

Decision 97-12-019 December 3, 1997

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Bruce Kennedy, et al.,

Complainants,

vs.

GTE California, Inc. and Pacific Bell,

Defendants.

ORIGINAL

Case 95-08-063
(Filed August 30, 1995;
Amended December 6, 1996)

J. William Peironnet, Attorney at Law, for Bruce Kennedy, et al., for complainants.

Nicole Erbe, Attorney at Law, for Pacific Bell; and James McPhail, Attorney at Law, for GTE California, Inc., for defendants.

ORDER

Background

Complainants Bruce Kennedy and J. William Peironnet, representing themselves and approximately 27 additional complainants, as listed in Attachment D to the complaint, filed their complaint against GTE California Incorporated (GTEC) and Pacific Bell on August 30, 1995. This complaint was filed because complainants, residing within the Felton exchange¹ boundary, are assigned Felton prefixes and are required to pay a toll or foreign exchange (FEX)² rate for their Los Gatos calls. Complainants contend that their calls to Los Gatos should be included in their exchange (local calling area) because their geographical area is situated in the Los Gatos School District,

¹ An exchange is an identifiable geographical area serviced by one or more central offices.

² FEX is a telephone exchange service which may be provisioned to a customer through a central office of an exchange other than the exchange in which the customer is located.

include Los Gatos mailing addresses, and because most residents of the subject area do business in the Town of Los Gatos and work in that direction, to the North.

Complainants seek to alleviate the alleged inequity through a realignment of their local calling area to include Los Gatos through the assignment of Los Gatos prefixes so that it is not necessary to pay a toll or FEX rate for Los Gatos calls and by requiring GTEC to purchase Pacific Bell facilities to effectuate such realignment of complainants' local calling area. Subsequently, on December 9, 1996, complainants amended their complaint seeking an Extended Area Service (EAS)³ route from complainants' Felton exchange to the Los Gatos exchange.

The request for a realignment of complainants' local calling area and requirement that GTEC purchase Pacific Bell facilities, was withdrawn by complainants at a July 11, 1997 Prehearing Conference (PHC) held in San Francisco. At the PHC, complainants also moved to dismiss GTEC as a defendant to this complaint case. There is no objection to dismiss GTEC from the complaint in this case. Hence, the sole issue remaining in this complaint is whether a one way EAS route, provided by Pacific Bell, from the Felton exchange to the Los Gatos exchange is justified.

EAS

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 the local calling area based on the "Salinas formula," as approved by the Commission. This formula is based on the relative size of the exchanges, distance between the exchanges, and the subscriber's class of service.

The primary factor in determining whether to institute EAS between different exchanges is a study of subscriber calling patterns, *Richard Kirschman v. Pacific Bell* (1991) 39 CAL PUC2d 208. A subscriber calling pattern study identifies the average

³ EAS is a service which allows an exchange to extend its local calling area to another exchange.

number of calls placed per line per month between the two exchanges at issue, the percentage of subscribers who complete at least one call a month to the targeted exchange (take rate), and the need to satisfy subscribers' basic calling needs. Three factors are generally needed to support the establishment of a new EAS route. These factors consist of a range of three to five average calls per line per month, a minimum 75% take rate, and a need to satisfy the subscribers' basic calling needs (Decision (D.) 97-06-106 and D.97-07-057).

Discovery issues between complainants and Pacific Bell on subscribers calling patterns were resolved at the July 11, 1997 PHC. Pacific Bell agreed to provide complainants with a EAS study consisting of one month's data, May or June of 1997 based on availability of data, on the one-way calling pattern from the Felton exchange to the Los Gatos exchange. The information includes the percentage of subscribers disaggregated by residence and business calling from the Felton exchange to the Los Gatos exchange; the take rate disaggregated by residence and business per access line; and, the number of residence and business lines or access lines.

Pacific Bell completed its EAS study and provided the agreed upon information to complainants under a non-disclosure protective agreement. Based on its study results, Pacific Bell filed a September 17, 1997, redacted and unredacted "Motion to Dismiss and Motion For Summary Judgment." Pacific Bell filed a concurrent motion to place its unredacted motion under seal because its includes subscriber calling pattern data it considers proprietary and relevant to its competitors' marketing and pricing strategies. Absent an objection and the presence of reasonable cause for not disclosing proprietary data, the assigned Administrative Law Judge granted Pacific Bell's motion to place its unredacted motion under seal on October 9, 1997.

From its EAS study, Pacific Bell determined that none of the three factors needed to support a new EAS route could be met. Specifically, Pacific Bell's Felton exchange subscribers averaged less than two calls to the Los Gatos exchange, below the minimum three to five average call criteria; the take rate was less than 30%, well below the minimum 70% criteria; and the Felton exchange subscribers' basic calling needs are presently being met without incurring a toll call.

Although the requested EAS is not viable, Pacific Bell currently offers a variety of calling plans which complainants could subscribe to including FEX, Direct Discount, 24 Hour Discount Service Area, and 24 Hour Discount Community which offer different discounts off local toll calls for varying sign up or monthly charges. Pacific Bell has also stated that it has requested the Commission to lower its prices for local toll and to increase its discounts on the calling plans. In addition, Pacific Bell represents that there are a number of competing telephone companies which promise local calling at competitive rates, although it does not specifically identify them by name. Hence, Pacific Bell filed its motion to dismiss the complaint. The motion is unopposed.

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 Pacific Bell's other subscribers who would receive no benefit from the proposed EAS route but who would be required to carry the burden of making up the revenue deficiency. In this complaint case, the subscriber calling patterns do not support the establishment of a one-way EAS route from the Felton exchange to Los Gatos. Complainants represent only 0.31% of the 5,642 total service lines in the Felton exchange; to grant complainants' request would impose an unreasonable burden on the remaining 99.68% of Pacific Bell's Felton exchange subscribers. Complainants should utilize alternative calling plans made available by Pacific Bell or subscribe to serve with competitive local exchange carriers to satisfy their individual calling needs. This complaint should be dismissed.

Findings of Fact

1. Complainants, residing within the Felton exchange boundary, are assigned Felton prefixes and are required to pay a toll or FEX rate for their Los Gatos calls even though they are situated in the Los Gatos School District, have Los Gatos mailing addresses, do business in the Town of Los Gatos, and work in that direction.

2. Complainants requested a realignment of their local calling area to include Los Gatos.
3. Complainants amended their complaint seeking an EAS route.
4. There is no objection to complainants' request to dismiss GTEC from the complaint in this case.
5. Complainant withdrew their request for a realignment of their local calling area.
6. EAS is a service which allows customers in an exchange to extend their local calling area to another exchange for an additional flat rate increment.
7. The primary factor in determining whether to institute EAS between different exchanges is a study of subscriber calling patterns.
8. The subscriber calling patterns in complainant's Felton exchange do not support the establishment of a one-way EAS route from the Felton exchange to Los Gatos.
9. Pacific Bell offers a variety of calling plans which complainants can subscribe to. These plans include FEX, Direct Discount, 24 Hour Discount Service Area, and 24 Hour Discount Community.
10. Pacific Bell's unredacted Motion to Dismiss and Motion For Summary Judgment was placed under seal because the Administrative Law Judge determined there was reasonable cause for not disclosing the subscriber calling pattern data included in the motion.
11. There is no opposition to Pacific Bell's motion to dismiss this complaint.

Conclusions of Law

1. The complaint should be denied with prejudice.
2. Pacific Bell's unredacted motion should remain under seal.

O R D E R

IT IS ORDERED that:

1. The complaint in Case 95-08-063 is denied with prejudice.

2. Pacific Bell's unredacted motion to dismiss and motion for summary judgment placed under seal pursuant to an Administrative Law Judge October 9, 1997 ruling shall remain under seal.

3. Case 95-08-063 is closed.

This order is effective today.

Dated December 3, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEPPER
RICHARD A. BILAS
Commissioners