ALJ/GEW/bwg

Mailed
MAR 3 0 1998

Decision 98-03-076 March 26, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Roger Collin, Georgia Collin and Charlie Acker, et al., Complainants, vs. Pacific Bell, Defendant.	ORIGINAL Case 96-10-004 (Filed October 3, 1996)

Roger Collin, Georgia Collin, and Charles Acker, for complainants.
Nicola Erbe, Attorney at Law, Adrian Tyler, and Joe N. Carrisalez, for Pacific Bell, defendant.
Robert Cagen, Attorney at Law, and Stephen J. Rutledge, for the Consumer Services Division.

OPINION

1. Summary

Complainants, 114 residents of the northern coastal town of Elk in Mendocino County, complain that they must pay toll rates for calls to Mendocino and Fort Bragg, where virtually all of their essential services are located. They seek to have their local calling area extended to include Mendocino and Fort Bragg. Pacific Bell opposes the request, arguing that competition in the telecommunications industry is beginning to give consumers a choice of toll service providers and rates.

2. Background

Elk, located on Highway 1 between Manchester and Mendocino, is a former logging town perched on bluffs overlooking the Pacific. The town was known as Cuffey's Cove when it was founded in the 1850s, but the name was later changed to Greenwood when it became important in the logging industry. Because another town called Greenwood was established in Eldorado County, the post office in Mendocino County was called Elk, and that gradually became the name of the town.

The last mill closed in Elk in 1966. The town now has a population of 250 and has become a residential and tourist community. A number of inns, many of them dating to the early 1900s, serve visitors who come to enjoy the scenery, the wildlife, and the numerous secluded beaches.

In the early days of development of telephone exchanges, the boundaries of the Elk Exchange were fixed within a relatively small area and restricted generally to a five-mile radius. The result is that Elk is the only community that subscribers can call locally, while their neighbors eight miles north in Albion and to the east in Comptche can make local calls up to 45 miles away, including calls to Mendocino and Fort Bragg. Complainants object that this difference is unreasonable and prejudicial, under Public Utilities (PU) Code §§ 1702, 453(a) and 453(c),[1] and that, in any event, Pacific Bell should be required to implement an extended local calling area for Elk subscribers.

3. Procedural History

This complaint was filed on October 3, 1996. Following an extension of time to compile calling data, Pacific Bell answered the complaint on December 16, 1996, opposing expanded area service and arguing that Elk subscribers are treated in accordance with the utility's tariffs. A prehearing conference was conducted on February 10, 1997, in the restored 105-year-old Greenwood Community Church in Elk. Based on the results of Pacific Bell's calling data, the Commission's Telecommunications

---

[1] Section 1702 permits a subscriber complaint "as to the reasonableness of any rates or charges" if the complaint is signed by 25 or more consumers.

Section 453(a) proscribes "any preference or advantage" or "any prejudice or disadvantage" in service by a utility.

Section 453(c) prohibits a public utility from establishing or maintaining "any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service."

Division was directed to conduct a mail survey of Elk residents to determine support for an added-cost extended calling area. A second prehearing conference was held on October 29, 1997, in Elk, to review results of the Elk survey.

At the second prehearing conference on October 29, Pacific Bell representatives responded to questions from residents but continued to oppose extended local calling for Elk on grounds that it was inimical to emerging competition in telephone service. An evidentiary hearing was held on December 11, 1997, in Elk. At the hearing, complainants, with the assistance of the Commission's Consumer Services Division, presented two witnesses. Pacific Bell presented one witness. The parties exchanged briefs on February 13, 1998, at which time the case was deemed submitted for Commission decision.

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 center for the Elk Exchange is 12.72 miles (rounded to 13 miles under the tariff) from the Mendocino rate center, and 21.9 miles (rounded to 22 miles) from the Fort Bragg rate center. A call between Elk and Mendocino or Fort Bragg is a toll call.

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,"[2] is intended to reimburse the telephone company for the lost toll revenue for calls between the 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 been petitioned by subscribers.[3] In later years, EAS routes have been sought directly by subscribers in a hybrid type of complaint proceeding generally brought pursuant to PU Code § 1702. Under § 1702, a complaint may challenge the reasonableness of telephone rates if the complaint is brought by 25 or more customers.

In considering EAS, the Commission examines (1) whether EAS is justified by a "community of interest" between the 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.[4] To determine the existence of a community of interest, the Commission has applied three tests: (1) average number of calls per line per month between the complainants' exchange and the target exchange, 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 target exchange. As a final step in considering EAS, the Commission weighs whether costs of extending local

---

[2] Pacific Telephone and Telegraph Company (1970) 71 CPUC 160.

[3] Id. at 161.

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

calling are justified, and whether those costs create unreasonable rates for any customer group.[5]

5. Position of Complainants

Testifying on behalf of complainants, Charles Acker, a 20-year resident and manager of the water districts in Elk and nearby Irish Beach, stated that most Elk residents turn to Mendocino and Fort Bragg for their essential needs. He testified that Elk has an elementary school that goes through the third grade, after which children are bused to Mendocino for middle school and high school. Elk has no plumbers, electricians, doctor's office or dentist. The Mendocino Coast Hospital in Fort Bragg is the closest emergency medical facility. Shopping and banking are done in Fort Bragg and Mendocino. Acker testified that Elk's business area is limited to a garage and a convenience store.

On cross-examination, Acker acknowledged that he and other residents use a long distance company and a special five-digit telephone code for intraLATA toll calls, paying 6 cents a minute for calls to Mendocino and Fort Bragg. He acknowledged that numerous county and state offices are available through toll-free 800 numbers. Even so, he said, his residential telephone bill typically runs $18 to $20 per month for Pacific Bell service and about $25 per month for toll calls to Mendocino and Fort Bragg.

Stephen J. Rutledge, a Consumer Services Division analyst, introduced the Commission's mail survey of Elk residents, in which they were asked if they favored extended area service to Mendocino and Fort Bragg for an additional service charge of $4.50 per month for residences and $13.50 for businesses, based on the Salinas formula. Of 107 residential customers responding, 84 (77%) favored extended area service, while 25 (23%) voted against it. Business customers favored extended service 15-4, with a 79% approval rate. Elk averaged more than 11 calls per month per residential line to the

---

[5] Pacific Telephone and Telegraph Company (1970) 71 CPUC 160, 164.

target exchanges and more than 22 calls per month per business line. More than 80% of Elk subscribers made at least one call per month to Mendocino and Fort Bragg.

Rutledge acknowledged that a number of residents responding added comments that they thought the expanded service should be without additional charge, and those opposing extended service thought that the additional service charge was too high.

6. Position of Pacific Bell

Pacific Bell's witness, Joe N. Carrisalez, regulatory director, testified that it will cost $123,000 to implement EAS routes in Elk, and that EAS will foreclose the ability of other telephone companies to compete for toll calls from Elk to Mendocino and Fort Bragg, since those would then be local calls. He testified that alternative toll services are available from other carriers, but he acknowledged that none can offer rates that are as low as the EAS surcharge.

Carrisalez stated that the EAS surcharge will not compensate Pacific Bell fully for lost toll revenue, and the difference in income, as well as the one-time implementation cost of $123,000, would be recovered through a surcharge added to the bills of all 15 million Pacific Bell customers in California. If EAS is ordered for Elk, Pacific Bell would file an advice letter seeking authority to add the statewide surcharge.

Carrisalez traced the creation of telephone exchanges in the area, stating that they were established in the mid-1900s along fixed geographic boundaries. Exchanges in the state range from as small as half a square mile (Verdi) to 1,400 square miles (Bakersfield). Smaller communities with broad local calling often began as toll stations connected to and later absorbed into larger exchanges like the Fort Bragg Exchange. The Elk Exchange, however, has been an independent exchange since its inception.

Carrisalez acknowledged that Elk meets the traditional tests for establishment of EAS routes, adding that "we're not opposed to the EAS if the Commission orders it." (Transcript at 44.) He stated that Pacific Bell will not voluntarily establish an EAS because of what it deems to be the anticompetitive effect. On cross-examination, Carrisalez stated that an Elk EAS, while foreclosing some toll competition, could encourage local exchange competition if other companies elect to resell Pacific Bell local service in the area.

7. Discussion

The evidence shows, and Pacific Bell does not dispute, that the Elk Exchange meets the Commission's historic tests for establishment of extended area service routes. Elk subscribers average more than 11 calls per month from residences to the target exchanges, and there has been at least one call per month to Mendocino and Fort Bragg from 80% of the residential telephone lines in Elk. Business lines show only 50-55% with at least one call a month to the target exchanges, but the survey shows a majority of businesses favor implementation of EAS routes.

A minority of Elk subscribers object to paying an additional $4.50 per month to extend the local calling area. One subscriber with one residential line and two business lines noted that he would be billed an additional $31.50 per month, or $378 per year, under the EAS plan, and he makes relatively few calls to Mendocino and Fort Bragg. He said that the support for EAS was based in part on subscribers who want "toll-free playtime on the Internet." (Exhibit 7.) However, a sizable majority of Elk residents (77%) responding to the Commission survey indicated that they are willing to pay the additional service charge in order to call Mendocino and Fort Bragg without incurring toll charges.

Complainant Acker spoke for many of his neighbors when he testified that, while an EAS route appears to be the only practical way to obtain toll-free calling to Mendocino and Fort Bragg, he continues to feel that the limitations of the Elk Exchange are unfair and the exchange should be broadened without additional charges. Complainants, however, have not shown that Pacific Bell's service violates a Commission rule or order, nor have they shown discrimination that rises to the level of a PU Code § 453 violation.

Discrimination forbidden by § 453 "must be undue, taking into consideration all of the surrounding facts and circumstances." (In re Atchison, Topeka and Santa Fe Railway Company (1940) 43 CRC 25, at 34.) The Commission has held consistently that exchanges and exchange rate centers, once established, are permanent and should not be changed. (See API Alarm Systems v. General Telephone Company (1990) 36 CPUC2d 369, 396; Bailey v. Calaveras Telephone Company , Decision (D.) 97-07-057 (July 16, 1997).) Changing rate centers not only affects local rates, but also affects long distance and other rates which reference these rate centers. Any change in rate centers would result in costs, administrative burdens and investment recovery issues, not only for Elk but for other local and long distance exchange carriers. (Kern v. Pacific Bell, D.96-01-010, slip op. at 6.) The showing here does not justify a change in our policy regarding rate centers.

Pacific Bell contends that recent changes in regulatory policy and increasing local competition make traditional EAS standards obsolete. It notes correctly that the Commission now is considering whether to eliminate EAS as an option because of the availability of competitive services. (Local Competition Proceeding, Rulemaking 95-04-043/Investigation 95-04-044.) The Commission has addressed this argument before. In Shields v. Volcano Telephone Company, D.97-06-106, slip op. at 4-5, we stated:

> "[The utility] is correct that this decision must be made in light of the changes that are occurring in the telecommunications industry. At some point, those change may dictate that we stop authorizing new EAS routes. We do not think that point has yet been reached, however. Rather, many EAS routes now exist throughout the state. Adding one route, or a very few additional routes, if and when justified, will not make eventual reconciliation of EAS with competition significantly worse. We expect competition to develop in bursts, and appear in some areas and services before others. Where a need for EAS is shown now, along with uncertainty about when competition will become effective and vigorous in any particular area or service, we should consider EAS requests as they are made.
>
> "As competition develops, EAS routes will either become obsolete on their own, or may need to be revised by the Commission. When the time is right, we will consider if new EAS policies need to be implemented and existing EAS routes changed. In the meantime, we will consider each EAS request as it is made on its own merits."

Unless and until the Commission alters its approach to extended area service, it follows that this case must be governed by the traditional tests for EAS. Complainants have established that those tests are met as to the Elk Exchange. Pacific Bell has not demonstrated persuasively that competitive alternatives have developed to the point that EAS is inappropriate for the Elk Exchange. The complaint, therefore, is sustained, and the relief sought – that is, an order requiring Pacific Bell to establish a one-way EAS from the Elk Exchange to the Mendocino Exchange and the Fort Bragg Exchange – is granted.

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 § 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.

Findings of Fact

1. Complainants are 114 residents of the coastal community of Elk in Mendocino County.

2. Elk is in the 877 exchange of Pacific Bell.

3. Complainants seek extended area service to permit toll-free calling from the Elk 877 Exchange to the 937 prefix in the Mendocino Exchange and the 961 and 964 prefixes in the Fort Bragg exchange.

4. Prehearing conferences in this matter were conducted on February 10, 1997, and October 29, 1997, in Elk. An evidentiary hearing was conducted on December 11, 1997.

5. The Elk rate center is 12.72 miles from the Mendocino rate center and 21.9 miles from the Fort Bragg rate center.

6. Elk subscribers average 11 calls per month to the Mendocino and Fort Bragg exchanges per residential line and 22 calls per month per business line.

7. The percentage of Elk subscribers calling Mendocino and Fort Bragg in a given month is at the 80% level for residences and 55% for businesses.

8. Essential calling needs of Elk residents cannot be met through toll-free calls within the 877 Elk Exchange.

9. There are approximately 70 EAS plans in Pacific Bell's more than 400 exchanges.

10. The cost of establishing EAS routes from Elk to Mendocino and Fort Bragg will be approximately $123,000.

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 from the Elk Exchange to the Mendocino Exchange and the Fort Bragg Exchange are the same as rates in effect in all of Pacific Bell's exchanges.

3. It is undisputed that the Elk Exchange meets the Commission's historic tests for establishment of extended area service routes to the Mendocino Exchange and the Fort Bragg Exchange.

4. A substantial majority of Elk Exchange subscribers support establishment of EAS routes at an additional monthly service charge cost of $4.50 for residence lines and $13.50 for business lines.

5. Pacific Bell has not shown that competitive alternatives in telephone service have developed to the point that EAS is inappropriate for the Elk Exchange.

6. Unless and until the Commission alters its approach to extended area service, this case must be governed by the traditional tests for EAS.

7. The relief sought by complainants should be granted.

8. This order should be made effective immediately so that Elk subscribers may have access to Mendocino and Fort Bragg local calling as soon as practical.

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.

ORDER

IT IS ORDERED that:

1. The complaint of Roger Collin, Georgia Collin, and Charlie Acker, et al., vs. Pacific Bell is sustained.

2. To the extent that the complaint asks that Pacific Bell be required to establish one-way extended area service (EAS) from the Elk Exchange to the Mendocino Exchange and the Fort Bragg Exchange, the relief requested is granted.

3. To the extent that the complaint seeks relief other than establishment of one-way EAS routes from Elk to Mendocino and Fort Bragg, the relief requested is denied.

4. Pacific Bell is ordered to establish one-way EAS from Elk to Mendocino and Fort Bragg exchanges.

5. Pacific Bell is authorized to file tariffs reflecting an EAS surcharge for Elk subscribers once the EAS routes are implemented.

6. Pacific Bell is authorized to file an Advice Letter, with supporting workpapers, seeking recovery in its system surcharge of implementation and other unrecovered costs of the EAS routes serving Elk.

7. Case 96-10-004 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