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Decision 91-01-011 January 15, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Richard Kirschman,)

Complainant,)

vs.)

Pacific Bell (U-1001-C),)

Defendant.)

ORIGINAL

Case 90-07-051

(Filed July 20, 1990)

Richard Kirschman, for self, complainant.Colleen M. O'Grady, Attorney at Law, for
Pacific Bell, defendant.Helen M. Mickiewicz, Attorney at Law, and
Roy Lathrop, for the Division of Ratepayer
Advocates.OPINIONSummary of Complaint

On July 20, 1990, Richard Kirschman (Kirschman or complainant) filed this complaint against Pacific Bell (defendant) seeking an order to require defendant to expand the local calling area of West Marin 868 prefix subscribers to include Point Reyes Station 663 prefix numbers. West Marin subscribers are located within the Stinson Beach, Bolinas, and Dogtown area.

Complainant acknowledges that defendant is requesting in a separate proceeding, not identified, for authority to extend the West Marin local calling area to include Belvedere, located on the other side of Mt. Tamalpais reachable by a 25- to 35-minute drive.

However, complainant contends that it is inappropriate to exclude local calling access to the Point Reyes Station area because the area is a routine part of life for West Marin residents. He asserts that it is in Point Reyes Station area that one finds the only bank, pharmacy, doctors, clinic, feed store,

full-sized market, lumber yard, hardware store, and various county social welfare offices.

Although defendant's subscribers who live within a 20-minute drive to the north, to the west, and to the east of the Point Reyes Station area are treated as local callers within a toll-free zone, subscribers who live within a 20-minute drive to the south in the immediate adjoining 868 prefix area are treated as full toll-paying callers.

Complainant requests that we recognize the unique character of coastal West Marin's local community of interest and that we require defendant to offer 868 prefix subscribers an extended local calling area of service, known as Extended Area Service (EAS), that reflects the larger local calling area of West Marin's rural region and require defendant to provide a value of service equivalent to that offered subscribers in urban areas. Attached to the complaint is a petition requesting the extended calling area signed by 35 West Marin residents, of which 22 are from Bolinas, 11 from Stinson Beach, and 2 from Dogtown.

Answer to Complaint

On August 24, 1990, defendant filed a motion to dismiss and answer to the complaint. Defendant provided three reasons why the complaint should be dismissed. Defendant's first argument is that the local calling area for the West Marin area already includes all basic customer needs. The police department, fire department, and other services can be reached by dialing "911." Hospitals and doctors can be reached, and shopping centers, grocery stores, banks, and other subscriber basic needs are located in complainant's local calling area.

In support of its first argument defendant cites a Commission decision¹ which states that the Commission has

¹ McManamon v. Pacific Telephone (1978) 84 Cal. P.U.C. 49, 51-52.

repeatedly held that the relative number of prefixes in the free calling area is not a proper criticism for the evaluation of the reasonableness of exchange boundaries. As long as the basic subscriber calling needs, i.e., schools, police, fire, ambulance, hospitals, doctors, dentists, banks, attorneys, shopping centers etc., are met, the exchange boundaries cannot be classified as unreasonable.

The second argument for dismissal is that the calls placed from West Marin to Point Reyes Station amount on average to only \$0.58 for residential subscribers and \$1.68 for business subscribers. Absent a high usage defendant cannot justify extending the local service area to include Point Reyes Station.

Finally, defendant argues that no change in the local calling area is necessary because defendant offers "Circle Calling," a discretionary service to West Marin subscribers. Circle Calling service enables subscribers, such as West Marin subscribers, to place a large volume of calls to Point Reyes Station at a discount up to 30% for \$4.75 per month.

In answer to the complaint, defendant asserts that there is not a sufficient community of interest between the West Marin area and the Point Reyes Station area to warrant extending the local calling area.

Reply to Defendant's Dismissal Motion

On September 4, 1990, complainant filed a response to defendant's motion to dismiss the complaint. Complainant asserts that:

1. Granting the motion would deny complainant a public hearing and the opportunity to present evidence and witnesses.
2. He is not trying to re-draw the existing exchange boundaries.
3. West Marin's local calling area as currently provided does not meet all basic customer needs.

4. The volume of calls from West Marin to Point Reyes Station reflects the rural population realities of the region and should be treated with respect even though dollar amounts are smaller than urban centers.

Hearing

An evidentiary hearing was held on October 1, 1990 in the Bolinas Firehouse conference room before Administrative Law Judge (ALJ) Galvin. The ALJ informed all parties of their right to be represented by an attorney. Kirschman represented himself. Kirschman, Timothy Waters (Waters), and Jean Burroughs (Burroughs) testified for complainant. Defendant was represented by Colleen O'Grady, an attorney, and Alisanne Gilmore-Allen (Gilmore-Allen), a marketing product manager, testified for defendant. The Division of Ratepayer Advocates (DRA) was represented by Helen M. Mickiewicz, an attorney, and testimony was provided by Roy Lathrop, a program specialist.

Closing arguments were received at the end of the evidentiary hearing and the matter was submitted upon the receipt of the hearing transcript on October 24, 1990.

Complainant's Position

Although the complaint requests one-way EAS service from the Stinson Beach, Bolinas, and Dogtown area to the Point Reyes Station area, complainant testified that he is seeking toll-free EAS in both directions. The population of Stinson Beach is 715, Bolinas 1,491, Dogtown 30, and Point Reyes Station 679. Kirschman asserts that his request is based on defendant's failure to recognize the community of interest that exists between these villages.

Kirschman explained that West Marin is separated from the rest of Marin County by a series of parallel coastal hills and ridges. Its villages are widely spaced and include Point Reyes Station, Inverness, Marshall, Nicasio, Olema, Dogtown, Bolinas, and

Stinson Beach with Point Reyes being the economic and service hub of these communities.

Kirschman introduced approximately 16 letters addressed to him from various businesses and individuals supporting his claim that Point Reyes Station is the economic and service hub of West Marin. Most of these letters assert that these villages are intimately dependent on each other and as such should be allowed to have free telephone access to each other. None of these writers were informed that if complainant's request were adopted that they may be assessed an additional charge for EAS.

Complainant acknowledges that exchange centers are within 8 miles of one another and that telephone calls between those exchanges are toll free. He also acknowledges that the new regulatory framework decision, Decision (D.) 89-10-031 as modified by D.90-04-031, extended all local calling areas from an 8-mile area to a 12-mile area.

Complainant, recognizing that EAS exists between several exchanges, such as between Point Reyes and Novato and Inverness, believes that calls placed to EASs are free and seeks similar treatment for the West Marin area. However, he does recognize that a billing adjustment would need to be made somewhere to compensate defendant for the cost of what are now toll calls. If the additional costs were to be shared amongst all the ratepayers and each person paid a half cent a month additional, that would be one thing. However, he does not believe that it would be fair if the entire cost was put on the phone bills of the Stinson Beach, Bolinas, and Dogtown subscribers.

Defendant's Position

Gilmore-Allen testified that it is defendant's policy not to implement EAS when its franchise obligation is not in question. She defined EAS as a service provided to subscribers within a given exchange local calling beyond an 8-airline-mile calling area. Gilmore-Allen explained that although the Commission is expanding

the 8-mile local calling area to 12 miles, the expansion will have no impact on this complaint because the distance between the 868 and 663 prefix is approximately 15 miles.

Defendant explained that in those instances where EAS is provided an incremental cost is added to each subscriber's basic exchange rate for the added local calling area based on the "Salinas formula" approved by the Commission. This formula considers the relative size of the exchanges, the distance between the exchanges, and the subscriber's class of service.

The following tabulation compares the current monthly rates for residential and business subscribers in the affected exchanges with the EAS impact if the complaint is granted. In addition, defendant would incur a one-time charge of approximately \$12,000 to implement the EAS.

	Current Rate	With EAS
<u>Residential Flat Rate</u>		
Stinson Beach, Bolinas & Dogtown	\$8.35	\$ 8.80
Point Reyes Station	8.35	9.25
<u>Business Measured Rate</u>		
Stinson Beach, Bolinas & Dogtown	8.35	9.80
Point Reyes Station	8.35	10.95

Gilmore-Allen conducted a field survey to determine what goods and services are available within the Stinson Beach, Bolinas, and Dogtown subscribers' area. She found that the Stinson Beach, Bolinas, and Dogtown area has access to emergency services via 911 and has access to elementary schools, a small grocery store, a physician, restaurants, and a post office within the communities of Stinson Beach, Bolinas, and Dogtown. Her discussion with residents disclosed that most of the residents go over the hill to other communities for necessary goods and services.

In addition, she found that within the Mill Valley and Corte Madera communities, which are a part of the Stinson Beach, Bolinas, and Dogtown local exchange, there are elementary schools, major grocery stores, gas stations, dentists, banks, doctors, convalescent hospitals, pharmacies, restaurants, and a high school.

Defendant's analysis of the local calling pattern disclosed that a majority of Stinson Beach, Bolinas, and Dogtown subscribers do not call the Point Reyes Station area in a given month. Only 38.5% of the residence subscribers and 50% of the business subscribers called the Point Reyes Station area in March 1989. As a basis of comparison, Gilmore-Allen testified that approximately 76% of the residence subscribers and 70% of the business subscribers called San Rafael during the same time period.

The calling pattern from the Point Reyes Station area to the Stinson Beach, Bolinas, and Dogtown area was even lower. Only 28% of those residential subscribers called the Stinson Beach, Bolinas, and Dogtown area during the same month, and only 41% of business customers called.

Gilmore-Allen concludes from her field survey that all necessary goods and services are available in complainant's local calling area and that affected subscribers would not be willing to pay the mandatory incremental EAS charge. She also concludes from her review of the local calling pattern that the calling pattern does not warrant the EAS requested by complainant.

However, Gilmore-Allen does explain that there are alternative plans available to those subscribers that frequently call outside their local calling area. These alternatives include Community Plan, Circle Calling, and Optional Calling Measured Service (OCMS). Community Plan provides a subscriber a 30% discount on all calls to an area plus an \$8.70 allowance of calls at no charge for \$4.35 per month. Circle Calling provides a subscriber a 30% discount on all calls to exchanges within a 40-mile radius for \$4.75 per month. Finally, OCMS provides a subscriber

subscriber unlimited calls between communities between certain hours for \$5.10 per month.

DRA's Position

Lathrop testified that any consideration of including the Point Reyes Station area as an EAS to and from the Stinson Beach, Bolinas, Dogtown area should be based on the community of interest factor and the "take rate."

Lathrop defined the community of interest factor as the average number of calls per line per billed month. To be a candidate for an EAS he explained that the area must attain a community of interest factor of 3.0 to 5.0. For the month of March 1989, based on 1,598 residence subscribers and 197 businesses, the community of interest factor for the area in question was 1.68 and 5.08, respectively.

He defined the take rate as a percentage of customers who complete at least one call per billed month. To be a candidate for EAS the area must attain a take rate in excess of 75%. In March 1989 the take rates for residence and business were 38.5% and 50.7%, respectively. In July 1990 the take rates for residence and business were 44.55% and 53%, respectively.

Lathrop asserts that the community of interest factor and take rate must be considered separately to make sure that the statistics are not influenced by one particular class of service. Based on Lathrop's analysis of the community of interest factors and take rate, he does not recommend that defendant establish an EAS between the Stinson Beach, Bolinas, Dogtown area and Point Reyes Station area, at this time.

Discussion

In a complaint proceeding the burden of proof lies with the complainant. Although complainant has established that a geographical community of interest exists in West Marin, the calling pattern testimony shows that defendant's subscribers' community of interest is not consistent with the West Marin's

geographical community of interest. On the contrary, the calling pattern testimony shows that the number of Stinson Beach, Bolinas, and Dogtown subscribers' calls to Point Reyes Station area and vice versa is small relative to the total number of subscribers and calls, and does not meet the minimum take rate or community of interest factor. No evidence has been provided to show that the Stinson Beach, Bolinas, and Dogtown subscribers' basic needs are not currently being met.

Subscribers that do call from Stinson Beach, Bolinas, and Dogtown to Point Reyes Station area, and vice versa, have Circle Calling, OCMS, and Community Plan alternatives that may benefit them economically.

We are obligated to protect all subscribers' interests without favor or discrimination between areas or classes of subscribers. As such, it is fair and reasonable to require that those benefiting from EAS provide revenues sufficient to leave defendant's earnings in the same condition that defendant presently earns. To do otherwise would be unfair to defendant's other subscribers who would receive no benefit from the proposed EAS but who would be required to carry the burden of making up the revenue deficiency. Complainant has not met his burden of proof in this complaint case; therefore, this complaint should be denied.

Findings of Fact

1. Complainant requests that the unique characteristic of West Marin's local community of interest be recognized and that defendant offer West Marin subscribers toll-free EAS for the West Marin area.

2. The relative number of prefixes in the free calling area is not a proper criticism for the evaluation of the reasonableness of exchange boundaries.

3. As long as basic subscriber calling needs are met, the exchange boundaries cannot be classified as unreasonable.

4. West Marin is separated from the rest of Marin by a series of parallel coastal hills and ridges.

5. Point Reyes Station is the geographical, economic and service hub of West Marin.

6. Complainant's letter writer supporters were not informed that they may be assessed an additional monthly charge if complainant's request for an EAS is adopted.

7. A billing adjustment would need to be made to compensate defendant for the cost of what are now toll calls if an EAS is established.

8. It is defendant's policy not to implement EAS when its franchise obligation is not in question.

9. EAS is a service that provides subscribers within a given exchange local calling beyond an 8-airline-mile calling area.

10. The 8-mile local calling area is being expanded to 12 miles.

11. Stinson Beach, Bolinas, and Dogtown exchange is located approximately 15 miles from the Point Reyes Station exchange.

12. In those instances where EAS is provided, an incremental cost is added to each subscriber's basic exchange rate for the added local calling area based on the Salinas formula.

13. Defendant would incur a one-time charge of approximately \$12,000 to implement the requested EAS.

14. The local calling pattern shows that a majority of the Stinson Beach, Bolinas, and Dogtown subscribers do not call the Point Reyes Station area, and vice versa.

15. A field study disclosed that all necessary goods and services are available in complainant's local calling area.

16. The local calling pattern does not warrant the establishment of an EAS.

17. Community Plan, Circle Calling, and OCMS are alternative calling plans available to those subscribers that frequently call outside their local calling area.

18. The community of interest factor and the take rate for the area do not show a need for the EAS.

19. We are obligated to protect all subscribers' interests and without favor or discrimination between areas or classes of subscribers.

20. It is fair and reasonable to require that the benefactors of EAS provide revenues sufficient to leave defendant's earnings in the same condition that defendant presently earns.

21. Complainant has not met his burden of proof.

Conclusion of Law

The complaint should be denied with prejudice.

ORDER

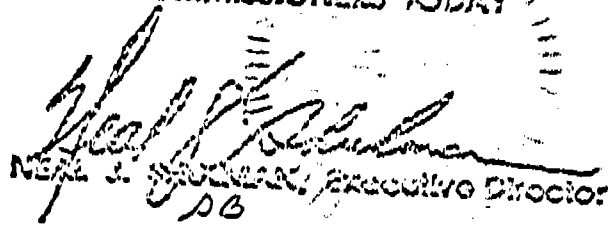
IT IS ORDERED that the complaint in Case 90-07-051 is denied with prejudice.

This order becomes effective 30 days from today.

Dated January 15, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEIL J. GOULD, Executive Director