BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Proposed Rulemaking	)	
To Create Chapter 37 – Number Pooling	)	Case No. TX-2007-0086
and Number Conservation Efforts.	)	

COMMENTS OF THE MISSOURI SMALL TELEPHONE COMPANY GROUP

COMES NOW the Missouri Small Telephone Company Group ("STCG")(*see* Attachment A) pursuant to the Missouri Public Service Commission's ("Missouri PSC") November 1, 2006 *Notice to Submit Comments* as published in the Missouri Register, and states to the Missouri PSC as follows:

I. INTRODUCTION

The STCG supports numbering conservation efforts and appreciates the Missouri PSC's work to address this issue. However, the STCG has concerns that the Missouri PSC's proposed number pooling and conservation rules would require some small rural carriers to incur substantial costs without creating any benefits. Specifically, the STCG is concerned that the proposed rules would require some carriers to implement local number portability (LNP) without first receiving a bona fide request (BFR) to do so, therefore exceeding the Federal Communications Commission (FCC) requirements for small rural carriers and the authority that the FCC has delegated to the Missouri PSC.

In addition, the proposed rule would appear to impose costs on a number of small companies and possibly their customers without any corresponding benefit. Implementing LNP will require small companies to incur one-time and ongoing LNP costs. The FCC's LNP rules allow carriers to recover their LNP costs through end-user surcharges, so the proposed rules could result in those small company customers paying for LNP-associated costs that are unnecessary at this time. Moreover, because any numbers returned by those small companies could not be used by other carriers, there would be no corresponding benefit for the small companies, their customers, or other carriers.

II. COMMENTS

A. Thousands Block Number Pooling and LNP

In order to comply with the Missouri PSC's proposed thousands block number pooling requirements, some small rural carriers would need to implement LNP and incur LNP costs. There is currently no FCC requirement for small rural carriers that have not received a BFR for LNP to implement LNP. Most of the small companies have not implemented LNP in their exchanges because no competing carriers have requested LNP, and it appears that the proposed rule seeks to make some exception for such carriers in its definition of "Exempt Carrier" at 4 CSR 240-37.020(6). However, this definition would require those carriers that are "technically capable"[1] of providing LNP to incur implementation costs and ongoing costs such as database administration even though such carriers have had no request for number portability.

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1 For the purposes of these comments, the STCG assumes that by "technically capable" the proposed rule is referring to those carriers with switches that can accommodate LNP but lack the

The FCC's rules allow telephone companies to recover their LNP implementation costs through a five (5) year surcharge on customers.[2] There would be no corresponding benefit for these LNP costs because any thousands block of numbers that the small carriers made available could not be used anywhere else except the small company rate center (where there are no requests for numbers and no competing carriers). Thus, small companies could incur LNP costs and customers could end up paying LNP surcharges that produce no benefit for anyone.

In short, the proposed rules would require carriers and customers to incur costs without producing any corresponding benefit.

B. The Proposed Definition of "Exempt Carrier" Should Be Amended.

The proposed rule's definition of "Exempt Carrier" would impose LNP requirements on carriers that are "technically capable" of implementing LNP even though there is no request for numbers and no way for others carrier to use such numbers. Specifically, the last sentence of proposed rule 4 CSR 240-37.020(6) reads:

> A carrier that has the technical capability to provide local number portability but is not currently providing local number portability is not an exempt carrier.

Thus, the proposed Rule as drafted would contradict the FCC's definition of "exempt" carriers and impose costs and requirements on small rural carriers that have the technical capability to provide LNP but are not currently doing so. The

necessary software and/or programming updates to actually implement LNP.

[2] *See* 47 CFR 52.33.

proposed rule would apply to some carriers that have not yet implemented LNP – in effect, requiring them to implement LNP in order to comply with the rule.

The inconsistency between the Missouri PSC's rules and the FCC's rules is both unlawful and unreasonable. The Missouri PSC's proposed rules are unlawful because they: (1) exceed the FCC's requirements for small rural carriers; (2) exceed the express limitations of the FCC's delegated authority to the Missouri PSC; and (3) fail to consider whether the costs to rural carriers and possible surcharges to rural customers are "just and reasonable" under the circumstances. The proposed rules are unreasonable in that they would require some small companies to incur costs and return numbers when there is no demand or possible use for those numbers. Therefore, the definition of "Exempt Carrier" should be amended to match the FCC's definition.

1. The FCC Has Exempted Small Companies from Number Pooling.

The FCC has exempted many of the Missouri STCG companies from the Missouri PSC's proposed number pooling requirements. Specifically, the FCC's *Order and Fifth Further Notice of Proposed Rulemaking* in CC Docket No. 99-200, released Feb. 17, 2006, which granted the Missouri PSC's petition for delegated authority to implement mandatory thousands-block number pooling, stated as follows:

> The [FCC] specifically exempted from the pooling requirement rural telephone companies . . . that have not received a specific request for the provision of LNP from another carrier, as well as carriers that are the only service provider receiving numbering resources in a given rate center.

FCC *Missouri PSC Delegation Order*, ¶5. The FCC specifically precluded the Missouri PSC from imposing its delegated authority on rural carriers that were exempted by the FCC:

> In this case, we require state commissions, in exercising the authority delegated herein to implement number pooling, to **implement this delegation consistent with the exemption for the carriers described above**.

FCC *Missouri PSC Delegation Order*, ¶11 (emphasis added).

Less than a month ago, the FCC reaffirmed this position in a case involving four other states:

> We are guided by the principle, expressed in our pooling precedent, that it is reasonable to require LNP only in areas where competition dictates demand. **For this reason, the [FCC] has exempted from pooling rural telephone companies and Tier III CMRS providers that have not yet received a specific request for the provision of LNP from another carrier and carriers that are the only service provider receiving numbering resources in a given rate center**. **We therefore mandate that the state commissions, in exercising the authority delegated to them herein to implement number pooling, implement this delegation consistent with the federal exemption for these carriers, as described above**. **Accordingly, we expect that rural carriers who are not LNP capable will not be required to implement pooling solely as a result of the delegation of authority set forth in this Order.**

In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, *Order*, rel. Nov. 9, 2006, ¶14(emphasis added). Accordingly, the STCG suggests that the definition of "Exempt Carrier" be revised to include references to the FCC exemptions in PSC rules 240-37.010 and 240-37.020.

2. The Rules Would Produce No Benefit in Rural Areas.

The proposed rules would require small rural companies to incur LNP costs and return numbers when there is no demand or possible use for those numbers in rural rate centers. Specifically, the rules would require both contaminated and uncontaminated thousands blocks to be returned to the North American Numbering Plan Administrator (NANPA) or Thousands-Block Pooling Administrator, but those blocks could not be used in other rate centers. This is because the STCG companies are the only companies receiving numbering resources in their rate centers, and they have received no requests for LNP from competitive local exchange carriers (CLECs).[3] Thus, there is no reason to return the numbers because no other carrier would be able to use the numbers. This is why the FCC has held that small carriers should not be required to incur LNP costs and perform thousands block number pooling until there has been a request for LNP. Small companies and their customers should not be forced to incur LNP costs until there is a corresponding benefit.

It is the STCG's understanding and belief that returning uncontaminated 1,000 blocks will not immediately require LNP implementation because the small companies can implement an intercept of those blocks in their switches such that calls will not be completed.[4] If, however, a 1,000 block (or a number within that block) is assigned to another carrier, then the small company will immediately be required to implement LNP. Clearly, pooling of contaminated blocks will require

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[3] The STCG companies are not obligated to provide wireline-to-wireless or "intermodal" LNP because the FCC's order imposing intermodal LNP was stayed by the U.S. Court of Appeals for the D.C. Circuit. See *USTA v. FCC*, 400 F.3d 29 (D.C. Cir. 2005).

[4] The STCG companies have not had to return uncontaminated blocks, so the STCG companies

LNP so calls to those numbers already assigned to small company subscribers will continue to be completed to those customers.

C. LNP Implementation Cost Data and Estimates

For purposes of these estimates, the STCG assumes that the proposed rule's definition of "technically capable" refers to those carriers with switches that can accommodate LNP but lack the necessary software and/or programming updates to actually implement LNP. For those members of the STCG that are "technically capable" of providing LNP but are not currently doing so, the total amount of one-time, non-recurring implementation costs and cost estimates is $478,556.[5]

1. Ongoing LNP Cost Data and Estimates

For the "technically capable" members of the STCG, the total amount of ongoing cost estimates associated with recurring expenditures for LNP is $25,121.57 per month, or more than $300,000.00 per year.[6]

2. Costs Per Line

The FCC's rules allow companies to recover their LNP costs through an end-user surcharge, but this method of recovery is problematic for rural carriers that have a small customer base over which to apply these surcharges. For example, in the 2004 LNP modification and suspension cases, one small

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do not at this time know for certain what will be required.

[5] Most of the STCG companies submitted LNP data to the FCC last year in CC Docket No. 95-116, *Initial Comments of the Missouri Small Telephone Company Group*, filed in response to the FCC's *Public Notice Seeking Comment on its Initial Regulatory Flexibility Analysis regarding Intermodal Wireline-to-Wireless LNP*, August 19, 2005. Where possible, those numbers have been updated for the purpose of these comments. For those few companies were not able to update their LNP cost data, the 2005 FCC data was used.

[6] *Id.* Because the 2005 data is over one year old, costs for a few carriers may have either increased or decreased.

Missouri company had an estimated monthly recurring charge of $7.92 per customer to recover LNP costs over the five-year time period allowed by the FCC. Evidence before the Missouri PSC in the 2004 LNP modification and suspension cases demonstrated that the estimated monthly LNP costs per customer for the small companies that received suspensions ranged from $0.11 to $7.92 per month, with an average estimate of $1.84 per customer, per month. New estimates for the "technically capable" companies show an estimated monthly LNP cost per customer ranging from a low of $0.01 per month and a high of $5.03 per month.

In 2004, the Missouri PSC found that suspension of LNP requirements for small companies was "necessary to avoid a significant adverse economic impact on users of telecommunications services generally and to avoid imposing a requirement that is unduly burdensome."[7] Although the cost and customer surcharge information may have changed somewhat over the last few years, the legal and policy issues are the same. Small companies and their customers should not be forced to incur costs when there is no corresponding benefit and no carrier has requested LNP.

D. The STCG's Proposed Revisions to Rule

The Missouri PSC's rules should be consistent with the FCC's exemptions for small rural carriers that have not received requests for local number portability. Accordingly, the STCG proposes that the Missouri PSC adopt the following revisions to the "General Provisions" and "Definitions" sections of the

[7] *Report and Order*, Case No. TO-2004-0437, July 27, 2004, p. 9 (emphasis added).

proposed numbering rule that are identified with bold and underlined text:

4 CSR 240-37.010 General Provisions

(1) This rule and the other rules comprising Chapter 37 shall apply to all carriers operating in the state of Missouri and requesting numbering resources directly from the North American Numbering Plan Administrator or the Thousands-Block Pooling Administrator regardless as to whether such carriers operate under the jurisdiction of the Public Service Commission**<u>, except to the extent that certain rural carriers may be exempted from specific provisions of this rule by Federal Communications Commission (FCC) decisions and rules</u>**.

(2) The rules comprising Chapter 37 shall not relieve any company from any of its duties under the laws of this state or from any other rules of this commission. All carriers shall be in compliance with this chapter within thirty (30) days after the effective date of this rule **<u>except for rural telephone companies and Tier III CMRS providers that have not received a specific request for the provision of local number portability from another carrier, and for carriers that are the only service provider receiving numbering resources in a given rate center</u>**.

The STCG recommends that the proposed rule's current definition of "Exempt Carrier" be **<u>deleted in its entirety</u>** and replaced with the FCC's definition of Exempt Carrier as follows:

4 CSR 240-37.020 Definitions

(6) **<u>Exempt Carriers are rural telephone companies and Tier III CMRS providers that have not received a specific request for the provision of local number portability from another carrier and carriers that are the only service provider receiving numbering resources in a given rate center</u>**.

III. CONCLUSION

The STCG supports the Missouri PSC's work to address number conservation issues, and the STCG is not opposed to certain number conservation efforts. However, because some provisions in the proposed rules could impose costs on STCG companies and possibly customers without creating any corresponding benefit, the STCG respectfully requests that the Commission amend its proposed number pooling and conservation rules as described above and grant such other relief as is appropriate and necessary in the circumstances.

RESPECTFULLY SUBMITTED,

By **/s/ Brian T. McCartney**

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CERTIFICATE OF SERVICE

I hereby certify that these comments were filed via the Commission's Electronic Filing and Information System (EFIS) and 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 30th day of November, 2006, to the following parties:

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ATTACHMENT A

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