

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

DOCKET NO. 04M-130T

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IN THE MATTER OF SUNFLOWER TELEPHONE COMPANY, INC.'S COMBINED  
PETITION FOR SUSPENSION AND MOTION FOR EXPEDITED TREATMENT AND  
WAIVER OF RESPONSE TIME.

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**DECISION GRANTING PETITION IN PART**

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Mailed Date: April 20, 2004  
Adopted Date: April 13, 2004

**I. BY THE COMMISSION**

**A. Statement**

1. On March 19, 2004, Sunflower Telephone Company, Inc. (Sunflower), 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 to Commercial Mobile Radio Service (CMRS or wireless) providers in its Towner, Sheridan Lakes, and Hartman exchanges until May 24, 2006. Sunflower makes this request pursuant to § 251(f)(2) of the Telecommunications Act of 1996 (the Act), 47 U.S.C. § 251 (f)(2).

2. At our weekly meeting on March 31, 2004, we shortened the notice period to this Petition to 15 days. On April 5, 2004, we received an Entry of Appearance and Notice of Intervention, or in the Alternative, Petition to Intervene of WWC Holding Co., Inc. (Western Wireless).

3. The Towner, Sheridan Lakes, and Harman exchanges are geographically located outside the Denver Metropolitan Statistical Area (MSA), which is the only MSA in Colorado that

is in the top 100 in the United States. The Federal Communications Commission (FCC) rules require that telecommunications carriers providing service outside the top 100 MSAs provide LNP by May 24, 2004, or six months after receiving a request to port a number, whichever is later. Sunflower, in its Petition, requests that we find under § 251(f)(2) that it is contrary to the public interest and unduly economically burdensome for the Petitioner to implement LNP in its exchange.

4. Section 251(f)(2) of the Act provides:

Suspension and modifications for rural carriers. A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) of this section to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification –

(A) is necessary –

i. to avoid a significant adverse economic impact on users of telecommunications service generally;

ii. to avoid imposing a requirement that is unduly economically burdensome; or

iii. to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

5. Sunflower qualifies as a “rural telephone company” as defined in 47 U.S.C. § 153(37) and is a local exchange carrier with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide.

6. Sunflower states in its Petition that one of the most significant reasons why this Petition should be granted, and why the implementation of LNP by rural carriers is contrary to

the public interest and unduly economically burdensome, is the complete lack of any demand for LNP in its exchanges. Sunflower asserts that it has not received one customer request to port a number since the enactment of the Act eight years ago, even with the increased publicity since November 2003. Further, Sunflower states that none of its exchanges are adjacent to a major transportation corridor, and thus wireless coverage is not extensive.

7. As to economic burden, Sunflower states that its known costs for implementing LNP will be about \$1,500 for a switch upgrade and \$3,000 for fixed vendor costs to secure required database capability. The costs that Sunflower cannot at this time estimate include monthly recurring costs for the “per dip” charge and the associated facilities costs. Sunflower asserts that it is contrary to the public interest to force Sunflower’s customers (currently 364 access lines) to incur the expense for a service that they do not demand.

8. Sunflower does admit in its Petition that it has received a request for LNP from a CMRS provider, Verizon Wireless. This request was received on November 18, 2003, requesting LNP service by May 24, 2004. However, Sunflower states that, to its knowledge, the CMRS provider requesting LNP has neither a point of interconnection nor numbering resources in the Sunflower exchanges. Also, to Sunflower’s knowledge, none of its end-user customers has made any request to have his or her wireline number ported to a wireless carrier.

9. We note that Verizon Wireless did not file an intervention in this docket. In the Western Wireless Petition for Intervention, however, Western Wireless states that it has good cause for intervening in this docket. Western Wireless contends that while it has not yet requested LNP implementation in the Towner, Sheridan Lakes, or Harman exchange, it expects to do so

within the next two years. Therefore, Western Wireless will be affected by any decision reached by this Commission to grant the Petitioner's request for a two-year suspension.

10. In its November 10, 2003 order,<sup>1</sup> the FCC stated: "Carriers inside the 100 largest MSAs (or outside the 100 largest MSAs, after the transition period) may file petitions for waiver of their obligation to port numbers to wireless carriers, if they can provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules." This high level of scrutiny imposed by the FCC is a direct result of the FCC's strong statement that "we continue to deem rapid implementation of number portability to be in the public interest."<sup>2</sup> Further, in its November 10, 2003 order, the FCC reiterated its position that "number portability promotes competition between telecommunications service providers by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers."<sup>3</sup>

11. We agree with the Petitioner that consumers will not likely be adversely impacted by the grant of a waiver to this carrier. According to the Petitioner, it has not received requests or even inquiries from its customers concerning Sunflower's ability to port their wireline numbers.

12. However, in balancing the FCC's and our State goals of increased competition throughout Colorado, including in the rural areas of the state, we believe that a two-year waiver

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<sup>1</sup> See In Re Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No. 95-116 (November 10, 2003 Order).

<sup>2</sup> See In Re Telephone Number Portability, CC Docket No. 95-116 (January 16, 2004 Order).

<sup>3</sup> November 10, 2003 Order, at ¶ 4.

of the LNP implementation requirements is too long. We agree with the FCC's statement in its January 16, 2004 order, that:

. . . [I]n order to offer intermodal portability to their subscribers, these smaller carriers must acquire the hardware and software necessary to provide porting, make the necessary network upgrades, and ensure that their upgraded networks work reliably and accurately. Some of the Petitioners also assert that Two Percent Carriers often lack the experience and technical experience with number porting to quickly implement the necessary upgrades to their systems to ensure accurate porting. Accordingly, we conclude that special circumstances exist to grant Two Percent Carriers who have not previously upgraded their systems to support LNP a limited amount of additional time to overcome the technological obstacles they face to successfully meet a request for wireline-to-wireless porting.<sup>4</sup>

13. In that order, the FCC granted these rural providers an additional six months to provide LNP. We find that a one-year waiver of the LNP requirements should give Sunflower adequate time to make necessary facilities hardware and software upgrades, and to work with vendor(s) for the administration part of portability. In addition, a one-year waiver should not unduly harm Western Wireless given the fact that it is not yet offering service in Sunflower's exchanges.

14. Sunflower is required to implement LNP in its Towner, Sheridan Lakes, and Hartman exchanges no later than May 24, 2005, absent further order from this Commission.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The Petition for Suspension of the Local Number Portability Requirements of Sunflower Telephone Company, Inc., is granted in part, consistent with the above discussion.

2. WWC Holding Co., Inc.'s Petition to Intervene is granted.

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<sup>4</sup> January 16, 2004 Order.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
April 13, 2004.**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners

COMMISSIONER JIM DYER ABSENT.