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Decision 98-03-070 March 26, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Sonia L. Gill, et al.,

Complainants,

vs.

Pacific Bell,

Defendant.

ORIGINAL

Case 96-10-023
(Filed October 16, 1996)

Sonia L. Gill, for complainants.

Nicola Erbe and Colleen O'Grady, Attorneys
at Law; Adrian Tyler, and Joe N. Carrisalez,
for Pacific Bell, defendant.

Regina Costa, for The Utility Reform Network,
interested party.

Robert Cagen, Attorney at Law, and Stephen J.
Rutledge, for the Consumer Services
Division.

OPINION

1. Summary

Complainants, 39 residents of the northern California town of Yorkville in the hills of Anderson Valley, complain that they are required to pay toll rates on calls to Boonville, the central town of Anderson Valley. They seek to have their local calling area extended to Boonville, where complainants say that they conduct most of their shopping, school and employment business.

2. Background

Yorkville is a rural community located just south of Anderson Valley in Mendocino County. While the sign at the side of State Highway 128 announces a population of 25, residents say that the town actually has a population of between 100 and 150, along with its own post office and zip code (95494).

At the turn of the century, Anderson Valley was a secluded area. During that time, residents developed a language called "Boontling" that continues to charm visitors. Thus, in the context of this case, Yorkville residents, called "high rollers" (because they rolled up their trousers for the dusty "pike," or walk, to Boonville), seek to have service for their "bucky walters" (telephones, apparently named for an early subscriber) include "Boont" (Boonville) as a local call so that they can "harp" (to talk or speak) to Boont neighbors without a toll charge.

In the early days of development of telephone exchanges, however, Yorkville was included in the 894 Cloverdale exchange, while Boonville is in the 895 Boonville exchange. Although Yorkville and Boonville are in Mendocino county, and the City of Cloverdale is in Sonoma county, the location of telephone exchange centers dictates that Yorkville's local calling area includes the Cloverdale area, while calls to Boonville are toll calls.

3. Procedural History

This complaint was filed on October 16, 1996. Following an extension of time to compile calling statistics, Pacific Bell answered the complaint on December 16, 1996, opposing extended area service and arguing that Yorkville's essential calling needs are met within the Cloverdale exchange. A prehearing conference was conducted on February 11, 1997, in Boonville. Assigned Commissioner Henry M. Duque, by ruling dated May 7, 1997, set a second prehearing conference for June 17, 1997, in Yorkville, and directed the Commission's Consumer Services Division (CSD) and the Telecommunications Division to provide procedural and technical assistance to the complainants.

At the second prehearing conference on June 17, Pacific Bell representatives responded to questions from residents but continued to oppose extended local calling for Yorkville. An evidentiary hearing was held on October 2, 1997, in Yorkville. At hearing, complainants, with the assistance of CSD, presented three witnesses. Pacific Bell presented one witness. The parties exchanged opening briefs on November 24,

1997, and reply briefs on December 4, 1997. The case was deemed submitted for Commission decision on December 4, 1997.

4. Introduction

Pacific Bell's service territory in California is divided into more than 400 geographic areas, or exchanges. Each exchange has a point designated as a rate center. Calls originating and terminating within an exchange are local toll-free calls. Calls between exchanges also are local if the rate centers for the exchanges are within 12 miles of each other. Calls between exchanges with rate centers greater than 12 miles from one another are toll calls with per-minute charges. These rates are authorized by the Commission and are the same throughout the state. The rate centers of the Boonville and the Cloverdale exchanges are 24 miles apart. A call between Yorkville (in the Cloverdale exchange) and Boonville costs 14 cents for the first minute and 11 cents for each additional minute under the Pacific Bell tariff.

Extended area service, or EAS, is a method that permits a telephone company to expand an exchange's local calling area to include another exchange. One-way EAS permits local calling in one direction between two exchanges. Two-way EAS allows local calling in both directions between two exchanges. The Commission has authorized approximately 70 EAS routes in Pacific Bell exchanges. EAS is not an optional service. Once authorized, it applies to all subscribers in an exchange, and an additional monthly service charge is assessed on all affected subscribers whether they take advantage of EAS calling or not. The additional service charge, calculated under what is called the "Salinas formula," is intended to reimburse the telephone company for the lost toll revenue for calls between the two exchanges.

When Pacific Bell's predecessor company operated as a monopoly, the company itself applied to the Commission when it sought to offer EAS routes, often after it had

¹ Pacific Telephone and Telegraph Company (1970) 71 CPUC 160.

been petitioned by subscribers.² In later years, EAS routes have been sought directly by subscribers in a hybrid type of complaint proceeding brought pursuant to Public Utilities (PU) Code § 1702. Under Section 1702, a complaint may challenge the reasonableness of telephone rates if the complaint is brought by 25 or more customers. Frequently, such complaints also allege violation of PU Code § 453(a) (prejudice or disadvantage in service) and PU Code § 453(c) (unreasonable difference in service between localities).

In considering EAS, the Commission considers (1) whether EAS is justified by a "community of interest" between the two exchanges; (2) whether there is substantial customer support for EAS and the accompanying increase in service charge; and (3) whether EAS can be implemented at reasonable rates.³ To determine the existence of a community of interest, the Commission generally has applied three tests: (1) average number of calls per line per month between the two exchanges, with three to five deemed the minimum necessary to justify EAS; (2) the percentage of affected subscribers who make at least one call a month to the target exchange, with 70% to 75% deemed sufficient; and (3) whether most essential calling needs (police, fire, medical, legal, schools, banking and shopping) can or cannot be met within subscribers' existing toll-free calling area.

If these community of interest factors appear to have been met, the Commission requires a survey of subscribers to determine whether they are willing to pay the additional service charge in order to have toll-free calls to the other exchange. As a final step in considering EAS, the Commission weighs whether costs of extending local calling are justified, and whether those costs create unreasonable rates for any customer group.⁴

² *Id.* at 161.

³ See Bailey v. Calaveras Telephone Company, Decision (D.) 97-07-057, slip op. at 9, and cases cited therein (July 16, 1997).

⁴ Pacific Telephone and Telegraph Company (1970) 71 CPUC 160, 164.

5. Position of Complainants

Testifying on behalf of complainants, Sonia Gill, a teacher and artist, stated that most Yorkville residents regard Boonville as their main contact for school, business and social dealings, rather than Cloverdale, which is more distant and in another county. Yorkville is 9 miles from Boonville and 17 miles from Cloverdale. Gill introduced a locally produced Yorkville telephone directory showing that many of Yorkville's calls are to numbers in the 895 Boonville exchange.

Stephen J. Rutledge, a Commission regulatory analyst, testified that CSD conducted a mail survey of Yorkville residents, asking if they favored extended area service to Boonville for an additional service charge of 95 cents per month for residences and \$2.75 for businesses, based on the Salinas formula. Of 67 persons responding, 61 (91%) favored extended area service, while 6 (9%) voted against it.

Rutledge acknowledged that there is no support for extended area service to Boonville, at additional cost, from the entire Cloverdale exchange. Only Yorkville shows interest in local calling to Boonville. He maintained, however, that the Commission has in the past authorized creation of a special telephone district area to permit extended area service from a community in one exchange to another exchange. He maintained that the community of interest factors in that case parallel those here.

6. Position of Pacific Bell

Pacific Bell's witness, Joe N. Carrisalez, regulatory director, testified that the Commission has never ordered Pacific Bell to create a "partial prefix" extended area service between one exchange and a limited part of another exchange. To do so, he said, would require that Yorkville residents change their 894 prefix if the service were to be automated, or it would require cumbersome manual procedures for servicing the relatively few Yorkville subscribers. He stated that the precedent of providing such service would prompt numerous "border" communities in Pacific Bell exchanges to seek similar extended area service and would disrupt exchange dialing and billing for Pacific Bell and other carriers that route their calls through the Bell system.

Carrisalez presented a lengthy list of essential government, business and other services within the Cloverdale exchange that can be reached without toll charge by Yorkville subscribers. He stated that Yorkville residents have a choice of alternative services, including foreign exchange service (that would provide a Yorkville resident with an 895 Boonville prefix), and various Pacific Bell discount plans. He stated that, with deregulation, competitive telephone service is now or eventually will be available for Yorkville.

Carrisalez acknowledged that Yorkville meets two of the three community of interest tests, if those tests were applied to this case. The company's records show that Yorkville residents average 17 calls per month to Boonville per residential line and 47 calls per month per business line, and the percentage of Yorkville subscribers calling Boonville in a given month is at the 80% level. He stated that, in his judgment, the third test is not met, since Yorkville residents can reach virtually all essential services within their toll-free calling area in the Cloverdale exchange.

7. Discussion

The evidence shows, and complainants do not dispute, that an exchange-to-exchange EAS between the Cloverdale and Boonville exchanges does not meet EAS criteria. Pacific Bell data show that the average number of calls from the Cloverdale exchange to the Boonville exchange is less than one call per month per line, and that the number of Cloverdale subscribers calling Boonville at least once a month is less than 15%. The parties agree that a survey of all subscribers in the Cloverdale exchange would show little support for paying an additional monthly service charge in order to have toll-free calls to Boonville.

Complainants, however, do not seek an exchange-to-exchange EAS. Instead, they ask that Pacific Bell be required to carve out a district area for Yorkville and create an EAS to Boonville that would apply only to the 894 prefix for Yorkville subscribers. Pacific Bell argues that the Commission has never ordered an EAS for a portion of an exchange, and that, in any event, the evidence here does not justify EAS routing.

Complainants rely on the case of Willits Contel Customers v. Contel of California, Inc. (1993) 51 CPUC2d 449. In Willits, residents of the Sherwood Forest community, in Contel's Laytonville exchange, sought toll-free calling to Pacific Bell's Willits exchange. Complainants alleged that their community of interest was with Willits rather than with their exchange's namesake community of Laytonville. After three prehearing conferences, Contel offered to establish a district area in the Sherwood Forest part of the Laytonville exchange and to establish one-way EAS service between the new district area and the Willits exchange. In return, Contel would receive increased monthly service charges from subscribers in Sherwood Forest, and Contel would withdraw a discount calling plan it had offered in the community. Complainants, Contel and the Commission's advocacy staff entered into a settlement agreement which subsequently was approved by the Commission.

The Willits settlement, however, cannot be the basis for an order in this case. By its own terms, the settlement was "not [to] be construed as a precedent regarding any principle or issue in any current or future proceeding," and the Commission's Rules of Practice and Procedure preclude any such reliance.⁴ Unlike Contel, Pacific Bell has not agreed to a settlement here. It was not a party to the Willits case. It is not willing, on a voluntary basis, to establish a special district for Yorkville, and it has presented evidence to show that such a district would require either a new telephone prefix for Yorkville or manual controls that would be costly and cumbersome for a system as large as Pacific Bell's.

By the same token, we are compelled to agree with Pacific Bell that the traditional EAS measures are not appropriately applied in this case. In virtually all EAS

³ 51 CPUC2d at 459.

⁴ Rule 51.8: "Commission adoption of a stipulation or settlement is binding on all parties to the proceeding in which the stipulation or settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding."

cases, the Commission has evaluated the three community of interest factors and the customer survey on an exchange-wide basis only. If the Commission were to consider only a portion of an exchange – that is, the area where those seeking EAS are located – the result invariably would be a high calling volume to the targeted exchange and a high preference for an EAS route. The fact is that the Commission has no established procedure for analyzing EAS on other than an exchange-to-exchange basis, and, at least in the case of Pacific Bell, it has never ordered a partial exchange EAS or authorized a partial-prefix EAS.

Even if we were to use the EAS criteria as guidelines, the record shows that Yorkville cannot meet one of the three community of interest tests. While complainants may prefer to call Boonville, it is clear that most of their essential calling needs can be met within the toll-free calling area of the Cloverdale exchange. Indeed, the Commission recently found in another case that all basic calling needs are met within the Cloverdale exchange.⁷ While there is a toll charge to call the Anderson School in Boonville, Pacific Bell's witness testified that the school could at a cost of about \$30 per month establish a foreign exchange line to permit local calling to and from Boonville.

We turn, then, to whether complainants have shown that Pacific Bell's rates or charges to Yorkville subscribers are unreasonable under PU Code § 1702, or whether the utility's service subjects Yorkville to an unreasonable difference or disadvantage under PU Code §§ 453(a) or 453(c). We find that this burden has not been met. The rates charged for calls between Yorkville and Boonville are tariffed rates and are the same as those in effect in all of Pacific Bell's exchanges. While Yorkville parents must make a toll call to reach their children's Boonville school, that fact alone is insufficient to show undue prejudice or disadvantage.

We are disappointed that Pacific Bell did not spend more time working with Yorkville residents to acquaint them with the calling plans and alternative services

⁷ Cloverdale Chamber of Commerce, D. 97-04-068 (April 23, 1997).

available to reduce the cost of calls to Boonville. It was not until hearing that the utility suggested to residents that they might establish a \$30-per-month foreign exchange number for the Boonville school. Only in passing did Pacific Bell suggest that subscribers investigate specific reduced-rate calling plans (Direct Discount, 24 Hour Discount Service Area, and 24 Hour Discount Community). Had Pacific Bell provided earlier and more detailed information to these complainants about alternative toll calling, it might have avoided the need for hearing and left Yorkville customers with a better impression of Pacific Bell service.

With that said, however, the evidence here shows no unreasonable rates or practices by Pacific Bell in Yorkville, and no violation of law, rule or Commission order. It follows that the complaint should be, and is, dismissed.

We further find that this is a complaint case which challenges the reasonableness of rates or charges as specified in PU Code § 1702. Therefore, this is not an adjudicatory proceeding as defined in PU Code § 1757.1, and thus, pursuant to Section 1756(b), following any application for rehearing before the Commission, the proper court for filing a petition for writ of review would be the California Supreme Court.

Comments on Decision

At the direction of Assigned Commissioner Duque, comments on the proposed decision in this case were filed by The Utility Reform Network (TURN), complainant Sonia L. Gill, Anderson Valley Fire Chief Colin H. Wilson, and by Pacific Bell.

TURN, Gill, and Wilson disputed the conclusion that essential calling needs for Yorkville residents can be met within the Cloverdale exchange, arguing that Yorkville looks to the Boonville and Ukiah exchanges for most of its calling needs. Pacific Bell responds that Yorkville residents may prefer to call nearby Boonville, but essential calling needs, such as police, fire, ambulance, banking, and shopping, are available as non-toll calls within Yorkville's Cloverdale exchange.

As to the conclusion that the Commission has always considered EAS on an exchange-to-exchange basis, rather than considering EAS from a limited part of one exchange, TURN asks that we take official notice that Pacific Bell has at least six district

areas (that is, portions of an exchange) with EAS routes to another exchange.⁴ Pacific Bell responds that in each of those cases, the district area that was created contained its own separate prefix or prefixes. Yorkville shares its 894 prefix with the rest of the Cloverdale exchange, and creation of a Yorkville district area would require that Yorkville be given a new prefix to distinguish it from the rest of the Cloverdale exchange, or that manual procedures be set up to deal with partial-prefix inquiries.

By the same token, we note that the tariffs show that each of the district areas identified by TURN has its own rate center (that is, the point identified by vertical and horizontal coordinates through which calls are directed and billed). Yorkville does not have a rate center. To provide a district area for Yorkville like those cited by TURN would require the Commission to order Pacific Bell to establish a Yorkville rate center. The Commission consistently has held that exchanges and exchange rate centers, once established, are permanent and should not be changed. (API Alarm Systems v. General Telephone Company (1990) 36 CPUC2d 369, 396; Bailey v. Calaveras Telephone Company, D.97-07-057 (July 16, 1997). Changing rate centers not only affects local rates, but also affects long distance and other rates that reference those rate centers. Any change in rate centers would result in costs, administrative burdens, and investment recovery issues, not only for Yorkville but for other local and long distance carriers. (Kern v. Pacific Bell, D.96-01-010, slip op. at 6.) The record here does not justify a change in our policy regarding rate centers.

Pacific Bell admits in its comments that its witness misstated the cost of foreign exchange service for Yorkville, which requires a \$500 installation fee (instead of \$100) and a monthly charge of \$25 (instead of \$10). While we agree that foreign exchange service may not be practical for individuals in Yorkville, we do not regard that fact as determinative. Instead, as explained in the decision, we are reluctant to apply exchange-to-exchange EAS tests to a request for special rates for part of a prefix and

⁴ TURN notes that district area EAS routes exist in the Bakersfield, Grass Valley, North Tahoe, Palmdale, Sonora, and Waterford exchanges.

part of an exchange. If the EAS tests were to apply, we are not persuaded on this record that they have been met since essential calls can be made within the Cloverdale exchange.

As we have stated in the past, we are sympathetic to rural communities such as Yorkville, where telephone subscribers may have to make more toll calls than do subscribers in suburban and urban areas. (Cloverdale Chamber of Commerce v. Pacific Bell, *supra*, slip op. at 6-7.) While we cannot change the geographic circumstances of Yorkville, we have taken numerous steps to increase competition in the provision of telecommunications services to the public. Our purpose in encouraging competition has been to provide consumers with an increasing array of telephone services at the lowest possible cost. As this record demonstrates, Yorkville subscribers do not yet have the range of choices we envisioned, but they do have more competitive and rate plan choices than they did before local exchange markets were opened. We intend to do all that we can to broaden those choices.

Findings of Fact

1. Complainants are 39 residents of the rural community of Yorkville in Mendocino County.
2. Yorkville is in the 894 Cloverdale exchange of Pacific Bell.
3. Complainants seek extended area service to permit toll-free calling from Yorkville, in the Cloverdale exchange, to Boonville, which is in Pacific Bell's 895 Boonville exchange.
4. Prehearing conferences in this matter were conducted on February 11, 1997, and June 17, 1997. An evidentiary hearing was conducted on October 2, 1997.
5. Yorkville is 9 miles from Boonville and 17 miles from Cloverdale.
6. Yorkville residents average 17 calls per month to Boonville per residential line and 47 calls per month per business line.
7. The percentage of Yorkville subscribers calling Boonville in a given month is at the 80% level.

8. Essential calling needs of Yorkville residents can be met through toll-free calls within the 894 Cloverdale exchange.

9. There are approximately 70 EAS plans in Pacific Bell exchanges.

10. Pacific Bell has not established an EAS to serve one exchange and a part of a prefix within another exchange.

11. Pacific Bell estimated that it would cost between \$50,000 and \$100,000 to establish an EAS between Yorkville and the Boonville exchange.

Conclusions of Law

1. Complainants have not shown unreasonable conduct or a violation of law, rule or Commission order by Pacific Bell.

2. Rates charged for calls between Yorkville and Boonville are the same as rates in effect in all of Pacific Bell's exchanges.

3. It is undisputed that call volume does not support an exchange-to-exchange EAS between the Cloverdale and Boonville exchanges.

4. If EAS criteria were applied to one exchange and a limited part of another exchange, calls between Yorkville and the Boonville exchange would satisfy call volume criteria for establishment of an EAS.

5. While Yorkville residents may prefer to call Boonville, their essential calling needs can be met through toll-free calls within the Cloverdale exchange.

6. The record does not support a requirement that Pacific Bell establish an EAS between the Boonville exchange and the Yorkville area of the Cloverdale exchange.

7. The relief sought by complainants should be denied.

8. The complaint should be dismissed.

9. This is a complaint case challenging the reasonableness of rates or charges, and so this decision is not issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1. Therefore, the proper court for filing any petition for writ of review will be the California Supreme Court.

O R D E R

IT IS ORDERED that:

- 1. The relief sought by complainants is denied.**
- 2. The complaint is dismissed.**
- 3. This proceeding is closed.**

This order is effective today.

Dated March 26, 1998, at San Francisco, California.

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