

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03M-505T

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

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
DISMISSING PETITION AS MOOT**

Mailed Date: February 12, 2004

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. The captioned petition of CenturyTel of Eagle, Inc. (CenturyTel), was filed with the Colorado Public Utilities Commission (Commission) on November 20, 2003. 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, 2003.¹

2. 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

¹ The Petition was brought pursuant to Section 251(f)(2) of the Telecommunications Act of 1996. That provision 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.

Company, and Greeley Cellular Telephone Company (collectively, AT&T Wireless) filed timely interventions.

3. 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. On December 17, 2003, it referred the matter to the undersigned administrative law judge (ALJ) for resolution on an expedited basis.

4. A pre-hearing conference was held on December 30, 2003, at which time the parties generally agreed that the issues involved in this proceeding could be resolved on a “summary judgment” basis without the necessity of conducting discovery, submitting pre-filed testimony, or holding a formal hearing. A procedural schedule designed to resolve the Petition in that manner was established on December 31, 2003. *See*, Decision No. R03-1463-I.²

5. On January 13, 2004, four days after submission of the parties’ Statement of Facts, the FCC adopted an Order relating to the LNP issue. *See, In the Matter of Telephone Number Portability*, Order, CC Docket No. 95-116 (released January 16, 2004) (Waiver Order).

6. 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

² Decision No. R03-1463-I also established an alternative procedural schedule in the event the parties were unable to agree on a Statement of Undisputed Material Facts (Statement of Facts) in connection with the summary judgment procedure. That procedural schedule was vacated when the parties submitted their Statement of Facts on January 9, 2004. *See*, Decision No. R04-0039-I.

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

7. In light of the above, a determination that CenturyTel is a Covered Carrier under the Waiver Order effectively renders the relief requested by the Petition moot. Therefore, on January 30, 2004, the ALJ requested that, on or before February 6, 2004, the parties either supplement their Statement of Facts to include a stipulation pertaining to the facts underlying the qualifying conditions set forth in the Waiver Order or, in the alternative, to advise him of their availability for a forthwith hearing to elicit evidence relating to those facts. *See*, Decision No. R04-0115-I.

8. On February 6, 2004, T-Mobile filed its Notice of Withdrawal of Intervention (T-Mobile Withdrawal) and on February 11, 2004, AT&T Wireless filed its Notice of Withdrawal of Intervention (AT&T Wireless Withdrawal). The T-Mobile Withdrawal acknowledges that CenturyTel is a Covered Carrier under the Waiver Order and, therefore, is entitled to the limited waiver granted therein with respect to its Lake George exchange. The AT&T Wireless Withdrawal does not specifically address that issue. However, it can be reasonably inferred that AT&T Wireless' decision to withdraw its intervention was also based on its understanding that CenturyTel qualifies for the limited waiver provided by the Waiver Order.

9. By virtue of the foregoing, it is found and concluded that CenturyTel is a Covered Carrier under the Waiver Order and, as a result, qualifies for the limited waiver provided therein in connection with its Lake George exchange. Accordingly, the Petition will be dismissed as

moot and any remaining procedural requirements imposed by Decision Nos. R03-1463-I and/or R04-0115-I will be vacated. In addition, the temporary suspension of the LNP requirements imposed upon CenturyTel by the LNP Order granted by Decision No. C03-1340 will be terminated.

10. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The Petition of CenturyTel of Eagle, Inc., seeking a six-month suspension of the Federal Communications Commission's November 10, 2003, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* insofar as it requires CenturyTel of Eagle, Inc., to implement local number portability in its Lake George exchange on or before November 24, 2003, is dismissed as moot.

2. The temporary suspension of the local number portability requirements imposed upon CenturyTel of Eagle, Inc., by the Federal Communications Commission's November 10, 2003, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* granted by Decision No. C03-1340 is terminated.

3. Any remaining procedural requirements imposed by Decision Nos. R03-1463-I and/or R04-0115-I entered in this docket are vacated.

4. Docket No. 03M-505T is closed.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge