

Decision No. R04-0850-I

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

DOCKET NO. 04M-129T

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

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DOCKET NO. 04M-131T

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

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DOCKET NO. 04M-138T

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

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DOCKET NO. 04M-137T

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

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DOCKET NO. 04M-130T

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

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

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Mailed Date: July 26, 2004

**I. STATEMENT**

1. On July 19, 2004, N.E. Colorado Cellular, Inc. (NECC), filed a Motion to Compel Eastern Slope Rural Telephone Association to Respond to NECC's First Data Requests (Motion) in the captioned consolidated proceeding.

2. The Motion seeks an order requiring the Eastern Slope Rural Telephone Association (Eastern Slope) to respond to four of NECC's data requests (Nos. 012, 013, 019, and 038) dated July 7, 2004 (Data Requests). A copy of the Data Requests and Eastern Slope's Objections thereto are attached to the Motion.

3. On July 20, 2004, response time to the Motion was shortened to July 22, 2004. *See*, Decision No. R04-0799-I. Eastern Slope did not file a response to the Motion on or before that date.

4. The Motion contends that the Data Requests seek information relevant to Eastern Slope's request for suspension of the wireline-to-wireless local number portability requirements imposed by the Federal Communications Commission.

5. Eastern Slope has objected to Data Request Nos. 012, 013, and 038 on grounds that the information sought: (a) is not relevant or material to the issues involved in this proceeding; (b) is proprietary; and/or (c) may be contained in Eastern Slope's annual report on file with the Colorado Public Utilities Commission (Commission). Eastern Slope has objected to Data Request No. 019 on the ground that the information sought is publicly available in Eastern Slope's annual report on file with the Commission.

6. The Commission's procedural rules allow a party to obtain 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 *Code of Colorado Regulations* (CCR) 723-1-7(a) and (b) and Rule 26(b)(1) of the Colorado Rules of Civil Procedure (CRCP). Thus, the scope of discovery is very broad. *Kerwin v. District Court*, 649 P.2d 1086 (Colo. 1982). The Data Requests seek such relevant, non-privileged information.

7. Eastern Slope's claim that the requested information is proprietary is somewhat inconsistent with its position that its publicly available annual reports may contain information that is responsive to the Data Requests. Nonetheless, Eastern Slope's confidentiality concerns can be satisfied by requiring production of the requested information pursuant to the provisions of 4 CCR 723-16; *i.e.*, by requiring NECC's counsel and client representatives to sign and file the Nondisclosure Agreement described in 4 CCR 723-16-3.8.

8. Finally, Eastern Slope's reference to its annual reports as possible sources of the information sought in the Data Requests is insufficient to satisfy the requirement that it fully answer such Data Requests. *See*, CRCP 33(b). In the event its annual reports contain information responsive to the Data Requests, Eastern Slope must produce the applicable annual report and specify the portion(s) of the report that is fully responsive to such Data Requests.

9. For the above reasons, the Motion to Compel will be conditionally granted. Eastern Slope shall provide responses to the Data Requests no later than ten days after NECC's legal counsel and its designated representatives file executed Nondisclosure Agreements in the form specified by 4 CCR 723-16-3.8 with the Commission.

## **II. ORDER**

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

1. The Motion to Compel Eastern Slope Rural Telephone Association to Respond to NECC's First Data Requests filed by N.E. Colorado Cellular, Inc., in the captioned proceeding is conditionally granted consistent with the terms of this Order.

2. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge