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Decision 98-06-075 June 18, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service.	Rulemaking 95-04-043 (Filed April 26, 1995)
Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service.	Investigation 95-04-044 (Filed April 26, 1995)

ORIGINAL

OPINION

Summary

By this decision, we adopt modifications to our existing practice with respect to the provision of Extended Area Service (EAS)[1] within the service territories of all incumbent local exchange carriers (ILECs) throughout California.

An Administrative Law Judge (ALJ) ruling was issued on December 12, 1997, soliciting comments regarding: (1) perceived problems with the current policies regarding EAS within the large and mid-sized ILECs' service territories; and (2) suggested changes in current EAS policies to resolve these problems. The ruling proposed that the examination of EAS policies within the service territories of the small ILECs, which are not subject to the New Regulatory Framework and for which competitive local entry has not yet been initiated, be addressed in the context of the next general rate case filings for those ILECs. In response to those comments, we determine in this order that existing EAS routes for all ILECs, including small ILECs, should be grandfathered for the present time. Effective with this order, no new

[1] As the term is used within this decision, "EAS" refers to those routes which have been established through the formal complaint process based upon use of the "Salinas formula."

complaint filings seeking to establish EAS routes within any ILEC territories in California shall be accepted and processed. Any EAS cases currently pending before the Commission as of the effective date of this order shall be processed based on the factual merits of each individual case.

Background

EAS is a telephone service authorized in certain designated communities which extends the geographic reach of a local toll-free calling area. Generally, the service territories of the local telephone carriers are divided into local exchanges. Each local exchange has a point designated as a rate center which is used to measure the distance of calls for billing purposes. If the rate centers for two local exchanges are within a prescribed number of miles of one another, the calls between those exchanges are local calls (in areas where Zone Usage Measurement service does not exist). For ILECs, the prescribed distance is 12 miles. If the rate centers are greater than 12 miles apart, the calls between such exchanges are toll calls. EAS allows customers in one exchange to extend the toll-free local calling area into another exchange whose rate center is more than 12 miles away.

EAS routes have traditionally been established through formal complaint cases filed by customers seeking to extend their 12-mile local calling area when those customer cannot reach a reasonable range of essential services within their existing toll-free local calling area. These essential services include police, fire, medical care, legal services, schools, banking and shopping.

The Commission has traditionally considered several criteria in deciding whether to authorize an EAS route. In general, these criteria include whether: (1) a community of interest exists between the affected local exchange and areas beyond the existing toll-free calling area, (2) there is customer support for extending the area of service, and (3) the EAS route can be implemented with reasonable rates.

The establishment of an EAS route can result in lost toll revenues to the ILEC. Lost toll revenue resulting from EAS subsidies may be recovered through two different sources. The first source is the so-called "EAS increment" which was developed by applying the so-called "Salinas Formula." The EAS increment, paid by all customers in a specific exchange, is intended to compensate the ILEC for part of the lost toll revenue associated with EAS calling. The EAS increment does not necessarily allow a carrier to recover all lost toll revenues for the exchange because traffic volumes over routes change over time.

The second source is a surcharge imposed statewide on all of the ILEC's customers throughout its service territory which is meant to cover the balance of lost revenues not recovered through the EAS increments. The ILEC also incurs costs to put EAS routes in place. Such costs include increased direct trunking between the exchanges. The ILEC typically recovers these implementation costs also through a statewide surcharge.

Dealing with multiple complaint cases involving disputes over the need for EAS service has consumed a significant share of the Commission's and parties' resources. It has also led to cross-subsidization between customer groups. Rather than continuing to address EAS issues in a piecemeal fashion, we shall adopt a generic policy in this decision regarding the continued need for EAS. Particularly in light of the growing competitive alternatives available to customers, it is timely to scrutinize the merits of whether to continue or eliminate EAS as a service option within the service territories of the ILECs.

Position of Parties

Comments were filed by the large ILECs, Pacific Bell (Pacific), GTE California, Incorporated (GTEC), the mid-sized ILECs, Roseville Telephone Company (RTC), Citizens Telephone Company (CTC), a group of small ILECs,[2] various parties

[2] The Small ILECs are: Evans Telephone Co., GTE West Coast Inc., Happy Valley Telephone Co., Hornitos Telephone Co., Kerman Telephone Co., Pinnacles Telephone Co., Siskiyou Telephone Co., Volcano Telephone Co., and Winterhaven Telephone Co.

representing competitive local carriers (CLCs),[3] The Utility Reform Network (TURN), and the Office of Ratepayer Advocates (ORA).

The majority of parties, including the large ILECs, the CLCs, and ORA, generally agree that, in the current competitive market, EAS is no longer necessary, and should be either grandfathered or phased out over time. Parties in favor of grandfathering or phasing out EAS argue that EAS has become an anachronism which had a valid role in the era prior to the advent of competition. These parties argue that since the institution of intraLATA toll competition in 1995, customers increasingly have access to alternative calling plans from competing intraLATA providers and should no longer require EAS routes. Given the cost inequities and administrative burdens involved in adjudicating and establishing EAS routes, these parties argue that no new EAS routes are needed or should be approved.

Among those parties representing the interests of consumers, opinions are divided. ORA favors a phase-out of EAS routes while TURN opposes any elimination or phasing out of EAS. TURN argues that EAS meets essential calling needs that are not adequately addressed by any other service alternative. TURN contends that EAS routes are necessary in situations where services that are essential to a community are not located within the boundaries of a local telephone exchange. People who live in rural communities where there are no schools, no doctors and no county offices must conduct essential daily activities in other communities. Without EAS, residents of such small communities would routinely have to place *toll* calls to reach *local* services, including schools, doctors, city and county departments, hospitals, and emergency services.

Based on discussions with volunteer fire chiefs and dispatchers from Mendocino and Humboldt Counties, TURN expresses concern over modifying the current EAS policy without substantial input from affected communities. Local police and fire

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[3] Parties representing CLCs included AT&T Communications of California (AT&T), Sprint Communications (Sprint), the MCI Telecommunications Corporation (MCI), and the California Cable Television Association (CCTA).

departments are required by law to provide the public with a "backup" local telephone number to reach these emergency services if the 911 system is inoperable. The general public is not required to dial 911 to contact police and fire departments during emergencies. Under the existing EAS routes between certain communities, telephone calls to the emergency backup number are local calls. If these routes were eliminated, such local calls would become toll calls. TURN expresses concern that if 911 is not working, a caller would have to use a credit card or have sufficient change to make an emergency call from a payphone in such communities.

TURN argues that the presence of toll competition and the potential for local competition do not alleviate the need for EAS in many California communities, and that residents of small communities have requested and obtained EAS routes despite the presence of toll competition. TURN argues that EAS routes are only approved if they satisfy the criteria of a demonstrated strong community of interest and acceptability to the majority of telephone customers in the EAS route. TURN does not believe such customers' telecommunications needs are met through toll competition, but that reliance on toll calls could actually be a hindrance to the organization and execution of emergency operations.

The mid-sized ILECs (RTC and CTC) also favor at least some retention of the EAS as an optional alternative. RTC recommends that the Commission adopt a policy by which it would no longer mandate the creation of new EAS routes in areas of California opened to local competition, but that each ILEC be given unilateral discretion to establish or change EAS routes based on the ILEC's assessment of competitive market conditions. RTC claims that the ILECs require such flexibility in order to compete with CLCs that have discretion to establish how large their local calling area will be. RTC further proposes that the ILEC should have discretion to determine the rate design and the manner in which revenues and cost impacts associated with the creation or change of an EAS route will be addressed.

CTC sees no need to eliminate, grandfather, or curtail the current EAS program at this time as long as carriers are allowed to offer optional local calling plans rather than traditional flat rate, mandatory EAS. As long as customers are willing to pay the rates to cover the cost of the expanded local calling, CTC believes a provider should be free to offer the EAS service. CTC would support a more streamlined process for implementing EAS routes with minimal regulatory review.

The small ILECs believe that the Commission should avoid imposing any new EAS routes on California until it has taken a fresh look at the problems inherent in the existing EAS rate increment calculation mechanism. Until the mismatch between the cost and price of EAS plans can be corrected, the small ILECs argue, the Commission should not create additional routes which will have to be eliminated or entirely revised under reformed EAS policy. Instead, the small ILECs suggest that small ILEC EAS policies, routes and compensation should be appraised, and altered if necessary, within the context of their next general rate cases.

Discussion

EAS was originally designed to address rural customers' concerns regarding high toll rates charged for calls to nearby communities of interest, where essential/emergency services, such as police, fire, medical care, and schools are located. EAS was first established decades ago when there was generally only one local exchange carrier providing telephone service within a local calling area, and rural customers had no competitive alternatives to paying toll rates to reach essential services.

IntraLATA toll competition was instituted on January 1, 1995, whereby both business and residential customers now may choose from among multiple carriers to carry their intraLATA calls, reducing the toll costs rural customers face for calls beyond their local calling area. Concurrent with the institution of intraLATA competition, the toll rates of Pacific and GTEC were significantly reduced by the Commission. Today, many interexchange carriers offer intraLATA toll calling plans at competitive rates. AT&T Communications of California, Inc., MCI Communications, and Sprint, for example, offer residential optional calling plans that include intraLATA toll rates of no more than $.05 per minute for calls made within California. Moreover, three ILECs (CTC, RTC and GTEC) have implemented intraLATA equal access, eliminating the need for customers to dial additional numbers to reach their intraLATA toll carrier of choice. Pacific must also implement intraLATA toll equal access when it enters the interLATA long distance business within California. We conclude that the market for intraLATA toll telephone service within California is sufficiently competitive to conclude that the continual creation of new EAS routes is no longer a defensible policy.

In the serving areas of the ILECs, intraLATA toll calls cost increasingly less in California, as shown by comparison to the previously high toll rates of the monopoly provider in effect prior to the advent of intraLATA toll competition in 1995. Granted, the resulting toll rates will still cost the customer somewhat more than costs within urban communities where customers can reach essential services with just a local call. As noted by ORA, however, residents of sparsely populated areas often live in those areas precisely because they are sparsely populated and remote. As such, residents in such regions inherently enjoy certain advantages relative to urban dwellers, and also experience certain inherent disadvantages. For example, the residents of rural communities who live further from essential services may pay lower housing costs than residents in urban centers.

We acknowledge TURN's concern that without an EAS route, residents in a small community may no longer be able to make local calls for essential services which are exclusively located outside the local exchange serving the community. We believe, however, that any disadvantages customers may experience as a result of lacking the ability to reach essential services through local back-up numbers are not of sufficient significance to justify the continual consideration of new requests for EAS routes. Those residents without EAS routes are not precluded from reaching essential services by making toll calls through an intraLATA carrier.

In any event, EAS is not essential for purposes of making calls to emergency services which are outside of the local exchange. The current E-911 network technology permits a customer to simply dial 9-1-1, and the call is automatically routed to the nearest appropriate emergency service provider based on the address associated with the phone number from which the call is made. Since E-911 service is a free call, and does not require the caller to remember the number of the emergency service provider, it is actually a superior alternative to reliance on EAS for emergency calling. While callers seeking emergency services may still resort to the regular seven-digit number on rare occasions, they can still do so without EAS, but will simply incur applicable toll charges. In any event, the E-911 system should be the primary tool for emergency calls.

EAS impacts must be evaluated in terms of all California telephone customers, not just those who are directly affected by subsidized EAS rates. As noted by ORA, the shortfall in the ILEC's recovery of costs of providing local service to EAS customers is currently made up through a surcharge on all ILEC customers which subsidizes the toll usage of customers with EAS routes. The cost of subsidizing EAS routes falls on the shoulders of customers who receive no benefit from EAS.

EAS is also an impediment to CLCs seeking to extend their service into those areas covered by EAS routes. The removal of the EAS option could stimulate development of more competitive alternative rate plans. EAS routes resulted in subsidized prices which do not reflect costs, but which distort pricing signals sent to consumers as well as to new competitors. The continued proliferation of additional EAS routes will only perpetuate these inequities, and inhibit the growth of a more competitive market and the choices which customers have.

Moreover, to the extent that EAS rates remain cheaper than competing toll rates, the cost savings may be due, at least partially, to the use of outdated cost assumptions to set EAS rate increments. The "Salinas Formula" which has traditionally been used as a basis for setting EAS rate increments was established decades ago and is seriously outdated. If the EAS formula was updated to reflect current traffic volumes and the costs of constructing and operating the routes, less productivity gains, the EAS rate increments might be revised significantly upward. The current appeal of EAS as a cheap substitute for toll calling could thus be further called into question.

The termination of processing of complaint cases to consider new EAS routes will also permit the redirection of significant labor-intensive resources to more productive uses. As noted by GTEC, gathering the toll traffic data to perform an EAS calling study is becoming increasingly difficult. With intraLATA toll equal access, an ILEC must gather toll data beyond what it carries and bills. To do this, the ILEC must go back through historical records to capture the calling patterns for all customers in the exchange requesting EAS. Verification of this data for completeness and accuracy is a labor intensive process.

We deny the request of RTC to give the ILECs unilateral discretion to create or change EAS routes. We find unpersuasive RTC's arguments that it would foster development of a competitive market to permit the ILECs such unilateral discretion. EAS involves a subsidy rate design. It would neither promote competition nor be equitable to telephone customers of other ILECs to permit RTC to unilaterally require such customers to subsidize RTC's EAS routes created by mere fiat.

We therefore conclude the prospective filing of complaints for the creation of new EAS routes is no longer appropriate. We find no necessity to establish a threshold level of local competition prior to phasing out EAS. Even in those areas where competition for local exchange service is not yet available, intraLATA toll carriers still can offer competitive service. It is toll service – not local exchange service – that is the relevant competitive alternative to an EAS route.

The phasing out or elimination of existing EAS routes would constitute a change in previously authorized Commission decisions. TURN argues that Commission decisions authorizing EAS routes may not be modified or reversed without notice to affected customers and an opportunity for an evidentiary hearing as in complaint cases as provided for in Section 1708 of the Public Utilities Code. (*California Trucking Association v. Public Utilities Commission* (1977) 19 Cal. 3d 240, 244-245.) ORA agrees that the phasing out of EAS raises an issue regarding notice to customers. ORA disagrees, however, that "an opportunity to be heard" mandates evidentiary hearings unless a material issue of fact must be resolved.

We conclude that existing EAS rates should be grandfathered for the present. In Pacific's territory alone, there are approximately 245 communities with EAS routes. It is inappropriate to change existing EAS routes without consideration of the effects on the change on these communities and without due notice and opportunity to be heard by affected subscribers.

Each pending EAS complaint case now pending before the Commission shall proceed based on the factual merits of each case. We shall not, however, accept any new filings made subsequent to the effective date of this decision seeking to prospectively establish additional EAS routes. At the time the ALJ ruling was issued addressing EAS issues, it was stated that the examination of EAS issues within the service territories of the small ILECs would be examined in the context of their next general rate case filings. Based upon review of the comments filed on this issue, including those of the small ILECs, we conclude that there is no reason to exclude EAS routes which extend into the service territories of small ILECs in adopting EAS policies in this decision. The problems created by continued proliferation of new EAS routes affect the small ILECs at least much, if not more, than the larger ILECs. Moreover, the availability of competitive alternatives for intraLATA service exists in the small ILECs service territories just as it does in the that of the larger ILECs. Therefore, the cessation of new EAS filings shall apply on a statewide basis, including potential EAS routes extending into the service territories of the small ILECs.

Findings of Fact

1. EAS is a service utilized by telephone subscribers in designated communities to extend the geographic range of a local calling area in situations where the subscribers cannot reach a reasonable range of essential services within their existing toll-free local calling area.

2. The Commission has in recent years established EAS routes on a case-by-case basis in the context of formal complaints brought by customers.

3. EAS was justified during the era when there was only one local exchange carrier providing local and intraLATA toll service, and customers had no competitive alternatives to high toll rates to make calls to the closest communities of interest.

4. IntraLATA toll competition was instituted on January 1, 1995, whereby both business and residential customers now may choose from among multiple carriers to obtain intraLATA toll services.

5. IntraLATA competition has reduced the toll costs rural customers face for calls beyond their local calling area.

6. AT&T, MCI, and Sprint offer residential optional calling plans that include intraLATA toll rates of no more than $.05 per minute for calls made within California.

7. Citizens Telecommunications Company of California Inc., Roseville Telephone Company, and GTE California Incorporated have each implemented intraLATA equal access, eliminating the need for their local exchange customers to dial additional numbers to reach the customers' intraLATA toll carrier of choice.

8. Pacific Bell must implement intraLATA toll equal access when it enters the interLATA long distance market within California

9. Even in those areas where competition for local exchange service is not yet available, intraLATA toll carriers still can offer competitive toll service.

10. While residents in a small community may not be able to make local calls for essential services located outside the local exchange, those residents can reach such services by making toll calls through an intraLATA carrier.

11. The removal of the EAS option on a prospective basis could stimulate development of more competitive alternative rate plans.

12. The "Salinas Formula," which has traditionally been used for setting EAS rates, is seriously outdated. If the rate formula was updated to reflect current conditions, EAS rate increments could increase, thereby lessening the appeal of EAS.

13. EAS is not essential to emergency services located outside of the local exchange, since such services can be reached by dialing 9-1-1, whereby the call is automatically routed to the nearest appropriate emergency service provider based on the customer's telephone number.

14. In those limited instances where the seven-digit number is dialed as a backup number to reach emergency services, it can be dialed as a toll call without the need for an EAS route.

15. The elimination of EAS routes will mean that some local communities will lose the ability to reach essential services through a backup local number.

16. The shortfall in the ILECs' recovery of costs of providing service to EAS customers is made up through a statewide surcharge on ILEC customers which subsidizes the toll usage of customers with EAS routes.

17. EAS is an impediment to CLCs seeking to extend their service into areas covered by EAS routes.

18. The continued proliferation of additional EAS routes would perpetuate rate inequities among customers, and inhibit the growth of a more competitive market and the choices which customers have.

19. The problems created by continued proliferation of new EAS routes affect the small ILECs at least much, if not more, than the larger ILECs.

Conclusions of Law

1. EAS impacts should be evaluated in terms of all California telephone customers, not just the minority who benefit from the subsidized EAS rates.

2. The filing of complaint cases seeking to establish new EAS routes within California should be suspended on a prospective basis effective from the date of this decision.

3. Pending EAS complaint cases filed prior to the date on which this order becomes effective should be processed based on factual merits of the individual case.

4. Existing EAS routes should be grandfathered for the present time.

5. Customers served by EAS routes should be given due notice and an opportunity to be heard before any changes are made to existing EAS routes, pursuant to PU Code § 1708.

O R D E R

IT IS ORDERED that:

1. No new filings to establish additional Extended Area Service (EAS) routes tendered after the date of this order, shall be accepted within the service territories of any incumbent local exchange carrier (ILEC) within California.

2. Currently pending EAS complaint cases filed prior to the effective date of this order shall proceed based on the factual merits of each case.

3. Existing EAS routes within the service territories of any ILEC within California shall be grandfathered for the present time.

This order is effective today.

Dated June 18, 1998, at San Francisco, California.

P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
JOSIAH L. NEEPER
Commissioners

I dissent.

/s/ RICHARD A. BILAS
President

I dissent.

/s/ HENRY M. DUQUE
Commissioner