

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-138T

IN THE MATTER OF AGATE MUTUAL TELEPHONE COOPERATIVE ASSOCIATION'S
COMBINED PETITION FOR SUSPENSION AND MOTION FOR EXPEDITED
TREATMENT AND WAIVER OF RESPONSE TIME.

DECISION GRANTING PETITION IN PART

Mailed Date: April 30, 2004
Adopted Date: April 21, 2004

I. BY THE COMMISSION

A. Statement

1. On March 24, 2004, Agate Mutual Telephone Cooperative Association (Agate) 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 exchange until May 24, 2006. Agate 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 March 31, 2004, we received a Motion to Intervene filed by N.E. Colorado Cellular, Inc., doing business as Viaero (NECC) and 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 Agate exchange is 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. Agate, in its Petition, requests that we find under § 251(f)(2) that it is contrary to the public interest, unduly economically burdensome, and technically infeasible 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. Agate 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. Agate 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 because of the complete lack of any demand for LNP in the Agate exchange. Agate asserts that it has not received any customer requests to port a number since the enactment of the Act eight years ago, even with the increased publicity since November 2003. Further, Agate states that its exchange is not adjacent to a major transportation corridor, and thus wireless coverage is not extensive.

7. As to economic burden, Agate states that its known costs for implementing LNP will be about \$26,384 for a switch upgrade and \$80,500 for accompanying software. The costs that Agate represents it cannot at this time estimate include monthly recurring costs for the “per dip” charge and the associated facilities costs. Agate asserts that it is contrary to the public interest to force Agate’s customers (currently 150 access lines) to incur the expense for a service they do not demand. Given the FCC’s five-year recovery period, Agate calculates that the LNP implementation costs and recurring monthly costs could run \$11.88 per month per customer.

8. Agate does admit in its Petition that it has received two requests for LNP from CMRS providers, Verizon Wireless and NECC, requesting LNP service by May 24, 2004. However, Agate takes issue with the NECC request, stating that the request from NECC for LNP does not constitute a *bona fide* request because NECC’s coverage area does not overlap with the Agate exchange. This overlap is required by the FCC’s November 10, 2003 Intermodal Order. Accordingly, Agate states that it has no legal obligation to provide LNP to NECC. Also, to Agate’s knowledge, none of its end-use 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 Agate 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. The NECC intervention states that the Agate Petition seeks to thwart NECC's request for LNP. NECC asserts that it has a direct interest in the relief sought by Agate and that its intervention is appropriate.

10. Agate filed a Response in Opposition to NECC's Motion to Intervene on April 7, 2004. In this Response, Agate re-asserts its position that since NECC's coverage area does not overlap with the Agate exchange area, NECC has no standing to either request LNP or request intervention in this docket. Agate contends that NECC's Motion fails to meet the threshold requirements for an intervention found at 4 *Code of Colorado Regulations* 723-1-64(b)(2).

11. We disagree with Agate and grant the interventions of both Western Wireless and NECC. Even if NECC's coverage area does not extend to overlap the Agate exchange at this time, NECC can still have a "substantial interest" in the outcome of this proceeding based on its business plan for the rural areas of Colorado for the next two years and beyond. Although not opposed by Agate, Western Wireless' Petition to Intervene is based on a similar interest and protection of its rights for future business plans.

12. In its November 10, 2003 order,¹ 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

¹ 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).

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.”² 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.”³

13. 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 Agate’s ability to port their wireline numbers.

14. 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 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.⁴

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

³ November 10, 2003 Order, at ¶ 4.

⁴ January 16, 2004 Order.

15. 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 Agate 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 or NECC.

16. Agate is required to implement LNP in its exchange 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 Agate Mutual Telephone Cooperative Association is granted in part, consistent with the above discussion.
2. WWC Holding Co., Inc.'s Petition to Intervene is granted.
3. N.E. Colorado Cellular, Inc.'s Motion to Intervene is granted.
4. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 21, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners