **Suspension**. Petitioner seeks a two year suspension of the FCC's Local Number Portability (LNP) requirements in order to avoid a significant adverse impact on Petitioner's customers. At the end of the two year suspension period, the Commission and Petitioner can review this matter to determine whether there has been any decrease in costs or increase in customer demand. If not, then further suspension may be warranted.

3. **Modification**. Petitioner seeks modification of the FCC's LNP requirements to address the call rating and routing issues for small rural carriers that were identified but left unresolved by the FCC's recent decisions.

4. **Expedited Treatment**. Due to the critical timing issues of implementing number portability, Petitioner respectfully requests that this petition be processed on an expedited basis so that Petitioner will have reasonable time to implement LNP if so required. As explained herein, Petitioner's Motion for Expedited Treatment satisfies Commission Rule 4 CSR 240-2.080(16).

DISCUSSION

I. WIRELESS-TO-WIRELINE LOCAL NUMBER PORTABILITY

5. Petitioner provides local exchange and other telecommunications services in Missouri to approximately 14,890 subscribers. Petitioner is a Missouri corporation with its principal office and place of business located at:

1001 Kentucky Street
Princeton, MO 64673

A certificate of good standing from the Missouri Secretary of State was filed by Grand River in Case No. TC-2002-1077, and that information is still current and correct. Grand River 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. Rod Cotton, Director of Business Development and Regulatory of Grand River, 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).

6. 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 Petitioner has received a bona fide request ("BFR") from a CMRS provider,

[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 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. 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.

7. Petitioner's switches are not equipped for LNP. Petitioner is required to implement LNP on or before May 24, 2004. For the reasons set forth below, Petitioner hereby seeks an extension of this May 24, 2004, deadline as described herein pursuant to Section 251(f)(2) of the Act.

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

8. 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–

[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*").

(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."[3]

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

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

9. 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.[4] Petitioner serves approximately 14,890 subscriber lines, which is far less than two percent of the national total. Thus, Petitioner's subscriber lines fall below the two percent threshold set in Section 251(f)(2). Accordingly, Petitioner is eligible to seek relief under Section 251(f)(2) from the 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

[3] 47 U.S.C. § 251(f)(2).

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

obligation imposed by Section 251(b)."[5] Therefore, Petitioner may seek relief from the LNP obligations under Section 251(f)(2).

IV. PETITIONER IS ENTITLED TO THE REQUESTED RELIEF UNDER SECTION 251(F)(2).

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

A. Implementing Wireless Local Number Portability Would Impose An Undue Economic Burden on Petitioner's Subscribers.

11. 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. Deploying wireless local number portability would impose such an adverse impact on Petitioner's subscribers.

12. 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

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[5] *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).

and ongoing costs incurred in providing number portability.[6] In addition to any applicable number portability database query costs, Petitioner will be forced to recover substantial implementation costs from its end user customers as well as ongoing monthly recurring charges for implementing LNP. Petitioner is prepared to provide documentation regarding these costs as soon as a protective order is issued in this case.

13. 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. Petitioner is prepared to provide calculations to show the approximate LNP implementation recovery charge per month for each subscriber as soon as the protective order is issued in this case.

14. The economic burden is significant for Petitioners' subscribers, 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. The cost impact of implementing LNP when compared to the anticipated number of subscribers that will port numbers is dramatic.

15. Additionally, wireless coverage makes service quality and signal reliability questionable in rural areas, leading Petitioner to believe that number porting rates in its service area will be significantly lower than in large urban areas.

16. 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

[6] 47 C.F.R. § 52.33.

available. Thus, the public interest will best be served by granting Petitioner a two-year suspension of its obligations to implement LNP, and 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.

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

17. The two-year suspension of Petitioner's 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 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.

18. Historically, the Commission has required that there be some minimal level of customer concern or demand before requiring rate-of-return regulated companies to expend significant resources to offer a new service. In this case, there has been no such showing. Rather, Petitioner has demonstrated the potential for the FCC's LNP requirements to result in adverse economic impacts on end users and produce undue economic burdens on Petitioner.

19. Increased costs, the potential waste of resources, and the possibility of reduced quality of service are not in the public interest. Therefore, the public interest would be best served by examining issues thoroughly and avoiding the possibility of increased rates and surcharges until the most economical and practical solution is developed.

VI. REQUEST FOR MODIFICATION

20. 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. 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.

A. CALL ROUTING AND RATING ISSUES

21. The different call routing schemes used by wireless and wireline carriers make wireline-to-wireless LNP technically infeasible at this time. Petitioner is a small rural local exchange company, and Petitioner's exchange boundaries have been defined by the Commission. Petitioner is unaware of any wireless carrier point of presence within its exchange. Moreover, 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 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.

B. MODIFICATION

22. Petitioner does not presently own facilities that would allow Petitioner to deliver calls outside of its exchanges, nor does Petitioner have any arrangement with intermediate third party carriers to transport these calls. 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 their facilities are not interconnected. The FCC's *Order* recognized that number portability was a separate function from the exchange of traffic. (*See* ¶37.) Although Petitioner is still examining the call rating and routing issues at this time, Petitioner believes that modification will be necessary.

23. Petitioner seeks modification of the FCC's LNP requirements to

address these call rating and routing issues. Specifically, Petitioner seeks modification such that once LNP capability is achieved, Petitioner would notify the wireless carrier that Petitioner was fully LNP capable but that if the requesting wireless carrier wants calls transported to a point outside of the local serving area of the ILEC, 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.

24. This 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 order of clarification issued on November 20, 2003 which notes that transport of calls can be handled as it is currently handled today.

VII. MOTION FOR EXPEDITED TREATMENT

25. Pursuant to 4 CSR 240-2.080(16), Petitioner seeks a Commission order on or before March 31, 2004 because of the impending FCC deadline. Alternatively, if the Commission cannot issue a decision by March 31, 2004, then Petitioners respectfully request that any Commission decision issued after March 31, 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.

26. 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. These requirements 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 Petitioner

from being in violation of FCC orders and avoid increased costs for rural customers.

27. Granting Petitioner's request will allow Petitioner 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 Petitioner's customers or the general public. To Petitioners' 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 and consulting with equipment vendors.

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 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. 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 March, 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, Mr. Rod Cotton, Director of Business Development and Regulatory of Grand River Mutual Telephone Corporation, 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.

R L Cott

Signature

STATE OF Missouri)
COUNTY OF Mercer)

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

Mary Pearl Scurlock

Notary Public

My Commission expires 4-24-07

MARY PEARL SCURLOCK
Notary Public - Notary Seal
STATE OF MISSOURI
Mercer County
My Commission Expires: April 24, 2007

Attachment A