BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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| In the Matter of the Petition of Holway<br>Telephone Company for Suspension<br>of the Federal Communications<br>Commission Requirement to<br>Implement Number Portability | )<br>)<br>)<br>)<br>) | Case No. TO-2004-0403 |

## SUPPLEMENTAL PETITION

COMES NOW Holway Telephone Company ("Holway" or "Petitioner"), and pursuant to the Missouri Public Service Commission's ("Commission") April 2, 2004 *Order Directing Filing*, states to the Missouri Public Service Commission as follows:

## SUMMARY

Holway's initial February 17, 2004 Petition ("Initial Petition"), along with this Commission-ordered Supplemental Petition, establish Holway's eligibility and need for suspension and modification of the FCC's wireline-to-wireless local number portability ("LNP") requirements pursuant to 47 U.S.C. §251(f)(2). Under this statutory provision, the Commission must weigh the high LNP customer surcharges against the questionable "benefits" of mandating wireline-to-wireless LNP in remote rural areas absent any customer demand or interest. This factor alone – adverse economic impact on customers– is sufficient for Commission to grant suspension and modification. In addition, the technical challenges and undue economic burden on Petitioner also weigh in favor of suspension and modification.

## DISCUSSION

### I. Federal law allows the Missouri Commission to suspend and modify.

1. Federal law allows the Missouri Commission to suspend and modify the FCC's local number portability requirements for small rural carriers in order to avoid: (1) a significant adverse economic impact on Petitioners' subscribers; (2) an undue economic burden on Petitioner; or (3) a technically infeasible requirement. 47 U.S.C. § 251(f)(2). A showing of any one of these three criteria, along with a finding that suspension and modification is consistent with the public interest, is sufficient grounds for the Commission to grant suspension and modification under the Act. Many other state Commissions have recently granted similar requests for small rural telephone companies.[1]

### II. Petitioner has demonstrated need and eligibility for suspension.

2. Holway's existing switch is not equipped to support wireline-to-wireless LNP. Therefore, Petitioner must either update or replace this switch. Either option will be quite expensive and result in increased costs for both Holway and Holway's subscribers.[2] In addition, the choice between various switch replacement options is technically challenging in that it requires Petitioner to study alternative switch platforms and perform various cost/benefit analyses.

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[1] Alabama, Arkansas, Colorado, Idaho, Nebraska, Ohio, Oregon, South Carolina, South Dakota, Utah, Washington, and West Virginia have suspended the LNP requirements for small rural companies. Similar requests are pending before at least eighteen (18) other state utility commissions.

[2] The FCC rules allow Petitioner to allocate the total amount of LNP cost recovery among the number of access lines in Petitioners' territories and add this charge to customer bills for five years. 47 CFR 52.33(a)(1).

The verified Petition established that Petitioner serves less than two percent of the Nation's subscriber lines installed in the aggregate.[3] Thus, as explained in more detail below, Petitioner has demonstrated both need and eligibility for suspension and modification.

### A. Adverse Economic Impact on Subscribers

3. The FCC's rules allow Holway to assess a monthly, long-term number portability charge on subscribers to offset the initial implementation and ongoing costs incurred to provide LNP.[4] Petitioner's estimated implementation and ongoing LNP customer costs would result in charges of **$3.86 per customer, per month for the next five years**.

4. These estimated customer charges outweigh any questionable "benefit" that Petitioner's subscribers will receive from wireline-to-wireless LNP, and other state commissions have granted suspension and modification on this basis alone. For example, the Public Utilities Commission of Ohio recently weighed the benefits against the costs of implementing LNP for a small rural carrier and concluded that the LNP costs of over $1.00 per customer would pose a significant adverse impact on customers:

> The Commission believes that **the costs that Vaughnsville would incur to implement LNP would pose a significant adverse economic impact risk to its subscribers**. . . . **Pursuant to the FCC rules, Vaughnsville is permitted to allocate the total amount of the LNP cost recovery among the number of access lines in its territory and add this charge to its bills as a separate line item**. The FCC permits carriers to recover this federally mandated charge for five years from the date that the FCC

[3] *See* Petition, p. 5.
[4] 47 CFR 52.33(a)(1).

> approves the ILEC's tariff provision. **Therefore, assuming a minimum cost of $ 61.69 per access line, as set forth by the applicant, the monthly per line cost would be $ 1.03 per access line per month for a period of 5 years. Vaughnsville would be the first ILEC in Ohio to charge its customer over $ 1.00 per line to provide LNP to its end users**.[5]

Accordingly, the Ohio Commission found that "it is in the public interest, convenience, and necessity to **grant Vaughnsville a limited waiver of the obligation to implement LNP due to the cost/benefit analysis discussed above**."[6] After weighing the benefits against the costs, the Missouri Commission should do the same in this case.

5. The adverse economic impact is even more significant for Petitioner's subscribers in light of the fact that few, if any, subscribers are expected to port their wireline numbers to a wireless carrier. In Petitioner's rural exchanges, there appears to be little or no demand for wireline-to-wireless LNP at this time. Petitioner has received no subscriber requests for porting to a wireless carrier, and it is unlikely that rural service areas will experience any great demand for this service in the near future. This may be due in part to the fact that wireless coverage is limited or non-existent in many remote rural areas, but even large incumbent local exchange carriers serving in urban areas are seeing little demand for wireline-to-wireless porting.

[5] *In the Matter of the Application of Vaughnsville Telephone Company to Suspend or Modify its Local Number Portability Obligations*, Case No. 03-1972-TP-UNC, 2004 Ohio PUC LEXIS 33, entered Feb. 11, 2004 (emphasis added and footnotes omitted).
[6] *Id.* (emphasis added).

6. For example, at the end of 2003 BellSouth served roughly 23.7 million access lines.[7] But in a recent *ex parte* presentation before the FCC, BellSouth indicated that through February 18, 2004, its total ports were "approximately 1458 wireline to wireless ports with valid LSRs."[8] This is only .006% (far less than 1%) of BellSouth's access lines. A recent *ex parte* presentation before the FCC by Cingular Wireless noted that 97.5% of Cingular's porting was wireless-to-wireless, while wireline-to-wireless was only 2.5% of total porting.[9] These figures indicate that there is currently very little demand for wireline-to-wireless porting, and it is likely that this is even more true in rural areas.

## B. Undue Economic Burden

7. Petitioner provides service in a market that is already challenging to serve because of high costs and low population density. The FCC's LNP requirements will place an undue economic burden on Holway by forcing Holway to divert limited capital resources from the provision of reliable, high-quality services in order to implement an expensive service that has little (if any) subscriber interest or demand. The high costs of implementing the FCC's wireless LNP policy experiment will have immediate impacts upon Holway and Holway's rural subscribers. As a result, Holway will be forced to divert limited capital funds to implement LNP for a small handful of subscribers (if any) rather

[7] *See* www.bellsouth.com
[8] http://svartifoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6515784315
[9] http://svartifoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516083945

than applying those funds to upgrade infrastructure that will benefit a large number of subscribers.

### C. Technical Challenges

8. Petitioner has been working diligently to resolve the hardware and software issues related to the implementation of LNP. The initial Petition explained that Petitioner's Mitel GX 5000 switch has technical limitations, and Holway is investigating the cost to replace its switch.[10] This is an important process, and it takes time to analyze the costs and benefits of various switch replacement options. Holway's ultimate switch replacement decision will be based upon cost effectiveness and performance. This decision will have both immediate and long-term effects upon Holway and its customers.

9. Moreover, the FCC has not yet clarified many of the rating and routing issues that were left unresolved by the FCC's recent decision, and this creates an additional technical hurdle for implementing LNP because Petitioner's responsibilities have not yet been clearly defined in terms of call rating and routing.

10. Thus, it is not technically impossible or "infeasible" for Petitioner to examine various switch replacement options and determine an appropriate switch replacement solution. On the other hand, it is extremely "challenging" to do so within a short timeframe, and at this point it will be nearly impossible to complete the analysis, sign a purchase order, and have a replacement switch installed, tested, and in service by the FCC's May 24, 2004 deadline.

## III. Suspension and Modification are in the Public Interest.

### A. Existing customers will receive no benefit from the charges.

11. Implementing wireline-to-wireless LNP will not result in any tangible benefit for Petitioner's rural customers. Instead, the vast majority of rural customers will bear burdensome and unnecessary costs. And ironically, those few customers (if any) that do port their number to a wireless carrier will avoid the LNP charges, which may leave the remaining customers paying even higher charges. Petitioners currently have NO requests for wireline-to-wireless LNP from end user customers, demonstrating a complete lack of demand for this service.

### B. The LNP costs and customer surcharges are not reasonable.

12. It is unlikely that Petitioner's subscribers will view as "reasonable" an additional surcharge on their bills, especially one that is being imposed to benefit wireless carriers. Moreover, the question of "reasonableness" is relative, especially in rural areas of Missouri where median household incomes are lower than Missouri's statewide average. After weighing the estimated costs and LNP monthly recurring charges against the minimal (if any) benefit to Petitioner's customers, the Commission should grant suspension.

### C. Competition already exists in rural exchanges.

13. Wireless carriers already have a number of competitive advantages over Petitioner. For example, wireless service areas are much larger than

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[10] *Petition*, pp. 9-10.

Petitioner's wireline exchange(s), and wireless calling scopes are much wider than rural exchange calling scopes. Thus, wireless carriers are already competing in rural areas, and some of Petitioner's customers have both wireline and wireless service. Nothing prevents customers from using both wireline and wireless service or from dropping their wireline service altogether. In other words, competition is already taking place, and a temporary suspension in wireline-to-wireless LNP will have no impact on the wireless carriers' ability to compete.

### D. Suspension and modification are in the public interest.

14. Suspension and modification are in the public interest. Historically, Petitioner has refrained from system modifications without first weighing consumer benefit and demand against offsetting costs. Holway believes that the cost of upgrading its existing switch far outweighs any customer benefits. Holway has determined that switch replacement is the more cost effective solution. Therefore, Holway should be allowed a reasonable period of time to analyze various switch replacement options and select an appropriate replacement. Suspension and modification will also forestall Holway's customers from bearing the high costs for a new switch to provide a service that lacks any present customer demand or interest.

15. At this time, wireline-to-wireless LNP is an unnecessary expenditure of effort and expense for small rural carriers. Furthermore, it will needlessly raise costs for rural customers. For this reason, state commissions across the country are granting suspensions for small rural carriers such as

Petitioner. For example, the West Virginia Public Service Commission recently held:

> Since imposing the wireline to wireless number portability requirements under Section 251(f)(2) of the Act on Armstrong-Northern at this time would cause a significant adverse economic impact on users of telecommunications generally; would impose a requirement on Armstrong-Northern that is unduly economically burdensome, and would impose a requirement that is technically infeasible; and since Federal law does not preempt the Commission from making the decision in this matter and permits the Commission to exempt Armstrong-Northern for a temporary period of time, it is reasonable to suspend Armstrong-Northern's wireline to wireless number portability requirements under Section 251(f)(2) of the Act to a date certain, i.e., for one year . . . and requiring Armstrong-Northern to petition the Commission annually for so long as it wants the suspension to remain in effect and for so long as the basis for such exemption continues to exist.[11]

The Utah Public Service Commission recently issued a similar one-year suspension of the wireline-to-wireless number portability requirement for a group of small Utah companies.[12] The Colorado Public Utilities Commission has also granted one-year LNP suspensions for a group of small rural carriers.[13] After weighing the benefits against the costs, this Commission should do the same and grant Holway's Petition.

[11] *Armstrong Telephone Company-Northern Petition for Consent and Approval for Suspension of Wireline to Wireless Number Portability Obligations*, Case No. 03-1749-T-PC.
[12] *In the Matter of the Utah Rural Telecom Ass'n Request for Suspension of Wireline to Wireless Number Portability*, Docket No. 04-2424-01, 2004 Utah PUC LEXIS 49, issued Mar. 17, 2004.
[13] *See e.g. In the Matter of Sunflower Telephone Company, Inc.'s Combined Petition for Suspension and Motion for Expedited Treatment and Waiver,* Docket No. 04M-130T, *Decision Granting Petition in Part*, adopted April 13, 2004.

## IV. Petitioner has acted in response to the FCC's decision.

### A. New November 10, 2003 requirements

16. The wireline-to-wireless LNP requirements established in the FCC's November 10, 2003 are very different from the FCC's rules which do not require location portability between wireline carriers. Specifically, Petitioner must now 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 wireline number is provisioned, provided that the porting-in [CMRS] carrier maintains the number's original rate center designation following the port."[14] Thus, <u>for the first time</u>, on November 10, 2003, the FCC established a requirement for Petitioner to port numbers to a requesting wireless carrier 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 Petitioner.

17. This new requirement is <u>very</u> different from the FCC's rules prior to November 10, 2003. Specifically, the FCC's rules for wireline-to-wireline LNP require a local presence in an ILEC exchange, and ILECs are <u>not</u> required to port numbers beyond their rate center. Until the FCC's November decision, there were no different rules for wireline-to-wireless calling, and ILECs universally assumed that the wireline LNP rules applied. In other words, ILECs had seen

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[14] *In re Telephone Number Portability*, CC Docket No. 95-116, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, issued Nov. 10, 2003.

nothing from the FCC to suggest any type of requirement for geographic porting. Because the wireless carriers had not sought to establish any physical point of presence in Petitioners' exchanges, there did not appear to be any immediate possibility that LNP would be required.

18. It was only after the FCC's November 10, 2003 decision that the ILECs had any obligation to port numbers beyond their rate centers, and this new requirement is completely contrary to the FCC's existing rules for wireline-to-wireline LNP. To make matters worse, the FCC recognized that there were complicated call rating and routing issues associated with this new "about-face" in policy, yet the FCC declined to address these issues in its November decision, putting them off for some later date. Thus, Petitioner has not had "years" to prepare for wireline-to-wireless LNP. Rather, Petitioner has had only a few months to examine the FCC's completely new and not yet fully defined or resolved wireline-to-wireless LNP requirements.

19. Currently, there are no wireless carriers with a local presence in Petitioners' rate centers. Without LNP beyond rate centers, there had been no interest within these markets by either competitive local exchange carriers ("CLECs") or wireless carriers requesting LNP. If the FCC had not decided to extend LNP obligations beyond rate centers, it is unlikely that wireless carriers would have any interest in building out to rural exchanges for the few potential customers to be gained via LNP. The FCC's recent decision has resulted in a number of wireless carriers sending LNP requests regardless of their point of connection, and this has placed a tremendous burden on small rural ILECs

nationwide. Ultimately, it is the consumers in small rural exchanges that will be faced with the costs.

20. It would not have been good business for Petitioner to prepare for LNP beyond rate centers before November 10, 2003 because no such requirement existed or was even anticipated. Replacing or upgrading switches based upon such an unanticipated requirement would have raised questions from consumers and perhaps even regulators about the rationale for assuming such great costs. LNP beyond rate centers is a completely new requirement, and Holway is seeking a temporary suspension in order to determine the best long-term solution for consumers at the least long-term cost with a switch that has the capability to offer customers the services that are in demand.

## B. Petition for Suspension

21. In January, after considering and reviewing the FCC's decisions and various other industry sources, Petitioner and counsel began drafting the Petition for Suspension. The Petition was finalized in February and filed on Tuesday, February 17, 2004. Petitioner sought expedited treatment.

## C. Discussions and Meetings with Staff and Public Counsel

22. After the FCC issued its recent orders, Petitioner has been active in communicating with the Commission's Staff and the Office of Public Counsel about the costs and customer impacts of wireline-to-wireless LNP. On January 28, 2004, a representative from Holway – Mr. Bruce Copsey – met in person with John Van Eschen, Bill Voight, Mick Johnson, and Larry Henderson of the

Commission's Staff to discuss wireline-to-wireless LNP. Counsel for Holway met in person with Natelle Dietrich and Mike Scheperle from the Commission Staff on March 16, 2004 to discuss issues related to the Petition and LNP. In addition, counsel for Holway met in person with Barbara Meisenheimer from the Office of Public Counsel to discuss issues related to LNP. A number of follow-up telephone and e-mails calls to Staff and Public Counsel have been made since that time, including communication on February 26 and 27, March 2, 4, 5, 8, 15, 19, 24, and 25, and April 5, 8, and 20. Thus, Holway has been prudent in actively communicating its concerns about wireline-to-wireless LNP with Staff and Public Counsel.

## CONCLUSION

Holway respectfully requests that the Commission: (1) GRANT Holway's request for a two-year suspension of the FCC's wireline-to-wireless LNP requirements; and (2) GRANT Holway's request for modification and expressly state that Holway "is not foreclosed from seeking additional modification if and when the FCC issues a subsequent decision to address the rating and routing issues associated with porting numbers."

Respectfully submitted,

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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 electronic mail, U.S. Mail, postage prepaid, or hand-delivered on this 26th day of April, 2004, to the following parties:

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