

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

In the Matter of the Petition of KLM)
Telephone Company for Suspension)
and Modification of the Federal)
Communications Commission)
Requirement to Implement Number)
Portability)

Case No. TO-2004-0401

PETITIONER'S STATEMENT OF POSITION

COMES NOW the Petitioner in the above-captioned matter and for Petitioner's Statement of Position, states to the Missouri Public Service Commission as follows:

LIST OF ISSUES

1. Should the Commission grant a suspension and/or modification of the intermodal porting requirements?

Yes. Federal law allows the Missouri Commission to suspend and/or modify Petitioner's intermodal porting requirements.¹ Petitioner's equipment is not presently LNP-capable, and implementing LNP will result in substantial implementation costs and monthly recurring costs which Petitioner may recover from customers in accordance with Federal Communications Commission (FCC) rules. As explained in more detail below, the Missouri commission should suspend and modify Petitioner's intermodal porting requirements to avoid an adverse economic impact on customers and/or an undue economic burden on the company.

(a) Adverse Economic Impact on Customers

Under the FCC's rules, Petitioner may assess a monthly, long-term LNP charge on customers to offset the initial and ongoing costs incurred in providing number portability.² As a small rural telephone company, Petitioner has a small customer base over which to spread these costs. Thus, although the implementation costs and ongoing costs associated with LNP may be similar across Missouri, customers of smaller companies may face substantially higher surcharges. Because KLM's switching equipment will have no technical support after 2007, KLM and its customers will have to pay for LNP now and new switching equipment by the end of 2007. The adverse economic impact on these rural customers outweighs any questionable "benefit" that Petitioner's subscribers will receive from wireline-to-wireless LNP, and many other state Commissions have granted similar suspensions.³

For example, the Public Utilities Commission of Ohio recently 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.⁴ Accordingly, the Ohio Commission granted suspension. Likewise, 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

¹ 47 U.S.C. §251(f).

² 47 CFR §52.33.

³ 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 over a dozen other state commissions.

⁴ *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.

impact on a small company's subscribers.⁵ The Illinois Commission granted a 2½ - year suspension of the LNP requirements. In this case, a two-year suspension will prevent an adverse economic impact on rural Missouri consumers.

(b) Undue Economic Burden on Company

Petitioner provides service in rural areas 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 suspension.⁶ The FCC's LNP requirements will place an undue economic burden on Petitioner by forcing Petitioner 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 or interest. In KLM's case, the burden is even worse because KLM will be forced to make expensive upgrades now to a switch that will only have vendor support for a few more years. The high costs of implementing the FCC's wireless LNP policy experiment will have immediate impacts on Petitioner and Petitioner's rural subscribers. Suspension will avoid an undue economic impact on Petitioner and prevent Petitioner from being required to divert limited funds to implement LNP for a small handful of subscribers (if any) rather than applying those funds to implement services and/or upgrade infrastructure that will benefit a large number of subscribers.

⁵ *Harrisonville Telephone Company Petition for Suspension of Modification*, Case No. 03-0731, *Order*, issued May 11, 2004.

⁶ June 18, 2004 letter from FCC Chairman Michael Powell to the Honorable Stan Wise, President of NARUC. (Emphasis added.)

(c) Technical Feasibility

There are a number of operational and technical obstacles associated with LNP. First, KLM's switches are not LNP capable. Second, KLM does not have facilities outside of its local exchange area and therefore cannot transport calls outside its exchange boundaries. Third, the FCC has not yet resolved questions about which carrier is responsible for transporting the local traffic when no interconnection facilities exist.

(d) Public Interest

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. Suspension will prevent unwanted surcharges, and it will not impede wireless competition in rural areas.

- (i) *No benefit*** – Implementing wireline-to-wireless LNP will not result in any tangible benefit for Petitioner's 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 Petitioner's remaining customers paying even higher charges.
- (ii) *No demand*** – In Petitioner's rural exchanges, there appears to little or no demand for wireline-to-wireless LNP at this time. It is unlikely that rural service areas will experience any great demand for this service in the near future. This may be due in part to the fact that wireless coverage is limited or non-existent in many of the remote rural areas where Petitioner serves,

but even large incumbent local exchange carriers serving in urban areas are seeing little demand for wireline-to-wireless porting.

(iii) **Unwanted charges** – It is unlikely that Petitioner’s 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 Petitioner’s customers.

(iv) **Wireless Competition** – Wireless carriers are already competing in rural areas, and some of Petitioner’s customers have both wireline and wireless service. Wireless carriers already have a number of competitive advantages over Petitioner. For example, wireless service areas are much larger than Petitioner’s wireline exchanges, and wireless calling scopes are much wider than rural exchange calling scopes. Nothing prevents customers from using both wireline and wireless service or from dropping their wireline service altogether. Competition is already taking place, and the requested suspension will have no impact on the wireless carriers’ ability to compete.

2. What reasons support suspension and/or modification?

As explained in more detail above, suspension and modification are warranted in order to avoid an adverse economic impact on customers, an undue economic burden on the company, and/or a requirement that is technically infeasible.

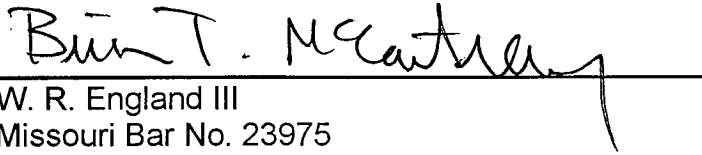
3. If the Commission should grant a suspension, how long should the suspension last?

Petitioner has requested a two-year suspension until May 24, 2006. This suspension is warranted to avoid an adverse economic impact on customers and an undue burden on Petitioner. A two-year suspension will also allow Petitioner, Public Counsel, and Staff to gain a better understanding of the level of demand for wireline-to-wireless LNP and the costs associated with LNP. Finally, suspension will allow Petitioner to explore, evaluate, and pursue a switch replacement that will not only be LNP capable but also provide Petitioner's customers with state of the art technology that is both efficient and feature-rich.

4. If the Commission should grant a modification, what are the specific conditions of the modification?

Modification should be conditioned so that if wireline-to-wireless LNP is requested before the FCC has resolved the rating and routing issues associated with LNP, then the Petitioner will notify the wireless carrier that it is not the responsibility of the Petitioner to establish facilities and/or arrangements with third party carriers to transport calls on a local basis outside of its local serving area. Petitioner will 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.

Respectfully submitted,



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ATTORNEYS FOR PETITIONER

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 19th of July 2004.

/s/ Brian T. McCartney

Brian T. McCartney