

Decision No. R04-1354-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-221T

IN THE MATTER OF P C TELCOM'S PETITION FOR SUSPENSION OF LNP
REQUIREMENTS.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
SETTING HEARING; ESTABLISHING
PROCEDURES AND PROCEDURAL
SCHEDULE; AND DENYING REQUEST FOR
TEMPORARY EXTENSION OF SUSPENSION PERIOD**

Mailed Date: November 17, 2004

I. STATEMENT

1. The captioned proceeding was commenced on May 3, 2004, when Phillips County Telephone Company (PC Telecom) 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 until November 24, 2004.

2. The Colorado Public Utilities Commission (Commission) granted the Petition on June 11, 2004. *See*, Decision No. C04-0630.

3. On September 22, 2004, PC Telecom filed a Motion to Reopen the Record (Motion to Reopen) to request a further suspension until November 24, 2005.

4. On September 28, 2004, N.E. Colorado Cellular, Inc., doing business as Viaero filed a Motion to Intervene and Request for Hearing (Motion to Intervene). The Commission granted the Motion to Reopen and the Motion to Intervene on October 15, 2004, and assigned the

matter to the undersigned administrative law judge (ALJ) for hearing on an expedited basis. *See*, Decision No. C04-1213.

5. A pre-hearing conference was held on November 15, 2004. *See*, Decision No. R04-1314-I. Appearances were entered on behalf of the parties by their respective legal counsel.

6. At the pre-hearing conference, counsel presented oral argument in connection with the issue of whether a temporary extension of the LNP suspension period (temporary extension) can or should be granted to PC Telecom pending issuance of an administratively final decision in this matter.¹ This issue was prompted by recognition of the fact that, notwithstanding the Commission's directive that this matter be processed on an expedited basis, it will not be possible to issue an administratively final order in this proceeding prior to November 24, 2004, the date upon which the suspension of the LNP requirements imposed on PC Telecom currently expires. Thus, in the absence of a temporary extension, it is possible that PC Telecom may be exposed to some liability for failing to comply with the LNP requirements imposed upon it by the Federal Communications Commission subsequent to that date. For the reasons set forth below, the ALJ has concluded that a temporary extension should not be granted.

7. As indicated above, the Commission granted PC Telecom's initial request to suspend its LNP obligations from May 24, 2004 until November 24, 2004. It did so without holding an evidentiary hearing. However, it declined to grant a further suspension on that basis and, instead, directed that PC Telecom's request for an additional one-year suspension be set for hearing before an ALJ. *See*, Decision No. C04-1213. In so ruling, the Commission did not

¹ This issue was raised by the ALJ in Decision No. R04-1314-I. However, it became apparent at the pre-hearing conference that PC Telecom is requesting that a temporary extension be granted. N.E. Colorado Cellular, Inc., opposes that request.

indicate that it would be issuing an initial decision in this matter pursuant to § 40-6-109(6), C.R.S. Therefore, notwithstanding its directive to process this case on an expedited basis, it is reasonable to conclude that the Commission was aware that its assignment of the case to an ALJ would preclude administrative finality until after expiration of the current November 24, 2004, suspension date.

8. Notwithstanding the above, the Commission made no provision in its Decision No. C04-1213 for granting a temporary suspension. Nor did it authorize or express its desire that the ALJ do so. In the absence of such provisions, it can only be assumed that the Commission has determined that no further suspension of PC Telecom's LNP obligations should be granted unless and until the ALJ determines, after an evidentiary hearing, that such an extension is warranted.

9. At the pre-hearing conference the parties also raised the issue of the manner in which the 180-day timeframe referred to in 47 U.S.C. § 251(f)(2) would apply to this proceeding as currently postured. The parties have agreed to submit briefs on that issue on or before November 30, 2004. The parties also agreed to procedures and a procedural schedule for the further processing of the Petition. Those procedures and procedural schedule are reasonable and will be adopted by the Order that follows.

II. ORDER

A. It Is Ordered That:

1. The request of Phillips County Telephone Company for a temporary extension of the local number portability suspension period previously granted to it by the Colorado Public Utilities Commission in Decision No. C04-0630 pending issuance of an administratively final decision in this proceeding is denied.

2. The parties shall submit briefs concerning the manner in which the 180-day timeframe referred to in 47 U.S.C. § 251(f)(2) applies to this proceeding as currently postured on or before November 30, 2004.

3. The hearing of this matter is scheduled as follows:

DATE: December 14, 2004

TIME: 1:00 p.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

4. Phillips County Telephone Company shall file its direct testimony and exhibits, in question and answer form, on or before November 30, 2004.

5. N. E. Colorado Cellular, Inc., doing business as Viaero, shall file its answer testimony and exhibits, in question and answer form, on or before December 7, 2004.

6. Any desired post-hearing Statements of Position shall be filed on or before December 20, 2004.

7. Discovery shall be governed by Rules 77(a) and (b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations*, 723-1-77(a) and (b).

8. All testimony/exhibits, discovery, motions, briefs, or other pleadings shall be served on all parties electronically or by hand delivery on the same date they are filed with the Commission.

9. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

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