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Decision 96-01-010 January 10, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mark S. Kern, Complainant,

ORIGINAL

Pacific Bell (U-1001-C), Defendant.

Case 93-09-021  
Filed September 8, 1995

Complainant also filed a petition to his certain... signed by complainant and 25 other Corte Madera area residents.

requesting that the Corte Madera calling area be granted zones 1 and 2 calling to... Colleen O'Grady, Attorney at Law, for Pacific Bell, defendant.

OPINION

Summary of Complaint

Mark S. Kern (complainant) filed a complaint on behalf of himself against Pacific Bell (defendant). Complainant alleges that:

"The division of Southern Marin County into four (4) separate exchanges is in effect a rate discrimination. It appears unreasonable from prefix 924. The sizes, areas, populations, demographic(s) and distances across the exchange of the exchanges of Sausalito, Tiburon-Belvedere, Mill Valley, and Corte Madera do not compare fairly with other exchanges in the San Francisco Bay Area. The line dividing the exchanges of Belvedere from Corte Madera appears to provide a community with a special discount. This appears in violation of Public Utility Code Sec. 453(c)... no public utility shall... grant any preference or advantage... or subject any corporation or person to any prejudice or disadvantage. Within each exchange is a rate center over 1.461 square miles. From which distance is measured to another exchange to determine what a customer will pay for phone service between the exchanges.

EXHIBIT

Complainant requests that defendant be directed to consolidate the Belvedere-Tiburon (Belvedere), Sausalito, Mill Valley, and Corte Madera exchanges and rate centers into one Southern Marin exchange and rate center or, in the alternative, that defendant be directed to provide residents of the Corte Madera exchange with Extended Area Service (EAS) into San Francisco and the East Bay.

Complainant also attached a petition to his complaint, signed by complainant and 25 other Corte Madera area residents, requesting that the Corte Madera calling area be granted Zones 1 and 2 calling to San Francisco Zones 1, 2, and 3, and to East Bay Zones 1, 2, 3, and 4. Petitioners also requested that the four Southern Marin County calling areas be consolidated into one calling area to facilitate fair calling rates. Petitioners, unlike complainant in his complaint, did not assert any allegations of rate discrimination and did not request EAS from Corte Madera to the San Francisco and East Bay exchanges.

Answer to Complaint.

Defendant denies in its October 15, 1993 answer to the complaint that rate discrimination exists in the Southern Marin County exchanges and denies that the current configuration of exchanges unlawfully deprives residents of the Corte Madera exchange of the economically beneficial access afforded those who live in the Belvedere, Mill Valley, and Sausalito exchanges.

In its answer, defendant explains what exchanges are. An exchange is a specific geographical area served by a central office or several central offices. A central office is a building in which the physical telephone lines originate. Boundary lines separate adjoining exchanges. Some area exchanges are as small as Verdi, with 0.5 square mile, or as large as Bakersfield, which has over 1,461 square miles. Within each exchange is a rate center from which distance is measured to another exchange to determine what a customer will pay for phone service between the exchanges.

Defendant also explains that rates for local and toll calls are based on the mileage between rate centers. A rate center is designated when an exchange is established and is usually the location of a telephone central office with many of the older rate centers established at the location of the post office or other federal building within a community or city. To be classified as a Zone 1 or Zone 2 call, the distance from rate center to rate center must be between 10 and 12 miles. Generally, Zone 1 and Zone 2 calls are classified as local calls with no charge for flat rate service customers. If there are between 12 and 16 miles from rate center to rate center, the call is classified as a Zone 3 call with a discounted toll charge. Calls which span in excess of 16 miles from rate center to rate center are generally toll calls.

Defendant identifies, in its answer, tariff alternatives presently available to those ratepayers desiring discount calling into the other exchanges. Such alternatives include foreign exchange service and a variety of discount calling plans in San Francisco and the East Bay which would enable those ratepayers with high call volume to save money without burdening the entire population of an exchange.

Defendant concludes that the complaint should be dismissed because the rate centers which complainant seeks to be well relocated have been approved by the Commission, are set forth in defendant's tariffs, and because the complaint fails to comply with the provisions of Public Utilities Code § 1702 which sets forth the conditions for consideration of a complaint.

PU Code § 1702 states, in relevant part, that a complaint must set forth any fact or thing done or omitted to be done by Pacific Bell, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation of any provision of law or any order or rule of the commission.

Hearings and also explaining that rates for local and long distance calls are classified as local calls with no charge for concurrent briefs. A prehearing conference (PHC) was held on August 23, 1994, pursuant to an August 12, 1994 Administrative Law Judge's (ALJ) ruling. An evidentiary hearing on the complaint was held on September 22, 1994. Testimony was received from complainant and Mark S. Kern and defendant's Joe Carrisalez. A total of 18 exhibits were introduced of which 17 were received into evidence. The hearing was submitted upon the November 14, 1994 receipt of concurrent briefs. Rate Discrimination

Complainant asserts that rate discrimination exists because customers from the Corte Madera exchange, contiguous to the Belvedere exchange, must pay charges for calls to the San Francisco and East Bay area exchanges while customers from the Belvedere exchange enjoy local calling to the San Francisco and East Bay area exchanges. Complainant supports his assertion with testimony on the difference in the size, area, population, demographics, and distance across the four separate Southern Marin exchanges, the San Francisco exchange, and the East Bay area exchanges.

There is no dispute that the size, area, population, demographics, and distance of individual exchanges are different. However, defendant's witness explains that exchanges are not necessarily intended to coincide with political or governmental boundaries, which are frequently changed by annexation and other common events such as size, area, and population. Rather, exchange boundaries are established to endure customer service with basic customer calling needs.

In McManamon v. Pacific Telephone & Telegraph (1978), 84 Cal. P.U.C. 49, 51-52, we stated that exchange boundaries cannot be classified unreasonable as long as the basic customer calling needs, such as service to schools, police, fire, ambulances, hospitals, doctors, dentists, banks, attorneys, shopping centers, etc. are met.

The Southern Marin exchanges were established prior to 1948 based on the engineering design of local central office facilities and anticipated population growth. The facilities and exchanges were located so that the maximum number of customers could be served at the lowest cost.

A field examination of the Corte Madera exchange by defendant's witness substantiated that the Corte Madera exchange encompasses all of the exchange customers' basic needs, and more. Specifically, Larkspur, located in the Corte Madera exchange, contains the Marin General Hospital, a police station, a firehouse, a library, a city hall, a post office, banks, churches, gas stations, chiropractor and dental offices, a pharmacy, a professional center, a movie theater, several restaurants and cafes, a racquet club, a barber shop, an inn, and an insurance agency. Hence, the Corte Madera exchange satisfies the basic customer calling needs criteria and should not be changed.

While some customers could benefit from complainant's proposal to relocate three Southern Marin County rate centers to the Belvedere exchange rate center, other customers would be subject to additional toll charges. This is because any relocation of the Corte Madera exchange rate center, or any other exchange's rate center, will automatically reconfigure the exchange's Zone 1, 2, and 3 calling area enabling customers to call additional areas at no charge and impose toll rates on previously classified local free calling numbers. A review of the exchanges and rates chart, attached to the complaint, reveals that Corte Madera customers currently benefiting from free local calling to Ignacio and Novato would be charged toll rates upon the relocation of the Corte Madera exchange rate center to Belvedere.

The history of rate centers was discussed in Decision (D:) 90-05-091 in Case 87-06-022 (36 CPUC 2d 369, 396) which pointed out that:

"The 'Rate Centers' of the telephone exchanges are designated when the exchange is first

established and their location does not change. GTEC's witness, Bob Hatfield, a tariff expert, confirmed that: "they do not change" in location once established (Tr. 461). It also appears that many of the older exchange rate centers were established at the location of the post office or of another federal building within the given community or city and not at the actual location of the telephone central office. This ancient custom appears to have its origin when, prior to the existence of the Federal Communications Commission (FCC) (1934) the Postmaster General had certain authority to fix rates and interconnection on a nondiscriminatory basis. This authority originally dealing with telegraph service dates back to 'The Act of July 24, 1866,' (14 Stat. 221, 39th Cong., 1st sess.) Also, President Woodrow Wilson placed the control of telephone communications under Postmaster General A. S. Burleson from August 1, 1918 to July 31, 1919, as deemed necessary for the national security or defense, during World War I, (40 Stat. 1807, July 22, 1918.) Since the Postmaster General knew where all the nation's post offices were located, these locations became a matter of convenience for other possible uses including the rate centers of telephone exchanges. The authority granted the Postmaster General in 1866 was transferred to the FCC in 1934 by Section 601(b) of the Communications Act of 1934. (D.90-05-091 at p. 18, 36 CPUC 2d 369, 396; see also D.90-03-033 at pp. 24-25 in Application 89-05-004.)

In D.90-05-091 and D.94-01-015, we continued the historical method of holding that rate centers, once established, should not be changed. Not only are local rates determined in reference to these rate centers, but also all long distance and private carrier rates reference these rate centers. Any change in rate centers would result in costs, administrative burdens, and investment recovery issues (not only for defendant but for other) local and long distance exchange carriers.

"The Rate Centers of the telephone exchanges are designated when the exchange is first

The rate centers under discussion in this complaint have been approved by the Commission and are contained in defendant's tariffs as Schedule Cal. P.U.C. A6-2 (7). The evidence does not substantiate that rate discrimination exists between the Southern Marin County exchanges. Further, no evidence was offered to substantiate a need to charge the rate centers, previously adopted by this Commission, for such long distance calling plans (LDC) as EAS Alternative Solution.

Complainant's alternative to his request for consolidation of the Southern Marin County exchanges into one exchange with a rate center located so that calls to San Francisco and the East Bay would be local calls, was for the establishment of EAS in the Corte Madera exchange.

EAS is a service which allows an exchange to extend its local calling area to another exchange. In turn, for this extended local calling area, all customers within the exchange pay an additional monthly flat rate to compensate the telephone utility for its lost revenue associated with extending local calling beyond 12 miles. Defendant's witness calculated that the additional EAS monthly rate for Corte Madera exchange customers to obtain EAS for local calling to San Francisco and East Bay exchanges would be from \$1.35 to \$2.10 and from \$4.00 to \$6.35 for residential and business customers, respectively.

Customer calling patterns are the primary factor in determining whether to institute EAS between different exchanges, Richard Kirschman vs Pacific Bell (1991) 39 Cal PUC2d 208.

Although complainant received a favorable response for EAS from a small informal survey of Corte Madera exchange customers, he did not inform such parties that all customers would be required to pay an additional monthly flat fee for the service, whether they used it or not. Further, no evidence was presented on the calling pattern of customers in the Corte Madera exchange.

Irrespective of whether complainant was able to substantiate his EAS request with customer calling patterns, EAS is not a viable solution in this instance because Corte Madera is located within the San Francisco metropolitan area. In Pacific Telephone & Telegraph Company, (1979) 2 Cal. PUC2d 89, we established that EAS shall not be allowed in metropolitan areas that have zone usage and measurement (ZUM) calling plans. Such ZUM calling plans provide off-peak pricing in the San Francisco and East Bay extended area including the Corte Madera exchange and the other three Southern Marin exchanges. Therefore, EAS is not a viable alternative. Complainant's Intent to Claim Compensation on April 5, 1995, a complainant filed a notice of his intent to claim compensation. Pursuant to PUC Code § 1804 (a), a customer who intends to seek an award must file its intention within 30 days after the holding of a PHC. Complainant believes that his intent was timely filed because there was no PHC in this proceeding. Complainant is required, as part of his intent filing, to provide a statement of the nature and extent of his planned participation in the proceeding and an itemized estimate of the compensation he expects to request. In addition, complainant may include a showing that his participation in the proceeding would pose a significant financial hardship. Although a finding of significant financial hardship in no way ensures compensation, such a finding is necessary to obtain compensation.

Complainant asserts that the nature and extent of his planned participation are a matter of record, substantiated by his exhibits, direct testimony, and brief as to an itemized estimate of compensation he expects to request, complainant considers 1,250 hours at \$100 per hour for a total of \$125,000 to be a fair and just compensation award. Complainant represents that he spent more than 1,000 hours researching and developing his complaint.



Complainant also represents that a financial hardship exists because his income is limited and because this case has diverted his efforts from advocating as a member of the Marin County Mental Health Board, and from pursuing a research project derived from his being cited for illegally mooring a sailboat near the Santa Barbara Harbor.

In its answer to complainant's intent, defendant recommends that complainant's intent to claim compensation be rejected because it was filed approximately seven months past the 30-day statutory allowance after the August 31, 1994 PHC, which was held pursuant to an August 12, 1994 ALJ ruling at which complainant failed to appear.

Defendant further asserts that the Notice of Intent should be denied because complainant failed to include an itemized estimate of his requested compensation and failed to satisfy the significant financial hardship requirements as defined in PU Code § 1802(g), which defines significant financial hardship to mean that the customer cannot afford, without undue hardship, to pay the costs of effective participation.

Both complainant and defendant were mailed a copy of the ALJ ruling setting forth the August 31, 1994 PHC. Defendant attended the PHC but complainant did not appear and did not seek a postponement of the PHC. The absence of a complainant at a scheduled PHC does not result in the cancellation of a PHC. By D.92-08-047, we affirmed the existence of a rebuttal presumption that any item committed in the regular course of our practice to the custody of the United States mail, such as PHC notices, shall be deemed received by the addressee in the absence of specific, verified evidence of misdirection or failure to affix proper postage. In this proceeding, no such verified evidence was received by the Commission. Hence, nonreceipt of the ALJ PHC ruling is not a valid defense.

We concur with defendant's Complainant's intent to claim compensation should be rejected because complainant failed to submit his intent within 30 days after the August 31, 1994 PHC Findings of Facts and from pursuing a hearing at the County Mental Health Board, and from pursuing a hearing at the Santa Barbara Health Board.

1. Complainant asserts that rate discrimination exists in the Southern Marin exchanges and rate centers.

2. Complainant seeks the consolidation of Southern Marin exchanges and rate centers into one exchange and rate center.

3. Complainant seeks the implementation of EAS for Corte Madera exchange customers as an alternative solution to consolidating the Southern Marin exchanges and rate centers.

4. Rates for local and toll calls are based on the mileage between rate centers.

5. There is no dispute that the size, area, population, demographic, and distance of individual exchanges are different.

6. Exchange boundaries cannot be classified unreasonable as long as basic customer calling needs are met.

7. The Corte Madera exchange encompasses all of the exchange customers' basic needs, and more.

8. Any relocation of the Corte Madera exchange rate center will automatically reconfigure the exchange's Zones 1, 2, and 3 calling area, enabling customers to call additional areas at no charge and impose toll rates on previously classified local free calling numbers.

9. The rate centers under discussion in this complaint have been approved by the Commission and are contained in defendant's tariffs.

10. EAS is a service which allows an exchange to extend its local calling area to another exchange. All customers in an exchange receiving EAS pay a monthly flat rate to compensate the telephone utility for its lost revenue associated with extending local calling beyond 12 miles.

12. For EAS service, Corte Madera exchange customers would pay an additional monthly rate of (from \$1.35 to \$2.10 and from \$4.00 to \$6.25 for residential and business customers, respectively.

13. Customer calling patterns are the primary factor in determining whether to institute EAS between different exchanges.

14. EAS is not allowed in metropolitan areas that have calling plans such as the Southern Marin exchanges.

15. Complainant filed his intent to claim compensation approximately seven months after the PHC in this proceeding.

16. PU Code § 1804(a) requires an intent to claim compensation to be filed 30 days after a PHC.

17. Complainant has not set forth any facts which would cause us to modify a procedure that has been in effect for decades and which has proven beneficial and certain.

18. Complainant has not met his burden of proof.

Conclusion of Law

Defendant's motion to dismiss the complaint should be granted. The complaint should be denied with prejudice.

12. For HAS services, Corte Madera exchange customers would pay an additional monthly rate of \$1.35 to \$2.10 and from \$4.00 to \$6.25 for residential and business customers, respectively.

**IT IS ORDERED that:**

- 1. The complaint in Case 93-09-021 is denied with prejudice.
- 2. Mark S. Kern's Notice of Intent to claim compensation in this proceeding is denied. HAS is not allowed to retroactively call plans such as the Southern California and California Dated January 10, 1996 at San Francisco, California.
- 3. Case 93-09-021 is closed.

16. PU Code 81804(a) requires an intent to claim compensation to be filed 30 days after a PNC.

17. Complaint has not set forth any facts which would cause us to conclude that there has been in effect for decades and which has been in effect for decades and certain.

18. HENRY M. DUQUE  
 JESSIE J. KNIGHT, JR.  
 P. GREGORY CONLON  
 DANIEL Wm. FESSLER  
 Commissioners

Conclusion  
 Defendant's motion to dismiss the complaint should be granted. The complaint should be denied with prejudice.