

Decision No. R04-0115-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 03M-505T

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IN THE MATTER OF THE PETITION OF CENTURYTEL OF EAGLE, INC. FOR  
SUSPENSION OF CERTAIN LNP REQUIREMENTS.

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**INTERIM ORDER OF  
ADMINISTRATIVE LAW JUDGE  
DALE E. ISLEY  
REQUESTING SUPPLEMENTATION OF  
AGREED STATEMENT OF MATERIAL  
FACTS OR, IN THE ALTERNATIVE,  
ADVISEMENTS CONCERNING  
AVAILABLE HEARING DATES**

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Mailed Date: January 30, 2004

**I. STATEMENT**

1. The captioned petition of CenturyTel of Eagle, Inc. (CenturyTel), was filed with the Colorado Public Utilities Commission on November 20, 2003. Public notice of the petition was provided on November 26, 2003. Voicestream PCS II Corporation, doing business as T-Mobile USA, Inc. (T-Mobile), AT&T Wireless Services of Colorado, LLC, AT&T Wireless PCS, LLC, Fort Collins-Loveland Cellular Telephone Company, and Greeley Cellular Telephone Company (collectively, AT&T Wireless) have filed timely interventions.

2. The CenturyTel petition (Petition) seeks a six-month suspension (*i.e.*, until May 24, 2004) of the Federal Communications Commission's (FCC) November 10, 2003, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* (LNP Order) insofar as it requires CenturyTel to implement local number portability (LNP) in its Lake George

exchange on or before November 24, 2003.<sup>1</sup> The Petition is brought pursuant to Section 251(f)(2) of the Telecommunications Act of 1996 which allows local exchange carriers with fewer than 2 percent of the nation's subscriber lines in the aggregate nationwide (Two Percent Carriers) to petition a state commission for a suspension or modification of the requirement to provide LNP.

3. This matter is currently postured for resolution on a no-hearing, summary judgment basis. *See*, Decision Nos. R03-1463-I and R04-0039-I. In that regard, the parties have filed an Agreed Statement of Material Facts (Statement of Facts), and two of the parties, CenturyTel and T-Mobile, have filed initial briefs in support of their respective positions.<sup>2</sup> Response briefs are due to be filed on or before February 6, 2004.

4. On January 13, 2004, four days after submission of the parties' Statement of Facts, the FCC adopted an Order in CC Docket No. 95-116 (Waiver Order) relating to the LNP issue. The Waiver Order grants a limited waiver of the wireline-to-wireless porting requirement imposed by the LNP Order to certain Two Percent Carriers who operate in the top 100 Metropolitan Statistical Areas (MSAs). Two Percent Carriers that meet the conditions described in the Waiver Order have until May 24, 2004, to comply with the wireline-to-wireless porting requirement. The waiver applies to all Two Percent Carriers operating within the top 100 MSAs that had not received a request for local number porting from either a wireline carrier prior to May 24, 2003, or a wireless carrier that has a point of interconnection or numbering

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<sup>1</sup> On November 28, 2003, the Commission temporarily suspended the LNP requirements imposed upon CenturyTel by the LNP Order in the Lake George exchange. *See*, Decision No. C03-1340. It then referred the matter to the undersigned administrative law judge (ALJ) for resolution on an expedited basis.

<sup>2</sup> AT&T Wireless did not submit an initial brief. Therefore, it is unclear whether it remains an active party in this proceeding.

resources in the rate center where the customer's wireline number is provisioned (Covered Carriers).

5. Thus, a determination of whether CenturyTel qualifies for the limited waiver provided by the Waiver Order has become a threshold issue in this proceeding since the relief requested by the Petition is effectively rendered moot if CenturyTel so qualifies.

6. Paragraphs 5 and 7 of the Statement of Facts establish that CenturyTel is a Two Percent Carrier and that its Lake George exchange is located in one of the top 100 MSAs. However, the remaining qualifying conditions set forth in the Waiver Order (*i.e.*, whether CenturyTel received a request for local number porting from either a wireline carrier prior to May 24, 2003, or a wireless carrier that has a point of interconnection or numbering resources in the Lake George rate center where the customer's wireline number is provisioned) are not specifically addressed by the Statement of Facts.<sup>3</sup> Therefore, without a stipulation as to the facts underlying these conditions, it is not possible to determine whether CenturyTel qualifies for coverage under the Waiver Order on a summary judgment basis.

7. By virtue of the foregoing, the parties must reach a stipulation as to the facts underlying the qualifying conditions set forth in the Waiver Order if they wish to have the limited waiver issue resolved on a summary judgment basis. If the parties wish to proceed in that manner, they must submit a supplement to the Statement of Facts on or before February 6,

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<sup>3</sup> Paragraph 9 of the Statement of Facts indicates that the parties dispute whether a February 21, 2003, LNP request directed to CenturyTel by T-Mobile constitutes a "bona fide" request under applicable FCC rules. However, this leaves open the question of whether a wireline carrier requested LNP from CenturyTel prior to May 24, 2003. In addition, CenturyTel and T-Mobile touch on the subject conditions in their initial briefs but they do not provide a sufficient factual basis that would allow the ALJ to conclude that they have been satisfied. Indeed, there is disagreement on this point with CenturyTel contending that it is "plainly" covered by the Waiver Order and T-Mobile contending that CenturyTel's receipt of LNP requests prior to May 24, 2003, disqualifies it from such coverage.

2004, along with their response briefs. Such supplement must contain a statement of agreed facts addressing the following issues:

- i. whether CenturyTel received a request for local number portability in its Lake George exchange from a wireline carrier prior to May 24, 2003; and
- ii. whether CenturyTel received a request for local number porting from a wireless carrier that has a point of interconnection or numbering resources in its Lake George exchange where the customer's wireline number is provisioned.<sup>4</sup>

8. In the event the parties fail to submit the supplement described above, the requirement for submission of response briefs imposed by Decision No. R03-1463-I will be suspended and the matter will be set for hearing on a forthwith basis for the purpose of eliciting evidence pertaining to the above issues.<sup>5</sup>

## **II. ORDER**

### **A. It Is Ordered That:**

1. CenturyTel of Eagle, Inc., Voicestream PCS II Corporation, doing business as T-Mobile USA, Inc., AT&T Wireless Services of Colorado, LLC, AT&T Wireless PCS, LLC, Fort Collins-Loveland Cellular Telephone Company, and Greeley Cellular Telephone Company shall, on or before February 6, 2004, submit a supplement to the Agreed Statement of Material Facts filed in this matter on January 9, 2004, in accordance with the provisions of Section I, Paragraph 7 above.

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<sup>4</sup> In its Notice of Compliance with Decision No. C03-1340 filed on December 2, 2003, CenturyTel identified Verizon Wireless, Western Wireless, AT&T Wireless, T-Mobile, and Sprint as wireless carriers who had submitted requests for LNP for the Lake George exchange. Therefore, this issue could also be framed as follows: whether any of these wireless carriers have a point of interconnection or numbering resources assigned to them in the Lake George exchange.

<sup>5</sup> Although an effort will be made to accommodate the schedules of all concerned in connection with any hearing setting, that may not be possible given the expedited nature of this proceeding.

2. In the event CenturyTel of Eagle, Inc. Voicestream PCS II Corporation, doing business as T-Mobile USA, Inc., and AT&T Wireless Services of Colorado, LLC, AT&T Wireless PCS, LLC, Fort Collins-Loveland Cellular Telephone Company, and Greeley Cellular Telephone Company fail to submit the supplement described above, the requirement for submission of response briefs imposed by Decision No. R03-1463-I will be suspended and the parties shall, on or before February 6, 2004, submit an advisement concerning their availability for a one-day hearing in February 2004.

3. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge