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Decision 98-09-015 September 3, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Bill Langworthy, et. al.,

Complainants,

vs.

Calaveras Telephone Company (U 1004-C) and  
Pacific Bell (U 1001 C),

Defendants.

Case 97-01-013  
(Filed January 14, 1997)

William E. Langworthy, complainant.  
Alvin H. Pelavin, Mark P. Schreiber, and Sean P. Beatty,  
Attorneys at Law, for Calaveras Telephone  
Company and Nicola Erbe, Attorney at Law, for  
Pacific Bell; defendants.

## O P I N I O N

### 1. Summary

Complainant seeks an expansion of the local, toll-free calling area for residents of Copperopolis to include San Andreas and other communities. Defendants oppose the request. We decline to authorize the requested relief. The proceeding is closed.

### 2. Procedural History

San Andreas and Copperopolis are communities in the Sierra foothills. San Andreas is about 40 miles east of Stockton. Copperopolis is about 25 miles southwest of San Andreas.

Complainant seeks an order enlarging the toll-free calling area for the 785 prefix to include the 754 prefix. The 785 prefix is in the Copperopolis exchange of the Calaveras Telephone Company (Calaveras). The 754 prefix is in the San Andreas exchange of Pacific Bell (Pacific). Complainant alleges that reaching important services from the 785 prefix requires a toll call. Further, complainant claims that the existing calling area discriminates against complainant by causing higher telephone bills compared to those of Pacific's customers who reside a like distance from local government offices. Complainant seeks expanded local calling for the 785 prefix to include the 754 prefix, or the ability to switch to service from Pacific. The complaint is signed by more than 25 telephone customers of Calaveras.

In its answer to the complaint, Calaveras asserts that calling important services from the 785 prefix does not require a toll call. Further, Calaveras denies that the 785 toll-free calling area should be enlarged to include the 754 prefix, that the existing toll-free calling area discriminates against complainant, and that complainant's service should be switched to Pacific. Calaveras states five affirmative defenses, and asks that the complaint be dismissed. Pacific's answer similarly denies that its existing services are unlawfully discriminatory, states three affirmative defenses, and asks that the complaint be dismissed.

A prehearing conference (PHC) was held on April 28, 1997. Complainant clarified that the requested relief is two-way toll-free calling between the 785 and 754 prefixes. The Administrative Law Judge (ALJ) directed defendants to compile specific data used by the Commission to assess requests for expanded local calling, known as extended area service (EAS).

On July 7, 1997, Calaveras filed a motion for summary judgment. No responses were filed. A second PHC was held on August 15, 1997. Dates and

procedures for evidentiary hearing were discussed, and parties were directed to serve witness lists 14 days before hearing.

On September 4, 1997, Pacific served a motion to dismiss and a motion for summary judgment. No responses were filed. Hearing was held on September 12, 1997, evidence received, closing statements made, and the matter submitted for decision upon receipt of the transcript.

### **3. Background**

A telephone company's service territory is divided into exchanges. Exchanges vary greatly in size, from under one square mile to over 1461 square miles.<sup>1</sup> Each exchange has a single point designated as the rate center. Calls originating and terminating within an exchange are local, toll-free calls, independent of the size of the exchange. Calls between exchanges are local, toll-free calls when the rate centers are within 12 miles of each other, again independent of the size of the exchanges. Calls between exchanges are toll calls when the rate centers are more than 12 miles from one another, also independent of the size of the exchanges. The undisputed testimony in this proceeding is that the distance between the Copperopolis and San Andreas exchange rate centers is 16 miles. Therefore, calls between Copperopolis and San Andreas are toll calls.

Extended area service, or EAS, is a method that permits a telephone company to expand the local, toll-free calling area of one exchange to include another exchange when calls to the other exchange would otherwise be toll calls.

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<sup>1</sup> For example, in Pacific's territory, the Verdi exchange is 0.05 square miles, while the Bakersfield exchange is over 1461 square miles. (Decision (D.) 94-01-015, mimeo., page 3.)

One-way EAS permits local calling in one direction between exchanges.

Two-way EAS allows local calling in both directions between exchanges.<sup>2</sup>

The Commission has authorized many EAS routes throughout California. EAS is not an optional service, however. Once authorized, it applies to all subscribers in an exchange, and an additional monthly service charge is assessed on all subscribers whether or not they take advantage of EAS calling. The additional service charge, traditionally calculated under what is called the "Salinas formula,"<sup>3</sup> is intended to reimburse the telephone company for lost toll revenue between the two exchanges.

We consider several criteria in deciding whether to authorize an EAS. These criteria include (1) whether EAS is justified by a "community of interest" between the two exchanges, (2) whether there is substantial customer support for extending the area of service even with the accompanying increase in monthly service charge, and (3) whether the EAS can be implemented with reasonable rates.<sup>4</sup>

The Commission generally examines three factors to determine the existence of a community of interest: (1) the average number of calls per line per month to the targeted exchange, (2) the percentage of customers placing at least one call per month to the targeted exchange (often referred to as the "take rate"), and (3) the extent to which essential calling needs (e.g., calls to police, fire,

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<sup>2</sup> EAS is not an option in metropolitan areas that have zone usage measurement (ZUM) calling plans. (See D.96-01-010, mimeo., p. 8 (64 CPUC2d 235, 239), citing to D.90642 (2 Cal PUC2d 89 (1979)).)

<sup>3</sup> D.77311, Pacific Telephone and Telegraph Company (1970) 71 CPUC 160.

<sup>4</sup> See, for example, D.77311 (71 CPUC 160), D.91-01-011 (cited but not reported at 39 CPUC2d 208), D.93-09-081 (51 CPUC2d 422), D.93-09-083 (51 CPUC2d 449), D.96-01-010 (64 CPUC2d 235), D.96-08-039, D.97-06-106, D.97-07-057, D.98-03-070, and D.98-03-076.

medical providers, schools, banks, retail services) are met in the existing local, toll-free calling area. We have not established specific minimum levels which must be passed before we authorize an EAS. Nonetheless, an average of three to five calls per line per month is generally the minimum necessary to justify a candidate EAS, along with no less than 70% of customers placing at least one call per month to the targeted exchange. There must also be the general inability to complete essential calls without incurring toll charges.

Customer calling patterns (e.g., average number of calls and the take rate) are the primary factor in determining whether to institute an EAS.<sup>5</sup> Even when an EAS is supported by calling patterns, however, the essential calling needs test must also be met before an EAS will be authorized.<sup>6</sup>

#### **4. Positions of Parties**

Complainant testifies that calls from the Copperopolis exchange in Calaveras County to Tuolumne County and Alpine County are toll-free, while calls to the Calaveras County seat in San Andreas are toll calls. Complainant says the right of Calaveras County citizens to call their county government without charge should be mandatory. Taxpayers in Calaveras County support Calaveras County government, not Alpine or Tuolumne County governments, according to complainant. Moreover, complainant asserts that if the United States government subsidizes either Calaveras or Pacific as private companies, that no private company should be subsidized by taxpayers unless all private companies are subsidized. Complainant asserts it is unreasonable that calls may

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<sup>5</sup> See D.91-01-011, mimeo., p. 9. Also, see D.96-01-010, mimeo., p. 7, plus Finding of Fact 13, p. 11 (64 CPUC2d 235, 239-240).

<sup>6</sup> See, for example, D.98-03-070, mimeo., pp. 8-11.

be made toll-free to Bear Valley (over 60 miles from Copperopolis) when calls to San Andreas (about 25 miles from Copperopolis) are toll calls. Complainant's witnesses support the request to call county government toll-free; explain shopping, banking, social and other essential calling needs cannot be met in the existing toll-free calling area; and state that some women do not call the Women's Crisis Center because it is a toll call (fearing additional danger when the call appears on the telephone bill).

The witness for Calaveras testifies that the basic calling needs of Calaveras subscribers in the Copperopolis exchange are met within the existing local, toll-free calling area. Moreover, the witness asserts that calling pattern and traffic data do not meet the Commission's criteria for establishing an EAS route.

Due to unavoidable circumstances, Pacific did not present evidence at hearing. The ALJ ruled that the hearing would proceed as planned, however, and further hearing undertaken later, if necessary, with respect to Pacific.

## **5. Discussion**

We first consider an EAS from Copperopolis to San Andreas involving Calaveras. If the one-way route from Copperopolis to San Andreas is not justified, a two-way EAS involving Pacific is similarly not justified. Nonetheless, complainant also sought further hearing with respect to Pacific if the EAS from Copperopolis to San Andreas is not granted. Thus, we also consider the EAS from San Andreas to Copperopolis to determine if further hearing is necessary. Finally, we consider issues of discrimination, and the ability of customers to switch service from Calaveras to Pacific.

### **5.1. EAS from Copperopolis to San Andreas**

The evidence does not show a community of interest from the Copperopolis exchange to the San Andreas exchange. First, the percentage of customers placing at least one call per month from Copperopolis to San Andreas in January, February and March 1997 is 39%, 38% and 40%, respectively, or an average of 39% over the first quarter of 1997. This is well below our general standard of no less than 70%.

Second, the average number of calls per line per month from Copperopolis to San Andreas over the same three months is 3.05, 2.79 and 3.28, or an average of 3.04 over the first quarter of 1997. This is at the low end of what we generally consider to be the minimum necessary. Moreover, the data show that the average can be greatly influenced by a small number of subscribers making a disproportionate number of calls. For example, slightly more than 1% of the 1943 total access lines in Copperopolis account for 28% of calls made to the San Andreas exchange in January 1997. The average number of calls per line in January 1997 falls from 3.05 to 2.21 when this slightly more than 1% of high volume calls is removed. The data also show that 61% of Copperopolis customers in January 1997 made no calls to San Andreas, and 71% made one call or less.<sup>7</sup> Thus, the majority of subscribers made one call or less to San Andreas, while a small group of callers made a disproportionate number of calls and increased the average.

Third, the evidence shows that basic needs can be met in the local, toll free calling area. Subscribers can reach essential services toll-free, including

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<sup>7</sup> Out of 1943 access lines, 1178 (61%) made no calls. (Exhibit 2, page 4, lines 1 and 2.) Out of 1943 access lines, 1388 (71%) made one or fewer calls (1178 made no calls, and 210 made one call, or 1388 made one call or less). (Exhibit 2, page 4, lines 1 and 2.)

county, state and federal government services; public and private elementary, middle and high schools; medical clinics; a dentist; and commercial services, including grocery stores, hardware stores, banks, and feed stores. (Exhibit 2, Attachment 3.) That is, without a toll charge, subscribers can reach an emergency number (911) for the sheriff and fire departments, as well as nonemergency numbers for the sheriff, the fire protection district, doctors, schools, banks, many government services, and basic retail services. Under cross-examination, complainant's witnesses affirmed that schools, grocery stores, libraries and banks can be called toll-free.

Therefore, we find that a community of interest does not exist between the Copperopolis and San Andreas exchanges. Without a community of interest, we need not consider customer support and reasonable rate criteria.

We address two concerns of complainant and his witnesses. First, complainant argues it is unreasonable that calls are toll-free from Copperopolis to Bear Valley (about 60 miles), but calls from Copperopolis to San Andreas (about 25 miles) are toll calls. This is a function of the geography of each exchange, and the location of the rate center. Copperopolis and Bear Valley are in the same exchange, while Copperopolis and San Andreas are not. Moreover, exchanges are not geographically uniform, and no evidence was presented here that they should be made uniform. The Commission has consistently held that exchanges and exchange rate centers, once established, are permanent and should not be changed.<sup>8</sup> The history of rate centers was discussed in D.90-05-091, where we pointed out that:

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<sup>8</sup> See, for example, D.98-03-076, mimeo., p. 8; D.96-08-039, mimeo., p. 5; D.94-01-015, Finding of Fact 1, mimeo., p. 7.



"The 'Rate Centers' of telephone exchanges are designated when the exchange, is first established and their location does not change ... [M]any of the older exchange rate centers were established at the location of the post office or of another federal building within the given community or city and not at the actual location of the telephone central office. This ancient custom appears to have its origin when, prior to the existence of the Federal Communications Commission (FCC)(1943) the Postmaster General had certain authority to fix rates and interconnection on a nondiscriminatory basis. This authority originally dealing with telegraph service dates back to ' The Act of July 24, 1866,' (14 Stat. 221, 39<sup>th</sup> Cong., 1<sup>st</sup> sess.) Also, President Woodrow Wilson placed the control of telephone communications under Postmaster General A. S. Burleson from August 1, 1918 to July 31, 1919, as deemed necessary for the national security or defense, during World War I. (40 Stat. 1807, July 22, 1918.) Since the Postmaster General knew where all the nation's post offices were located, these locations became a matter of convenience for other possible uses including the rate centers of telephone exchanges. The authority granted the Postmaster General in 1866 was transferred to the FCC in 1934 by Section 601(b) of the Communications Act of 1934." (D.90-05-091, 36 CPUC2d 369, 396; also see D.96-01-010, mimeo., p. 5, 64 CPUC2d 235, 238.)

Due to the nature of the exchanges and rate centers, customers in the Copperopolis exchange may call toll-free a great distance within the exchange, but must pay a toll charge to call a shorter distance to San Andreas. This circumstance alone, however, neither justifies an EAS nor any other relief.

Second, one of complainant's witnesses testified in favor of an EAS to enable toll-free calling to the Women's Crisis Center. We decline to authorize an EAS for this limited, albeit important, need. There is no evidence that an EAS is the only method, nor the least costly method, nor the most reasonable method, for meeting the calling needs of persons in crisis. More reasonable alternatives may exist.

For example, under cross-examination it was learned that the Women's Crisis Center has a telephone number with a 736 prefix (Angels Camp) for use

during normal business hours which can be reached toll-free from the Copperopolis exchange. While the evidence is that many women may not know of this toll-free number, advertising the 736 prefix number may be less costly and more reasonable than the creation of an EAS. Other alternatives may also exist, such as placing an out-going message on the 736 prefix number with information about when to call toll-free, or suggestions of other available resources; expanding the hours of coverage of the 736 prefix number; purchasing call-forwarding for calls to the 736 prefix number in other than normal business hours (wherein the calls are forwarded to another location with the cost of the forwarded calls charged to the 736 prefix number); purchasing a telephone number in the Copperopolis exchange but answered in the San Andreas exchange (i.e., foreign exchange service); or purchasing an "800" or "888" area code (i.e., toll-free) number for incoming calls.

The record does not develop these or other alternatives. We are unable to adopt an EAS for the benefit of an unknown number of people in crisis, however, given that there is no showing that an EAS is the only, or the most reasonable, way to meet that need, and a community of interest does not exist from the Copperopolis exchange to the San Andreas exchange.

## **5.2. EAS from San Andreas to Copperopolis**

Complainant sought a two-way EAS. A two-way EAS, however, depends upon authorization of both parts. Since we reject the EAS from Copperopolis to San Andreas, we decline to authorize a two-way EAS.

Complainant did not file a response to Pacific's motion to dismiss. At hearing, complainant stated that there would be no need to pursue the matter with respect to Pacific if the requested relief was granted. If that relief was not granted, however, complainant sought a further hearing with regard to Pacific. We decline to consider this matter further.

A complaint must allege an act or thing done or omitted to be done by a public utility including any rule or charge established or fixed by or for a public utility in violation of any provision of law or of any order or rule of the Commission. The allegation may include that rates are unreasonable. (Section 1702 of the Public Utilities (PU) Code; Rule 9(a) of the Commission's Rules of Practice and Procedure.) Complainant makes no such allegations against Pacific or Pacific's rates. The complaint is not signed by any subscriber in the San Andreas exchange, or any other Pacific exchange. Therefore, there is no cause of action against Pacific, and the complaint must be dismissed with respect to Pacific.

Moreover, not only have no Pacific customers in the San Andreas exchange signed complainant's petition, no such customers have in any other way shown any interest in an EAS from San Andreas to Copperopolis, and none have shown any interest in, or expressed any need for, hearing. Complainant presents no credible indication that he would be able to show the existence of a community of interest from San Andreas to Copperopolis. On the other hand, Pacific's motion to dismiss, supported by declaration made under penalty of perjury, shows that the community of interest factors are not met. Pacific's motion is granted.

### **5.3. Discrimination**

Complainant alleges that the existing calling area discriminates against complainant by causing higher telephone bills compared to those of Pacific's customers who reside a like distance from local government offices. To the contrary, Calaveras and Pacific each charge their respective customers rates approved by the Commission and authorized in published tariffs. Complainant

has not shown that these rates are discriminatory, nor that any discrimination--if there is any--is undue.'

#### **5.4. Switch Service to Pacific**

If EAS routes are not approved, complainant asks for the ability to switch service from Calaveras to Pacific. We decline to authorize this request.

We are in the process of opening all local markets to competition. When competition is available in the Copperopolis exchange, complainant will have the opportunity to switch service to any competitor electing to offer service.

Until that time, we decline to require Calaveras to sell, and Pacific to buy, the Copperopolis exchange, or in any other way direct that Pacific take over service in the Copperopolis exchange. Complainant does not show under what authority we could order such extraordinary relief, and no evidence was presented that would justify such relief. Even if we made such order, however, a call from Copperopolis to San Andreas would still be a toll call unless we also changed the exchange boundary and rate center. As stated above, we have consistently held that exchanges and exchange rate centers, once established, are permanent and should not be changed. Without a change in exchange boundary or rate center, authorizing complainant the ability to switch to Pacific would not resolve complainant's concerns. Therefore, we decline to authorize complainant the ability to switch service to Pacific.

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' As we noted in D.98-03-076 (mimeo., p. 7): "Discrimination forbidden by Section 453 [of the Public Utilities Code] '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.)."

## **6. Judicial Review**

This is a complaint case which challenges the reasonableness of rates or charges, as specified in PU Code Section 1702. Therefore, it is not an adjudicatory proceeding, as defined in PU Code Section 1757.1.

### **Findings of Fact**

1. The Commission generally examines three factors to determine the existence of a community of interest between telephone exchanges: (1) the average number of calls per line per month to the targeted exchange, (2) the percentage of customers placing at least one call per month to the targeted exchange, and (3) the extent to which essential calling needs (e.g., calls to police, fire, medical providers, schools, banks, retail services) are met in the existing local, toll-free calling area.

2. The percentage of customers placing at least one call per month from the Copperopolis exchange to the San Andreas exchange in the first quarter of 1997 was 39%, while the Commission's general standard to support an EAS is no less than 70%.

3. The average number of calls per line per month from the Copperopolis exchange to the San Andreas exchange in the first quarter of 1997 was 3.04.

4. The average number of calls per line per month can be greatly influenced by a small number of subscribers making a disproportionate number of calls.

5. The average number of calls from the Copperopolis exchange to the San Andreas exchange per line in January 1997 was 2.21, when the slightly more than 1% of subscribers making about 28% of calls is removed, while the Commission's general minimum standard to support an EAS is an average no less than 3 to 5 calls per line per month.

6. Telephone customers in the Copperopolis exchange can, without toll charges, call an emergency number (911) for the sheriff and fire departments, and

nonemergency numbers for the sheriff, the fire protection district, doctors, schools, banks, many government services, libraries, and basic retail services.

7. A community of interest for the purpose of considering an EAS does not exist between the Copperopolis and San Andreas exchanges.

8. An EAS from the Copperopolis exchange to the San Andreas exchange is not reasonable.

9. Rejection of the EAS from Copperopolis to San Andreas necessitates rejection of the EAS from San Andreas to Copperopolis as the second part of a two-way EAS.

10. Complainant does not allege an act or thing done or omitted to be done by Pacific including any rule or charge established or fixed by or for Pacific in violation of any provision of law or of any order or rule of the Commission, nor does complainant allege that Pacific's rates are unreasonable.

11. The complaint is not signed by any subscriber in Pacific's service territory.

#### **Conclusions of Law**

1. Pacific's motion to dismiss should be granted.

2. The relief sought in this complaint should be denied, and the complaint should be dismissed.

3. This is a complaint case challenging the reasonableness of rates or charges, this decision is not issued in an adjudicatory proceeding as defined in PU Code Section 1757.1.

4. This decision should be effective today to promote conclusion of this matter without delay.

**O R D E R**

**IT IS ORDERED that:**

1. Pacific Bell's motion to dismiss is granted.
2. The relief sought by complainant is denied, and the complaint is dismissed.
3. The proceeding is closed.

This order is effective today.

Dated September 3, 1998, at San Francisco, California.

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