

Decision No. C04-0620

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-130T

IN THE MATTER OF SUNFLOWER TELEPHONE COMPANY, INC.'S PETITION FOR
SUSPENSION OF LNP REQUIREMENTS.

**DECISION GRANTING APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION**

Mailed Date: June 9, 2004
Adopted Date: May 26, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Application for Rehearing, Reargument, or Reconsideration (RRR) by WWC Holding Co., Inc. (Western). The application requests reconsideration of Decision No. C04-0408, in which we granted the Petition by Sunflower Telephone Company, Inc. (Sunflower), for temporary suspension of its wireline-to-wireless local number portability (LNP) obligations. Now being duly advised in the premises, we grant the Application for RRR. This matter will be set for hearing before an Administrative Law Judge (ALJ).¹ Pending the decision on reconsideration, the temporary suspension of the LNP requirements approved in Decision No. C04-0408 will remain in effect.

¹ Since the Commission must enter its decision on the Petition within 180 days after its filing, we will enter the initial decision in this case pursuant to the provisions of § 40-6-109(6), C.R.S.

B. Discussion

2. This case concerns Sunflower's Petition for Suspension of the wireline-to-wireless LNP requirements ordered by the Federal Communications Commission (FCC).² Under the FCC's LNP orders, telecommunications carriers such as Sunflower are required to implement wireline-wireless LNP by May 24, 2004, or six months after receiving a request to port a number, whichever is later. However, 47 U.S.C. § 251(f)(2) empowers a state commission to suspend LNP requirements for rural carriers, such as Sunflower, if necessary:

- to avoid a significant adverse economic impact on users of telecommunications service;
 - to avoid imposing a requirement that is unduly economically burdensome; or
 - to avoid imposing a requirement that is technically infeasible;
- and
- provided the request for suspension is consistent with the public interest, convenience, and necessity.

3. On March 19, 2004, Sunflower filed its Petition for temporary suspension of the FCC's LNP requirements until May 24, 2006. After Commission notice of the Petition, Western filed its Entry of Appearance and Notice of Intervention or, in the Alternative, Petition to Intervene. Notwithstanding that intervention, we granted the Petition, in part, without hearing. Decision No. C04-0408 suspended the FCC-ordered LNP requirements for Sunflower for one year, instead of two as requested in the Petition.

4. In its Application for RRR, Western argues: (1) Granting the Petition without hearing violates Commission rules, Colorado statutes, and constitutional principles of due

² *In Re Telephone Number Portability*, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket 96-116 (November 10, 2003 Order), and *In Re Telephone Number Portability*, CC Docket 95-116 (January 16, 2004 Order).

process; (2) The suspension of the LNP requirements was not based upon the standards set forth in § 251(f)(2); (3) The decision to suspend the LNP requirements was not based upon any evidence of record; and (4) By suspending the LNP requirements, the Commission improperly substituted its judgment for that of the FCC. For the reasons discussed here, we do not agree that granting the Petition without hearing violated any rule, statute, or constitutional principle; however, since Western has now made clear that it opposes the Petition and requests a hearing, we grant the Application for RRR.

5. As for Western's argument that it was unlawful to grant the Petition without hearing, we note: § 40-6-109(5), C.R.S., provides that, "[t]he commission may by general rule or regulation provide for the taking of evidence in uncontested or unopposed proceedings by affidavit or otherwise, without the necessity of a formal oral hearing..." The Commission adopted Rule 24, Commission Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, to implement § 40-6-109(5), C.R.S. The Rule makes clear that matters before the Commission, such as Sunflower's Petition, may be granted under a modified procedure (*i.e.*, without hearing) if unopposed by any intervenor.³ While Western did file a request for intervention in this case, that request did *not* state that Western opposed the Petition, nor did that request for intervention request a hearing. Western's failure to elucidate its intentions and positions in its request for intervention would otherwise justify the Commission's decision to rule on the Petition under the modified procedure specified in Rule 24.

6. However, we note that Rule 24 also provides that, for a matter to be determined under the modified procedure, it must be supported by verified (*i.e.*, by affidavit) information.

³ Western's argument that the record lacked any information to support a grant of the Petition is incorrect. Sunflower's Petition is in the record and our decision relied on that Petition.

That verified information must adequately support the request for relief. In this case, the Commission did not formally designate the Petition for determination under modified procedure, and Sunflower did not support its Petition with verified information. Therefore, since the Application for RRR clarifies that Western opposes the Petition and is requesting a hearing, we grant the Application. In light of our decision to conduct a hearing on the Petition, the specific arguments in the Application for RRR are moot.

7. This matter is referred to an ALJ for expedited hearing. Section 47 U.S.C. § 251(f)(2) requires that the Commission act upon Sunflower's Petition within 180 days of its filing. Therefore, in accordance with § 40-6-109(6), C.R.S., we now determine that due and timely execution of our functions imperatively and unavoidably requires that we omit the recommended decision in this case.

8. We note that other rural incumbent local exchange carriers have filed similar petitions for suspension of the FCC's LNP requirements, and those cases involve identical procedural circumstances as this case. That is, the Commission granted those petitions notwithstanding Western's request for intervention, and the Commission, in granting Western's Applications for RRR, is now setting those matters for hearing. We direct the ALJ, after comment from the parties, to consider whether these dockets should be consolidated for hearing and determination.⁴

⁴ The dockets include: Docket Nos. 04M-129T (Petition by Big Sandy), 04M-130T (Petition by Sunflower Telephone), 04M-131T (Petition by Columbine Telephone), 94M-137T (Petition by Eastern Slope Telephone), and 04M-138T (Petition by Agate Mutual Telephone).

9. Pursuant to § 251(f)(2), the Commission may suspend enforcement of the FCC's LNP requirements pending hearing and determination of the Petition. We now suspend those requirements pending decision of Sunflower's Petition.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration by WWC Holding Co., Inc., is granted consistent with the above discussion.

2. This matter is referred to an Administrative Law Judge for hearing consistent with the above discussion. Pursuant to § 40-6-109(6), C.R.S., the recommended decision in this matter shall be omitted.

3. Pending decision on the instant Petition, the Local Number Portability requirements adopted by the Federal Communications Commission and referenced in the Petition are suspended.

4. The Motion to Intervene untimely filed by N.E. Colorado Cellular is granted.

5. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 26, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners