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July 9, 2007

Via Electronic Mail

Ms. Paula Jordan
T-Mobile
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Mr. Gary Sacra
Verizon
gary.m.sacra@verizon.com

Co-Chairs of the NANC LNPA Working Group

RE: Problem Identification & Management Issue No. 60

Dear Ms. Jordan and Mr. Sacra:

My firm represents a number of small rural incumbent local exchange carriers ("ILECs") in the state of Missouri. I will not be able to participate in this week's NANC LNPA Working Group Meeting, so I am sending this letter to express my concerns with the Problem Identification and Management Statement Issue No. 60 ("PIM 60") submitted by Socket Telecom ("Socket") and advocating what appears to be geographic/location portability. I am particularly concerned with potential impacts upon small rural carriers in the state of Missouri.

I. Geographic/Location Portability

As a threshold matter, geographic/location portability is not required by federal law or FCC rule. The facts outlined in PIM 60 appear to show that Socket is requesting geographic or location portability. Indeed, Socket's description of the problem concedes the fact that **"the customer's service location will change as a result of the port."** (PIM 60, p. 1, §2.A) (emphasis added). Socket states, "It is true that **the service location of the customer will change** as a result of the port as Socket will replace the customer's current local service with a tariffed Foreign Exchange component as part of the local exchange service it provides." (p. 2, §2.A.) (emphasis added). Nevertheless, Socket simply proclaims its view "that this port does not involve geographic or location portability." *Id.*

Continued Exhibit No. 13
Case No(s). TC-2007-0341
Date 7-11-07 Rptr. TM

Despite clear law to the contrary, "Socket does not believe that service location is relevant to the issue of location portability or a carrier's obligations related to number portability." *Id.* Socket's position is inconsistent with federal law, which makes clear that location is relevant to local number portability ("LNP") and does not require location portability.

II. The FCC's *Intermodal Order*

In its testimony before the Missouri Public Service Commission ("PSC"), Socket relies upon the FCC's *Intermodal Order* to support its argument, but the *Intermodal Order* is not on point for a number of reasons. First, the *Intermodal Order* dealt with LNP between wireline and wireless companies with larger FCC-defined local calling areas (*i.e.* the MTA), so its analysis is inapplicable for LNP between local exchange carriers. Second, the *Intermodal Order* does not apply to Missouri's small ILECs because the *Intermodal Order* has been remanded and stayed against application to small rural carriers by a federal appeals court. *USTA v. FCC*, 400 F.3d 29 (D.C. Cir. 2005). Third, the Missouri PSC specifically granted modification under 47 U.S.C. §251(f) so that Missouri's small rural ILECs will not bear the cost for any facilities or arrangements with third-party carriers needed to transport ported calls to any point outside of the small rural ILEC local service areas.¹

III. Transport Costs

One of the biggest problems with Socket's position on PIM 60 is that it would appear to have the ILEC pay for the new transport costs related to location portability.² In other words, not only would the ILEC lose the customer, but the ILEC would also be forced to incur the additional ongoing expenses of transporting the calls to a distant location.

Before the federal appeals court remanded and stayed the *Intermodal Order*, Missouri's small ILECs filed petitions for modification with the Missouri PSC to address this transport problem. After notice and hearings, the PSC found that modification of the Missouri small rural ILECs' obligation to transport calls to ported numbers served by distant switches was "necessary to avoid an undue economic burden."³

¹ See e.g. *In the Matter of the Petition of Farber Telephone Company for Suspension and Modification of the FCC's Requirement to Implement Number Portability*, Missouri PSC Case No. TO-2004-0437, *Order Approving Unanimous Stipulation and Agreement*, issued July 27, 2004.

² The FCC's *Initial Regulatory Flexibility Analysis* for its *Intermodal Order* recognized that "porting beyond wireline rate center boundaries could impose compliance burdens on small entities." Specifically, the FCC observed that "porting beyond wireline rate center boundaries may cause small or rural carriers to incur transport costs associated with delivering calls to ported numbers served by distant switches." *IRFA*, Federal Register, Vol. 70, No. 138, at ¶10.

³ *In the Matter of the Petition of KLM Telephone Company for Suspension and Modification of the FCC's Requirement to Implement Number Portability*, Missouri PSC Case No. TO-2004-0401, *Report and Order*, issued Aug. 12, 2004 (emphasis added).

The unfairness of this transport problem was aptly demonstrated by Missouri PSC Commissioner Steve Gaw during the modification hearings involving wireline-to-wireless LNP:

[I]t sort of reminds me of a farmer with a horse and another farmer comes over and says, I like that horse, I want that horse. And the farmer says, Well, I – that's nice. What will you give me for him? He says, I'm not going to give you anything for him. And, Oh, by the way, I want you to buy a truck and trailer and haul him over to my house for nothing. . . . this scenario asks that local company to pay for the . . . continuing transfer of that new call and whatever maintenance there is. I guess he's got to pay for the feed and the hay too now that I think about it.⁴

This is the same scenario that Socket appears to be advocating with PIM 60.

It is not and should not be industry practice to require ILECs to bear the transport costs for ported calls outside of their exchange areas. Socket's proposal would require mid-sized ILECs to incur additional expenses to increase trunking facilities solely to carry a competitor's traffic. Most small rural ILECs do not even have the facilities to carry such traffic to distant locations, so the burden would be even greater on small entities. The Missouri PSC has already found that wireline-to-wireless LNP would create an undue economic burden in remote rural areas. As a result, the PSC held that wireless carriers (and not the rural ILECs) were financially and operationally responsible for the transport and termination of any ported wireless calls if the wireless carrier has no POI within the rural LEC's service area.

Missouri's small rural telephone companies have already spent substantial resources to become LNP capable or prepare for LNP. There is not currently any requirement for rural ILECs to provide location portability, and there would be no benefit in imposing further compliance burdens and costs on small rural ILECs such that they could be forced to bear the additional costs of carrying a competitors' ported calls to POI's far beyond the small companies' exchange boundaries.

IV. Conclusion

Based upon the facts outlined in PIM 60, it appears that Socket is requesting location portability that is not currently required by any federal law or rule. Accordingly, the LNPA Working Group should conclude that: (1) PIM 60 does constitute geographic or location portability, and (2) ILECs are not currently required to transport calls outside of their local exchange area under the facts described in PIM 60.

Again, I am sorry that I cannot participate in this week's meetings, and I hope that you will accept these written comments and consider small ILEC concerns.

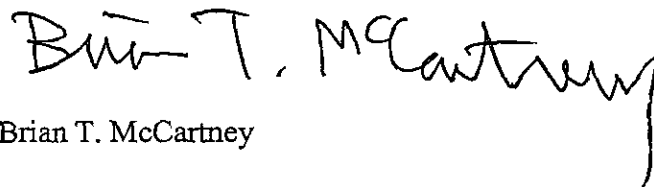
⁴ KLM Report and Order, Case No. TO-2004-0401, Tr. 67 (comment by Commissioner Gaw).

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Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

A handwritten signature in black ink that reads "Brian T. McCartney". The signature is written in a cursive, flowing style. The first name "Brian" is written with a large, stylized 'B' and a small 'i'. The middle initial "T." is written with a large 'T' and a period. The last name "McCartney" is written with a large 'M' and a long, sweeping tail on the 'y'.

Brian T. McCartney

cc: Michael Penn, CenturyTel
Matt Kohly, Socket