

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

|  |   |                              |
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| Petition for Suspension of the Federal   | ) |                              |
| Communications Commission Requirement    | ) |                              |
| to Implement Wireline/Wireless Number    | ) | <b>Case No. TO-2004-0232</b> |
| Portability, under 47 U.S.C. § 251(f)(2) | ) |                              |

**RESPONSE OF  
SPECTRA COMMUNICATIONS GROUP, LLC D/B/A CENTURYTEL  
AND CENTURYTEL OF MISSOURI, LLC  
TO ORDER DIRECTING FILINGS**

COMES NOW Spectra Communications Group, LLC d/b/a CenturyTel ("Spectra") and CenturyTel of Missouri, LLC ("CenturyTel") (hereinafter collectively referred to as "Petitioners"), and for their Response to the Commission's Order Directing Filings entered in this matter on December 11, 2003, respectfully state as follows:

**Procedural Background**

1. On November 19, 2003, Petitioners filed their Petition for Suspension and Motion for Expedited Treatment, requesting that this Commission issue an order suspending, until May 24, 2004, the Federal Communications Commission's November 10, 2003 *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, insofar as that order requires Petitioners to implement wireline-to-wireless (*i.e.*, intermodal) number portability by November 24, 2003. As fully alleged in their Petition, Petitioners sought suspension of the FCC decision because it is technically infeasible for them to comply with the FCC's timeline. Petitioners also asked for expedited treatment, requesting that the Commission issue an order by November 21, 2003.

2. On November 20, 2003, the Office of the Public Counsel filed its Statement of No Objection to Petition, wherein Public Counsel affirmatively stated that it had no objection to the relief requested by Petitioners.

3. On November 20, 2003, the Commission issued an order granting Petitioners a temporary suspension, until January 24, 2004, of the intermodal porting obligations. The Commission also directed its Staff to file a recommendation no later than December 4, 2003.

4. Also on November 20, 2003, Sprint Spectrum L.P. d/b/a Sprint PCS (“Sprint”) filed its Application to Intervene and Response to Petition for Suspension and Motion for Expedited Treatment, wherein Sprint stated that it opposed a complete waiver of Petitioners’ porting obligations; “however, Sprint does not oppose a six month extension from the date of the FCC’s clarifying order until May 10, 2004.”<sup>1</sup> (Emphasis added).

5. On December 4, 2003, Staff filed its Response and Recommendation, requesting that the Commission direct the Petitioners to provide, no later than December 19, 2003, relevant evidence supporting their request for suspension. Staff indicates that upon review of that evidence, Staff will be in a position to file an additional response and recommendation. Petitioners respectfully would note that Sprint, as stated in its Application, “believes that it is not a productive use of the Commission’s time and resources to spend further time and expense on requiring the Petitioners to give greater specificity concerning the alleged obstacles to complying in a shorter time

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<sup>1</sup> Sprint Application, p. 1. Sprint goes on to state that “Petitioners should exercise appropriate measures to provide LNP as soon as possible and should provide LNP prior to that [May 10, 2004] date, if feasible.” *Id.*, p. 3.

period.”<sup>2</sup> As discussed in Paragraph 2, *supra*, the Office of the Public Counsel already is on record for having no objection to the relief requested by Petitioners.

6. In its December 11, 2003 Order Directing Filing, the Commission directed Petitioners to file documentation supporting the request for suspension, and also directed Staff to file, no later than January 7, 2004, either a supplemental recommendation or a status update indicating the date certain upon which Staff will file its supplemental recommendation.

### **The Section 251(f)(2) Standard**

7. Section 251(f)(2) of the Act allows a rural local exchange carrier (LEC) with fewer than two percent of the Nation’s subscriber lines installed in the aggregate nationwide to petition a state commission for a suspension or modification of the application of a requirement or requirements found in Subsections (b) and (c) of Section 251.<sup>3</sup> Subsection (b)(2) of Section 251 contains the duty to provide number portability in accordance with FCC requirements. As fully set forth in their Petition, the number of

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<sup>2</sup> *Id.*, p. 6.

<sup>3</sup> 47 U.S.C. §251(f)(2).

Section 251 (f) Exemptions, suspensions, and modifications

...

#### **2) Suspensions and modifications for rural carriers**

A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) of this section to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, 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.

subscriber lines served by CenturyTel nationally is under two percent of the Nation's total number of subscriber lines. Accordingly, Petitioners are eligible to petition this Commission for the specific relief requested ("a temporary suspension of the FCC Order's intermodal porting obligations until May 24, 2004<sup>4</sup>), and Petitioners respectfully submit that their verified Petition shows that "such suspension is necessary to avoid imposing a requirement that is technically infeasible, and is consistent with the public interest, convenience and necessity."

### **Response to Staff Memorandum and Order Directing Filing**

8. In responding to the allegations and conclusory opinion of the Staff contained in the Staff Memorandum attached to the Staff Response and Recommendation, Petitioners respectfully suggest that it is important to identify the specific relief Petitioners are requesting in this matter, the statutory standard under which such relief is sought, and the historical perspective on this issue, particularly regarding "2 Percent Carriers." Petitioners adopt, and incorporate by reference herein, the verified allegations contained in their November 19, 2003 Petition for Suspension and Motion for Expedited Treatment.

9. What the Petitioners are seeking in this matter: a temporary suspension of the FCC Order's intermodal porting obligations until May 24, 2003.<sup>5</sup> What the Petitioners are not seeking from this Commission: a waiver of their obligation to port numbers to wireless carriers, which would be filed with the Federal Communications Commission, and which would invoke the FCC's standard for waivers, as set forth in its

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<sup>4</sup> Petition for Suspension and Motion for Expedited Treatment, Conclusion, p. 11.

<sup>5</sup> The Missouri Commission's Order Granting Temporary Suspension clearly acknowledges this fact: "Petitioners request that the Commission grant a temporary suspension of the FCC Order's intermodal obligations until May 24, 2004." Order at 2.

Opinion (and seemingly “adopted” by the Staff herein), to “provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules.” (FCC Order, ¶ 30, p. 13, citing 47 C.F.R. § 1.3, 52.25(e)). Petitioners regret any confusion that may have resulted from the use of the word “waiver” in the body of the pleading.

10. As previously discussed herein, and as fully set forth in Staff’s Response (¶ 2), Petitioners seek relief under 47 U.S.C. § 251(f)(2). The verified Petition for Suspension set forth Petitioners’ technical infeasibility associated with the compliance deadlines of the FCC’s November 10, 2003 Order. (See ¶¶ 13-17).

11. While Staff’s Memorandum suggests that the FCC’s November 10, 2003 Memorandum Opinion and Order “addresses most, if not all, issues raised by the Petitioners in the present case,” noticeably absent is any reference to the language of the Order that would suggest the FCC may have intended to provide rural, 2 Percent Carriers, such as Petitioners, with a “transition period” to “help ensure a smooth transition” in the deployment of number portability in their service areas:

(F)or wireline carriers operating in areas outside of the 100 largest MSAs, we hereby waive, until May 24, 2004, the requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer’s wireline number is provisioned. We find that this transition period will help ensure a smooth transition for carriers operating outside of the 100 largest MSAs and provide them with sufficient time to make necessary modifications to their systems.<sup>6</sup>

12. As a “2 Percent Carrier,” CenturyTel nationally serves predominantly small, rural exchanges. In those instances where CenturyTel serves portions of the top 100 MSAs, its service is generally provided in the more rural areas of those MSAs

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<sup>6</sup> Order at ¶ 29.

contiguous to the greater portion of its operations in rural market areas. Indeed, Spectra provides service in 107 rural exchanges throughout Missouri, and yet, for purposes of this FCC Order, its service area includes parts of Clinton, Lafayette, Ray and Clay Counties, which are part of the Kansas City, MO-KS MSA. CenturyTel provides services in 96 rural exchanges throughout Missouri, and its service area includes parts of St. Charles, Franklin, Lincoln and Warren Counties, which are a part of the St. Louis MO-IL MSA.

As a rural carrier operating in multiple jurisdictions, CenturyTel is currently in the process of negotiating with industry vendors on a corporate-wide basis, with the expectation of reducing software implementation/activation costs that can ultimately benefit its consumers. In the brief time-frame provided since the FCC's November 10 Order, Petitioners are still assessing and establishing the scope of the technical, financial and operational challenges (*i.e.*, "evidence" suggested by Staff) associated with implementation of the Order's intermodal porting requirements.

13. In its Memorandum, Staff references the fact that it contacted Sprint Missouri, Inc. and SBC Missouri, Inc. (large carriers with national wireless affiliates) seeking information on their readiness to comply with the FCC's Opinion, and both companies responded that "they are in compliance with the requirements for wireline/wireless porting." With all due respect, their responses concerning "technical feasibility issues" may address rating issues, but they ignore the routing issues identified by the many carriers challenging the FCC's Order before both the agency and the courts. While Staff's Memorandum acknowledges Petitioners' statements in their Petition "that important contractual and compensation issues associated with porting

outside the rate center would need to be resolved to accomplish wireline/wireless porting,” it responds with a recitation of the FCC’s language found in Paragraph 40 of the Order: “We recognize the concerns of these carriers, but find that they are outside the scope of this order.” As referenced in Paragraph 16 of the Petition for Suspension, the FCC, however, specifically acknowledged “. . . that the routing will change when a number is ported. Indeed, several wireline carriers have expressed concern about the transport costs associated with routing calls to ported numbers.” (Order, ¶ 39).

14. Petitioners are compelled to address, once again, the implication (and outright allegation of Sprint) that Petitioners “knew this was coming,” “sat on their hands,” or “the situation is one largely of the Petitioners’ own making.” As stated in the First Paragraph of the Petition for Suspension, in its November 10, 2003 *Order* the FCC, for the first time, stated that its interpretation of its rules prohibiting location portability between wireline carriers does not apply to wireline to wireless LNP. While the FCC characterizes its *Order* as a “clarification,” the rule adopted in the *Order* – which requires wireline carriers to port out numbers in circumstances where they were never required to port out numbers before – is an abrupt departure from the Commission’s prior approach to this issue. As set forth in its Joint Petition for Stay Pending Judicial Review (filed jointly with the United States Telecom Association in CC Docket No. 95-116), CenturyTel, Inc. notes that, “Where, as here, ‘an agency changes the rules of the game . . . more than a clarification has occurred.’” (Citing *Sprint Corp. v. FCC*, 315 F.3d 369, 374 (D.C. Cir. 2003)). While the FCC denied the USTA/CenturyTel

Joint Petition, it is attached hereto because it provides an excellent historical perspective on the evolution of this particular issue.

WHEREFORE, Spectra Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri, LLC respectfully submit their Response to the Commission's Order Directing Filings.

Respectfully submitted,

/s/ Larry W. Dority

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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, e-mailed or hand-delivered, on this 19th day of December, 2003, to the following parties:

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/s/ Larry W. Dority

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