

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

Docket No. 04M-221T

IN THE MATTER OF P C TELCOM'S PETITION FOR SUSPENSION OF LNP
REQUIREMENTS

STIPULATION AND SETTLEMENT AGREEMENT

Phillips County Telephone Company d/b/a "P C Telcom" ("PCTC" or "Petitioner"), and N.E. Colorado Cellular, Inc. ("NECC") referred to herein collectively as "the Parties", acting through their respective undersigned counsel, enter into this Stipulation and Settlement Agreement ("Stipulation") regarding the Combined Motion to Reopen the Record and for Waiver of Response Time filed by PCTC in the instant Docket. The Parties submit this Stipulation for approval by the Colorado Public Utilities Commission (Commission) pursuant to Rule 83(a) of the Commission's *Rules of Practice and Procedure*, 4 CCR 723-1-83(a).

PROCEDURAL HISTORY

1. On May 3, 2004, Petitioner filed its Combined Petition for Suspension and Motion for Expedited Treatment and Waiver of Response Time. Relying upon provisions of Section 251(f) of the Federal Telecommunications Act, Petitioner sought an expedited Order from this Commission suspending the Federal Communication Commission's ("FCC") November 10, 2003 *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* ("*Intermodal Order*") to the extent such order required Petitioner to implement local number portability ("LNP") in its exchange by May 24, 2004.

2. The PCTC Petition noted that it had received LNP request letters from T-Mobile, Verizon and NE Colorado Cellular, Inc., all of which requested LNP service by May 24, 2004. The Petition further noted that: "Petitioner's switch was not LNP capable, but Petitioner is in the process of taking steps to make its switch LNP capable by installing the appropriate software. Petitioner is also in the process of making the necessary arrangements to 'port' calls by contracting with a vendor to provide 'data dip' services. It has not, however, had an opportunity to fully implement and test the arrangements it has made to become fully LNP compliant."

3. The PCTC Petition requested that its LNP implementation deadline be extended by this Commission for a six month time period, to and including November 24, 2004.

4. With a mailed date of June 11, 2004, this Commission issued its Decision No. C04-0630. In that Decision Granting Petition, it reviewed the issues raised by the Petition, noted that none of the CMRS providers listed in the Petition had sought intervention in the matter, and approved the requested six month waiver for the company to become LNP compliant. PC Telcom was directed in the Commission's Order to implement LNP in its exchange no later than November 24, 2004 "...absent further order from this Commission."

5. Subsequent to the issuance by this Commission of its June 11, 2004 Decision Granting Petition, PCTC made the decision to purchase a replacement switch to provide enhanced telecommunications services capabilities to the customers in its exchange. It concluded that LNP compliance expenses for its existing switch could be avoided if an additional LNP waiver were granted by this Commission.

6. On September 22, 2004 PCTC filed its Combined Motion to Reopen the Record and For Waiver of Response time in the docket. In its pleading, PCTC moved the Commission to reopen the record in the proceeding and to grant it an additional LNP waiver of one year's time, to and including November 24, 2005 to permit replacement of its existing switch without expending resources on an LNP upgrade. Although it did not intervene in Petitioner's initial filing, N. E. Colorado Cellular ("NECC") filed its Motion to Intervene in response to Petitioner's Combined Motion to Reopen on September 28, 2004.

7. In its regular weekly meeting of September 29, 2004, the Commission denied the PCTC Motion for Waiver of Response Time. In its regular weekly meeting of October 13, the Commission granted the NECC intervention; and assigned the matter to an ALJ for expedited consideration. In Decision No. C04-1213 dated October 15, 2004, the Commission formalized the decisions noted above.

8. On November 5, 2004 the presiding ALJ issued his Interim Order (Decision No. R04-1314T) setting a prehearing conference. Paragraph 7 of that Interim Order notes that it will be impossible to issue an administratively final order prior to November 24, 2004 – the date upon which PCTC’s current waiver expires, and that counsel for the parties will be expected to present oral argument concerning the waiver extension issue at the prehearing conference scheduled on November 15, 2004. Counsel for the parties appeared as scheduled at the prehearing conference on November 15 and made their respective oral arguments.

9. On November 17, 2004 the presiding ALJ issued his Interim Order (Decision No. R04-1354) in which he established a procedural schedule for the docket and in which he also denied PCTC’s request for extension of the waiver suspension period beyond November 24, 2004.

10. On November 19, 2004 PCTC filed its Combined Motion for Partial Stay and For Waiver of Response Time seeking an extension of the LNP waiver suspension period from November 24, 2004 throughout the pendency of the docket. On November 22, 2004, NECC filed its Response to the PCTC Combined Motion and urged rejection by the ALJ of the arguments for the requested LNP suspension waiver.

11. The Parties conducted settlement negotiations and reached a compromise settlement concerning the issues of concern to each in the docket prior to the presiding ALJ issuing a decision concerning the PCTC Motion for Partial Stay. Those settlement terms are set out below.

TERMS OF AGREEMENT

12. It is agreed that PCTC's suspension waiver for LNP compliance will be extended from November 24, 2004 without interruption to and including January 14, 2005. Commencing on January 14, 2005 PCTC agrees that it will be LNP compliant pursuant to applicable Federal Communications Commission orders. It further agrees that if requested to do so commencing on January 14, 2005 any requested PCTC to NECC "port" will be processed within the federally mandated porting interval of four business days commencing on that date. That is -- the first day upon which a requested port would commence processing is January 14, 2005 and any request received on that date (or on subsequent dates) will be processed in accordance with the referenced FCC mandated porting intervals.

13. PCTC agrees that it will not seek any further LNP waiver suspensions beyond that agreed upon in this settlement agreement from the Colorado Public Utilities Commission.

14. PCTC will provide biweekly progress reports concerning the steps it is taking to become LNP compliant between this date and January 14, 2005 to NECC. These reports will be made in email form and will be provided by counsel for PCTC to counsel for NECC on December 10, and December 23, 2004 and January 7, 2005.

15. The Parties jointly request that this docket remain open beyond the January 14, 2005 waiver suspension expiration date and that it be made subject to closure based upon a joint motion of the parties at a time subsequent to the waiver expiration date.

16. The Parties further agree that the existing procedural schedule set forth in the ALJ's Interim Order (Decision No. R04-1354) dated November 17, 2004 should be vacated in its entirety.

GENERAL PROVISIONS

17. Both Parties desire to end further uncertainty in litigation by entering this Stipulation. Accordingly, the Parties hereby agree to be bound to the terms of this Stipulation.
18. This Stipulation is a settlement of disputed and compromised claims and accordingly, this Stipulation is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Stipulation. No precedential effect or other significance, except as may be necessary to enforce this Stipulation or a Commission order concerning this Stipulation, shall be attached to any principle or methodology contained in this Stipulation.
19. All witnesses of the Parties will support all aspects of the Stipulation and Settlement Agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Stipulation. Each Party also agrees that, except as expressly provided in this Stipulation, it will take no action in any administrative or judicial proceeding, which would have the effect, directly or indirectly, of contravening the provisions of this Stipulation. Without prejudice to the foregoing, the Parties expressly reserve the right to advocate positions different from those stated in this Agreement in any proceeding other than one necessary to obtain approval of, or enforce this Stipulation or a Commission order approving this Stipulation. Nothing in this Stipulation shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Stipulation.
20. This Stipulation shall not become effective until the Commission issues a final order approving the Stipulation, which order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to any of the Parties to the Stipulation. In the event the Commission modifies this Stipulation in a manner unacceptable to any Party hereto,

that Party may withdraw from the Stipulation and shall so notify the Commission and the other Parties to the Stipulation in writing within ten (10) days of the date of the Commission order. In the event a Party exercises its right to withdraw from the Stipulation, this Stipulation shall be null and void and of no effect in this or any other proceedings.

21. In the event this Agreement becomes null and void or in the event the Commission does not approve this Stipulation, this Stipulation, as well as the negotiation undertaken in conjunction with the Stipulation, shall not be admissible into evidence in these or any other proceedings.

22. The Parties state that they have reached this Stipulation by means of a negotiated process that is in the public interest, and that the results reflected in this Stipulation are just, reasonable and in the public interest. Approval by the Commission of this Stipulation shall constitute a determination that the Stipulation represents a just, equitable, and reasonable resolution of all issues, which were or could have been contested by the Parties.

23. This Stipulation is an integrated agreement that may not be altered by the unilateral determination of any Party.

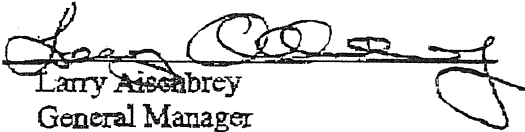
24. This Stipulation may be executed in separate counterparts, including facsimile. The counterparts taken together shall constitute the Stipulation and Settlement Agreement. The Parties represent that the signatories to the Stipulation have full authority to bind their respective parties to the terms of the Stipulation.

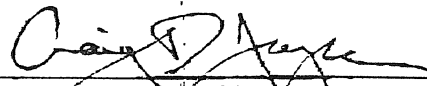
WHEREFORE, PCTC and NECC respectfully submit this Stipulation and Settlement Agreement for approval by the Commission and request that the Commission grant such approval.

Dated this 15th day of December, 2004.

NECC

APPROVED AS TO FORM:

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