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July 9, 2004

Pat Miller, Chairman
c/o Sharla Dillon, Docket Manager
TENNESSEE REGULATORY AUTHORITY
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives Request for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 251(f)(2) of the Communications Act of 1934, as Amended
Docket No. 03-00633

Dear Chairman Miller·

Please find enclosed an original and thirteen copies of the Brief in Support of the Coalition's Requested LNP Suspension along with an Appendix of documents.

Thank you for your attention to this matter, and if you have any questions, please let me know.

Sincerely,

Tara L. Swafford

TLS:bb
Enclosures
cc: R. Dale Grimes, Esq.
Thomas Moorman, Esq
Melvin J. Malone, Esq.
Timothy Phillips, Esq.
Edward Phillips, Esq.

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
	)	
TENNESSEE COALITION OF RURAL	)	
INCUMBENT TELEPHONE COMPANIES	)	**DOCKET NO. 03-00633**
AND COOPERATIVES REQUEST FOR	)	
SUSPENSION OF WIRELINE TO WIRELESS	)	
NUMBER PORTABILITY OBLIGATIONS	)	
PURSUANT TO SECTION 251(f)(2) OF THE	)	
COMMUNICATIONS ACT OF 1934, AS	)	
AMENDED	)	
	)	
	)	

BRIEF IN SUPPORT OF THE COALITION'S REQUESTED LNP SUSPENSION

The Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives (the "Coalition" or the "Petitioners") hereby submits this brief in support of its Amended Petition which requests a suspension of its intermodal or local number portability ("LNP") obligations pursuant to 47 U.S.C. § 251(f)(2) of the Communications Act of 1934, as amended (the "Act"). The Coalition respectfully urges the Tennessee Regulatory Authority (the "TRA") to make its decision based on the Tennessee-specific facts provided by the Coalition and in a manner that insures reliable and affordable telecommunications services for all consumers in the State of Tennessee.[1] With this perspective, the Coalition is confident that the TRA will, based on the

[1] The need for the requested relief arises from the Federal Communications Commission ("FCC") actions regarding the porting of telephone numbers from a wireline carrier to a wireless carrier or "intermodal porting." *See In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, Memorandum, Opinion and Order and Further Notice of Proposed Rulemaking,* CC Docket No 95-116, FCC 03-284, released Nov 10, 2003 *("Intermodal Order")* *See also In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, Order,* CC Docket No 95-116, FCC 04-12, released January 16, 2004 (the *"Intermodal Orders"*)

record before it, grant the Coalition the relief requested in its Amended Petition and it will advance the overall Tennessee-specific public interest.

I. SUMMARY

The Coalition members have been clear that the relief they seek is two-fold. First, ten of the Coalition members have not yet been able to complete the necessary end office modifications (*i.e*, the hardware and software upgrades required to deploy the porting capability) as well as the necessary back office functions. For these petitioning companies, a continuing suspension is requested at least until the date they each identified in Attachment 1 to the Amended Petition, as amended by their respective testimonies, until these modifications and functions are installed and properly tested. For the reasons stated on the record, this aspect of the relief is justified due to the technical infeasibility of complying with the FCC's intermodal directives at this time. Moreover, the public interest will be served as it will allow the companies to continue their efforts toward end office and back office compliance. Thus, this relief will avoid the possibility of any lapse in relief currently afforded these Coalition members and, therefore, avoid potential federal enforcement action.[2]

The second aspect of the Petition, joined by all of the Petitioners, is a request for suspension until six months after the TRA or the FCC provide appropriate policy direction to the Coalition as to the responsible party for the transport of calls to end users served by a number ported to a wireless carrier that has not established a physical point of interconnection on the

[2] The FCC issued a Notice of Apparent Liability for Forfeiture ("NAL") on May 13, 2004 to the CenturyTel, Inc operating companies in the State of Washington in the amount of $100,000 00 *See In the Matter of CenturyTel, Inc et al, Notice of Apparent Liability for Forfeiture,* File No EB-04-IH-0012, NAL Account No 200432080136, DA 04-1304, released May 13, 2004 Regardless of the outcome of the NAL, the fact remains that even the possibility of such a proceeding against a Coalition member has a chilling effect

Coalition member's network. Because the resolution of this issue is tied to the pending CMRS Arbitration before the TRA and to the federal appeal of the FCC's *Intermodal Orders*, the Petitioners request that they be granted a suspension until six months after both of these cases are finally resolved.

In all events, however, all members of the Coalition either possess the end office and back office capability to port numbers or are taking the steps necessary to deploy this capability. No member of this Coalition expects to be granted an indefinite suspension of its LNP obligations, nor has such a request been made. Contrary to the allegations of the Intervenors in this case, therefore, the Coalition is not seeking an indefinite suspension of any LNP obligation. The Coalition members are, however, requesting that the decision in this proceeding recognize and appreciate the obvious fact lost on the Intervenors – the end office capability of providing LNP and properly administering that capability through changes in the "back office" administrative functions of a company *cannot* be divorced from the completion of traffic (*i.e.*, the transport of the call) to an end user served through a ported telephone number. This is the proper scope of the Petition and the basis upon which the Coalition members are each seeking relief. Any efforts to mischaracterize any aspect of the relief or to muddy the record with extraneous issues should be rejected outright by the TRA. Moreover, since there is virtually no demand for intermodal porting, the TRA can, with confidence, proceed along this requested approach. The public interest is served by avoiding any confusion and ensuring efficient implementation rather than a piecemeal approach based in unknown and unresolved requirements.

II. A SUSPENSION IS WARRANTED PURSUANT TO 47 U.S.C. § 251(f)(2).

The applicable statutory subsection, 47 U.S.C. § 251(f)(2), provides that "a local exchange carrier with fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a state commission for a suspension or modification." Per the FCC study on telephone trends released August 7, 2003, there are approximately 188 million local telephone lines in service nationwide. Thus, Local Exchange Carriers ("LECs"), such as the Coalition members, that serve fewer than 3,760,000 access lines are qualified to seek a suspension under the Act. As provided in the testimony of the Coalition members, each member serves far fewer than this number of customer lines and thus qualifies for the relief that Congress expressly provided for in § 251(f)(2).[3]

By enacting § 251(f)(2), Congress recognized that the various State Commissions are the appropriate place to make the fact-specific and public policy determination for their own states as to when suspensions of interconnection obligations, including § 251(b)(2)'s LNP requirements, should be granted Pursuant to the Act, a suspension or modification of interconnection obligations can be granted by the TRA for the Coalition members if the TRA determines that a requested 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

[3] According to the direct testimony given on behalf of the Coalition members, the number of access lines for each company are as follows Ardmore – 2,997, Ben Lomand – 35,954, Bledsoe – 12,311, CenturyTel – 26,999, DTC – 20,795; Highland – 26,150, Loretto – 6,043, Millington – 26,630, North Central – 16,437, Crockett/Peoples/West Tennessee – 14,129, Twin Lakes – 38,011, Yorkville – 1,973, TDS Telecom – 34,231 (Wales Testimony (Ardmore) p. 2, Schlimmer Testimony (Ben Lomand), p 2, Anderson Testimony (Bledsoe), p 2, Dickey Testimony (CenturyTel), p 2, Greer Testimony (DeKalb/DTC), p 2, Galloway Testimony (Highland), p 2, Hutchins Testimony (Loretto), p 2, Howard Testimony (Millington), p 2, Rowland Testimony (North Central), p 2, Roark Testimony (Crockett/Peoples/West Tennessee), p 2, Dudney Testimony (Twin Lakes), p 2, Watson Testimony (Yorkville), p 2, Hicks Testimony (TDS), p 3) Thus, the total number of access lines for all Coalition members is 262,660

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

47 U.S.C. §251(f)(2).

This statutory provision reflects that Congress fully understood that the implementation of many of the § 251 interconnection requirements, including LNP, may not be technically feasible, economically rational, or in the *overall public interest* in areas of the nation such as those served by the Coalition. Congress' incorporation of the § 251(f)(2) suspension mechanism reflects the general understanding that the State Commissions are the appropriate authority to make this determination in their own respective State. Accordingly, by virtue of § 251(f)(2), the TRA has the authority to determine whether the LNP obligations of the Coalition pursuant to the FCC intermodal porting directives should be suspended for the time requested in the Coalition's Amended Petition. No one can seriously contend otherwise.

When establishing the initial parameters of LNP, the FCC recognized that rural or smaller LECs may have difficulty complying with the then known LNP obligations. Thus, the FCC established a framework at that time that would ensure that all "eligible LECs will have sufficient time to obtain any appropriate Section 251(f)(2) relief as provided by the statute."[4] Just recently, the FCC again confirmed the appropriateness of this form of relief. In a dramatic departure from the warnings provided only approximately six weeks earlier by the FCC's Chief of Consumer & Governmental Affairs Bureau, K Dane Snowden, FCC Chairman Powell encouraged State Commissions to consider requests such as that made in this proceeding, and specifically to consider the impact of such requests on small business such as those operated by the Coalition:

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[4] *In the Matter of Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236 (1997) at 7302-03

> The [FCC] has emphasized on many occasions the important competitive and consumer benefits of number portability. The Chief of the FCC's Consumer & Governmental Affairs Bureau noted the benefits of wireline-to-wireless porting in his May 6, 2004 letter to you. The Small Business Administration's Office of Advocacy, however, has raised concerns about the possible economic burden that intermodal porting may place on LECs that are small businesses, particularly those in rural areas. *Those concerns may warrant flexibility in evaluating pending waiver requests by small LECs under Section 251(f)(2). Accordingly, and notwithstanding Chief Snowden's letter, I urge state commissions to consider the burdens on small businesses in addressing those waiver requests and to grant the requested relief if the state commissions deem it appropriate. I also request that you share with NARUC's membership this letter encouraging state commissioners to closely consider the concerns raised by small LECs petitioning for waivers.*

(Letter from Michael K. Powell, Chairman, FCC, to Stan Wise, President, National Association of Regulatory Utility Commissioners, dated June 18, 2004 (the "FCC Powell Letter") at 1 (emphasis added) (Exhibit 1)).[5]

Accordingly, both Congress and the FCC specifically sanction the relief sought in this Petition. Likewise clear is that Congress, and now the FCC, recognized that the specific facts and circumstances confronting the Coalition are to be considered by the TRA in ruling upon the suspension request. For the reasons stated in its pre-filed testimony, pleadings, discovery responses and other filings with the TRA, including this Brief, the Coalition respectfully requests that the TRA grant its request for a suspension of its LNP obligations as described in Sections III and IV below.

III. A SUSPENSION FOR THE PETITIONERS WHO WILL NOT BE READY TO PERFORM LNP BY JULY 26, 2004 IS WARRANTED PER § 251(f)(2).

As the record reflects, there are ten companies that have requested a specific suspension for a specific time period due to the fact that they will not be ready by July 26, 2004 to implement the hardware, software and back office requirements for LNP despite their efforts to

[5] All references to Exhibits are to the Coalition's Appendix of Exhibits submitted in support of this Brief

be ready as soon as possible.[6] These Petitioners, along with their requested date for suspension, are as follows:

Ardmore Telephone Company, Inc.	November 24, 2004
Bledsoe Telephone Cooperative	December 31, 2004
Dekalb Telephone Company, Inc.	October 31, 2004
Highland Telephone Cooperative, Inc.	August 24, 2004
Loretto Telephone Company, Inc.	October 1, 2004
Millington Telephone Company	July 30, 2004
Crocket Telephone Company, Inc., Peoples Telephone Company and West Tennessee Telephone Company	December 31, 2004
Yorkville Telephone Cooperative	July 31, 2004

Even the Intervenors don't completely begrudge a grant of this aspect of the request. For example, in its direct testimony, Sprint stated that it does not "object to a limited suspension to allow Petitioners adequate time to achieve" the LNP technical capacity as set forth in Petitioners' Statements in Support of Local Number Portability Technical Capacity filed on May 19, 2004.[7] As summarized below, the ten companies seeking specific extensions for LNP technical capability reasons have demonstrated that they should be entitled to the suspension under the statutory requirements of § 251(f)(2).

Ardmore Telephone Company, Inc. ("Ardmore"): As provided in the Direct Testimony of Terry Wales, Ardmore seeks a suspension of its LNP obligations until November 24, 2004 to allow time for installation of software necessary for LNP obligations. Ardmore has already installed the required hardware but also needs extra time to put in place the back office functions necessary for LNP obligations and anticipates the back office functions will be

[6] *See* the Coalition's Response to Verizon's Discovery Request No 1 19, on file with the TRA, for a description of the LNP compliance efforts taken by the Coalition, *see also* the direct testimony of the Coalition members and the Amended Petition for the relevant costs that have been incurred to implement LNP

[7] *See* Direct Testimony of Hoke Knox, page 3, lines 10-13 Even Verizon's expert witness, William Jones, concedes that a thirty-day suspension from July 26, 2004 should be granted (*See* Direct Testimony of William Jones at pp 12-13)

completed by August 1, 2004. A four-month suspension to allow for the completion of these items is necessary for technical feasibility and to protect the best interests of the consumer.

Bledsoe Telephone Cooperative ("Bledsoe"): Based on the testimony of Mr. Gregory L. Anderson, Bledsoe is seeking a specific extension of its LNP obligations until December 31, 2004 to ensure it is completely ready to implement LNP. All hardware has already been installed, but the software is in the process of being installed, with internal testing of the software and hardware modifications for LNP capability scheduled to occur on July 23, 2004.

Dekalb Telephone Cooperative, Inc. ("DTC"): As provided in the testimony of Leslie Greer, DTC requests a suspension until October 31, 2004 in order to allow time to install a new soft switch to handle LNP with internal testing of the software and hardware modifications of LNP capability to occur on October 1, 2004. In addition, additional time is needed to have in place all of the back office functions needed for LNP. (*See* testimony of Mike Hicks of TDS Telecom). Accordingly, a date of October 31, 2004 is requested and is reasonable for both technical feasibility and the best interests of the consumer/public.

Highland Telephone Cooperative, Inc. ("Highland"): As provided in the testimony of Roger Galloway, Highland requests a suspension until August 24, 2004 due to the fact that it needs additional time to complete all of its back office functions, which it estimates will be in place by August 24, 2004. The testimony of Mike Hicks sets out the many details that are needed to complete back office functions, and Highland has adopted this testimony. Accordingly, a temporary one-month suspension until August is warranted to ensure technical feasibility and to protect the interests of the public/consumer.

Loretto Telephone Company, Inc. ("Loretto"): As provided in the testimony of Desda K. Passarella Hutchins, Loretto seeks a temporary suspension until October 1, 2004 to allow

internal testing of the software modifications of LNP capability and to have in place all of its necessary back office functions This is specifically needed because Neustar, one of its third party vendors, has an existing backlog of three months that makes compliance with the back office functions for Loretto not possible until October 1, 2004. Thus, a temporary suspension for a little over two months is warranted to ensure technical feasibility and reliable service for the consuming public.

Millington Telephone Company ("Millington"): As provided in the testimony of W. S. Howard, Millington seeks a temporary suspension until September 1, 2004 to complete its necessary back office functions, which it estimates will be in place no later August 15, 2004. In addition to the many required back office functions as provided in the testimony of Mike Hicks, extra time is also needed due to the schedule of Millington's third party vendor, Nortel, which does not anticipate it can complete the central office training until August 15, 2004. Millington has provided in its testimony a flow chart of the many functions and services required to implement LNP per the FCC's Orders. For reasons of technical feasibility and the best interests of the consumer, a temporary suspension for a little over one month should be granted.

Crockett Telephone Company, Inc., Peoples Telephone Company, and West Tennessee Telephone Company, Inc. (the "TEC Petitioning Companies"): Per the testimony of Lera Rourke on behalf of the TEC Petitioning Companies, these companies request an extension until December 31, 2004 to allow them to install the software necessary in each company's host office switch While the TEC Petitioning Companies estimate that by August 31, 2004 each host office switch should be installed and tested, the back office obligations for LNP will not be in place until December 31, 2004 Further, the host office switch for each of the TEC Petitioning Companies was only scheduled to be installed on June 30, 2004, with testing

and validation to be completed by August 30, 2004 Accordingly, an extension until December 31, 2004 for these companies is reasonable to provide for technical feasibility and the best interests of the consumer

Yorkville Telephone Cooperative ("Yorkville"): As provided in the testimony of Kerry Watson, Yorkville would like a temporary suspension only until July 31, 2004, a mere five days after the current suspension expires to insure that it has in place all its necessary back office functions, particularly tandem switch integration and testing. This is certainly a reasonable request and should be granted by the TRA.

Because each of these ten Coalition members has specific situations delaying their ability to implement LNP, the TRA should evaluate each company on its own. (*Accord* FCC Powell Letter (Exh. 1)). Certainly the statutory requirements have been met by these petitioning companies who, for the most part, have implemented the hardware requirements and are now at the mercy of third party vendors for software and back office issues. Until the necessary software and back office functions are in place, it is not technically feasible for these Coalition members to implement LNP. Forcing these companies to engage in efforts aimed at quickening the pace of end office and/or back office function capability would only increase the high costs already incurred for LNP in that a compressed timetable would direct more resources away from their day to day operations in favor of LNP issues. This would be an undue economic burden on the end user as well as the LEC who is forced to accelerate a process that has been delayed for reasons largely out of the LEC's control. Granting a few extra months to make sure the LECs get their LNP procedures in order will benefit all involved, including the consumer and the Intervenors, a result fully consistent with the public interest, and avoid even the possibility of FCC enforcement action. (*See,* n. 2, *supra,* and accompanying text).

IV. A SUSPENSION OF THE COALITION'S LNP OBLIGATIONS IS WARRANTED DUE TO THE LACK OF DIRECTION AS TO THE RESPONSBILITY FOR THE TRANSPORT OF CALLS TO A NUMBER PORTED TO A WIRELESS CARRIER.

As explicitly recognized by the FCC, the FCC has provided no direction to companies such as the Coalition members as to the responsibility associated with how calls are to be transported to a number ported to a wireless carrier that is outside the landline carrier's rate center. The FCC explicitly stated in its *Intermodal Order* that it declined to address the issue of how the rating and routing of such calls should be handled:

> Moreover, as CTIA notes, the 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

Intermodal Order at ¶¶ 39-40. Thus, there is no direction for the Petitioners as to how they are to transport calls to a number that has been ported to a wireless carrier outside of their rate center, or the responsibility for arranging that transport and the payment of charges associated with that transport.

As the TRA is aware, however, this issue is squarely before it in another proceeding involving the same parties -- the CMRS Arbitration, Docket No. 03-00585. A hearing is scheduled in the CMRS Arbitration for August 9, 2004. Because the issue as to the responsibility of any transport should be resolved in that proceeding and not here, the Petitioners respectfully request that a suspension of their LNP obligations be granted until the issue is resolved and the Coalition receives direction as to how it is to transport such calls Contrary to this common sense approach, however, the Intervenors are attempting an end run around the CMRS Arbitration by asking the TRA to resolve the transport issue in this suspension proceeding, a proceeding that does not present all of the facts and circumstances necessary to

allow for an informed decision. In contrast, the Coalition is merely seeking a suspension until six months after the transport issues are answered through 1.) the CMRS Arbitration pending before the TRA and 2.) the appeal of the *Intermodal Orders* before the D.C. Circuit Court of Appeals.[8]

The Coalition members respectfully request that the TRA take a measured look at these issues to ensure itself and the end users in the geographic areas served by the Coalition that the means by which intermodal LNP is implemented is done *only* once. If this takes additional time (as the record in this proceeding demonstrates is necessary), the Coalition members believe that such time will ultimately result in a process that is more efficient and less confusing for all involved. The merits of the transport issue are pending in the CMRS Arbitration and should not be addressed in this case.

To be sure, there is no need to rush into implementation of LNP obligations until all of the transport issues have been determined and/or court action resolving the legality of the obligations in the first instance. As provided in the testimony of the Coalition, there have been virtually no requests from customers of Coalition members for intermodal porting.[9] Indeed, the Intervenors have not established that there is any demand at all for this service in the market

[8] Currently, the status of this appeal is that the Petitioners, the United States Telecom Association, CenturyTel, Inc , the National Telecommunication Cooperative Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies, have filed their appellate brief, and oral argument is scheduled before the United States Court of Appeals for the D C Circuit on November 18, 2004, Case Nos 03-1414 and 03-1443 (*See* brief, Exhibit 2)

[9] According to the direct testimony given on behalf of the Coalition members, Ardmore, CenturyTel, DTC, Highland, Millington, North Central and Yorkville have received no customer requests to port a number to a wireless carrier. (Wales Testimony (Ardmore), p 6, Dickey Testimony (CenturyTel), Inc , p 4, Greer Testimony (DeKalb/DTC), p 6, Galloway Testimony (Highland), p 5, Howard Testimony (Millington), p 6, Rowland Testimony (North Central), p 5, Roark Testimony (TEC Petitioning Companies), p. 10, Watson Testimony (Yorkville), p 5) The remaining companies have had no more than three requests: Ben Lomand – 2, Bledsoe – 2, Loretto – 2 (inquiries), Twin Lakes – 1, TDS - 3 (Schlimmer Testimony (Ben Lomand), p 6, Anderson Testimony (Bledsoe), p 6, Hutchins Testimony (Loretto), p 1, Dudney Testimony (Twin Lakes), p 5, Hicks Testimony (TDS), p 12)

served by the Coalition

While the Intervenors may speculate as to the reasons for this lack of current demand, they effectively suggest that such demand is, in effect, irrelevant. That position defies common sense. If no record demonstrates that end users are clamoring to port their telephone number to a wireless carrier, then the Intervenors are simply suggesting that any promised benefits outweigh the carefully crafted Congressional requirements found in § 251(f)(2) that demonstrate that the provision of certain interconnection functions is not always in the public interest. The TRA, then, is being requested effectively to negate the very balancing that both Congress, and the now the FCC, recognize should occur. Thus, this lack of demand at the present time weighs in favor of a deliberate approach to the LNP obligations that ensures all the rules and policies are in place before the smaller, rural incumbent LECs are forced to comply with intermodal porting requirements that belie their current network responsibilities.

The record also demonstrates that, pursuant to the statutory framework of § 251(f)(2), the provision of intermodal porting at this time would either be technically infeasible or unduly economically burdensome or both. For example, because it is undisputed that the Coalition members are currently not required to transport calls beyond their boundaries, no such arrangements – including the necessary terms and conditions – currently exist. This is one of the very issues in the CMRS Arbitration. Thus, intermodal porting at this time is *per se* technically infeasible. Alternatively, any transport obligations of the Coalition members end at their certificated boundaries. Any customer call to a number ported to a wireless carrier outside the Coalition's rate center will involve a cost, for which the wireless carriers have not assumed

responsibility.[10] Thus, if intermodal porting were implemented at this time, the charges for transport could ultimately fall on some class of end user, and the wireless carriers have made abundantly clear those end users should be the ones served by the Coalition. Whether this cost burden is reflected in the rates charges by the Coalition members to their respective end users or borne by the Coalition members themselves, the potential cost burden associated with unanswered transport issues is, plain and simple, an undue economic burden. These practical realities should not be dismissed by the TRA as the Intervenors suggest. In that the FCC has not resolved how this cost should be apportioned and that the TRA is specifically addressing this issue in the CMRS Arbitration, a suspension of the LNP obligations is prudent for not only the end users but also for the Coalition and the public at large

In all events, however, Congress has specifically recognized the TRA's authority to make a determination as to suspension requests under § 251(f)(2). Given the uniqueness of Tennessee's position in that there is an ongoing arbitration where the specific factual issues relating to this transport issue are being litigated, decisions by other states without the benefit of these developed facts cannot and should not intrude upon the Tennessee-specific analysis required of the TRA.

For example, Sprint makes much of a case in Indiana. Sprint has failed to demonstrate, however, that the TRA's specific expertise and understanding of the intercarrier issues arising from the issues being addressed in the CMRS Arbitration were shared by the Indiana state

[10]Ardmore, Bledsoe, North Central, Crockett/Peoples/West Tennessee, Loretto, Millington and Yorkville all route calls from one of their customers to a wireless carrier to the end user's interexchange carrier ("IXC") (*See* Rebuttal Testimony of Wales (Ardmore); Anderson Bledsoe), Rowland (North Central), Roark (Crockett/Peoples/West Tennessee), Hutchins (Loretto), Howard (Millington), Watson (Yorkville)) Ben Lomand sends the calls to the IXC unless the wireless carrier has a reverse billing arrangement. (Schlimmer rebuttal testimony) Highland and Twin Lakes use the IXC unless there is a dedicated trunk to the wireless company (Galloway rebuttal testimony, Dudney rebuttal testimony) CenturyTel and DTC send the calls onto the BellSouth tandem (Dickey rebuttal testimony, Greer rebuttal testimony) TDS sends the calls in varied ways depending on the NPA-NXX rate center of the terminating wireless carrier (Hicks rebuttal testimony)

commission or that any of the Indiana-specific facts in that case have any relevance to the instant proceeding. It is not surprising, in the Coalition's view, that State Commissions may not fully grasp the importance and intricacy of the intercarrier issues between small LECs and wireless providers such as that gained by the TRA, particularly in light of the FCC's specific refusal to resolve these very matters. Adding further confusion is the fact that the FCC has undergone a dramatic about face on the sensitivity to the need for § 251(f)(2) relief within the last two (2) months. (*See generally* FCC Powell Letter (Exh. 1)).

Alternatively, were the Coalition members to engage in the "tit for tat" approach apparently embraced by some of the Intervenors, the TRA simply needs to look to the neighboring jurisdictions of Mississippi, Georgia and Missouri to find decisions contrary to the conclusions reached in Indiana. (*See* Exhibits 3, 4 & 5). In Mississippi, the Commission ordered a suspension until June 1, 2005 pursuant to § 251(f)(2) due in large part to the fact that there exist "unresolved matters" related to the transport of calls to ported number along with the fact that the lack of demonstrated end user demand for intermodal porting created a situation where the economic burden on the independent phone companies and their end users does not justify the implementation of LNP at the present time (*See* Exhibit 3 at ¶¶ 13-16). In Georgia, an extension was granted until December 31, 2004 pursuant to § 251(f)(2). (*See* Exhibit 4 at p. 2). Of additional interest is the resolution crafted in Missouri where the state commission instead of suspending LNP obligations entered an order requiring that if a request for wireline to wireless LNP is made, the LEC is not required to transport any calls beyond its local service area. This order is to remain in place in Missouri until the FCC further addresses the rating and routing issues associated with LNP. (*See* Exhibit 5, ¶¶ 2-5). Thus, the Missouri order acknowledges the very issue presented in this Petition; that is, how to make and pay for interconnection with a

wireless carrier outside the wireline carrier's rate center even if the wireline carrier is LNP-ready. (*Id.* at p. 3). The Missouri order also acknowledges that if LECs are required to deliver calls outside of their local exchange boundaries, that a substantial economic burden could be imposed upon the companies and would also lead to "additional legal and regulatory issues" relating 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" out of the LEC's service area. (*Id.* at p. 4).

In addition to the orders from these three neighboring states, attached as Exhibit 6 is a comprehensive state by state survey of LNP waiver petitions and decisions compiled by NeuStar, updated as of June 22, 2004. As seen from this attachment, 250 LNP waiver applications have been submitted in 38 states on behalf of approximately 786 LECs. From the attached document, it appears that 150 companies have been granted state LNP waivers for various periods of time; 53 LECs were denied waivers; 446 LECs were granted temporary waivers while the overall merits of their applications are being considered; 62 companies have LNP waivers pending but have not been granted temporary waivers during the interim period; and 75 LECs have withdrawn their petitions prior to final state commission action. Accordingly, there has been significant activity in other states in granting LNP suspensions pursuant to § 251(f)(2) However, as the Coalition members have made clear, the relief they seek in this proceeding is based on Tennessee-specific facts. The Coalition members are confident that, based on the Tennessee-specific understanding gained through the CMRS Arbitration, that the TRA will not cede its public policy determinations to others.

Without a suspension of the LNP obligations, the Coalition members will continue to be left without any direction as to the ultimate responsibility for the economic and technical

consequences arising from the transport of such calls, whether through the interexchange toll provider as many of them are doing or by sending the calls over the BellSouth tandem. Whether these conclusions are analyzed in terms of § 251(f)(2)'s economic burden or technical infeasibility, the result is the same and is fully supported by the record and common sense.

Given the customer confusion and complaints that may very well result should haphazard implementation of intermodal LNP be ordered, the Coalition urges the TRA to postpone the implementation of LNP until there is a uniform approach for all involved as to how these calls are to be transported. Due to the present lack of demand, there is no need to rush to judgment. Further, as urged in the recent letter from Chairman Powell, State Commissions like the TRA, should be flexible in evaluating the very type of request before the TRA. All of these factors, in conjunction with the record in this proceeding, continue to form a clear-cut demonstration that the public interest would be served by a grant of the fullest relief being requested by the Coalition. Accordingly, the Coalition respectfully requests that the TRA grant its request for a suspension of its LNP obligations pursuant to § 251(f)(2) until six months after the resolution of the unanswered transport issues in the CMRS Arbitration and the appeal of the *Intermodal Orders*.

V. THE IRRELEVANT AND INCORRECT ARGUMENTS OF THE INTERVENORS SHOULD BE DISREGARDED.

In a clever attempt to obscure the two straightforward issues in this case, the testimony of the Intervenors is riddled with irrelevant and incorrect assertions. As shown below, the TRA should give no weight to their smoke screens.

- ***The lack of demand for LNP supports this Petition.*** In his rebuttal testimony on behalf of Verizon, Mr. Jones ironically observes that the rural LECs should not be concerned with the cost of routing calls because the Coalition has projected little or no demand. (*See* p. 4 of rebuttal

testimony). This observation misses the point. The lack of demand is relevant to affording the TRA the ability to avoid a haphazard implementation of LNP for the Coalition members, and it does not justify the wireless carriers' efforts to end run the pending CMRS Arbitration and use this proceeding to establish routing and transport obligations for the rural LECs beyond the LNP situation The broader issue of transport obligations is squarely an issue within the CMRS Arbitration and it should be resolved there. While the number of calls to a ported number (to a wireless carrier) may be small, there are many other calls (*i.e* , regular calls to wireless users, calls to CLECs, and calls to BellSouth) that could be impacted by decisions or some new obligations regarding transport responsibility beyond the LEC's incumbent network If the rural LECs were required to transport local exchange service calls to distant locations, this would expose the LECs to new requirements that would extend to all types of traffic. The potential exposure of this extraordinary cost would be enormous, particularly where CLECs may be serving an ISP with nothing but incoming traffic. Therefore, the precedent that would be created potentially extends to much more traffic than calls to ported numbers. Thus, the lack of LNP demand is not a factor disfavoring this Petition; but, as referred to in this Brief, should persuade the TRA that there is no need to rush LNP until a deliberate and proper decision has been made on the transport issue.

- ***The rules that apply to a FCC waiver request are not applicable here.*** Mr. Jones also incorrectly suggests that, per the FCC, there should be no consideration of a public interest balance between costs and demand and the burdens associated with the immediate obstacles that would be facing the LECs in light of the lack of full resolution of the issues. (*See* p. 7 of rebuttal testimony). However, this is only in the context of FCC waivers (which are designed to address much different situations and have different criteria for consideration than do suspension

requests before a state commission). The burdens and public interest criteria pursuant to § 251(f)(2) obviously involve an evaluation of a balanced public interest result. Certainly, the imposition of costs and burdens when there is little or no demand is a condition that reflects directly on the conditions Congress intended a state commission to address under § 251(f)(2) Mr. Jones further confuses the FCC waiver requirements with a § 251(f)(2) proceeding when on page nine of his rebuttal testimony he suggests that in this proceeding Petitioners must provide the same information that the FCC requires for a waiver request. Again, Mr. Jones is incorrect to suggest that the FCC rules apply to this case.[11]

- ***Neither this Amended Petition nor Mr. Watkins' testimony is a collateral attack on the FCC's Orders regarding LNP.*** As explained above, the FCC expressly declined to answer both the issues of how calls to a number ported to a wireless carrier outside the rate center of the LEC are to be transported and what the responsibilities of carriers beyond the LEC's network should be. Because the FCC declined to decide this issue, Mr. Cole's charge on page three of his rebuttal testimony that the Coalition is merely collaterally attacking the FCC's decision ignores not only the suspension procedures provided for in § 251(f)(2) but also the clear language of the FCC's Intermodal Order. (*See supra*, p. 11).

- ***Sprint cannot impose interconnection obligations on the Coalition that are not required.*** In his rebuttal testimony on behalf of Sprint, pages 7-11, Mr. Knox makes a series of incorrect statements as to the Petitioners' interconnection obligations. Mr. Knox's comments are nothing more than an attempt to impose on the rural LECs, through the guise of LNP, interconnection arrangements that go well beyond those required by the FCC. The rural LECs

[11] Mr Knox on behalf of Sprint also analogizes to a situation that is not applicable to this case when he discusses that Citizens is routing calls (*See* page 2 of rebuttal testimony) What Citizens does is not a matter for consideration here.

have no obligation to transport local traffic to points of interconnection with Sprint far beyond the LEC's own networks. The FCC and the courts have stated that a LEC is free to treat as interexchange service any call to a point of interconnection that is beyond the local calling area of the originating LEC end user.[12] Toll calls are transported by interexchange carriers; toll calls are interexchange service. The LECs hand off toll calls to competing interexchange carriers consistent with the equal access requirements. There is no requirement for a LEC to deliver local exchange service calls to some distant point or to the "terminating carrier's switch" when that switch is beyond the local calling area and beyond the point that a LEC transports any other local exchange service call.

The issues incorrectly presented by Sprint are already before the TRA in the CMRS Arbitration. The resolution of those issues should not take place here or under the misplaced confusion of LNP implementation.

Mr. Knox, at pages 8 - 9 of his rebuttal, also contends that Sprint can unilaterally demand that the Petitioners be responsible for the costs of transport to the wireless carrier's point of interconnection in a LATA or to the wireless carrier's switch, no matter where they may be. Sprint apparently relies upon 47 C.F.R. §51.701(c). When placed in context, however, "the interconnection point" referenced in 47 C.F.R. §51.701(c) is to a location "within the incumbent LEC's network." 47 C.F.R. §51 305(a)(2); *see also* 47 U.S.C. §251(h)("For purposes of this section, the term `incumbent local exchange carrier' means, *with respect to an area*, the local exchange carrier that (A) on the date of enactment of the Telecommunications Act of 1996,

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[12] *See, e g* Memorandum Opinion and Order, *In the Matter of TSR Wireless, L L C*, et al, *v US West Communications, Inc* et al, released June 21, 2000, in File Nos E-98-13, E-98-15 E-98-16, E-98-17, E-98-18 at para 31, *affirmed Qwest Corporation v FCC*, 252 F 3d 462 (D C Cir 2001), *see also Mountain Communications, Inc v Qwest Communications*, FCC 02-220, *Order on Review*, July 25, 2002, para 6, vacated in part and remanded, *Mountain Communications v FCC*, 355 F 3d 644, 647 (D C Cir 2004) wherein the Court of Appeals recognized that LECs may treat as toll calls any call to a mobile user that must be delivered to an interconnection point beyond the normal local calling area

provided telephone exchange service *in such area. . . .*")(emphasis added). The FCC's interconnection rules addressing the exchange of traffic subject to the so-called reciprocal compensation requirements envision only that traffic exchange take place at an "interconnection point" on the network of the incumbent LEC, not at an interconnection point on some other carrier's network [13]

Moreover, the Act does not require an incumbent LEC to provision, at the request of another carrier, some form of interconnection arrangement that is superior or extraordinary to that which the LEC provisions for itself. The LEC's obligations are only to provide interconnection arrangements that are at least equal to those that the LEC provides for itself and its own services, not superior.[14] However, the suggestion by Sprint that a LEC could be required to provision local exchange carrier services with transport to some distant point, or to purchase services from some other carrier for transport of traffic beyond the rural LEC's network

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[13] "Incumbent LECs are required to provide interconnection to CMRS providers who request it for the transmission and routing of telephone exchange service or exchange access, *under the plain language of §251(c)(2)* " *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499 at ¶1015 (emphasis added), *see also id* at ¶¶ 181-185 Sections 251(c)(2)(A)-(C) of the Communications Act of 1934, as amended (the "Act"), in turn, states.

> (2) Interconnection -- The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection *with the local exchange carrier's network*-- (A) for the transmission and routing of telephone exchange service and exchange access, (B) *at any technically feasible point within the carrier's network*, (C) that is *at least equal in quality to that provided by the local exchange carrier to itself* or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection

47 U S C §§251(c)(2)(A)-(C)(emphasis added)

While it is true that §251(c) of the Act and §51 305(a)(2) of the FCC's rules addresses a form of interconnection associated with the §251(c)'s additional interconnection that, under §251(f)(1), do not apply to the Petitioners (who are each Rural Telephone Companies (*compare* 47 U S C §§ 153(37), 251(c) and 251(f)(1)), Sprint's contention would impose an even greater interconnection obligation than the §251(c) additional obligations that Congress did not require That result is equally erroneous

[14] The United States Court of Appeals for the 8th Circuit affirmed the conclusion that a LEC is not required to do for a requesting carrier any more that the LEC does for itself In rejecting FCC rules that would have required an incumbent LEC to offer a superior arrangement to that which the incumbent LEC provides for itself, the 8th Circuit concluded that "the superior quality rules violate the plain language of the Act " The court also concluded that the standard of "at least equal in quality" does not mean "superior quality" and "[n]othing in the statute requires the ILECs to provide superior quality interconnection to its competitors " *Iowa Utilities Board v Federal Communications Commission*, 219 F 3d 744, 757-758

would represent just such an extraordinary arrangement. While an incumbent LEC may, at the incumbent LEC's sole discretion, voluntarily agree to extraordinary arrangements, the LEC would not do so unless the requesting carrier is prepared to compensate the incumbent LEC or be responsible for the extraordinary costs. This would be the same sort of extraordinary arrangement that would be implied under wireline-wireless LNP where there is no interconnection arrangement or other business arrangement in place. And the FCC has stated explicitly that it has not decided this issue. *Intermodal Order* at ¶¶ 39-40.

Not only, then, is Sprint effectively suggesting a requirement for a superior quality interconnection be established, Sprint apparently would also impose such a requirement without taking responsibility for the extraordinary costs. It is, however, a wireless carrier's obligation to provision its own network or arrange for the use of some other carrier's facilities outside of the incumbent LEC's network as the means to establish that "interconnection point" on the network of the incumbent LEC. It is obviously not technically feasible for an incumbent LEC to establish an interconnection point on its network at a point where the incumbent is neither a service provider nor has any network.

In any event, the TRA is well aware that: (1) the Petitioners generally do not offer or provide any local exchange calling service to their own customers that would involve transport to distant locations as apparently suggested by Sprint; (2) the Petitioners' network and transport obligations *end at their respective certificated boundaries*; and (3) that transport obligations remain an issue that the FCC specifically left unresolved in its *Intermodal Order*

In light of these facts, whether Sprint's suggestion to the contrary equates to a request that is infeasible because it is premised on the fulfillment of a network arrangement that does not exist and for which there is no legal requirement, or a request that imposes undue economic

burden on the Coalition because it would require some extraordinary superior arrangement, the fact remains that either potential outcome warrants suspension under § 251(f)(2)(A).

Mr. Knox's further contention at page 6 of his rebuttal that, effectively, the TRA should ignore the fact that there are no interconnection agreements in place is equally without basis. The FCC specifically made clear that interconnection agreements would not be required *"solely for the purpose of porting numbers."* *Intermodal Order* at ¶34 (emphasis added); *see also id.* at ¶35. The record reflects that the need for the interconnection arrangements discussed by the Coalition arise from far more than the terms and conditions associated with intermodal porting. The vacuum created by the lack of policy direction associated with the transport responsibility over any physically indirect connection that may, from the rural LECs' perspective, require the use of transport facilities of another carrier can only be addressed through interconnection agreements and business arrangements. Under the general guise of "rating and routing" in an LNP environment, Sprint's contentions amount to nothing more than an effort to gloss over the realties which the TRA is fully aware and are a misplaced attempt to force new responsibilities on the Coalition that are properly the responsibility of Sprint.

- ***Routing to tandems is not a viable option.*** In his testimony, Mr. Jones of Verizon suggests that the rural LECs can simply route calls to tandems. (*See* pp. 4-5 of rebuttal testimony). Routing traffic to tandems leaves unanswered the question of the responsibility for the cost of this routing. If the wireless carriers are prepared to assume all responsibility for such costs and to indemnify the rural LECs against any charges that tandem providers may want to assess for this intermediary function, then the LECs would be willing to consider such business arrangements which may address some of the issues. But the wireless carriers do not have such

business arrangements in place and do not appear to be willing to put in place such arrangements.

- ***Indirect arrangements are not already in place.*** Mr. Cole suggests in his testimony on behalf of Verizon that there are already "indirect arrangements" in place. (*See* p. 3 of rebuttal testimony). This is not factually correct. The arrangements that are in place were established unilaterally by BellSouth and typically under BellSouth's role as an intrastate interexchange carrier. Also, there are no terms and conditions in place for the transit of traffic to distant points There are many business terms and conditions presented by routing calls to CMRS providers that are, as a matter of fact, not in place. Unless proper terms and conditions are in place, ones that would address the obligations of the rural LECs consistent with the requirement that they do no more for a requesting CMRS provider for local calls than the rural LECs do for themselves, there are unresolved issues which present economic burdens for the rural LECs without suspension. These issues are the subject of the pending CMRS Arbitration.

- ***The issue of 1000 block number pooling does not diminish the merits of this Petition.*** Verizon's suggestion on pages 6 - 7 in Mr. Cole's rebuttal testimony that 1000 block number pooling will be adversely impacted by an LNP suspension is incorrect. In its Docket No. 000851, the TRA mandated 1000 block number pooling only for LNP capable central offices in the 615 and 901 area codes Since the petitioning companies were not LNP capable, number pooling has not been an issue. In addition, as the TRA is aware, immediate number exhaustion issues have been addressed and, as a result of NPA code splits and overlays, the current life of Tennessee NPA codes ranges anywhere from the year 2012 to the year 2021. As a result of the TRA's number conservation actions, it is likely that the outstanding critical issues relating to the

implementation of LNP will be resolved well before current number resources are exhausted. Therefore, number conservation should not impede the TRA's ability to grant this Petition.

- ***The Verizon call center in Murfreesboro has no relevance to this proceeding.*** Verizon makes consistent reference in its testimony and filings to its "state-of-the-art port center located in Murfreesboro, Tennessee." This port center, however, was established as a nationwide customer call center for Verizon (see Exhibit 7, news articles), and the Coalition's access lines constitute only .0014% of the access lines in the nation as of 2002. (*See* Watkins rebuttal testimony, p. 22). Thus, the outcome of this case will have little to no impact on this existence of this center and is not a factor to consider under §251(f)(2).

- ***The Coalition does not need to provide actual costs for transporting calls to ported numbers.*** In his testimony on behalf of Sprint, Mr. Knox complains that the Petitioners did not provide actual costs. (*See* page 3 of rebuttal testimony). This is an impossibility argument that does not make sense in that the actual costs can only be known if the Petitioners actually implemented LNP – something that has not been done and would be contrary to the Coalition's request to suspend the requirement. Apparently, Mr. Knox would have the Petitioners implement LNP to determine the costs and then ask for suspension.

CONCLUSION

For the reasons stated in the testimonies on behalf of the Coalition, the pleadings on file, the discovery on file, and the arguments in this Brief, the Coalition should be granted a suspension of its LNP obligations pursuant to 47 U.S.C. § 251(f)(2) for the latter of the dates listed above on page seven for ten of the Petitioners, six months after the date by which the November 10, 2003 and January 16, 2004 FCC *Intermodal Orders* are no longer subject to

appeal, and six months after the date by which the TRA has provided direction to the Petitioners on the rating and routing issues raised in the pending CMRS Arbitration

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via the method listed below on July 9th, 2004, upon:

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