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Decision 97-12-094 December 16, 1997

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

Pac-West Telecomm, Inc. (U 5266 C),

Complainant,

v.

Evans Telephone Company (U 1008 C),  
and The Volcano Telephone Company (U 1019 C),

Defendants.

**ORIGINAL**

Case 96-10-018  
(Filed October 15, 1996)

Investigation on the Commission's own Motion into  
rating area consistency and routing practices  
between incumbent Local Exchange Carriers and  
certified Competitive Local Carriers in instances  
where expanded local service has been afforded.

1.97-03-025  
(Filed March 18, 1997)

(See Appendix A for list of appearances.)

## O P I N I O N

### Summary

Today's order addresses the compliance phase of this proceeding. This phase examines a specific dispute between Pac-West Telecomm, Inc. (Pac-West), complainant, and defendants Evans Telephone Company (Evans Telephone) and The Volcano Telephone Company (Volcano Telephone). In brief, Pac-West alleges that these incumbent local exchange carriers (LECs) are improperly routing calls made to Pac-West's customers such that the calls cannot be completed. Evans Telephone and Volcano Telephone argue that Pac-West is manipulating the telecommunications network in an attempt to cause toll calls to be carried on intraLocal Access and Transport Area (intraLATA) toll facilities without payment of the tariffed charges associated with use of those toll facilities.

We find that Evans Telephone and Volcano Telephone are in violation of applicable laws and policies by refusing to complete calls to Pac-West's customers. We direct them to route the calls as requested by Pac-West so that calls will be completed.

We conclude that Pac-West is not violating any of our current rules or orders by its actions; however, the intercarrier compensation issues still need to be resolved. We will also review the reasonableness of the NXX assignment, rating and routing configuration raised by this case in a generic forum. We put Pac-West on notice that its ability to assign telephone numbers rated out of Jackson and Crows Landing to its Stockton customers is subject to change, pending the outcome of our deliberations on the generic issues raised by this case.

Evans Telephone and Volcano Telephone should track all calls made by their customers to the 209/231 and 209/856 prefixes for a period of not less than six months. Based on that information, Evans Telephone and Volcano Telephone may file applications requesting compensation from Pac-West. Should the parties reach agreement on intercarrier compensation, they should file that agreement as a new application. If we determine that Pac-West owes compensation to defendants, such

compensation shall be calculated from the date that calls to 209/231 and 209/856 prefixes are completed calls.

We will address the generic issues raised in the compliance phase, as discussed below, in our local competition proceeding (Rulemaking (R.) 95-04-043/Investigation (I.) 95-04-044). Case (C.) 96-10-018 and Investigation (I.) 97-03-025, are hereby closed.

### **Procedural History**

Pac-West informed our Telecommunications Division of this dispute by letter dated July 29, 1996. During subsequent weeks, staff attempted to facilitate communication among the parties in order to resolve the dispute. The parties did not reach agreement on the issues, and Pac-West filed a complaint and a motion for a temporary restraining order and permanent injunctive relief on October 15, 1996. The assigned Administrative Law Judge (ALJ) denied the motion for the temporary restraining order, but set a hearing on issuance of a preliminary injunction for November 25, 1996. The assigned Commissioner and ALJ also requested the presence and participation of a representative of Pacific Bell. Calaveras Telephone Company (Calaveras Telephone) petitioned to intervene in this case. Evans Telephone and Volcano Telephone filed a timely response to the complaint on November 18, 1996.

By letter dated November 14, 1996, Pac-West withdrew its request for preliminary injunctive relief, without prejudice to its requesting similar relief later in this proceeding. In its letter, Pac-West noted that the resolution of its complaint would probably require the Commission to address issues of broader interest to both incumbent LECs and competitive local carriers (CLCs) that were not currently parties to the proceeding. Accordingly, Pac-West preferred to withdraw its request for preliminary injunctive relief so that issues could be addressed in a broader context in a less constricted timeframe. On November 18, 1996, the assigned ALJ granted Pac-West's request to withdraw its motion, without prejudice, and granted the petition to intervene by Calaveras Telephone.

On March 18, 1997, the Commission issued an Order Instituting Investigation (OII) to address the rating and routing issues raised by Pac-West's complaint. The OII

consolidated Pac-West's complaint with the investigation. The investigation was divided into two phases. The compliance phase, which is addressed in today's order, concerns the specific dispute between Pac-West, Evans Telephone and Volcano Telephone. A later generic phase will be initiated either in this proceeding, Local Competition proceeding (R.95-04-043/I.95-04-044) or another forum to address generic issues that arise from consideration of the complaint. The OII solicited comments on inclusion of the generic phase in the Experimental Rules set forth in Resolution ALJ-170.

A prehearing conference was held on April 30, 1997. PHC statements were filed by 10 parties, representing more than 25 interested LECs and CLCs. The assigned Commissioner issued a scoping memo and notice of evidentiary hearings on May 13, 1997. The memo identified the scope of issues in each phase, approved inclusion of the generic phase in the experimental rules, and set forth a procedural schedule for the compliance phase.

On June 18, 1997, Evans Telephone, Pacific Bell, Pac-West, and Volcano Telephone jointly filed an exhibit presenting a stipulation of facts, including a chronology, and a description of the disputed issues. (Joint Exhibit (Exh.) 1.) Opening and reply testimony was separately filed by these parties on June 18 and July 7, 1997, respectively. Pac-West filed rebuttal testimony on July 21, 1997. Evidentiary hearings were held in Volcano, California, from July 28 through July 31, 1997. Calaveras Telephone and Worldcom Inc. (Worldcom) did not prepare testimony but participated in cross-examination. Concurrent opening briefs were filed on September 12, 1997 by Evans Telephone and Volcano Telephone (jointly), Calaveras Telephone, Pacific Bell, Pac-West, and Worldcom. Reply briefs were filed by Volcano Telephone and Evans Telephone (jointly) and Pac-West.

Pursuant to Public Utilities (PU) Code § 311 and to our Rules of Practice and Procedure (California Code of Regulations, Title 20, Rules 77 to 77.6), the proposed decision of ALJ Gottstein was issued before today's decision. Evans Telephone and Volcano Telephone (joint), Pac-West and AT&T Communications of California, Inc. (AT&T) (joint), and GTE California Incorporated (GTE), filed timely comments on the proposed decision. Pac-West and Evans Telephone and Volcano Telephone (joint) filed

timely replies. We have made no substantive modifications to the analysis or disposition of issues in the proposed decision. However, the comments of GTE, Pac-West, and AT&T were persuasive on the question of procedural forum for the generic issues raised in this proceeding.

### **Parties to Complaint**

Pac-West, the complainant, is a telecommunications service company headquartered in Stockton. Pac-West commenced its operations as an interstate interLATA carrier in 1984 pursuant to Decision (D.) 84-06-113. In 1987, by D.87-10-015, Pac-West was granted authority to provide one-way paging and two-way mobile radiotelephone utility services. Pac-West's operating authority was expanded to include intraLATA toll service in 1994 pursuant to D.93-04-063, and was later expanded again to include competitive local exchange service by D.95-12-057. Pac-West transferred all of its one-way paging facilities and licenses to an unaffiliated third party, ProNet, Inc., in October, 1996, and no longer operates as a one-way paging carrier.

Defendant Evans Telephone is an incumbent LEC which provides service to approximately 10,000 customers in four exchanges located in Merced, Santa Clara, Stanislaus, and Yolo Counties. Defendant Volcano Telephone is an incumbent LEC which provides service to approximately 9,000 customers in four exchanges located in Amador, Calaveras, and El Dorado Counties.

### **Background Information**

#### **NXX Assignments**

The North American Numbering Plan (NANP) denotes a 10-digit telephone number format that allows direct dial capabilities for users of the telephone network. NANP is a geographic numbering plan composed of a three-digit area code (or Number Plan Area, NPA), followed by an exchange or central office code (NXX) composed of three digits, and a four digit line number. Every geographic number (NPA-NXX) is assigned a rate center, e.g., a physical point such as a post office building, and every rate center is assigned vertical and horizontal (V&H) coordinates analogous to

longitude and latitude lines used in navigation. These V&H coordinates are used to calculate airline mileage between rate centers for rating purposes. This method of rating calls is used throughout the United States.

The California Code Administrator is a industry-neutral representative responsible for assigning NXX codes to telecommunications service providers upon their request. The service providers include in their request the rate center they want the NXX associated with for rating purposes, along with routing instructions for all calls made to that NXX, e.g., the location of their facilities. After checking the request to make sure that all the information needed to assign a code is included and determining that the rate area selected is a valid rate area for the selected area code, the Code Administrator assigns the code to the requesting party. Once the code is assigned, the rating and routing instructions are entered into the Bellcore database system, which is the source for the rating and routing information contained in Bellcore's Local Exchange Routing Guide (LERG) and other industry publications. (Reporter's Transcript (RT) at 80-81; 163-184; 492-493; Joint Exh. 1, Attachment JIEx-3; Exh. 2, pp. 3-5.)

#### **Pre-Existing Arrangements for Traffic Rating and Routing**

As indicated in Figures 1 and 2 attached to this decision, the Crows Landing and Jackson exchanges are served by Pacific Bell. The Patterson and Volcano exchanges are served by Evans Telephone and Volcano Telephone, respectively. By D.90-11-058, the Commission established an extended local calling area (ELCA) of up to 12 miles between rate centers. Since the Jackson and Volcano rate centers are within this 12-mile requirement, a call from a Volcano NXX to a Jackson NXX is rated as a local call.<sup>1</sup> Basic rate customers have accordingly been able to place calls between these exchanges without additional charge and without the payment of any rate additive for Extended

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<sup>1</sup> Because of the distances involved, these calls were rated as local even before the ELCA decision expanded the local calling area from 8 to 12 miles.

Area Service (EAS). Similarly, a call from an Evans Telephone customer in Patterson to a Crows Landing NXX is rated as a local call.

Traffic between Volcano Telephone's Volcano exchange and Pacific Bell's Jackson exchange is carried on direct cross-boundary Volcano-Pacific Bell trunks between the Volcano and Jackson central offices. This traffic does not pass through Stockton. The routing is similar for traffic between Evans Telephone's Patterson exchange and Pacific Bell's Crows Landing exchange.

As indicated in Figures 1 and 2, Pacific Bell's Stockton rate center is more than 12 miles from the Volcano or Patterson rate centers. Therefore, calls from customers located in the Volcano or Patterson exchanges to Pacific Bell's Stockton rate center are rated as intraLATA toll calls. These calls are carried over dedicated trunks to Pacific Bell's Stockton tandem switch.

#### **Development of Dispute**

In February 1996, Pac-West submitted applications to Pacific Bell, as California Code Administrator, to open 60-plus new NXX prefixes in California. Pac-West specified that one of the new NXX codes should have the same rate center (i.e., rating V&H coordinates) as an existing Pacific Bell NXX in Crows Landing, and that another new NXX code should have the same rate center as an existing Pacific Bell rate center in Jackson. Pac-West also specified that calls to these NXXs be routed to Pacific Bell's tandem switch in Stockton. (Joint Exh. 1, Attachment JtEx-3, p. 2.) Pac-West's switch is in Stockton and connects to Pacific Bell's Stockton access tandem. Pac-West does not have plant facilities in Crows Landing or Jackson. (RT at 305-307.)

Pacific Bell, as California Code Administrator, processed Pac-West's application for NXX code assignment. Pac-West was assigned the 209/231 prefix rated out of the Jackson rate center, and the 209/856 prefix rated out of Crows Landing.

In March 1996, Pac-West and Pacific Bell entered into an interconnection agreement which, among other things, established compensation arrangements between Pac-West and Pacific Bell for calls made to these NXXs. Under those arrangements, when Pacific Bell transfers traffic to the Pac-West switch, Pacific Bell

pays Pac-West terminating charges. When traffic flows in the opposite direction (i.e., from Pac-West's switch to Pacific Bell's tandem), Pac-West pays Pacific Bell terminating charges.

Shortly thereafter, Pac-West began offering a Type 6 Service to internet service providers, which Pac-West characterizes as a "flat rate foreign exchange service." (Exh. 12, Attachment WBH-4; Exh. 21, RT at 328-330.) Pac-West made this service available by assigning Type 6 Service subscribers with telephone numbers associated with the geographic region in which a local presence was desired. For example, Pac-West assigned internet service providers located in Stockton with telephone numbers that had the Crows Landing 209/231 and Jackson 209/856 prefixes. In this way, customers could make a local call to the Stockton internet service providers from Crows Landing, Jackson, and other areas within 12 miles of those rate centers (such as Patterson and Volcano, respectively).

In May 1996, Evans Telephone Company received the Code Activity Report issued by Pacific Bell, as California Code Administrator. Evans Telephone noticed the listing of a new 856 NXX code that was shown with a Crows Landing rate center but that was to be routed to Pacific Bell's Stockton access tandem. This would require the routing of a call rated as local to Stockton for completion. Evans Telephone decided to defer opening this prefix until clarification of the inconsistency could be obtained from Pacific Bell. Evans Telephone was not able to obtain an explanation of the situation from Pacific Bell prior to further developments in the matter on July 25, 1996.

The further developments arose because, despite its intention to defer opening the NXX code until clarification of the inconsistency could be made, Evans Telephone had inadvertently opened the NXX code for service from its Patterson exchange. This was noticed by Evans' billing department in connection with customer billing data for



the month ending July 24, 1996.<sup>2</sup> When Evans Telephone management realized that the NXX code had inadvertently been enabled, the decision was reached to discontinue the service until suitable explanation and clarification of the inconsistency could be obtained.

On July 25, 1996, Evans Telephone changed the routing of the 856 calls from its Patterson exchange to reroute the calls directly to Crows Landing over the cross-boundary trunks between Patterson and Crows Landing. The next day, Evans Telephone reinstated the 856 routing over the Stockton trunks on an interim basis, so that Evans Telephone would be able to contact the customers who had been using the 856 prefix to explain the change. Also on July 26, 1996, Evans Telephone notified Pac-West of its intention to reroute the 856 traffic, which was designated as destined for Crows Landing, directly to Crows Landing on the existing cross-boundary trunks between Patterson and Crows Landing. Pac-West objected to this change. Evans Telephone put the change into effect on July 29, 1996.

Volcano Telephone learned of the new 231 prefix in June 1996, as it was preparing its switch for an equal access conversion. Volcano Telephone assumed that the prefix was for Pacific Bell access line growth and programmed the 231 NXX code to route over the existing cross-boundary trunks from Volcano to Jackson that carry the Pacific Bell 223 Jackson NXX traffic.

In late July or early August, Volcano Telephone learned of the Evans Telephone/Pac-West routing dispute over the 856 NXX code and first learned that the 231 NXX code had been designated by Pac-West as assigned to Jackson but with instructions to route the calls to the Pacific Bell tandem in Stockton. Thereafter, Pac-West asked Volcano Telephone to route the 231 calls to the Pacific Bell tandem in Stockton. Volcano Telephone declined to change the original routing of the 231 NXX

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<sup>2</sup> During the month June 25 to July 24, 1996, Evans Telephone had 10 customers in its Patterson exchange who placed calls to the 209/856 prefix. All of the calls were to the same number, which is connected to a modem to an internet service provider located in Stockton.

prefix over the direct cross-boundary trunks to Stockton. With this routing, the 231 calls do not complete. (Joint Exh. 1, pp. 5-6.)

### **Positions of the Parties**

Pac-West and Worldcom argue that both Evans Telephone and Volcano Telephone are obligated by the Public Utilities (PU) Code and federal statute to interconnect directly or indirectly with every other carrier and to operate their systems in a manner that permits calls to be completed. In the case of traffic rated to Pac-West's Crows Landing and Jackson numbers, this means that Evans Telephone and Volcano Telephone must program their switches to route traffic in accordance with Pac-West's routing instructions specified in the LERG. Pac-West contends that in some instances it may be appropriate for interconnected carriers to negotiate agreements addressing compensation for their costs of interconnection and the division of revenues for traffic handled by them, and, in the event they are unable to reach agreement, that they may seek relief from either the Commission or the Federal Communications Commission (FCC), or both, depending on the jurisdictional nature of the interconnections and traffic.

In Pac-West's view, changes in both the manner in which services are provided and in which service providers are compensated are the natural result of introducing competition into the industry, and should not be discouraged. Pac-West argues that small LECs like Volcano Telephone and Evans Telephone have the ability to seek adjustments to their local rates or, if applicable, make up any impact from the handling of calls to Pac-West's customers by drawing subsidies from the California High Cost Fund.

Evans Telephone and Volcano Telephone contend that they are not obligated to follow Pac-West's instructions to route intraLATA toll calls to Pac-West customers in Stockton while billing the Evans Telephone and Volcano Telephone customers as if the calls were local calls to Crows Landing and Jackson. Evans Telephone and Volcano Telephone argue that they are obligated to apply their tariffs in a nondiscriminatory manner and to rate all intraLATA toll calls to Stockton under applicable toll rate

schedules. In their view, Pac-West's efforts to eliminate charges by Evans Telephone and Volcano Telephone by assigning fictitious destination labels to NXX codes represent invalid manipulations of industry databases. These parties also argue that they are financially harmed by Pac-West's actions.

Evans Telephone and Volcano Telephone also contend that Pac-West's rating and routing instructions constituted the adoption of inconsistent rate centers that required notification to the Commission's Advisory and Compliance Division (CACD), now reorganized and renamed Telecommunications Division, under D.96-03-020. Pacific Bell and Pac-West argue that no party had any obligation under D.96-03-020 to inform the Commission of the rating/routing arrangements established by Pac-West. (Exh. 1, p. 8.)

Calaveras Telephone argues that carriers should be required to use rating points that match the location from and to which a call travels, except in well-defined circumstances. If this practice is not followed, Calaveras believes that customers will become confused by differing rates for calls made to the same geographic location and that the revenue streams for LECs will be jeopardized.

Pacific Bell believes it is required to interconnect its network with the networks of other requesting carriers so that customers can seamlessly receive calls placed from another carrier's network. Interconnection agreements between the carriers specify the terms and conditions of the interconnection, including compensation. Pacific Bell will not stop completing calls placed on its network by another carrier without prior notice or opportunity for proper recourse. Pacific Bell believes this is the proper policy for all LECs.

### Discussion

The origin of this dispute is the assignment of telephone users with an NXX rate center that does not coincide with the geographic location of the end-user. The evidence in this case convinces us that such assignments have implications for LECs and CLCs in the new competitive environment that have not been fully explored by this Commission. Whereas customers have in the past been able to obtain a local presence

through 800 or foreign exchange service, the way in which Pac-West provides a local presence to its customers is unprecedented. It raises issues concerning NXX assignments and intercarrier compensation that we believe should be explored more fully in either the generic phase of this proceeding or in another forum.

Evans Telephone and Volcano Telephone clearly object to the manner in which Pac-West provides a local presence to its customers. However, the threshold issue in this compliance phase is whether Evans Telephone and Volcano Telephone can voice objections by refusing to complete calls to Pac-West's customers.

We conclude that they cannot. In our Local Competition proceeding (Rulemaking (R.) 95-04-043/Investigation (I.) 97-04-044), we recently addressed the obligations of telecommunications carriers to complete calls even if underlying intercarrier arrangements for certain calls do not compensate them in a proper manner. Specifically, we stated:

"We conclude that all carriers are obligated to complete calls where it is technically feasible to do so regardless of whether they believe that the underlying intercarrier compensation arrangements for completion of calls are proper. The obligation to complete calls applies not just to [independent] LECs, but equally to all carriers involved in the origination, routing and completion of calls. Whether a call originates or terminates on a carrier's network, the obligation to complete calls is the same. This obligation is a fundamental principle and expectation underlying both state and federal statutes. PU Code § 558 requires:

'Every telephone corporation and telegraph corporation operating in this state shall receive, transmit, and deliver, without discrimination or delay, the conversations and messages of every other such corporation with whose line physical connection has been made.'

The obligation to complete calls is also embodied in the federal statutory language of the [Telecommunications Act of 1996]. As noted by several parties, Section 251(a)(1) of the Act states:

'Each telecommunications carrier has the duty...to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.' (47 U.S.C. § 251(a)(1).)

No carrier has the right to block or misdirect the routing of calls to their intended destination because the carrier believes that it is not being properly compensated for such calls. Customers have a right to expect that the telephone network throughout California is reliable, and that their calls will be completed regardless of billing disputes which may exist between carriers involved in the origination, routing and completion of such calls. Ubiquitous network reliability is imperative not just for routine residential and business calls, but particularly where emergency health or safety matters are involved. It is in the public interest that we do not permit carrier disputes to affect the service to end-users, the third party in those disputes. Further, we believe that it is anticompetitive for a carrier to selectively choose to block calls of a competitor ostensibly due to unsatisfactory compensation arrangements. Such a practice will not be tolerated nor permitted to frustrate the development of a competitive telecommunications market.

While carriers are entitled to just and reasonable compensation for the completion of calls over their facilities, the resolution of any disputes over compensation must necessarily be addressed after, and independent of, the physical routing of calls has been completed. The Commission has provided procedural remedies through the complaint process and other formal and informal dispute-resolution measures in which restitution can be achieved...." (D.97-11-024, mimeo., pp. 5-6.)

In view of the applicable laws and policies discussed above, we will grant Pac-West's requested relief, and require that Evans Telephone and Volcano Telephone complete calls to Pac-West's 231 and 856 NXXs by routing them as specified by Pac-West in the LERG until further notice of this Commission.

We put Pac-West on notice, however, that its ability to assign NXXs rated out of Jackson and Crows Landing to its Stockton customers is subject to change, pending the outcome of our deliberations in the generic phase. Changes would be applied on a prospective basis, however, so that Pac-West's customers signing up for Type 6 Service between now and our final decision on the generic issues would be assured of such service for the duration of the service contract.<sup>3</sup> As discussed further below, Pac-West

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<sup>3</sup> Type 6 Service is currently offered on a month-to-month term or a two-year term. See Exh. 21.

may also be required to compensate Evans Telephone and Volcano Telephone for alleged financial losses associated with these NXX assignments.

Having established that Evans Telephone and Volcano Telephone cannot refuse to complete calls to Pac-West's customers, we now consider the propriety of Pac-West's actions. It is clear from the record that Pac-West's form of providing foreign exchange service is unlike the manner in which service providers have offered a local presence to customers in the past. Traditionally, there have been two methods for customers to receive incoming calls with minimal or no charges to the calling party. The first is 800 service, which allows the called party to pay for incoming calls to that number. If Pac-West provided 800 service to internet service providers for calls made from Volcano (Patterson), Pac-West would pay Pacific Bell and Volcano Telephone (Evans Telephone) switched access charges that would be shared by use of their respective networks. (RT at 342, 426, 528.)

The second method is through a foreign exchange service that involves a physical connection between the central office associated with the customer's assigned NXX prefix and the central office where the customer wishes to have the new "foreign exchange" NXX prefix, i.e., in a location where the customer is not physically located. For example, suppose that an internet service provider physically located in Stockton (with a Stockton-rated NXX) wants a local presence in Jackson. Without foreign exchange service, a call made from the Jackson exchange to this internet service provider would be rated as a toll call. To obtain a foreign exchange out of Jackson, the internet service provider would pay an extra monthly charge to have Pacific Bell physically connect it to the central office in Jackson, i.e., the foreign central office in which it wants a local presence. (RT at 624-625; D.94-09-065, mimeo., p. 71.)

In the above example, if the Stockton internet service provider was a Pac-West customer, then Pac-West and Pacific Bell would enter into a resale arrangement, where Pac-West would pay Pacific Bell to bring the line from Jackson to Stockton in order to provide foreign exchange service to its customer. (RT at 392-393.) If Volcano Telephone customers called the internet service provider's foreign exchange number in Jackson,

Pacific Bell would pay Volcano Telephone a small amount for call completion to Jackson.<sup>4</sup>

In the case before us, Pac-West seeks to provide its customers with a foreign exchange service in a different way. Pac-West has obtained NXX prefixes rated in geographic areas where its Stockton customers wish to have a local presence. Pac-West has assigned those NXX prefixes to its Stockton customers and requested that calls be routed to Stockton to complete calls. As a result of this rating and routing configuration, Pac-West is able to provide its Stockton customers with toll-free incoming calls without 1) paying any intercompany compensation to Evans Telephone or Volcano Telephone, 2) installing any facilities in Jackson, Crows Landing, Volcano or Patterson or 3) having any customers that physically reside in the exchange area associated with the assigned NXXs. (RT at 305-307; 239-242, 256.) In fact, under this arrangement, Pac-West receives terminating charges from Pacific Bell, pursuant to their interconnection agreement. (RT at 254-255.)

Is Pac-West violating any Commission order or rule in providing service in this manner? We first address the issue of "inconsistent rate centers" raised by Evans Telephone and Volcano Telephone. (Joint Exh. 1, p. 8.) In D.96-03-020, we determined that CLCs should no longer be required to conform to the LECs' existing NXX rating areas to rate and bill calls. However, we did require that CLCs first notify our CACD (now the Telecommunications Division) if they planned to serve customers from NXX rating areas that were different from those of the LEC. (See D.96-03-020, mimeo., pp. 79-81; Ordering Paragraph 21.) We find no merit to the contention that Pac-West violated this reporting requirement because Pac-West requested NXX rating areas that

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<sup>4</sup> This compensation arrangement relates back to pre-ELCA decision when the Commission expanded the local calling area from 6 miles to 8 miles. The EAS payments to Volcano totaled approximately \$10,000 in 1997. (RT at 131-132, 479-481.)

were consistent with Pacific Bell's existing rating areas. (Joint Exh. 1, Attachment JIEx-3; RT at 208-209; 243.)

To our knowledge, Pac-West is the first service provider to obtain NXXs in exchanges where it is not serving customers and to assign those NXXs to customers that reside outside those exchanges. Our existing rules simply do not address this particular type of service provisioning.

This brings us to the argument that Pac-West's NXX assignments force Evans Telephone and Volcano Telephone to violate their tariffs. Tariffs do not address such assignments, nor do they address intercarrier compensation. Rather, tariffs address the issue of what Evans Telephone and Volcano Telephone can charge their customers. If the applicable tariffs rate these calls as toll, as Evans Telephone and Volcano Telephone contend, then these LECs can charge toll rates for calls made by their customers to the 209/231 and 209/856 prefixes. On the one hand, Evans Telephone and Volcano Telephone argue that their tariffs define these calls as toll, but on the other hand, they assert that they are losing toll revenues because they cannot collect toll charges from their customers. (Exh. 10, p. 6; RT at 416-424.) This argument is circular.

In sum, we find that Pac-West is not violating any of our current rules or orders by their actions. However, we believe that the reasonableness of the NXX assignment, rating and routing configuration raised by this case should be examined in a generic forum. Specifically, we need to consider 1) whether CLCs should be allowed to designate rate centers for NXXs in exchanges where there are no physical customers served and to assign those NXXs to customers outside of those exchanges and, if so, 2) what should be the intercarrier compensation arrangements for this type of service. There may be other NXX assignments and rating and routing configurations that should also be examined on a generic basis. Since our rules on local competition may need to be modified accordingly, we will address these and other issues related to rate centers in our local competition proceeding, R.95-04-043/I.95-04-044.

Evans and Volcano Telephone may have cause to request compensation from Pac-West for the alleged loss of revenues associated with Pac-West's provisioning of foreign exchange service between the date service commences and the resolution of



these generic issues. In particular, there was considerable discussion on the record of how increased local traffic to Pac-West's internet service providers could adversely affect Evans' and Volcano's local exchange rates through changes in the cost allocation process. Although there was no quantification of the potential magnitude of this impact, the discussion suggests that it could become substantial over time.<sup>5</sup> (Exh. 10, p. 6; RT at 153-155; 541-546.)

Accordingly, Evans Telephone and Volcano Telephone should track all calls made by their customers to the 209/231 and 209/856 prefixes for a period of not less than six months. Based on that information, Evans Telephone and Volcano Telephone may file applications requesting compensation from Pac-West. In their applications, Evans Telephone and Volcano Telephone should quantify the financial impacts associated with changes in cost allocation in terms of dollar levels and impact on rate of return. Should the parties reach agreement on intercarrier compensation, they should file that agreement as a new application. Should we determine that Pac-West owes compensation to defendants, such compensation shall be calculated from the date that calls to 209/231 and 209/856 prefixes are completed calls.

In conclusion, we reaffirm the Assigned Commissioner's Ruling that our interpretation of rules, laws and regulations in this case shall not bind the Commission in its future consideration of rules, standards or regulations in the local competition proceeding, R.95-04-043/I.95-04-044. (See Assigned Commissioner's Ruling dated May 13, 1997, pp. 3, 4.) We have resolved the compliance phase in light of existing rules, laws and regulations and limit their applicability to the specific circumstances surrounding the complaint.

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<sup>5</sup> Evans Telephone and Volcano Telephone also argue that they are losing toll revenues from their customers because the calls to Pac-West's Stockton customers are rated as local calls. We do not find this argument persuasive. It is unlikely that a customer located in Volcano or Patterson would pay toll rates for internet services, particularly when Evans Telephone and Volcano Telephone have affiliates that provide this service on a local call basis. (RT at 153-154; 474; 601-604.)

### Findings of Fact

1. The failure of Evans Telephone and Volcano Telephone to complete calls to Pac-West's customers violates our policies regarding interconnection obligations, as well as the principles and expectations underlying both state and federal statutes.
2. In requesting NXX prefixes from the California Code Administrator, Pac-West has selected NXX rating areas that are consistent with Pacific Bell's existing rating areas.
3. D.96-03-020 does not address the specific configuration of rating, routing and NXX assignments raised by this complaint.
4. Tariffs address the issue of what Evans Telephone and Volcano Telephone can charge their customers.
5. The argument of Evans Telephone and Volcano Telephone that Pac-West's actions force them to violate their tariffs is circular. On the one hand, Evans and Volcano argue that their tariffs define these calls as toll but, on the other hand, they assert that they are losing toll revenues because they cannot collect toll charges from their customers.
6. Assigning telephone users an NXX with a rate center that does not coincide with the geographic location of the end-user has implications for LECs and CLCs in the new competitive environment that have not been fully explored by this Commission.
7. Because it is unlikely that a customer located in Volcano or Patterson would pay toll rates for internet services, Pac-West's provisioning of foreign exchange service would not have an appreciable effect on toll revenues from Evans' and Volcano's customers. However, increased local traffic to Pac-West's internet service providers could adversely affect the local exchange rates of Evans Telephone and Volcano Telephone through changes in the cost allocation process.
8. The compliance phase has raised generic rating and routing issues that may result in modifications to our local competition rules.
9. This decision addresses all the issues raised in C.96-10-018 and assigns the generic issues raised in the compliance phase to our local competition proceeding, R.95-04-043/I.95-04-044.

**Conclusions of Law**

1. Until further notice of this Commission, Evans Telephone and Volcano Telephone should complete calls to Pac-West's customers by routing them as specified by Pac-West in the LERG.
2. Pac-West's actions do not violate any rules or policies established to date by this Commission.
3. Pac-West's ability to assign NXXs rated out of Jackson and Crows Landing to its Stockton customers should be subject to change on a prospective basis, pending the outcome of the Commission's deliberations in a generic forum.
4. The reasonableness of the NXX assignment, rating and routing configuration raised by this complaint should be examined in a generic forum.
5. Parties should be allowed to comment on the appropriate procedural forum for the Commission's consideration of generic issues.
6. Evans Telephone and Volcano Telephone should have the opportunity to request compensation from Pac-West for the loss of revenues associated with cost allocation changes resulting from Pac-West's provisioning of foreign exchange service.
7. Today's interpretation and application of rules, laws, and regulations in the compliance phase should not bind the Commission in its future consideration of rules, standards or regulations in the local competition proceeding (R.95-04-043/I.95-04-044) or in any other proceeding where the rules, standards or regulations governing the telecommunications market are developed.
8. C.96-10-018 and I.97-03-025 should be closed. The generic issues raised in the compliance phase should be addressed in R.95-04-043/I.95-04-044.
9. This order should be effective today so that call completion commences as soon as possible.

**ORDER**

**IT IS ORDERED** that:

1. Until further notice of this Commission, Evans Telephone Company and The Volcano Telephone Company (defendants) shall complete calls to the customers of Pac-West Telecomm, Inc. (complainant) by routing calls according to the Local Exchange Routing Guide (LERG). Within five days from the effective date of this decision, defendants shall reprogram their switches and take any other steps necessary to route calls made to 209/231 and 209/856 prefixes as specified in the LERG.
2. In Rulemaking (R.) 95-04-043/Investigation (I.) 95-04-044, this Commission shall consider the reasonableness of the NXX assignment, rating and routing configuration raised in this complaint. The Commission shall consider: 1) whether competitive local carriers (CLCs) should be allowed to designate rate centers for NXXs in exchanges where there are no physical customers served and to assign those NXXs to customers physically located outside of those exchanges and, if so, 2) what should be the intercarrier compensation arrangements for this form of foreign exchange service. There may be other NXX assignments and rating and routing configurations that shall also be examined on a generic basis in R.95-04-043/I.95-04-044.
3. Complainant's ability to assign NXXs rated out of Jackson and Crows Landing to its Stockton customers shall be subject to change, pending the outcome of the Commission's consideration of generic issues. Any changes shall be applied on a prospective basis.
4. Defendants shall establish a Memorandum Account to track all calls made by their customers to the 209/231 and 209/856 prefixes for a period of not less than six months from the effective date of this decision. The Memorandum Account shall include appropriate call detail and applicable charges.
5. Within 18 months of the effective date of this decision, defendants may, at their discretion, file new applications requesting compensation from complainant for financial losses associated with the completion of these calls. In their applications, defendants shall include the results of their tracking efforts and present financial losses

C.96-10-018, I.97-03-025 ALJ/MEG/tcg \*

in terms of dollar level impacts and impact on intrastate rate of return. Defendants' quantification of financial losses shall focus on the impact of increased local calls on the cost allocation process which, in turn, affects local exchange rates. Should the defendants and complainants reach agreement on intercarrier compensation, they shall jointly file that agreement as a new application. Should we determine that complainant owes compensation to defendants, such compensation shall be calculated from the date that calls to 209/231 and 209/856 prefixes are completed calls.

6. The new applications ordered by today's decision shall be filed at the Commission's Docket Office and served on all appearances and the state service list in this proceeding.

7. C.96-10-018 and I.97-03-025 are closed.

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

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

FIGURE 1: RATING AND ROUTING -- VOLCANO TELEPHONE/PAC-WEST

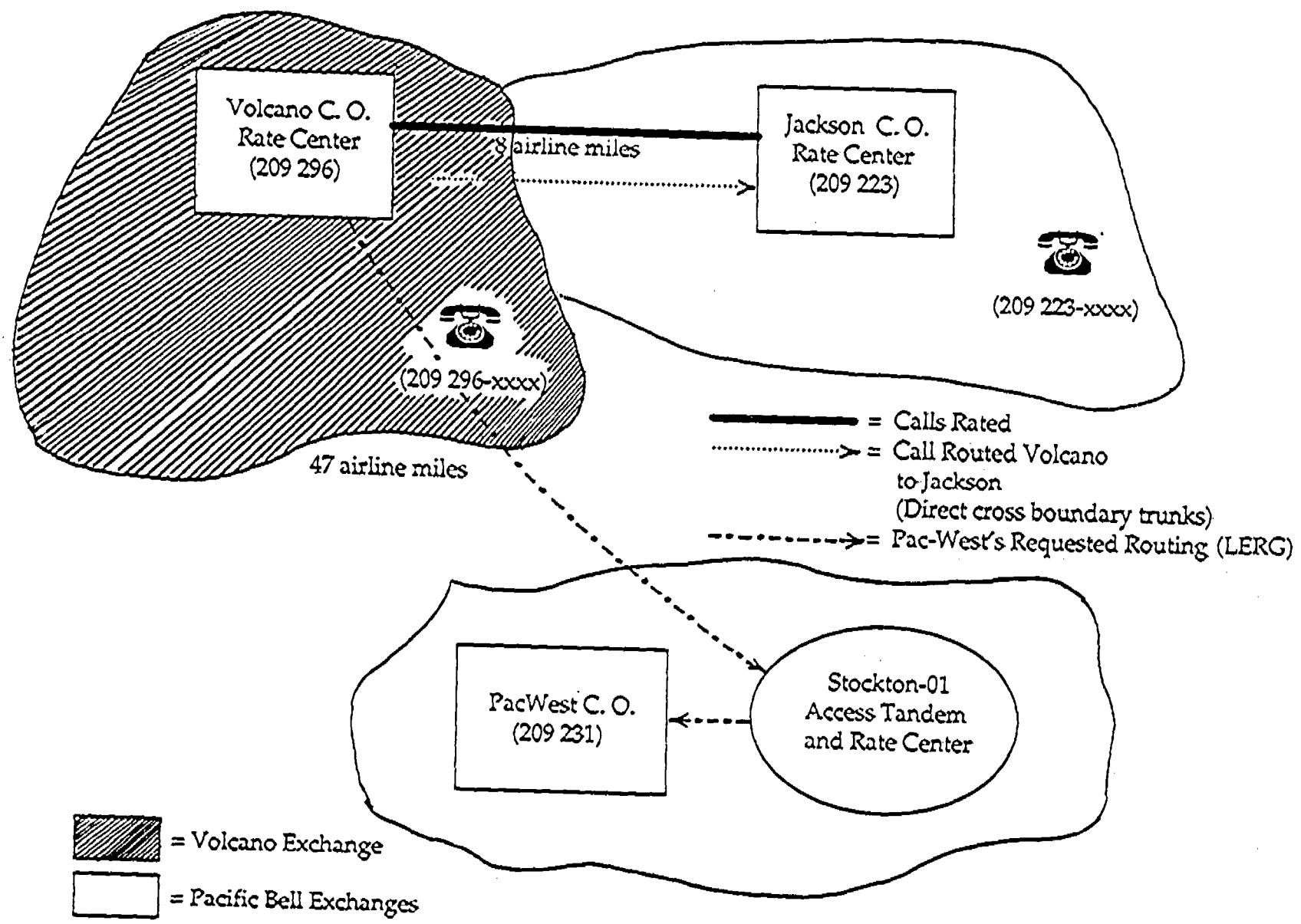
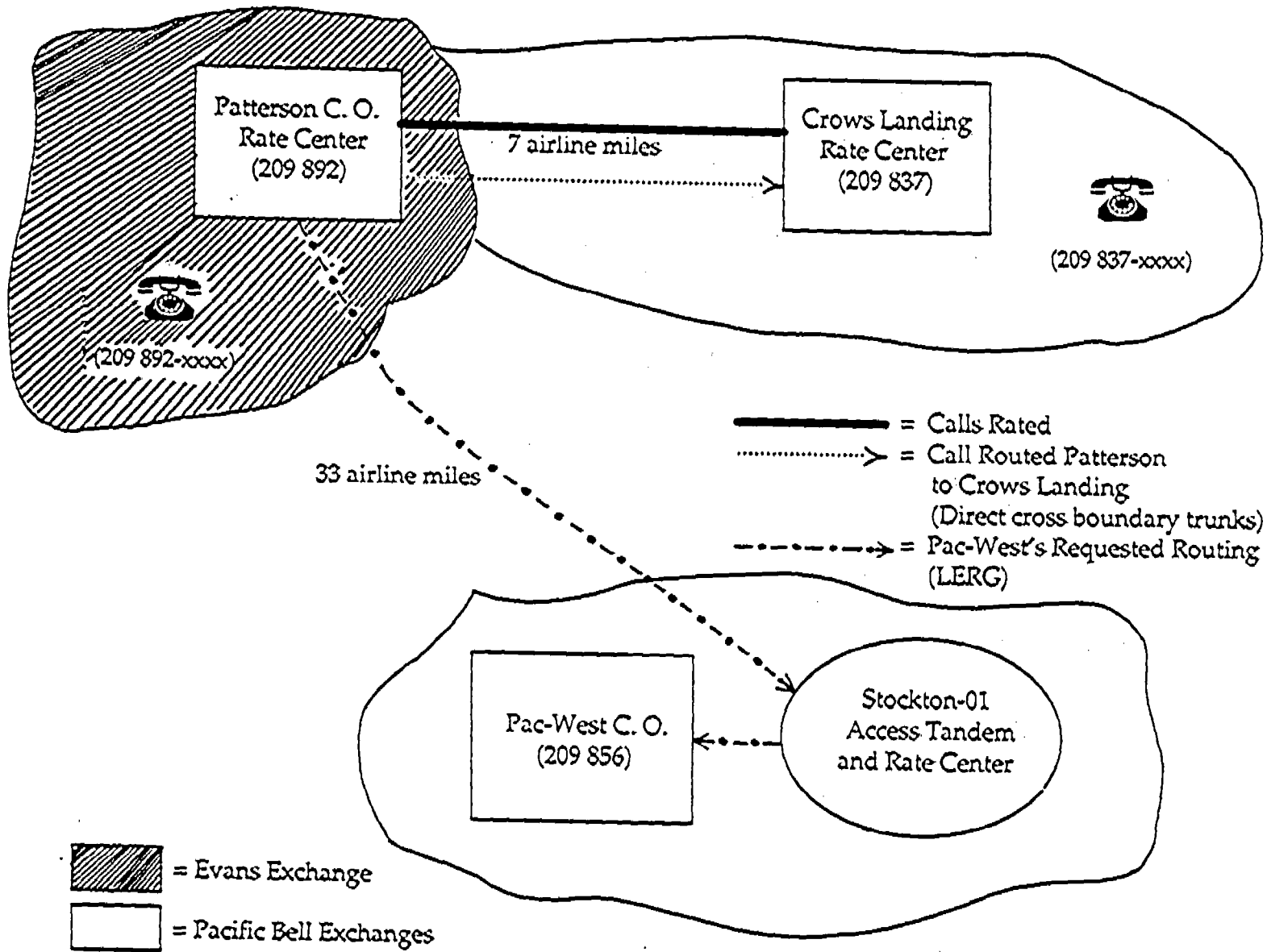


FIGURE 2: RATING AND ROUTING - EVANS TELEPHONE/PAC-WEST



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Last updated on 20-AUG-97 by: CIS  
C9610018 LIST  
I9703025

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(END OF APPENDIX A)