

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-207T

IN THE MATTER OF HAXTUN TELEPHONE COMPANY'S PETITION FOR SUSPENSION
OF LNP REQUIREMENTS.

DECISION GRANTING PETITION

Mailed Date: May 24, 2004
Adopted Date: May 12, 2004

I. BY THE COMMISSION

A. Statement

1. On April 27, 2004, Haxtun Telephone Company (Haxtun) filed a Combined Petition for Suspension and Motion for Expedited Treatment and Waiver of Response Time (Petition) requesting that the Commission temporarily suspend its wireline to wireless local number portability (LNP) obligations to Commercial Mobile Radio Service (CMRS or wireless) providers in its exchanges until May 24, 2006. Haxtun makes this request pursuant to § 251(f)(2) of the Telecommunications Act of 1996 (the Act), 47 U.S.C. § 251 (f)(2).

2. At our weekly meeting on April 28, 2004, we shortened the notice period of this Petition to ten days. No interventions were filed in this matter.

3. The Haxtun exchanges, Haxtun, Fleming, and Crook are geographically located outside the Denver Metropolitan Statistical Area (MSA), which is the only MSA in Colorado that is in the top 100 in the United States. The Federal Communications Commission (FCC) rules require that telecommunications carriers providing service outside the top 100 MSAs provide LNP by May 24, 2004, or six months after receiving a request to port a number, whichever is

later. Haxtun, in its Petition, requests that we find under § 251(f)(2) that it is contrary to the public interest, unduly economically burdensome, and technically infeasible for the Petitioner to implement LNP in its exchange.

4. Section 251(f)(2) of the Act provides:

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

(A) is necessary –

- i. to avoid a significant adverse economic impact on users of telecommunications service 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.

5. Haxtun qualifies as a “rural telephone company” as defined in 47 U.S.C. § 153(37) and is a local exchange carrier with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide.

6. Haxtun states in its Petition that one of the most significant reasons why this Petition should be granted, and why the implementation of LNP by rural carriers is contrary to the public interest and unduly economically burdensome, is because of the complete lack of any demand for LNP in the Haxtun exchanges. Haxtun asserts that it has not received any customer requests to port a number since the enactment of the Act eight years ago, even with the increased publicity since November 2003.

7. As to economic burden, Haxtun states, and has provided evidence to support the statement, that its costs for implementing LNP will total approximately \$143,850 or \$1.39 per month per access line with a five-year recovery period. Haxtun asserts that it is contrary to the public interest to force Haxtun customers (currently 1,721 access lines) to incur the expense for a service they do not demand.

8. Haxtun does admit in its Petition that it has received two requests for LNP service by May 24, 2004, from CMRS providers, Verizon Wireless and NE Colorado Cellular, Inc. (NECC). To Haxtun's knowledge, none of its end-use customers has made any request to have his or her wireline number ported to a wireless carrier. We note that neither Verizon Wireless nor NECC filed an intervention in this docket.

9. In its November 10, 2003 order,¹ the FCC stated: "Carriers inside the 100 largest MSAs (or outside the 100 largest MSAs, after the transition period) may file petitions for waiver of their obligation to port numbers to wireless carriers, if they can provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules." This high level of scrutiny imposed by the FCC is a direct result of the FCC's strong statement that "we continue to deem rapid implementation of number portability to be in the public interest."² Further, in its November 10, 2003 order, the FCC reiterated its position that "number portability promotes competition between telecommunications service providers by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers."³

¹ See In Re Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No. 95-116 (November 10, 2003 Order).

² See In Re Telephone Number Portability, CC Docket No. 95-116 (January 16, 2004 Order).

³ November 10, 2003 Order, at ¶ 4.

10. We agree with Haxtun that consumers will not likely be adversely impacted by the grant of a waiver to this carrier. According to the Petition, Haxtun has not received requests or even inquiries from its customers concerning its ability to port their wireline numbers. This fact demonstrates to us the impracticality of imposing such an economic burden on Haxtun's customers without purpose.

11. We agree with the FCC's statement in its January 16, 2004 order, that:

. . . [I]n order to offer intermodal portability to their subscribers, these smaller carriers must acquire the hardware and software necessary to provide porting, make the necessary network upgrades, and ensure that their upgraded networks work reliably and accurately. Some of the Petitioners also assert that Two Percent Carriers often lack the experience and technical experience with number porting to quickly implement the necessary upgrades to their systems to ensure accurate porting. Accordingly, we conclude that special circumstances exist to grant Two Percent Carriers who have not previously upgraded their systems to support LNP a limited amount of additional time to overcome the technological obstacles they face to successfully meet a request for wireline-to-wireless porting.⁴

12. In that order, the FCC granted these rural providers an additional six months to provide LNP. We find that the requested two-year waiver of the LNP requirements should give Haxtun adequate time to make necessary facilities hardware and software upgrades, and to work with vendors for the administration part of portability.

13. Haxtun is required to implement LNP in its exchange no later than May 24, 2006, absent further order from this Commission.

⁴ January 16, 2004 Order.

II. ORDER

A. The Commission Orders That:

1. The Petition for Suspension of the Local Number Portability Requirements of Haxtun Telephone Company is granted in part, consistent with the above discussion.

2. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 12, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners