

Decision No. R04-0845-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-129T

IN THE MATTER OF BIG SANDY TELECOM INC.'S PETITION FOR SUSPENSION OF
LNP REQUIREMENTS.

DOCKET NO. 04M-131T

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

DOCKET NO. 04M-138T

IN THE MATTER OF AGATE MUTUAL TELEPHONE COOPERATIVE ASSOCIATION'S
PETITION FOR SUSPENSION OF LNP REQUIREMENTS.

DOCKET NO. 04M-137T

IN THE MATTER OF EASTERN SLOPE RURAL TELEPHONE ASSOCIATION'S PETITION
FOR SUSPENSION OF LNP REQUIREMENTS.

DOCKET NO. 04M-130T

IN THE MATTER OF SUNFLOWER TELEPHONE COMPANY, INC.'S PETITION FOR
SUSPENSION OF LNP REQUIREMENTS.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
GRANTING MOTION TO COMPEL DISCOVERY**

Mailed Date: July 22, 2004

I. STATEMENT

1. On July 16, 2004, N.E. Colorado Cellular, Inc. (NECC), filed a Motion to Compel Agate Mutual Telephone Cooperative Association to Respond to NECC's First Data Requests (Motion) in the captioned consolidated proceeding.

2. The Motion seeks an order requiring the Agate Mutual Telephone Cooperative Association (Agate) to respond to NECC's data requests dated July 6, 2004 (Data Requests). A copy of the Data Requests and Agate's Objections thereto are attached to the Motion.

3. On July 16, 2004, response time to the Motion was shortened to July 20, 2004. *See*, Decision No. R04-0797-I. A Response to the Motion was filed by Agate on that date.

4. The Motion contends that the Data Requests seek information relevant to Agate's request for suspension of the wireline-to-wireless local number portability (LNP) requirements imposed by the Federal Communications Commission (FCC). Agate does not take issue with the relevance of the information sought. Rather, it contends that it should not be required to respond to the subject discovery since: (a) it was promulgated prior to the time it filed its direct testimony in this matter; and/or (b) NECC does not provide service in its service area. In this regard, Agate requests a variance from the Commission's discovery rules on the basis of a "good cause" showing that compliance with the same would be "impossible, impractical or unreasonable." *See*, 4 *Code of Colorado Regulations* (CCR) 723-1-3.

5. The Commission's procedural rules allow any party to initiate discovery upon any other party at any time for the purpose of obtaining discovery of any matter, not privileged, that is relevant to the claim or defense of a party. Relevant information need not be admissible at hearing if the discovery is reasonably calculated to lead to the discovery of admissible evidence. *See*, 4 CCR 723-77(a) and Rule 26(b)(1) of the Colorado Rules of Civil Procedure.

6. The Commission has made NECC a party to this consolidated proceeding. *See*, Decision No. C04-0048. Therefore, it is entitled to discover information from Agate relevant to its claim that it is entitled to suspend the FCC's LNP requirements. The Data Requests seek such information. Agate does not contend that the requested information is irrelevant or privileged. Therefore, the Motion will be granted and Agate will be required to respond to the Data Requests within ten days of the effective date of this Order.

7. Agate's argument that the Data Requests were propounded prior to the time it filed its direct testimony is unavailing since discovery may be initiated at "any time." *See*, 4 CCR 723-1-77(a).

8. Agate's argument that NECC's discovery not be allowed since it does not serve its service area goes to the issue of whether NECC has standing to intervene in this matter. As indicated above, the Commission has already considered this argument and has granted NECC intervenor status. As discussed above, as a party NECC has the right to discover relevant, non-privileged information from Agate.

9. Finally, Agate has failed to establish "good cause" as to why responding to the Data Requests would be "impossible, impractical or unreasonable" thereby justifying a variance from the Commission's discovery rules under 4 CCR 723-1-3.

II. ORDER

A. It Is Ordered That:

1. The Motion to Compel Agate Mutual Telephone Cooperative Association to Respond to NECC's First Data Requests filed by The N.E. Colorado Cellular, Inc., in the captioned proceeding is granted.

2. Agate Mutual Telephone Cooperative Association shall provide responses to the N. E. Colorado Cellular, Inc., data requests dated July 6, 2004, within ten days of the effective date of this Order.

3. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge