

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Petition of)
New London Telephone Company,)
Orchard Farm Telephone Company, and)
Stoutland Telephone Company for) Case No. TO-2004-0370
Suspension and Modification)
of the FCC's Requirement to Implement)
Number Portability)

UNANIMOUS STIPULATION AND AGREEMENT

COME NOW the Staff of the Missouri Public Service Commission (Staff), the Office of Public Counsel, (Public Counsel), and New London Telephone Company ("New London"), Orchard Farm Telephone Company ("Orchard Farm"), and Stoutland Telephone Company ("Stoutland")(collectively "Petitioners"), and for their unanimous Stipulation and Agreement, state to the Missouri Public Service Commission (Commission) as follows:

I. BACKGROUND

1. **The FCC's Order.** On November 10, 2003, the Federal Communications Commission ("FCC") issued a *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* ("the Order") addressing local number portability (LNP) between wireline and wireless telecommunications carriers.¹ The Order recognized the problem of designating different routing and rating points on LNP for small rural local exchange carriers, but the FCC did not resolve these issues in its decision. As a result, there are currently no rules,

¹ *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, issued Nov. 10, 2003.

guidelines, or resolution of certain outstanding issues related to wireline-to-wireless LNP for rural carriers.

2. **Wireline-to-Wireless LNP:** As incumbent local exchange carriers ("ILECs"), Petitioners are 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]."² Effective as of May 24, 2004, the Act's number portability requirements include the obligation that, where Petitioners have received a bona fide request ("BFR") from a CMRS provider, Petitioners must make their 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."³

3. According to the FCC's wireline-to-wireless LNP decision, Petitioners 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. This requirement applies even though the

² 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).

³ *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, issued Nov. 10, 2003.

wireless carrier's point of presence is in another rate center and has no physical interconnection with the wireline carrier. The FCC clarified that this requirement is limited to porting within the Local Access and Transport Area ("LATA") where the wireless carrier's point of interconnection is located "and does not require or contemplate porting outside of LATA boundaries."⁴ These wireline-to-wireless requirements are very different from the FCC's **wireless-to-wireline** (i.e. mobile to landline) rules which only require porting within the geographic boundaries of the wireline carrier's rate center.

4. The FCC has recognized the problem of designating different routing and rating points on LNP for small rural local exchange carriers, but the FCC has not yet addressed the issue. Rather, the FCC's November 10, 2003 decision found that these issues were outside the scope of its order and stated:

[T]he rating and routing issues raised by the rural wireline carriers have been raised in the context of non-ported numbers and are before the Commission in other proceedings. Therefore, without prejudging the outcome of any other proceeding, we decline to address these issues at this time as they relate to intermodal LNP.⁵

As a result, there are no rules, guidelines, or resolution of certain outstanding issues related to wireline-to-wireless portability for rural carriers.

5. **Standard for Section 251(f)(2) Suspension and Modification:**

Section 251(f)(2) of the Act requires a state public utility commission to suspend

⁴ *Id.* at fn 75.

⁵ *Id.* at ¶40.

or modify the obligations under Section 251(b) or (c) of the Act where the state commission determines that "such suspension or modification—

(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."⁶

State commissions have been given clear authority by Congress and the Act to modify or suspend the requirements of the Act or the FCC where the specified conditions are met.

6. **The Petition:** On February 9, 2004, Petitioners filed with the Commission pursuant to the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §251(f)(2), a verified Petition for suspension and modification of Petitioners' obligations under Section 251(b) of the Act to provide local number portability ("LNP") to requesting Commercial Mobile Radio Service ("CMRS" or "wireless") providers. Specifically, Petitioners seek a two-year suspension of the FCC's LNP requirements in order to avoid an adverse economic impact on customers and an undue economic burden on the company. During the two-year suspension period, Petitioners will assess the costs and benefits of a switch upgrade versus a switch replacement. Petitioners also seek suspension and

modification of the LNP requirements to address the call rating and routing issues that were identified but not resolved by the FCC in its November 10, 2003 Order.⁷

7. On May 12, 2004 the Commission issued a temporary suspension of the FCC's wireline-to-wireless LNP requirements until August 7, 2004.

II. FACTS

8. Many of the facts detailed below were included in the verified Petition and Staff's recommendation. These pleadings are incorporated by reference.

9. **The Petitioners:** Petitioners are facilities-based ILECs providing local exchange services in Missouri to approximately 1,021 New London subscribers, 851 Orchard Farm subscribers, and 1,574 Stoutland subscribers. Petitioners are Missouri corporations with their principal office and place of business located at P.O. Box 369, 501 S. Main Street, New London, MO 63459.

10. **Certificate of Service Authority:** Petitioners are authorized to provide telephone service to the public consistent with existing tariffs on file with the Commission (including the exchange boundary maps contained therein) and a certificate of public convenience and necessity granted in Case No. TA-88-37 (New London), TA-88-52 (Orchard Farm), and TA-88-39 (Stoutland). Petitioners provide basic local exchange service within their local exchange boundaries. Petitioners do not provide local exchange telecommunications services outside of their certificated areas.

⁶ 47 U.S.C. § 251(f)(2).

11. **Rural Telephone Company:** Petitioners' service areas are predominantly rural in character, and Petitioners are "rural telephone companies" as defined in 47 U.S.C. §153(37) and 47 C.F.R. §51.5. Petitioners each have a rural exemption under 47 U.S.C. §251(f)(1)(A) from the requirements of 47 U.S.C. §252(c) of the Act.

12. **Petitioners' Facilities:** Petitioners' facilities are not presently LNP-capable. Petitioners do not presently own facilities that would allow Petitioners to complete/terminate local calls outside of their exchanges.

13. **Wireless Facilities:** No wireless carriers that have made BFRs to Petitioners have points of presence (POPs) within Petitioners' local exchange areas.

14. **Relief Requested – Suspension:** Petitioners seek a two year suspension of the FCC's Local Number Portability (LNP) requirements in order to avoid a significant adverse impact on Petitioners' customers. Petitioners' switching equipment is not presently capable of supporting LNP. Therefore, implementing wireline-to-wireless LNP will require Petitioners to incur costly implementation expenses. Implementing LNP will also result in substantial ongoing costs. Petitioners seek suspension in order to analyze the costs and benefits of switch upgrades versus switch replacement.

15. 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

⁷ *Id.* at ¶¶ 37-40.

and ongoing costs incurred in providing number portability.⁸ As small rural telephone companies, Petitioners have a small customer base over which to spread these implementation costs. Under the FCC's LNP surcharge cost-recovery formula, Petitioners would recover 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. The verified Petition provided calculations to demonstrate the approximate LNP implementation recovery charge per month for each subscriber, exclusive of monthly recurring charges.

16. If Petitioners are required to implement LNP, it will result in substantial implementation costs which Petitioner may recover in accordance with FCC rules from its end user customers. Petitioners' estimated LNP charges necessary to recover implementation costs are between \$0.39 and \$0.71 for each subscriber over a five year (60 month) period, based on the cost of upgrading Petitioners' current switching equipment.

17. **Relief Requested – Modification:** Petitioners also seek suspension and modification because the FCC's recent LNP decision has identified but left unresolved important call rating and routing issues for small rural carriers. Petitioners seek suspension and modification because Petitioners do not presently own facilities that would allow Petitioners to port numbers and deliver associated local calls outside of their exchange boundaries. Petitioners seek modification such that once LNP capability is achieved, Petitioners would notify requesting wireless carriers that Petitioners are fully LNP capable but that if

⁸ 47 C.F.R. § 52.33.

the wireless carrier wants local calls transported outside of Petitioners' local service areas, 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 to the wireless carrier's point of presence (POP).

18. **Call Routing and Rating Issues:** The different call routing methods used by wireless and wireline carriers make wireline-to-wireless LNP problematic. Petitioners are small rural local exchange companies, and Petitioners' exchange boundaries and the scope of their authorized telecommunications services have been defined by the Commission. Specifically, Petitioners' service areas are defined by their tariffs and exchange boundary maps approved by and on file with the Commission. Each Petitioner's service authority was established by a certificate of service authority from the Commission to provide local services. Petitioners' local calling scopes have been set by the Commission, and these local calling scopes are different from those established by the FCC for wireless carriers.

19. One of the main LNP implementation questions is the issue of how to transport calls between ported numbers in different switches from a small ILEC to a wireless carrier where there are no facilities or arrangements with third parties to transport calls beyond Petitioners' exchange boundaries. The FCC's November 10, 2003 *Order* stated that number portability by itself does not create new obligations with regard to the exchange of traffic, but involves a limited exchange of data between carriers to carry out the port. (See *Order*, ¶¶ 37-40.) While the FCC recognized that these issues are pending before it in other

proceedings, the FCC has not yet resolved the call rating and routing issues.

20. **Undue Economic Burden on Petitioners' Subscribers:** 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 Petitioners' subscribers. 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 and ongoing costs incurred in providing number portability.⁹

21. If the Commission does not grant suspension, then Petitioner will incur substantial costs associated with hardware and/or software replacement/upgrades, programming, training, and translations work. Petitioner will also face ongoing database query costs associated with porting numbers. If the Commission does not grant modification, then Petitioner may face more costs, either in the form of additional facilities or negotiated or tariffed rates with third party transiting carriers, that it will ultimately recover from its end user customers.

22. **Undue Economic Burden on Petitioner.** The costs of implementing LNP at this time will impose an undue economic burden on Petitioners. In addition, any requirement to deliver local calls outside of Petitioners' local exchange boundaries would also impose a undue economic

⁹ 47 C.F.R. § 52.33. 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.

burden upon Petitioners. If Petitioners are required to provide service outside of Petitioners' certificated local service areas, then additional legal and regulatory issues will arise related to modifying existing certificates and tariffs and obtaining (through negotiation, and, if necessary, arbitration) facilities or arrangements with third party carriers to port numbers and transport associated calls to remote locations outside of Petitioners' local exchange service areas.

23. **Pending Legal Challenges:** Court challenges are currently pending to examine various aspects of the FCC's orders imposing wireline-to-wireless LNP on small carriers.¹⁰

III. STIPULATION AS TO RESULT

24. The Parties agree that suspension and modification are both necessary to avoid a significant adverse economic impact on users of telecommunications generally.

25. The Parties agree that suspension and modification are both necessary to avoid an undue economic burden on Petitioner.

26. The Parties agree that that the Commission should enter an order adopting Staff's recommendation for a temporary six-month suspension, until November 24, 2004, to allow Petitioners to assess the costs and benefits of switch upgrades versus switch replacements and provide Staff with further information about this cost/benefit analysis. After this initial six-month suspension period, the Parties will then be free to offer further recommendations

as to whether or not an additional suspension is appropriate under Section 251(f)(2) of the Act.

27. The Parties also agree that the Commission should enter an order granting Petitioner's requested modification of the FCC's LNP requirements until such time as the FCC addresses the call rating and routing issues presented by the FCC's November 10, 2003 LNP Order. Specifically, the Parties agree that the Commission should grant modification such that if wireline-to-wireless LNP is requested after a Petitioner has become fully LNP capable, then the Petitioner would 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 to a point outside of its local serving area. This would also apply to a situation where a wireless carrier that has established facilities and/or arrangements with third party carriers to transport calls to a point outside of the Petitioner's local serving area is requested to port numbers to another wireless carrier who has not established such facilities or arrangements.

28. The Parties also agree with Staff's recommendation for the Commission to state in its order granting modification that neither the Petitioners, nor their wireline customers, will be responsible for any transport or long distance charges associated with porting numbers and any associated calls outside Petitioner's local service area.

29. The Parties agree that suspension and modification of Petitioners' LNP obligations will ensure that subscribers are not forced to bear the costs for

¹⁰ See e.g. United States Court of Appeals, D.C. Circuit, *US Telecom. Ass'n et al. v. FCC*, Case No. 03-1414, and *Nat'l Telecom. Coop. Ass'n et al. v. FCC*,

something from which they are unlikely to benefit. The parties agree that modification will prevent Petitioners from having to incur costs before the FCC has resolved the LNP routing and rating issues.

30. The Parties agree that granting the requested suspension and modification is consistent with the public interest, convenience, and necessity since it will avoid imposing additional economic burdens on customers or telecommunications services and reduce customer confusion prior to the FCC resolving rating and routing issues.

31. The Parties agree that the Commission should enter an order authorizing Petitioners to 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, if possible, provide information about how to complete the call.

32. The Parties agree that the modification is a conditional modification until such time as the FCC further addresses the rating and routing issues associated with porting numbers. Petitioners should not be foreclosed from seeking additional modification if and when the FCC issues any subsequent decisions to address the rating and routing issues associated with porting numbers.

33. This Stipulation has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation shall be

Case No. 03-1443.

void and no signatory shall be bound by any of the agreements or provisions hereof. The Stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the signatories to take other positions in other proceedings.

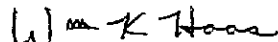
34. In the event the Commission accepts the specific terms of this Stipulation, the Parties and participants waive, with respect to the issues resolved herein the following rights: their respective rights to present testimony and to cross examine witnesses pursuant to Section 536.070(2) RSMo. 2000; their respective rights to present oral argument or written briefs pursuant to Section 536.080.1 RSMo. 2000; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo. 2000; and their respective rights to seek rehearing pursuant to §386.500 RSMo. 2000; and to seek judicial review pursuant to §386.510 RSMo. 2000. The Parties agree to cooperate with each other in presenting this Stipulation for approval to the Commission and shall take no action, direct or indirect, in opposition to Petitioners' request for modification and suspension of the FCC's LNP requirements.

35. The Staff shall file suggestions or a memorandum in support of the Stipulation and the other Parties shall have the right to file responsive suggestions or prepared testimony. All responsive suggestions, prepared testimony or memorandum shall be subject to the terms of any Protective Order that may be entered in this case.

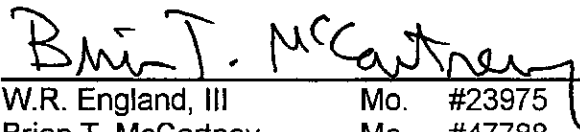
36. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order that may be issued in this case.

WHEREFORE, the signatories respectfully request the Commission to issue its Order adopting the terms and conditions of this Stipulation and Agreement and granting the relief requested by the Parties.


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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 U.S. Mail, postage prepaid, or hand-delivered on this 18th day of June, 2004, to the following parties:

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