

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-202T

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

**INITIAL COMMISSION DECISION APPROVING
STIPULATION AND SETTLEMENT AGREEMENT,
VACATING HEARING DATE, AND CONSOLIDATING
DOCKET WITH DOCKET NO. 04M-203T**

Mailed Date: August 4, 2004
Adopted Date: August 3, 2004

I. BY THE COMMISSION

A. Statement, Findings, and Conclusions

1. Under the provisions of § 251(f)(2) of the Communications Act of 1934, as amended, 47 U.S.C. § 251(f)(2), South Park Telephone Company (South Park) filed a Petition for Suspension of Wireline to Wireless Number Portability Obligations. South Park requested that the Commission temporarily suspend its wireline to wireless local number portability (LNP) obligations to Commercial Mobile Radio Service (wireless) providers in its exchange until December 31, 2005.

2. On April 28, 2004, we shortened the notice period of the Petition to ten days.

3. On May 10, 2004, WWC Holding Co., Inc. (Western Wireless), filed an Entry of Appearance and Notice of Intervention or, in the Alternative Petition to Intervene.

4. The Federal Communications Commission (FCC) rules requires that non-rural telecommunications carriers providing service in the nation's top 100 Metropolitan Statistical

Areas (MSAs) are required to provide LNP to all telecommunications carriers including wireless providers, by November 24, 2003. Rural carriers serving in areas inside the top 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.

5. Section 251(f)(2) of the Communications Act of 1934, as amended states:

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.

6. By its Petition, South Park requests that we find pursuant to § 251(f)(2) its obligation to implement LNP in its exchange is contrary to the public interest, unduly economically burdensome, and technically infeasible.

7. South Park qualifies as a "rural telephone company" as defined in 47 U.S.C. § 153(37) and it is a local exchange carrier with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide.

8. South Park states in its petition that the costs for it to implement LNP to port numbers and associated wireless calls to wireless carriers' facilities outweigh any customer or

public benefit and its implementation is technically and economically infeasible. South Park states that in order to become LNP capable, it will be required to upgrade its switch, arrange for these upgrades to be shipped, engineered, installed, and tested. South Park uses a Redcom MDXi switch and only has software available on a field trial basis which could render South Park vulnerable if the untested software causes interruptions in dial tone. The software costs are estimated to be \$20,000 or \$1.66 for each of South Park's 200 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 charges. South Park states that the economic burden to its customers for a service that perhaps one or two customers might actually choose is disproportionate to any benefit gained.

9. South Park states in its petition that it has received one request for LNP from a wireless provider requesting LNP service by May 24, 2004. South Park also states that none of its end-use customers has requested to have his or her wireline number ported to a wireless carrier. No wireless carrier provided an estimate of the number of ported customers that can be expected.

10. In its Petition for Intervention, Western Wireless states that it holds FCC licenses to provide service in Pueblo, Colorado MSA 214 which includes South Park's service territory. On May 10, 2004, Western Wireless issued a Request for Implementation of LNP to South Park.

11. By Decision No. C04-0588, mailed on June 3, 2004, we granted Western Wireless' Petition to Intervene. We ordered that that the Petition for Suspension of LNP Requirements be set for hearing before an Administrative Law Judge, and suspended South Park's obligation to implement LNP pending a final decision in this proceeding.

12. By Decision No. R04-0764-I, the hearing of this matter was scheduled for July 26, 2004.

13. By Decision No. C04-0747, mailed on July 7, 2004, we issued an Order for Initial Commission Decision pursuant to § 40-6-109(6), C.R.S. Since § 251(a)(2) of the Communications Act of 1934, as amended requires that a state commission act upon any petition filed under the statute within 180 days of its filing, the due and timely execution of our functions imperatively and unavoidably requires us to enter the initial decision in this case.

14. On July 21, 2004, South Park and Western Wireless filed a Joint Motion to Approve Stipulation and Settlement, Vacate Hearing Date, Consolidate Docket with Docket No. 04M-203T, and for the Commission to Retain Jurisdiction.

15. Because of the technical limitations of South Park's switching technology, the stipulating parties believe that real issues of technical feasibility exist concerning South Park's ability to upgrade the Redcom MDXi switch in time to meet South Park's current LNP obligations. Because of the technical challenges, Western Wireless states that it is willing to enter into the Stipulation and Agreement with South Park to extend the LNP deadline, subject to the terms and conditions stated in the Stipulation and Settlement Agreement.

16. South Park and Western Wireless agree on an LNP implementation schedule summarized below and fully stated in the Stipulation and Settlement attached to this decision as Exhibit A.

17. South Park agrees to provide a detailed status report to the Commission by October 1, 2004 describing its progress in implementing LNP. The parties may request that the Commission schedule a technical conference to discuss the status report.

18. South Park agrees that by December 31, 2004 or six months following a request, whichever date is later, it will make intermodel LNP available to Western Wireless unless the Commission grants additional relief.

19. Prior to December 31, 2004, or six months after a *bona fide* request, whichever date is later, Western Wireless agrees to establish a direct two-way point of interconnection within South Park's network. The routing of all LNP traffic exchange between Western Wireless and South Park will pass through this point of interconnection. Western Wireless may alternatively elect not to have a direct connection with South Park. In this case, Western Wireless will be financially responsible for any and all costs relating to routing of traffic outside South Park's network district.

20. The parties agree that the Commission retains jurisdiction over this matter until LNP is implemented by South Park and agree that this docket should remain open until that time.

21. It is found that the Stipulation and Settlement filed on July 21, 2004 by South Park and Western Wireless is in the public interest and should be approved.

22. South Park and Western Wireless in its Joint Motion to Approve the Stipulation and Settlement requests that this docket be consolidated with Docket No. 04M-203T, *In the Matter of Rye Telephone Company's Request for Suspension of Wireline to Wireless Number Portability Obligations*. The parties state that in the event a hearing, workshop, or technical conference is required in the future, consolidation of the two dockets is appropriate since they are substantially similar and the rights of the parties will not be prejudiced.

II. ORDER**A. The Commission Orders That:**

1. The Stipulation and Settlement Agreement filed by South Park Telephone Company and WWC Holding Company, Inc., on July 21, 2004, attached to this Decision as Exhibit A is approved.

2. South Park Telephone Company shall no later than December 31, 2004, or six months following the receipt of a *bona fide* request, whichever date is later, make intermodel local number portability available to WWC Holding Company, Inc., as agreed to in the Stipulation and Settlement, unless this Commission grants additional relief based on the information in the status report or for any extraordinary, unforeseen events that occur after October 1, 2004.

3. The hearing date of July 26, 2004 is vacated.

4. The request of South Park Telephone Company and WWC Holding Company, Inc., to consolidate the instant docket with Docket No. 04M-203T is granted.

5. The Commission retains jurisdiction over this matter until local number portability is implemented by South Park Telephone Company in its service territory. This docket shall remain open until that time.

6. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 3, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners