

ANDERECK, EVANS, MILNE, PEACE & JOHNSON, L.L.C.

ATTORNEYS AT LAW

EUGENE E. ANDERECK

TERRY M. EVANS

ERWIN L. MILNE

JACK PEACE

CRAIG S. JOHNSON

RODRIC A. WIDGER

GEORGE M. JOHNSON

BEVERLY J. FIGG

WILLIAM S. LEWIS

VICTOR S. SCOTT

COREY K. HERRON

MATTHEW M. KROHN

700 EAST CAPITOL AVENUE

COL. DARWIN MARMADUKE HOUSE

P.O. BOX 1438

JEFFERSON CITY, MISSOURI 65102-1438

TELEPHONE 573-634-3422

FAX 573-634-7822

LANETTE R. GOOCH

SHAWN BATTAGLER

JOSEPH M. PAGE

LISA C. CHASE

JUDITH E. KOEHLER

ANDREW J. SPORLEDER

JASON A. PAULSMEYER

BRYAN D. LADE

CONNIE J. BURROWS

March 3, 2004

FILED

MAR 03 2004

OF COUNSEL

MARVIN L. SHARP

GREGORY C. STOCKARD (1904-1993)

PHIL HAUCK (1924-1991)

Secretary/Chief Administrative Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

**Missouri Public
Service Commission**

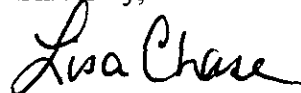
**Re: In the Matter of the Petition of Alma Telephone Company for
Suspension and Modification of Local Number Portability Obligations and Motion
for Expedited Treatment**

Dear Secretary:

Enclosed for filing please find an original and eight (8) copies of Alma Telephone Company's Petition for Suspension and Modification of Local Number Portability Obligations and Motion for Expedited Treatment and Motion for Protective Order.

Thank you for seeing this filed.

Sincerely,



Lisa Cole Chase

LCC:lw

enclosure

CC: General Counsel, MO Public Service Commission
General Counsel, Office of Public Counsel

Trenton Office
9th And Washington
Trenton, Missouri 64683
660-359-2244
Fax 660-359-2116

Springfield Office
1111 S. Glenstone
P.O. Box 4929
Springfield, Missouri 65808
417-864-6401
Fax 417-864-4967

Princeton Office
207 North Washington
Princeton, Missouri 64673
660-748-2244
Fax 660-748-4405

Smithville Office
119 E. Main Street
P.O. Box. 654
Smithville, Missouri 64089
816-532-3895
Fax 816-532-3899

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BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

Missouri Public
Service Commission
Case No. _____

**PETITION FOR SUSPENSION AND MODIFICATION
OF LOCAL NUMBER PORTABILITY OBLIGATIONS
AND MOTION FOR EXPEDITED TREATMENT**

COMES NOW Alma Communications Company d/b/a Alma Telephone Company ("Alma" or "Petitioner"), pursuant to Section 251(f)(2) of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. § 251(f)(2), and hereby petitions the Missouri Public Service Commission ("Commission") for a two-year suspension of Petitioner's obligations under Section 251(b) of the Act to provide local number portability ("LNP") to requesting Commercial Mobile Radio Service ("CMRS" or "wireless") providers. As demonstrated herein, Petitioner is entitled to the requested relief pursuant to the criteria set forth in Section 251(f)(2) of the Act, and the granting of this Petition will serve the public interest. Petitioner also seeks modification of the FCC's LNP requirements to address the call rating and routing issues that were identified but not resolved by the FCC.

Petitioner seeks expedited treatment of this Petition and addresses the Commission's requirements for expedited treatment herein pursuant to 4 CSR 240-2.080(16).

Concurrently with this filing, Petitioner is filing a Motion for Protective Order.

SUMMARY

1. **The FCC's Porting Requirements.** On November 10, 2003 and January 16, 2004, the FCC issued Orders in CC Docket No. 95-116 regarding wireline-to-wireless (i.e. intermodal) number portability. These orders conclude that local exchange carriers must port numbers to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number is provisioned by May 24, 2004.

2. **Suspension.** Petitioner seeks a two year suspension of the FCC's Local Number Portability (LNP) requirements in order to avoid a significant adverse impact on Petitioner's customers and an undue economic burden on Petitioner to comply with the FCC's orders by May 24, 2004.

3. **Modification.** Petitioner seeks modification of the FCC's LNP requirements to address the call rating and routing issues for small rural carriers that were identified but left unresolved by the FCC's recent decisions.

4. **Expedited Treatment.** Due to the critical timing issues of obtaining and implementing necessary software upgrades and possible switch upgrades and/or replacements, Petitioner respectfully requests that this petition be processed on an expedited basis so that Petitioner will have reasonable time to implement LNP if so required. As explained herein, Petitioner's Motion for Expedited Treatment satisfies Commission Rule 4 CSR 240-2.080(16).

DISCUSSION

I. WIRELESS-TO-WIRELINE LOCAL NUMBER PORTABILITY.

5. Petitioner provides local exchange and other telecommunications services in Missouri to approximately 380 subscribers. Petitioner is a Missouri corporation with its principal office and place of business located at:

206 S. County Road
Alma, MO 64001

A certificate of good standing from the Missouri Secretary of State is attached hereto as Attachment B. Alma has no pending actions or final, unsatisfied adverse judgments or decisions which involve customer service or rates that have occurred within the last three years from the date of this Petition. The Affidavit of Mr. Oral Glasco, Manager of Alma, verifying the accuracy of this information is marked as Attachment A and attached hereto. Petitioner is a "rural telephone company" as defined in 47 U.S.C. §153(37).

6. As an incumbent local exchange carrier ("ILEC"), Petitioner is 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]."¹ Effective as of May 24, 2004, the Act's number portability requirements include the obligation that, where Petitioner has received a bona fide request ("BFR") from a CMRS provider, Petitioner must make its 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

¹ 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).

wireline number is provisioned, provided that the porting-in [CMRS] carrier maintains the number's original rate center designation following the port."² Thus, according to the FCC's Order, Petitioner 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, even though the wireless carrier's point of presence is in another rate center and has no direct interconnection with the wireline carrier. The FCC first made this requirement known on November 10, 2003, and the wireline-to-wireless (i.e. intermodal) requirements are very different from the FCC's rules which prohibit location portability between wireline carriers.

7. Petitioner's switches are not equipped for LNP. Therefore, implementing wireline-to-wireless LNP will require both software and hardware updates, and possible switch replacement. Petitioner is required to implement LNP on or before May 24, 2004. For the reasons set forth below, Petitioner hereby seeks suspension and an extension of this May 24, 2004, deadline as described herein pursuant to Section 251(f)(2) of the Act.

II. SECTION 251(F)(2) OF THE ACT PROVIDES AN EXCEPTION FOR CERTAIN RURAL TELEPHONE COMPANIES.

8. Section 251(f)(2) of the Act requires a state public utility commission to suspend or modify a party's obligations under Section 251(b) or (c) of the Act, in the case of a local exchange carrier "with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide," where the state commission determines that "such suspension or modification—

(A) is necessary —

² *In re Telephone Number Portability*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 03-284 (Nov. 10, 2003) ("*Intermodal Portability Order*").

- (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."³

As demonstrated herein, Petitioner is eligible for and entitled to relief from the local number portability obligations under this provision.

III. PETITIONER IS ELIGIBLE TO SEEK RELIEF FROM WIRELESS LOCAL NUMBER PORTABILITY OBLIGATIONS UNDER SECTION 251(F)(2).

9. Section 251(f)(2) relief is available to any ILEC with fewer than two percent of the Nation's subscriber lines installed in the aggregate. As of December 2002, there were approximately 188 million local telephone lines in service nationwide.⁴ Petitioner serves approximately 390 subscriber lines, which is far less than two percent of the national total. Thus, Petitioner's subscriber lines fall below the two percent threshold set in Section 251(f)(2). Accordingly, Petitioner is eligible to seek relief under Section 251(f)(2) from the obligations imposed under Section 251(b) and (c) of the Act. Further, Section 251(f)(2) "establishes a procedure for requesting suspension or modification of the requirements of Sections 251(b) and 251(c). Number portability is an obligation

³ 47 U.S.C. § 251(f)(2).

⁴ FCC, *Federal Communications Commission Releases Study on Telephone Trends*, News Release (Aug. 7, 2003).

imposed by Section 251(b).⁵ Therefore, Petitioner may seek relief from the LNP obligations under Section 251(f)(2).

IV. PETITIONER IS ENTITLED TO THE REQUESTED RELIEF UNDER SECTION 251(F)(2).

10. Under Section 251(f)(2), a state commission should grant an eligible ILEC relief from obligations imposed under Section 251(b) and (c) to the extent that the suspension or modification serves the public interest and is necessary (1) to avoid an adverse economic impact on the ILEC's subscribers **or** (2) to avoid an unduly burdensome economic requirement on the ILEC **or** (3) to avoid a technically infeasible requirement. A petitioning ILEC need only show that one of these conditions applies to its circumstances. The wireless local number portability requirements from which Petitioner seeks relief are sufficiently burdensome to justify a finding that several of the criteria under Section 251(f)(2) are satisfied and grant of the Petition is warranted.

A. Implementing Wireless Local Number Portability Would Be Technically Infeasible by May 24, 2004

11. Alma Telephone Company's facilities currently use a Mitel GX5000 switch. Alma has been informed that the Mitel GX5000 Switch will no longer have vendor support on or after January 1, 2007. The cost of upgrading Alma's Mitel GX5000 switch to make it LNP capable would be almost \$22,000 with an eighteen week vendor delay to build and ship some of the necessary components. Once the components are received, they need to be installed and the system tested to ensure it is properly functioning and LNP capable. Due to

⁵ *In re Telephone Number Portability*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7303 (1997) (*LNP First MO&O*). Section 251(b) states that telecommunications carriers have a "duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." 47 U.S.C. § 251(b).

the cost of the switch upgrade and the limited time period left for support of the switch, Alma has been investigating the cost to upgrade its switch, or undertake more significant network changes to benefit its customers long term. This investigation, in and of itself, has required substantial time simply to assess the costs and benefits of a switch upgrade versus network upgrade.

12. Even under ideal circumstances, a six-month timeframe for implementation is not enough. As it is, there are approximately 1,250 small, rural telephone companies.⁶ Due to the large number of switch modifications, and possible switch replacements, not only by Petitioner but also by other carriers nationally, both Petitioner and its vendors risk missing the May 24, 2004, deadline at this time. As reflected above, Alma has been informed that there is an eighteen-week delay to build and ship some necessary components to upgrade the Mitel GX5000 switch. Again, this is a switch that will no longer be supported come January 1, 2007. Alma has acted with prudence in its efforts to comply with the FCC Order, and to act in the best interest of its customers in ascertaining its options with respect to becoming LNP capable. It is technically infeasible for Alma to become LNP capable by May 24, 2004 given the eighteen week delay for necessary components as well as the time needed to install the upgrades and test the switch to ensure that it is LNP capable.

⁶ see *FCC Adopts Further Measures to Reform Interstate Access Charge System for Rural Carriers*, FCC News, issued February 12, 2004.

B. Implementing Wireless Local Number Portability Would Impose An Undue Economic Burden on Petitioner's Subscribers.

13. 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 Petitioner's subscribers. Deploying wireless local number portability would impose such an adverse impact on Petitioner's subscribers.

14. Due to technical limitations of the Mitel GX5000 switch—which has no ongoing vendor investment in research and development of customer features—Alma believes that switch replacement represents the best investment on behalf of its end users. Alma is in the process of negotiating financing, hardware and software contract services, and construction services to upgrade its entire network system to not only upgrade its switching platforms, but to also install fiber to every customer's home that will support an array of new technological advancements in the telecommunications industry including high-speed internet access, voice and video, and thereby position Alma Telephone Company such that its customers can continue to enjoy the same telecommunications services enjoyed by customers in more urban areas for years to come. Granting Alma a suspension will benefit Alma's customers by limiting LNP costs to one upgrade as opposed to two upgrades; i.e. one upgrade to make the existing switch LNP capable until it is no longer supported, and a second upgrade within two years to make Alma LNP capable long term.

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 and ongoing costs incurred in providing number portability.⁷ In addition to any

⁷ 47 C.F.R. § 52.33. Not all costs of Alma's proposed network system upgrade may be recovered through a number portability charge; Alma's Universal Service Funds will be used to cover many of the upgrade expenses.

applicable number portability database query costs, Petitioner will be forced to recover substantial implementation costs from their end user customers, as well as ongoing monthly recurring charges for implementing LNP. Petitioner is prepared to provide documentation regarding these costs as soon as a protective order is issued in this case.

16. As small rural telephone companies, Petitioners have a small customer base over which to spread these implementation costs. Under the LNP surcharge cost-recovery formula, Petitioners would recover their 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. Petitioners are prepared to provide calculations to show the approximate LNP implementation recovery charge per month for each subscriber as soon as the protective order is issued in this case.

17. The economic burden is significant for the subscribers of Petitioner, particularly in light of the fact that few if any of the subscribers are expected to take advantage of wireless LNP and port their local wireline numbers to a wireless carrier. On a national level, analysts expect anywhere between two and six million people—between 1.06% and 3.2% of wireline subscribers nationwide—to replace their wireline telephones with wireless telephones in the next few years. If 3.2% of Petitioners' total subscribers were to port their telephone numbers to a wireless carrier (the top range of the estimate), that would equal only 12 of Petitioner's subscribers. The cost impact of implementing LNP when compared to the anticipated number of subscribers that will port numbers is dramatic.

18. Additionally, while the anticipated switch rate may be as high as 3.2% nationally, wireless coverage makes service quality and signal reliability questionable in rural areas, leading Petitioner to believe that number porting

rates in its service area will be significantly lower than the national average. In fact, Petitioner has received no inquiries or requests from its customers to have a telephone number ported to a wireless carrier.

19. In summary, only a very small number of Petitioner's subscribers are likely to take advantage of wireless local number portability, while all of Petitioner's subscribers will bear the substantial costs of making LNP available. First, Petitioner will be forced to divert limited capital funds to implement LNP for a small handful of subscribers rather than applying those funds to upgrade infrastructure that will benefit a large number of subscribers. Second, all of Petitioner's subscribers will be asked to directly bear a portion of those costs. Third, implementation of LNP may necessitate basic local rate increases for Petitioner's subscribers. Thus, implementation will have an undue economic impact on Petitioner and its subscribers.

C. Implementing Wireless Local Number Portability Would Impose An Undue Economic Burden on Petitioner.

20. Wireline-to-Wireless LNP obligations impose an undue economic burden on Petitioner. Requiring Petitioner to comply with these obligations would force Petitioner to divert limited capital resources from the provision of reliable, high-quality services in markets that are already challenging to serve so that a high-cost service could be implemented that has little if any subscriber interest or demand. Petitioner has been proactively examining switch replacement options along with options for network advancements with the goal of obtaining a switching platform and network system for Petitioner's subscribers that will be both cost effective and feature-rich. However, this is a critical decision for the Petitioner, as the decisions reached will be serving the Petitioner's subscribers

for years to come. It is not a sound business practice to incur the costs associated with upgrading an almost outdated switch, and then incur the costs to re-upgrade facilities within two-years time. Such duplicative costs for a service that none of Alma's customers have requested is unduly economically burdensome. The network upgrades contemplated by Alma will provide the best long term solution for the needs of Alma's customers.

21. Regulatory uncertainty also makes wireline-to-wireless LNP unduly economically burdensome. For example, the FCC's November 10, 2003 Memorandum Opinion and Order recognized the problem of designating different routing and rating points on LNP for rural LECs, but the FCC declined to address the issues in its decision. (See ¶¶ 39-40.) As a result of the FCC's decision to move forward without addressing these implementation issues, there are no rules, guidelines, or resolution of certain outstanding issues related to wireline-to-wireless portability for rural carriers, and this is especially problematic for call routing and rating issues. There are additional costs associated with call routing and rating outside of the rural LEC's network, and there is uncertainty with respect to how those costs are to be borne. In the face of this regulatory uncertainty, Petitioner may also incur costs associated with negotiations and/or litigation.

22. A Commission determination under Section 251(f) to grant suspension to avoid a significant adverse economic impact on Petitioner's end users, or to avoid imposing a requirement that is unduly economically burdensome on Petitioner, will not be contrary to any FCC findings. The FCC has not made a cost/benefit analysis as to the economic impact of intermodal

LNP on small rural ILECs.⁸

V. THE PUBLIC INTEREST WILL BE SERVED BY GRANTING THE REQUESTED RELIEF.

23. The two-year suspension of Petitioner's LNP obligations will ensure that subscribers are not forced to bear significant costs for something from which they are unlikely to benefit, or to incur duplicative costs for two upgrades. Suspension will serve the public interest by allowing Petitioner to use its limited resources to continue to ensure high-quality customer service and network reliability and to deploy services that will benefit Petitioner's entire subscriber base.

24. Suspension of LNP implementation ultimately serves the public interest as it will allow Petitioner to replace its existing switches prior to LNP implementation as opposed to paying for LNP software twice—once now to upgrade the existing switching platform and again when the necessary switch replacement occurs.

25. Historically, the Commission has required that there be some minimal level of customer concern or a "community of interest" before requiring rate-of-return regulated companies to expend significant resources to offer a new service. In this case, there has been no such showing. Rather, Petitioner has

⁸ *see In the Matter of Telephone Number Portability CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, *Reply Comments of the Office of Advocacy, U.S. Small Business Administration on the Further Notice of Proposed Rulemaking and Initial Regulatory Flexibility Analysis*, filed Feb. 4, 2004 ("The FCC released a Memorandum Opinion and Order ("MO&O") as part of the same document as the *Further Notice*. The MO&O addressed wireline-to-wireless porting while the *Further Notice* addressed wireless-to-wireline porting. Both actions, however, dealt with important issues relating to intermodal portability and both imposed requirements and costs on small rural wireline carriers. The FCC did not conduct a regulatory flexibility analysis for the MO&O on the basis that it was an interpretative rule. Advocacy does not agree with this assessment and believes that regulatory requirements imposed by the MO&O are similar in nature and scope to those in the *Further Notice* and require a notice and comment rulemaking and an RFA analysis." fn. 12).

demonstrated the potential for the FCC's LNP requirements to result in adverse economic impacts on end users and produce undue economic burdens on Petitioner.

26. Increased costs, the potential waste of resources, and the possibility of reduced quality of service are not in the public interest. Therefore, the public interest would be best served by examining issues thoroughly and avoiding the possibility of increased rates and surcharges until the most economical and practical solution is developed.

VI. REQUEST FOR MODIFICATION

27. Although the FCC has recognized the problem of designating different routing and rating points on LNP for small rural LECs, the FCC has not yet addressed the issue. As a result, there are no rules, guidelines, or resolution of certain outstanding issues related to wireless-to-wireline portability for rural carriers. This is especially problematic for call routing and rating issues.

A. CALL ROUTING AND RATING ISSUES

28. The different call routing schemes used by wireless and wireline carriers make wireline-to-wireless LNP technically infeasible at this time. Petitioner is a small rural local exchange company, and Petitioner's exchange boundaries have been defined by the Commission. Petitioner is unaware of any wireless carrier point of presence within its exchanges.

B. MODIFICATION

29. Petitioner does not presently own facilities that would allow Petitioner to deliver calls outside of its exchanges, nor does Petitioner have any arrangement with intermediate third party carriers to transport these calls. Therefore, one of the main technical obstacles is the issue of how to transport calls between ported numbers in different switches from a small ILEC to a

wireless carrier where their facilities are not interconnected. The FCC's Order recognized that number portability was a separate function from the exchange of traffic. (See ¶37.) Although Petitioner is still examining the call rating and routing issues at this time, Petitioner believes that modification will be necessary.

30. Petitioner seeks modification the FCC's LNP requirements to address the call rating and routing issues. Specifically, Petitioner seeks modification such that once LNP capability is achieved, Petitioner would notify the wireless carrier that Petitioner was fully LNP capable but that if the requesting wireless carrier wants calls transported to a point outside of the local serving area of the ILEC, 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. This modification would make the wireless carrier responsible for costs associated with transporting the call beyond the small ILEC rate center and thus place the costs on the carrier that caused them. Moreover, it is also consistent with the FCC's order of clarification issued on November 20, 2003 which notes that transport of calls can be handled as it is currently handled today.

VII. MOTION FOR EXPEDITED TREATMENT

31. Pursuant to 4 CSR 240-2.080(16), Petitioner seeks a Commission order on or before April 1, 2004 because of the impending FCC deadline. Petitioners also respectfully request that any Commission decision denying a two-year suspension include a suspension of the FCC's wireline-to-wireless LNP requirements until at least January 1, 2005 given the eighteen-week production backlog discussed above.

32. As explained above, the FCC's recent orders impose requirements that are substantially different from its prior LNP rules, and the FCC has yet to clarify a number of issues related to wireline-to-wireless LNP for small rural local

exchange carriers. Moreover, the FCC's LNP orders require costly software and hardware updates and possibly switch replacement. These updates and possible switch replacements will result in higher costs for rural customers, and it will be impossible for Alma to complete these updates by May 24, 2004. Therefore, granting the Petition will prevent Petitioner from being in violation of FCC orders and avoid increased costs for rural customers.

33. Granting Petitioner's request will allow Petitioner more time to implement the technical requirements for LNP and provide more time for the FCC to clarify the LNP requirements for small, rural telephone companies. There will be no negative effect on Petitioner's customers or the general public. To Petitioners' knowledge, none of Petitioner's customers have requested porting. This pleading was filed as soon as it could have been after reviewing the FCC's recent decisions and consulting with equipment vendors.

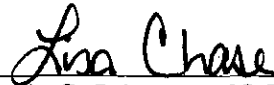
CONCLUSION

The costs and technical challenges to either upgrade or replace a switch are substantial. Both the Petitioner's subscribers and the company itself will absorb these costs. Each of the concerns raised in this petition fall within the criteria set forth in Section 251(f)(2) under which this Commission may suspend or modify Petitioner's LNP implementation obligations. While each of these concerns is valid, the most compelling concern is that of public interest. The Petitioner's subscribers will bear a significant financial burden for the benefit of a handful of subscribers, and ironically, the few subscribers who might benefit from LNP by porting their numbers will, in so doing, avoid the very costs (e.g., LNP end user charges) of implementing LNP. For these reasons, granting this petition is in the public interest.

Respectfully submitted,

**ANDERECK, EVANS, MILNE
PEACE & JOHNSON**

By:



Craig S. Johnson, MO Bar #28179
Lisa Cole Chase, MO Bar #51502
Col. Darwin Marmaduke House
700 East Capitol
P.O. Box 1438
Jefferson City, MO 65102
Telephone: 573/634-3422
Facsimile: 573/634-7822
email: CJohnson@aempb.com
email: lisachase@aempb.com

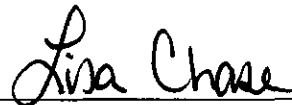
**ATTORNEYS FOR
PETITIONER**

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 3rd day of March, 2004, to the following parties:

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

General Counsel
Office of the Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102



Lisa Cole Chase

VERIFICATION

I, Oral Glasco, the Manager of Alma Telephone Company, hereby verify and affirm that I have read the foregoing **PETITION FOR SUSPENSION AND MODIFICATION OF LOCAL NUMBER PORTABILITY OBLIGATIONS AND MOTION FOR EXPEDITED TREATMENT** and that the statements contained herein are true and correct to the best of my information and belief.

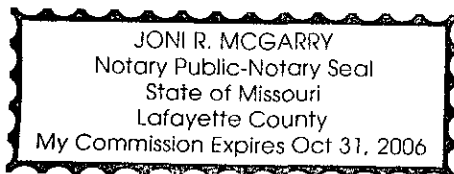
Oral Glasco

Signature

STATE OF MISSOURI)

COUNTY OF Lafayette)

Subscribed and sworn to me, a Notary Public, on this 1 day of
March, 2004.



Joni R. McGarry



STATE OF MISSOURI



Matt Blunt
Secretary of State


**CORPORATION DIVISION
CERTIFICATE OF GOOD STANDING**

I, MATT BLUNT, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

**ALMA COMMUNICATIONS COMPANY
T00503097**

was created under the laws of this State on the 5th day of December, 2001, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 2nd day of March, 2004


Secretary of State



Certification Number: 6454325-1 Page 1 of 1 Reference:
Verify this certificate online at <http://www.sos.mo.gov/businessentity/verification>