

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-203T

IN THE MATTER OF RYE TELEPHONE COMPANY 'S REQUEST FOR SUSPENSION OF
WIRELINE TO WIRELESS NUMBER PORTABILITY OBLIGATIONS PURSUANT TO
SECTION 251(F)(2) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED.

DECISION SETTING PETITION FOR HEARING

Mailed Date: June 3, 2004
Adopted Date: May 12, 2004

I. BY THE COMMISSION

A. Statement

1. On April 27, 2004, Rye Telephone Company (Rye) filed a Petition for Suspension of Wireline to Wireless Number Portability Obligations 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 Kim exchange until December 31, 2005. Rye 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 28, 2004, we shortened the notice period of this Petition to ten days. On May 10, 2004, an Entry of Appearance and Notice of Intervention or, in the Alternative Petition to Intervene was filed by WWC Holding Co., Inc. (Western Wireless).

3. The Federal Communications Commission (FCC) rules require that non-rural telecommunications carriers providing service in the nation's top 100 Metropolitan Statistical Areas (MSAs) must provide LNP to all telecommunications carriers, including CMRS providers, by November 24, 2003. Rural carriers serving in areas inside the top 100 MSAs and all carriers

serving outside the top 100 MSAs must provide LNP by May 24, 2004, or six months after receiving a request to port a number, whichever is later. Rye, 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. Rye 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. Rye states in its Petition that the costs for Rye to implement LNP to port numbers and associated wireless calls to wireless carriers' facilities in its Kim exchange outweigh any customer or public benefit at this time and make implementation technically and economically infeasible. Rye states that it is not requesting a suspension of the LNP requirements for its

Colorado City or Rye exchanges, but Rye asserts there are additional issues in its Kim exchange that require this request for suspension.

7. Rye states that in order to become LNP capable in its Kim exchange it will be required to upgrade its switch, and arrange for those upgrades to be shipped, engineered, installed, and tested. Rye uses a Redcom MDX switch that will require significant work and accompanying network upgrades that will not be completed until the fourth quarter of 2005. The costs for this software, installation, field assistance, and network engineering are estimated to be \$39,400 or \$3.77 for each of Rye's 174 Kim customers per month over a five-year recovery period. This cost estimate does not include the costs for the necessary SS7 links, third party vendor services, or other administrative changes. Rye states that the economic burden to its customers for a service that maybe one or two might actually choose is completely disproportionate to any benefit gained.

8. Rye does admit in its Petition that it has received one request for LNP from a CMRS provider requesting LNP service by May 24, 2004. To Rye's knowledge, none of its end-use customers has made any request to have his or her wireline number ported to a wireless carrier. Nor has any wireless carrier provided an estimate of the number of ported customers that can be expected.

9. Rye requests that a suspension be granted for the Kim exchange until December 31, 2005, or until the FCC and this Commission have considered and resolved the remaining technical and regulatory LNP implementation issues, whichever occurs first.

10. In its May 10, 2004 Petition for Intervention, Western Wireless states that it holds FCC licenses to provide service in Pueblo, CO MSA 214 (license no. 241A) which includes

Rye's service territory. Western Wireless asserts that it has considerable network assets and customers within Rye's service area and that on May 10, 2004, it issued a *bona fide* request for the implementation of LNP to Rye.

11. Western Wireless contends that if Rye's petition is granted, competition between Western Wireless and Rye will be impacted and the options of Colorado consumers will be limited. Western Wireless further contends that this request may cause additional problems with respect to the routing of calls to and from Rye's subscribers when the called number has been ported between wireless carriers. Western Wireless is concerned that Rye does not have the proper database upgrades necessary to complete calls to wireless subscribers whose numbers have been ported.

12. Specifically, Western Wireless requests that the Commission set this matter for hearing to afford it a chance to resolve the numerous factual issues raised by Rye's request. Western Wireless states that it will present evidence that the FCC already considered the unique position of rural incumbent carriers and tailored its rules accordingly.

13. On May 12, 2004, Rye filed a Response to Western Wireless' Petition to Intervene. In its response, Rye does not contest Western Wireless' request to intervene, but does argue that a hearing should not be set in this matter. Rye asserts that Western Wireless did not dispute the facts alleged in the Petition. According to Rye, the costs to implement are not at issue; clearly an economic burden exists for Rye's customers. Further, Rye states that pursuing a more rapid implementation schedule than December 31, 2005, will likely increase those costs. Further, Rye states that it is not even aware yet whether all of the necessary software and

hardware are available. Rye requests that the Commission deny Western Wireless' request for a hearing and grant its Petition for suspension.

14. Recently, we have seen a number of similar requests for suspension from rural providers throughout the state.¹ We believe that our decisions in those dockets struck a balance between the economic burden on the consumers and the benefits of intermodal porting and competition. In this instance, we believe that Western Wireless' disagreement of the facts contained in the Petition requires that we set this matter for hearing. Pursuant to § 251(f)(2)(B) of the Telecom Act, state commissions have 180 days to act on a petition for relief requested under § 251(f)(2). Because of this shortened timeline, and in an effort to lessen the legal costs for both parties, we encourage the parties to negotiate and come to an agreement acceptable to both, but short of that, it is our hope that Rye and Western Wireless can reach a stipulation of facts so that this matter can be handled through legal briefs rather than a prolonged hearing process. We believe that our previous decisions in the dockets referenced above can provide direction both to the parties and to the Administrative Law Judge assigned to hear this case.

15. Pending a final decision in this proceeding, we suspend Rye's obligations to implement LNP.

II. ORDER

A. The Commission Orders That:

1. The Petition for Suspension of the Local Number Portability Requirements of Rye Telephone Company is set for hearing before an Administrative Law Judge.

¹ See Docket Nos. 04M-129T, 04M-130T, 04M-131T, 04M-137T, 04M-138T, 04M-171T, 04M-172T, 04M-191T, 04M-207T, and 04M-208T.

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

3. Pending a final decision in this proceeding, we suspend Rye Telephone Company's obligations to implement local number portability.

4. The Motion for Admission *Pro Hac Vice* of Stephen F. Mecham is granted.

5. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 12, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners