

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-172T

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

DECISION GRANTING PETITION IN PART

Mailed Date: May 12, 2004
Adopted Date: May 5, 2004

I. BY THE COMMISSION

A. Statement

1. On April 12, 2004, Peetz Cooperative Telephone Company (Peetz) 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. Peetz 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 April 13, 2004, we shortened the notice period of this Petition to 15 days. On April 19, 2004, we received a Motion to Intervene filed by N.E. Colorado Cellular, Inc., doing business as Viaero (NECC).

3. The Peetz 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. Peetz, 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. Peetz 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. Peetz 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 Peetz exchange. Peetz 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, Peetz states that its total costs for implementing LNP will have a net present value of approximately \$42,647 or \$4.56 per month per access line with a five-year recovery period. Peetz asserts that it is contrary to the public interest to force Peetz customers (currently 230 access lines) to incur the expense for a service they do not demand.

8. Peetz 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. To Peetz'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. The NECC intervention states that the Peetz Petition seeks to thwart NECC's request for LNP. NECC currently offers wireless service in Peetz's territory and has equipment and customers in that exchange. NECC asserts that because of this, it has a direct interest in the relief sought by Peetz and that its intervention is appropriate.

10. 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

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 Peetz’s ability to port their wireline numbers.

12. However, in balancing the FCC’s and our state goals of increased competition throughout Colorado, including the rural areas of the state, and the concerns of NECC, 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.

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 Peetz 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 NECC.

14. Peetz is required to implement LNP in its exchange no later than May 24, 2005, absent further order from this Commission. We do not agree, and will not grant, Peetz's request for biennial renewals after May 24, 2006 absent further filing from Peetz.

II. ORDER

A. The Commission Orders That:

1. The Petition for Suspension of the Local Number Portability Requirements of Peetz Cooperative Telephone Company is granted in part, consistent with the above discussion.
2. N.E. Colorado Cellular, Inc.'s Motion to Intervene is granted.
3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 5, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

COMMISSIONER JIM DYER
ABSENT.