

Decision No. R04-0713-I

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-131T

IN THE MATTER OF COLUMBINE TELEPHONE COMPANY'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.

DOCKET NO. 04M-137T

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

DOCKET NO. 04M-130T

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

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
CONSOLIDATING PROCEEDINGS;
SETTING HEARING; AND
ESTABLISHING PROCEDURES
AND PROCEDURAL SCHEDULE**

Mailed Date: June 28, 2004

I. STATEMENT

1. The captioned proceedings were commenced on March 19 and 24, 2004, when Sunflower Telephone Company, Inc. (Sunflower), Eastern Slope Rural Telephone Association (Eastern Slope), Agate Mutual Telephone Cooperative Association (Agate), Columbine Telephone Company, and Big Sandy Telecom, Inc. (collectively, Petitioners), filed petitions (Petitions) with the Colorado Public Utilities Commission (Commission) requesting suspension of the wireline-to-wireless local number portability requirements imposed by the Federal Communications Commission.

2. By decisions mailed on June 9 and 10, 2004, the Commission referred the Petitions to the undersigned administrative law judge for an expedited hearing.¹ *See*, Decision Nos. C04-0621, C04-0626, C04-0627, C04-0620, and C04-0622.

3. Interventions have been filed in all the Petitions by WWC Holding Co., Inc. (Western Wireless). Interventions were filed in the Sunflower, Eastern Slope, and Agate petitions by N. E. Colorado Cellular, Inc. (NECC).²

4. A pre-hearing conference was held on June 25, 2004. *See*, Decision No. R04-0645-I. Appearances were entered on behalf of all parties by their respective legal counsel.

5. At the pre-hearing conference, the Petitioners jointly moved to consolidate the Petitions for hearing pursuant to 4 *Code of Colorado Regulations* 723-1-79(a). No party

¹ These decisions indicate that the Commission will be entering initial decisions in these matters pursuant to § 40-6-109(6), C.R.S.

² At the pre-hearing conference counsel for Agate questioned whether NECC had been granted intervenor status in Docket No. 04M-138T. The Commission granted NECC's Motion to Intervene in that proceeding on April 21, 2004. *See*, Decision No. C04-0448.

opposed the motion. The Commission may order consolidation when the issues in separate proceedings are substantially similar and the rights of the parties will not be prejudiced thereby. Here, the issues in all the Petitions are virtually identical. No party has indicated that it will be prejudiced by consolidation and, indeed, all parties are in agreement that consolidation is warranted. Therefore, the motion to consolidate the Petitions will be granted.

6. At the pre-hearing conference the parties presented an agreed set of procedures and a procedural schedule that should result in resolution of the Petitions within the timeframe mandated by 47 U.S.C. § 251(f)(2). Those procedures and procedural schedule are reasonable and will be adopted by the Order that follows.

7. The parties also indicated that it may be possible to resolve the issues raised by the Petitions on a “summary judgment” basis without the necessity of holding a formal hearing. In the event the parties unanimously conclude that such a procedure is warranted, they have agreed to submit a joint statement of agreed undisputed material facts on or before July 30, 2004, followed by the submission of briefs in accordance with the alternative procedural schedule set forth in paragraphs 10 and 11 of Section II.A. below. Resolution of the Petitions in this matter may result in vacating those portions of the procedural schedule set forth in paragraphs 2, 5 and 6 of Section II.A. below.

II. ORDER

A. It Is Ordered That:

1. The unopposed motion of Petitioners to consolidate the captioned proceedings pursuant to 4 *Code of Colorado Regulations* 723-1-79(a) is granted.

2. The hearing of this consolidated proceeding is scheduled as follows:

DATE: August 13, 2004

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

3. Petitioners shall file their direct testimony and exhibits, in question and answer form, on or before July 9, 2004.

4. WWC Holding Co., Inc., and N. E. Colorado Cellular, Inc., shall file their answer testimony and exhibits, in question and answer form, on or before July 23, 2004.

5. Any desired rebuttal or cross-answer testimony and exhibits shall be filed, in question and answer form, on or before August 4, 2004.

6. Any desired post-hearing Statements of Position shall be filed on or before August 20, 2004.

7. Responses to all written discovery shall be served within seven calendar days of service of the discovery requests to which they are directed. Objections to discovery shall be served within three business days of receipt of the discovery. Motions to compel discovery shall be filed within seven calendar days of receipt of objections to discovery. In all other respects, discovery shall be governed by Rules 77(a) and (b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations*, 723-1-77(a) and (b).

8. In the event the parties unanimously conclude that the issues raised in the Petitions can be resolved on a "summary judgment" basis, they shall file a joint statement of agreed undisputed material facts on or before July 30, 2004. Such statement shall include an

acknowledgement by the parties that the facts set forth therein are all the facts necessary for a complete resolution of the Petitions.

9. In the event the parties timely file a joint statement of agreed undisputed material facts as contemplated by paragraph 8 above, the procedural schedule set forth in paragraphs 10 and 11 below shall be followed and, unless advised to the contrary by the undersigned administrative law judge, those portions of the procedural schedule set forth in paragraphs 2, 5, and 6 above may be deemed vacated.

10. Each party shall file an initial brief setting forth the legal basis for its contention that it is entitled to a ruling on the Petitions in its favor as a matter of law on or before August 13, 2004. .

11. Each party may submit a brief in response to the initial briefs referred to in paragraph 10 above on or before August 20, 2004.

12. All testimony/exhibits, discovery, motions, briefs, or other pleadings shall be served on all parties electronically or by hand delivery on the same date they are filed with the Commission.

13. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge