

Decision No. C04-0899

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-129T

IN THE MATTER OF BIG SANDY TELECOM INC.'S PETITION FOR SUSPENSION OF
LNP REQUIREMENTS.

DOCKET NO. 04M-130T

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

DOCKET NO. 04M-131T

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

**INITIAL COMMISSION DECISION
APPROVING STIPULATION AND SETTLEMENT
AGREEMENT AND VACATING HEARING DATE**

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), Big Sandy Telecom, Inc. (Big Sandy), Columbine Telephone Company (Columbine), and Sunflower Telephone Company, Inc. (Sunflower), filed Petitions for Suspension of Wireline to Wireless Number Portability Obligations. Big Sandy, Columbine, and Sunflower requested that the Commission temporarily suspend their wireline to wireless local

number portability (LNP) obligations to Commercial Mobile Radio Service (wireless) providers in their respective exchanges until May 24, 2006.

2. On March 31, 2004, we shortened the notice period of the Petitions to ten days.

3. On April 5, 2004, WWC Holding Co., Inc. (Western Wireless), filed an Entry of Appearance and Notice of Intervention or, in the Alternative Petition to Intervene in each of these dockets.

4. At our regular weekly meeting on April 13, 2004, we granted each of these Petitions in part, allowing the carriers one year, or until May 24, 2005 to implement wireline to wireless LNP, or six months after a request for LNP from a carrier is received, whichever is later, absent further order from this Commission. Decision Nos. C04-0407, C04-0408, and C04-0409 were mailed April 20, 2004.

5. On May 10, 2004, Western Wireless filed an Application for Rehearing, Reargument or Reconsideration (RRR) of our April 20, 2004 decisions. We granted the RRR filings by Decision Nos. C04-0622, C04-0620, and C04-0621 and set the matters for hearing before an Administrative Law Judge. In those decisions, we determined that due and timely execution of our functions imperatively and unavoidably required that we omit the recommended decision in this case.

6. The Federal Communications Commission 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.

7. 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.

8. By the Petitions, Big Sandy, Columbine, and Sunflower request that we find pursuant to § 251(f)(2) their obligation to implement LNP in its exchange is contrary to the public interest, unduly economically burdensome, and technically infeasible.

9. All three companies qualify as a "rural telephone company" as defined in 47 U.S.C. § 153(37) and as a local exchange carrier with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide.

10. Big Sandy, Columbine, and Sunflower state in their Petitions that the costs for them 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. The carriers state that in order to become LNP capable, they will be required to upgrade its switch, arrange for these upgrades to be shipped, engineered, installed, and tested.

11. By Decision No. R04-0713-I, the above dockets were consolidated¹ and the hearing of these matters was scheduled for August 13, 2004.

12. On July 26, 2004, Big Sandy, Columbine, Sunflower, Northeast Colorado Cellular Corp. (NECC), and Western Wireless filed a Joint Motion to Approve Stipulation and Settlement, Vacate Hearing Date, and for the Commission to Retain Jurisdiction.

13. Big Sandy, Columbine, Sunflower, NECC, and Western Wireless agree on LNP implementation schedules summarized below and fully stated in the Stipulation and Settlement attached to this decision as Exhibit A.

14. Big Sandy agrees to implement LNP by December 31, 2004 or six months following the receipt of a *bona fide* request, whichever date is later. Big Sandy agrees not to challenge the *bona fide* request as to form.

15. Columbine agrees to make intermodal LNP available to wireless carriers having wireless coverage that overlaps Columbine's service area, by December 31, 2004 or six months following the receipt of a *bona fide* request, whichever date is later. Columbine agrees not to challenge the *bona fide* request as to form.

16. Sunflower agrees to implement LNP by December 31, 2004 or six months following the receipt of a *bona fide* request, whichever date is later. Sunflower agrees not to challenge the *bona fide* request as to form

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

¹ Docket Nos. 04M-137T and 04M-138T were also consolidated with these instant dockets but are not part of the filed Stipulation and Settlement Agreement.

18. It is found that the Stipulation and Settlement filed on July 26, 2004 by Big Sandy, Columbine, Sunflower, NECC, and Western Wireless is in the public interest and should be approved.

II. ORDER

A. The Commission Orders That:

1. The Stipulation and Settlement Agreement filed by Big Sandy Telecom, Inc., Columbine Telephone Company, Sunflower Telephone Company, Inc., Northeast Colorado Cellular Corp., and WWC Holding Company, Inc., on July 26, 2004, attached to this Decision as Exhibit A is approved.

2. The hearing date of August 13, 2004 is vacated for these three dockets.

3. The Commission retains jurisdiction over this matter until local number portability is implemented by Big Sandy Telecom, Inc., Columbine Telephone Company, and Sunflower Telephone Company, Inc., in their service territories. This docket shall remain open until that time.

4. 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