

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

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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**DECISION GRANTING PETITION IN PART**

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

**I. BY THE COMMISSION**

**A. Statement**

1. On March 24, 2004, Eastern Slope Rural Telephone Association (Eastern Slope) 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 exchanges until May 24, 2006. Eastern Slope 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. Eight of the Eastern Slope 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. Two Eastern Slope exchanges, Woodrow and Bennett, are located within the Denver MSA. Eastern Slope, 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 any of its exchanges.

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

6. Eastern Slope 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 its exchanges. Eastern Slope 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.

7. As to economic burden, Eastern Slope states that its known costs for implementing LNP will be about \$56,100 for switch upgrades and an additional \$7,146 for nonrecurring costs and \$6,713 for recurring costs. The costs that Eastern Slope represents it cannot at this time estimate include monthly recurring costs for the “per dip” charge and the associated facilities costs. Eastern Slope asserts that it is contrary to the public interest to force Eastern Slope’s customers (currently 5,000 access lines) to incur the expense for a service they do not demand.

8. Eastern Slope 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. Verizon Wireless requested LNP in the Bennett and Hugo exchanges and NECC requested LNP in the Woodrow exchange. To Eastern Slope’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 Eastern Slope exchanges, it expects to do so within the next two

years. Western Wireless does have “considerable network assets and customers within Eastern Slope’s territory.” 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 Eastern Slope Petition seeks to thwart NECC’s request for LNP. NECC asserts that it has a direct interest in the relief sought by Eastern Slope and that intervention is appropriate.

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 in exchanges outside the Denver MSA, namely Arriba, Eads, Flagler, Genoa, Haswell, Hugo, Karval, and Kit Carson will not likely be adversely impacted by the grant of a waiver to this carrier. According to the Petitioner,

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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.

it has not received requests or even inquiries from its customers concerning Eastern Slope's ability to port their wireline numbers.<sup>4</sup>

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 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>5</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 Eastern Slope 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.

14. Eastern Slope is required to implement LNP in its Hugo exchange no later than May 24, 2005, absent further order from this Commission. Eastern Slope is required to implement LNP in its Arriba, Eads, Flagler, Genoa, Haswell, Karval, and Kit Carson exchanges by May 24, 2005, or six months after receiving a request for LNP, whichever is later.

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<sup>4</sup> We also note that according to NeuStar, Inc., in the Western Region, for the months December 2003 through March 2004 only 1.56 percent of all ports have been wireline to wireless.

<sup>5</sup> January 16, 2004 Order.

15. As for the exchanges of Bennett and Woodrow, both of which fall inside the Denver MSA, we believe further analysis is warranted. First we address the Woodrow exchange. This exchange is located on the eastern most border of the Denver MSA. In fact, the majority of the exchange is actually outside the MSA with only a small fraction falling within the MSA borders. In its Petition, Eastern Slope enumerates its technical concerns regarding the implementation of LNP in this exchange. Eastern Slope asserts that the switch located in the Woodrow exchange is actually a remote switch served by its host located in Hugo. Because of this relationship, Eastern Slope states that, to enable LNP within the Woodrow exchange, the Petitioner would have to have two sets of point codes (required for routing traffic to ported numbers) accepted by the Hugo host switch, which is not currently technically feasible according to the switch vendor, Nortel.

16. Because of these special technical circumstances in the Woodrow exchange and because the exchange, while officially part of the Denver MSA, mostly lies outside the MSA in a very rural area, we grant the same one-year suspension as the other eight Eastern Slope exchanges. Our rationale follows from that discussion.

17. The Bennett exchange lies completely within the Denver MSA in both Adams and Arapahoe counties. Recently, the Commission granted a local calling area expansion for the Bennett exchange customers to call into the Denver Metro Local Calling Area without incurring toll charges. The justification for this expansion was based on Eastern Slope's own representations in its application that many of its customers work, go to school, and communicate with business and government offices in the Denver area. The proximity to the Denver area, the fact that Bennett is included in the MSA, and Eastern Slope's own testament to the fusion of communities along the I-70 corridor lead us to treat this exchange differently from

the others. We find that Eastern Slope should not be allowed a full one-year suspension of the LNP requirements for this exchange. However, we realize that, if Eastern Slope has not begun the necessary steps to implementation before now, which it appears it has not, it will be technically impossible for Eastern Slope to meet the May 24, 2004 date. Therefore, we grant Eastern Slope a six-month suspension, or until November 24, 2004, to implement LNP requirements for its Bennett exchange.

## **II. ORDER**

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

1. The Petition for Suspension of the Local Number Portability Requirements of Eastern Slope Rural Telephone 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

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\_\_\_\_\_Commissioners