

Decision No. C04-1101

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-137T

IN THE MATTER OF EASTERN SLOPE RURAL TELEPHONE ASSOCIATION'S PETITION
FOR SUSPENSION OF LNP REQUIREMENTS.

DOCKET NO. 04M-138T

IN THE MATTER OF AGATE MUTUAL TELEPHONE COOPERATIVE ASSOCIATION'S
PETITION FOR SUSPENSION OF LNP REQUIREMENTS.

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

Mailed Date: September 16, 2004
Adopted Date: September 14, 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), Eastern Slope Rural Telephone Association (Eastern Slope) and Agate Mutual Telephone Cooperative Association (Agate) filed Petitions for Suspension of Wireline to Wireless Number Portability Obligations. Eastern Slope and Agate 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 15 days.

3. On March 31, 2004, N.E. Colorado Cellular, Inc., doing business as Viaero (NECC) filed Motions to Intervene in both dockets. 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 21, 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. Eastern Slope's Bennett exchange was the only exception to this date. The Commission ordered Eastern Slope to implement LNP in the Bennett exchange by November 24, 2004. Decision Nos. C04-0448 and C04-0449 were mailed April 30, 2004.

5. On May 11, 2004, Western Wireless filed an Application for Rehearing, Reargument or Reconsideration (RRR) of our April 30, 2004 decisions. We granted the RRR filings by Decision Nos. C04-0626 and C04-0627 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, Eastern Slope and Agate 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. Both 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. Eastern Slope and Agate 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 their switch, and arrange for these upgrades to be shipped, engineered, installed, and tested.

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

12. On July 26, 2004, Big Sandy Telecom, Inc., Columbine Telecom Company, Sunflower Telephone Company, Inc., NECC, and Western Wireless filed a Joint Motion to Approve Stipulation and Settlement, Vacate Hearing Date, and for the Commission to Retain Jurisdiction.

13. The remaining two dockets at issue in this decision, were not part of that July 26, 2004 Stipulation. The hearing for the above captioned dockets was rescheduled for August 18, 2004 by Decision No. R04-0881-I.

14. On August 20, 2004, Eastern Slope, Agate, NECC, and Western Wireless filed an Unopposed Joint Motion for Approval of Stipulation, and to Vacate Hearing Date.

15. In the Stipulation attached to the Joint Motion, the parties state that they agree to the suspension of Eastern Slope and Agate's obligations contained in the Commission's orders in these dockets mailed on April 30, 2004. Those obligations are that Eastern Slope implement LNP in its Bennett exchange by November 24, 2004, and all other exchanges by May 24, 2005, and that Agate implement LNP in its exchange by May 24, 2005.

16. The parties agree in paragraph 2 of the Stipulation, that each rural incumbent local exchange carrier will provide a private letter report jointly addressed to the Wireless Carriers on or before February 1, 2005, describing its progress toward implementation and will also advise at that time whether it will be able to meet the May 24, 2005 scheduled implementation date.

17. Finally, the Stipulation states that nothing in the Stipulation is intended to prevent any party from seeking further relief from the Commission.

18. We note that over four months have passed since our original decisions were mailed in these dockets. It apparently has taken the parties those four months, attorney fees, and Commission resources to reach the exact same conclusions, save the February 1, 2005 status letter. We question whether this was a legitimate use of time and money.

19. Nonetheless, we do approve the Stipulation with one change to paragraph 2 of the Stipulation. We require Eastern Slope and Agate to file with the Commission the February 1, 2005 status letters they send to the wireless carriers. This information will be valuable to the Commission as well, to have full knowledge of whether Agate and Eastern Slope intend to meet the May 24, 2005 deadline. The dockets will be kept open for receipt of those letters.

20. It is found that the Stipulation and Settlement filed on August 20, 2004, by Eastern Slope, Agate, 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 Eastern Slope Rural Telephone Association, Agate Mutual Telephone Cooperative Association, N.E. Colorado Cellular Corp., and WWC Holding Company, Inc. on August 20, 2004, attached to this Decision as Exhibit A, is approved with modification.

2. The hearing date of August 18, 2004 is vacated for these two dockets.

3. Eastern Slope Rural Telephone Association and Agate Mutual Telephone Cooperative Association are ordered to file a status report on or before February 1, 2005, consistent with the above discussion.

4. The Commission retains jurisdiction over this matter until local number portability is implemented by Eastern Slope Rural Telephone Association and Agate Mutual Telephone Cooperative Association in their service territories. This docket shall remain open until that time.

5. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 14, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

CHAIRMAN GREGORY E. SOPKIN
ABSENT.