

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

In the Matter of a Proposed Rulemaking)	
To Create Chapter 37 – Number Pooling)	Case No. TX-2007-0086
and Number Conservation Efforts.)	

Comments of the Missouri Independent Telephone Group

Pursuant to the November 1, 2006 Notice of Public Hearing and Notice to Submit Comments,¹ the Missouri Independent Telephone Group² submits the following comments in opposition to certain aspects of the Proposed Rule.

Introduction

The MITG understands the need for number conservation. However, until there is competition in the MITG exchanges, established number conservation methods cannot be utilized. Unused MITG thousands blocks of numbers cannot be utilized outside their assigned rate center. Until the FCC and industry develops a method to utilize thousands blocks outside their assigned rate center, portions of the Proposed Rule are premature, costly, and wasteful.

The implementation of number pooling also necessitates the implementation of local number portability, or LNP. Once LNP is implemented, the MITG rural ILECs are entitled to recover LNP implementation costs by monthly charges to their customers. If the proposed rule is implemented as it is currently drafted, MITG customers could be required to pay for the ability to port their number to another carrier, but there would be

¹ 31 Mo Reg. 1758.

² Alma Communications Company, Chariton Valley Telephone Corp., Choctaw Telephone Company, Mid-Missouri Telephone Company (Otelco), MoKan Dial Inc., and Northeast Missouri Rural Telephone Company.

no other available carriers to port their numbers to. Until there is competition in a MITG rate center, there is no need for LNP or number pooling. Under the Proposed rule, MITG ratepayers could end up paying for nothing, and no entity, inside or outside MITG exchanges, would receive any benefit. Such charges would be neither just nor reasonable.

The Proposed Rule would require the MITG companies to implement thousands block number pooling, solely because they are “technically capable”, whether or not there is a need for pooling or porting. The Proposed Rule does not exempt rural telephone companies in a manner consistent with the FCC rules. The failure to adopt the same exemptions in the Proposed Rule is the cause of this waste. The Proposed Rule’s attempt to make exempt rural carriers participate in number pooling exceeds the extent of authority the FCC delegated to the Missouri Public Service Commission.

The Proposed Rule should be modified to mirror the FCC number pooling exemptions.

MITG Current Obligations

The MITG companies are currently exempt from thousands-block number pooling. The MITG companies are rural telephone companies. Except for MoKan Dial, which has implemented LNP for its 816 NPA Freeman exchange, none of the MITG companies are located within the largest 100 Metropolitan Statistical Areas where thousands-block pooling has been implemented.

The MITG companies are the only service providers receiving numbering resources within their rate centers. The MITG companies have received no requests for LNP from CLECs. Although there were prior request from CMRS providers, the MITG

companies have no obligation to implement “intermodal” LNP with CMRS providers, as this obligation has been stayed.³

Limits on Commission’s Delegated Authority

The Federal Communications Commission has assumed exclusive authority over the North American Numbering Plan that pertains to the United States. 47 CFR 52.3. The FCC has in effect a Thousands-block number pooling rule, 47 CFR 52.20.

This Commission requested, and received, delegated authority from the FCC to implement mandatory thousands-block number pooling in 4 Missouri NPAs: 417, 573, 636, and 660.⁴ In its *Delegation Order*, ¶ 11, the FCC precluded this Commission from imposing its delegated authority on rural carriers exempted by the FCC:

In this case, we require state commissions, in exercising the authority delegated herein to implement number pooling, to implement this delegation consistent with the exemption for the carriers described above.

Earlier in the *Delegation Order*, at ¶ 5, citing its Fourth Report and Order, 18 FCC Rcd at 12477, ¶ 14, the FCC explained that it had previously exempted rural telephone companies that had not received a request for numbering resources in a given rate center:

The Commission specifically exempted from the pooling requirement rural telephone companies and Tier III CMRS providers that have not received a specific request for the provision of LNP from another carrier, as well as carriers

³ FCC Orders imposing intermodal LNP were stayed and remanded to the FCC by the March 11, 2005 decision of the United States Court of Appeals for the District of Columbia, *USTA v FCC*, 400 F. 3d 29. Prior to that stay, the MITG companies had been granted suspensions or exemptions from the intermodal LNP requirement from this Commission, in docket numbers IO-2004-0453 (Alma), IO-2004-0467 (Chariton Valley), IO-2004-0546 (Choctaw), IO-2004-0545 (MoKan), TO-2004-0455 (Mid-Missouri), and IO-2004-0468 (Northeast).

⁴ *Numbering Resource Optimization*, Order and Fifth Further Notice of Proposed Rulemaking, CC Docket No. 99-200 (rel. Feb 24, 2006), “*Delegation Order*”.

that are the only service provider receiving numbering resources in a given rate center.

Recently, the FCC reminded state commissions that LNP is only reasonably required in areas where competition dictates demand. Rural Telephone Companies that are the only service provider in their rate center, and those that have not received a request for LNP, are exempt from thousands-block pooling. The FCC directed as follows:

We are guided by the principle, expressed in our pooling precedent, that it is reasonable to require LNP only in areas where competition dictates demand. For this reason, the [FCC] has exempted from pooling rural telephone companies and Tier III CMRS providers that have not yet received a specific request for the provision of LNP from another carrier and carriers that are the only service provider receiving numbering resources in a given rate center. We therefore mandate that the state commissions, in exercising the authority delegated to them herein to implement number pooling, implement this delegation consistent with the federal exemption for these carriers, as described above.⁵

The FCC anticipated delegating to this Commission number pooling outside the largest 100 MSAs, but only where there is local competition within a rate center. This Commission was not delegated authority to utilize number pooling where there are not two or more competitors within a rural carrier's rate center.

Rate Center Constraints

Thousands-block number pooling is defined as a process by which thousands-blocks may be allocated to different carriers, **within a rate center**. 47 CFR 52.20(a). Even the Proposed Rule recognizes that pooling can only occur within a rate center. See proposed 4 CSR 240-37.020 (22). The FCC, in its *Delegation Order*, explained that

⁵ Numbering Resource Optimization, Order of November 9, 2006, CC Docket No. 99-200, granting delegated authority to four additional states, at ¶ 13 and ¶ 14.

number pooling and LNP are only reasonably required where competition dictates a demand for numbers. Carriers that are the only service providers receiving numbering resources in a given rate center, or carriers that have not received a specific request for LNP, were exempted by the FCC. See *Delegation Order*, ¶ 5, and ¶ 11.

Proposed Rule 4 CSR 240-37.020, Definition of Exempt Carrier

Instead of mirroring the definitions and exemptions established by the FCC, the proposed rule in subsection (1) instead attempts to define what constitutes a bona fide request for LNP. Subsection (6) thereafter attempts to define an exempt carrier in a manner different from the definition established by the FCC. Subsection (6) contains the blanket statement that “a carrier that is technically capable of implementing LNP, but currently not providing LNP, is not exempt from number pooling”.

This is of concern because subsection (1) of proposed rule 4 CSR 240-37.030(1) requires all carriers, except “exempt” carriers, to implement pooling immediately. The rule appears to require the MITG companies to implement pooling immediately, even though there is no competition in their rate centers, and even though there is no request by a competitor for LNP. As these thousands blocks cannot be assigned outside the MITG company rate centers, the requirement to implement number pooling, and LNP, within thirty days of the effective date of the rule makes no sense. If the industry develops a protocol for pooling numbers between different rate centers, that would be the time to implement the rule as proposed. Until then it should not be adopted.

The Proposed Rule will require that rural telephone companies implement LNP now, regardless of cost or benefit. The Proposed Rule appears to preclude rural telephone companies from requesting to modify or suspend the obligation to implement

LNP. This is in contravention to the mandatory procedure established to consider modifications or suspensions set forth in 47 USC 251(f) (2).

It would be preferable, and less likely to lead to misinterpretation and litigation, for the proposed Rule to define an exempt carrier as one “exempted by the FCC”. There would be no doubt as to what carriers are subject to the Commission’s rule. There would be no doubt as to whether the Commission has exceeded the authority delegated by the FCC. There would be no doubt that rural telecommunications company would have no obligation to pool or implement LNP in advance of actual competition in their rate centers.

If the rule mirrored the FCC exemption, as the FCC changed or modified exemptions, it would not be necessary for this Commission to also have to modify the exemption section of its rule. If the rule mirrored the FCC exemption, as the FCC changes its rules and regulations as to what constitutes a bona fide request for LNP, or the timelines for implementing LNP after a bona fide request, it would not be necessary for this Commission to have to modify its rule.

WHEREFORE, the MITG respectfully requests that, for the reasons set forth above, the proposed rule not be adopted. Alternatively the MITG respectfully requests that the definition of carriers exempt from the proposed rule be changed to mirror the exemptions established by the FCC.

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