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Decision 99-02-063 February 18, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Marna An Powell and Donna M. Hufford, et al., Complainants, vs. GTE aka GTE Northwest dba GTE West Coast, Defendant.	ORIGINAL Case 97-09-056 (Filed September 29, 1997)

Marna An Powell and Donna M. Hufford, et al., for complainants.
Susan D. Rossi and A. Timothy Williamson, Attorneys at Law, for GTE West Coast Incorporated, defendant.

OPINION

1. Summary

Complainants, representing some 100 residents of the northern California coastal community of Orick, seek to expand the toll-free calling area of their 488 telephone exchange to include Trinidad, Arcata and Eureka. The evidence shows that the surcharge for such an expansion, added to monthly bills, would be greater than the cost of toll calls to those communities for 70% of Orick subscribers. The evidence shows that 56 telephone toll carriers are certified to serve Orick, and that 90% of Orick subscribers are using toll carriers other than their local exchange carrier. Under these circumstances, expanding the toll-free calling area is not justified.

2. Background

This case was filed on September 29, 1997, pursuant to Public Utilities (PU) Code § 1702, which authorizes complaints challenging the reasonableness of telephone rates if brought by 25 or more customers. Complainants seek extended area telephone service, or EAS, from Orick, which has about 300 telephone subscribers, to more populous communities to the south.

EAS is a method by which a telephone company expands an exchange's local calling area to include another, contiguous exchange. The Commission has authorized approximately 75 EAS routes in California. EAS is not an optional service. Once authorized, it applies to all subscribers in an exchange, and an additional monthly surcharge is assessed on all subscribers whether they take advantage of EAS calling or not.

In considering EAS, the Commission considers whether EAS is justified by a "community of interest" between the two exchanges, and whether the service can be implemented at reasonable rates.[1] 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) cannot be met within subscribers' existing toll-free calling area.

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

GTE West Coast Incorporated (GTEWC) is the local exchange carrier serving Orick. It opposed the request for EAS on grounds that the cost would be prohibitive and that subscribers have an increasing choice of carriers for local toll calls to nearby communities.

A prehearing conference attended by more than 100 residents was conducted on January 16, 1998, in Orick. GTEWC was directed to compile calling data between Orick and the target exchanges and to convey that information to complainants and to the Commission's telecommunications staff. On March 20, 1998, GTEWC submitted its compilation of calling data. The data showed, among other things, that Orick subscribers averaged 12 calls per month to Eureka and 11 calls per month to Arcata/McKinleyville. The percentage of Orick subscribers making at least one call per month to Eureka was 77% and to the Arcata exchange, 76%.

GTEWC admits that Orick subscribers meet the traditional EAS tests for frequency of calls to Arcata and Eureka. The company also admits that all of the community's essential calling needs are not met within the Orick exchange.

3. Staff Analysis

The Commission's Telecommunications Division analyzed the calling data and calculated the cost to each Orick subscriber of implementing an EAS route to the Trinidad, Arcata and Eureka exchanges. Staff reported that each Orick residential subscriber would pay an increment of $9.40 per month, in addition to the flat rate service charge, in order to implement EAS to the three target exchanges. The increment for Orick to Trinidad would be $1.45 per month; for Orick to Trinidad and Arcata, $5.45; and for Orick to Trinidad, Arcata and

Eureka, $9.40.[2] Orick business subscribers would pay an EAS increment of $14.36 per month in addition to their business flat rate service charge for toll-free calls to Eureka.

Staff next analyzed the number of calls per month made on each Orick line to each of the target exchanges. For Orick to Trinidad, staff concluded that 86% of residential subscribers paid less in toll charges than the EAS surcharge for Trinidad. For Orick to Arcata, approximately 70% of residential subscribers paid less in toll charges than the EAS surcharge for Arcata. For Orick to Eureka, 76% of residential subscribers paid less in toll charges than the EAS surcharge for Eureka.

For Orick business subscribers, 84% paid less in toll charges for Trinidad calls than they would for a Trinidad EAS; 67% paid less in toll charges for Arcata calls than they would for an Arcata EAS, and 67% paid less in toll charges for Eureka calls than they would for a Eureka EAS.

Based on this analysis, the Telecommunications Division concluded that the majority of both residential and business subscribers in Orick are better off financially paying toll rates for their calls to Trinidad, Arcata and Eureka than they would be paying an EAS surcharge to include those calls in their local calling area.

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[2] Staff calculated the Trinidad rate based on the Salinas formula, the Commission's traditional measure for EAS rate calculation. (Pacific Telephone and Telegraph Company (1970) 71 CPUC 160.) Because the Salinas formula only measures distances between exchange rate centers for up to 25 miles, staff calculated a "revenue neutral" rate for Arcata (30 miles) and for Eureka (35 miles). The EAS increment is intended to reimburse the telephone company for lost toll revenue for calls between the exchanges. (See Collin v. Pacific Bell (1998) Decision 98-03-076.)

By Administrative Law Judge's ruling dated April 8, 1998, complainants were asked whether they wished to proceed to hearing in view of the staff findings. In a filed response dated April 25, 1998, complainants asked the Commission to conduct a hearing in the fall in order to cross-examine witnesses and to explore alternative measures to reduce local toll costs. The parties agreed to a hearing on October 2, 1998, in Orick.

4. Evidence at Hearing

At hearing, GTEWC presented two witnesses who described the nature of EAS, the method of calculating the EAS surcharge and the additional trunking and facilities that would be required to establish EAS routes. James L. Graham, the company's manager for area pricing, confirmed the pricing analysis performed by the Commission's staff and presented summaries of data showing that 70% of total Orick subscribers would pay more for the proposed EAS routes than they do today in toll charges. Tom Pani, product manager for local services, testified that microwave links used for Orick telephone traffic have limited capacity and would need to be expanded to handle increased calling if EAS routes were established to Trinidad, Arcata and Eureka. To meet these expansion costs, Pani testified that, in addition to the EAS surcharge imposed on Orick subscribers, the company would seek a secondary surcharge to be imposed on all GTEWC customers in California.

Complainants presented the testimony of Philip Nesset, a clergyman and a director of the Orick Chamber of Commerce, who testified that the expense of toll calls to communities like Arcata and Eureka tended to discourage local development and made use of the Internet prohibitive for some residents. Marna An Powell, a named complainant, presented her written testimony urging an EAS route for Orick, at least to Arcata. In response to questions, she stated that most Orick residents use a telephone service other than GTEWC for local toll calls because competitive rates for such calls are about 8 cents per minute compared to GTEWC's 11 cents per minute. GTEWC confirmed that it carries only about 10% of local toll traffic to Arcata and Eureka. GTEWC presented evidence to show that 56 telephone companies are authorized to provide local toll service to Orick residents.

The parties asked to file briefs in this matter. The final brief was submitted on December 24, 1998, at which time the case was deemed submitted for Commission decision.

5. Discussion

The evidence shows, and GTEWC does not dispute, that local calling needs of Orick subscribers are not met within Orick. The more troublesome issue, however, is how to deal with the cost of local toll calls to other communities that possess essential services. Such calls to other communities can continue to be charged as toll calls, or if an EAS route were established, all Orick subscribers would pay a surcharge each month in addition to the basic service rate so that such calls would be considered local and no toll charges would be imposed.

On June 18, 1998, the Commission in Decision (D.) 98-06-075 reviewed the efficacy of instituting new EAS routes in view of the opening of the local toll market (or intraLATA market) to competition. We concluded that no new EAS requests would be accepted, reasoning that:

> "the problems created by continued proliferation of new EAS routes affect the small [Incumbent Local Exchange Carriers] at least [as] much, if not more, than the larger ILECs. Moreover, the availability of competitive alternatives for intraLATA services exists in the small ILECs' service territories just as it does in 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." (D.98-06-075, slip op. at 6.)

The request here that GTEWC, a small ILEC, institute a one-way EAS from Orick to Trinidad, Arcata and Eureka had been filed prior to adoption of D.98-06-075, and therefore continued to be processed under traditional EAS guidelines. The complainants and GTEWC agreed that the month of April 1996, at a time when GTEWC handled all toll calls for Orick, would be used as the representative month for the analysis of the EAS route.

The calling patterns from Orick to the Eureka and Arcata exchanges meet traditional tests for an EAS (an average of three to five calls per month per line to the target exchange; at least one call per month to the target exchange by 70-75% of subscribers). Calls to the Trinidad exchange do not meet these tests. However, EAS routes must be established to contiguous exchanges, so Trinidad (the only contiguous exchange) must be included in EAS routes to Eureka and Arcata. (See Whitten v. P.T.& T. Co. (1973) 74 CPUC 651, 655.)

The uncontested testimony presented at hearing showed that 72% of residential and business subscribers in Orick would pay more for an EAS route to Trinidad and Arcata than they paid in toll charges to those locations in April 1996. Similarly, 72% of residential subscribers and 74% of business subscribers would pay more in EAS surcharges than they did in toll charges in April 1996. (Exhibit 4.) Indeed, since 90% of Orick subscribers are using less costly toll serve than that provided by GTEWC, the disparity between toll charges and a monthly EAS surcharge is likely to be even greater.

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.[3] The adoption of an EAS route here, either to Arcata or to

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

Eureka, would disadvantage the majority of Orick subscribers, all of whom would have to pay the mandatory EAS surcharge. It would result in 70% of total Orick subscribers paying more in overall telephone charges each month. This 70% of users would subsidize the 30% who place numerous toll calls each month. While this Commission can understand the desire of high-volume toll users to reduce their charges (particularly where the toll calls are necessary for children's schooling and the family's medical and shopping needs), the Commission has an obligation to balance the interests of all ratepayers. As we noted in City of Anderson v. P.T.& T. Co. (1969) 70 CPUC 361, 368:

> "While the EAS proposal was accepted by all parties to these matters, this Commission has the obligation to consider and protect the interests of that large body of subscribers who are not aware of the issues involved, or who cannot afford to actively participate, in these matters."

The Commission in D.98-06-075 set forth the reasons why new EAS routes would not be considered. Among other reasons, it noted that: "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." (D.98-06-075, slip op. at 9.) The evidence here shows that there are 56 intraLATA toll providers certified to provide service in Orick, and 90% of Orick subscribers have taken advantage of this competition to lower the cost of their toll calls.

As competition has expanded, so have alternatives for Orick customers. One Orick resident noted that she regularly uses her cellular phone service and an hour of "free" calls to avoid making toll calls from her GTEWC wireline phone. As the testimony showed, other potential arrangements that could benefit those making frequent toll calls are a foreign exchange line (in effect, purchasing a target exchange line), and installation of 800 numbers for school and governmental agencies.

The increased competition in intraLATA calling that this Commission has authorized has benefited Orick telephone subscribers in reducing the cost of their local toll calls. We will continue to encourage competition in all aspects of telecommunications, and it is our hope and expectation that Orick subscribers will continue to reap benefits from these efforts. The record here establishes, however, that an EAS route is not economically justified for the great majority of Orick subscribers. It follows, therefore, that the request that we order GTEWC to establish an EAS route for Orick must be denied.

6. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Public Utilities Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. GTEWC in comments proposed minor changes to correct factual statements, and those changes have been made.

Findings of Fact

1. Complainants represent some 39 residents of the northern coastal community of Orick.

2. Orick is in the 488 telephone exchange of GTEWC, the incumbent local exchange carrier.

3. Complainants seek extended area service to permit toll-free calling from Orick to the exchanges serving Trinidad, Arcata/McKinleyville and Eureka.

4. A prehearing conferences in this matter was conducted on January 16, 1998. An evidentiary hearing was conducted on October 2, 1998.

5. Orick subscribers as of April 1996 averaged 12 calls per month to Eureka and 11 calls per month to Arcata/McKinleyville.

6. The percentage of Orick subscribers calling Eureka in a given month is at the 77% level, and to Arcata, at the 76% level.

7. Essential calling needs of Orick residents cannot be met within the Orick 488 exchange.

8. The residential surcharge for an EAS route from Orick to Trinidad would be $1.45 per month; for Orick to Trinidad and Arcata, $5.45; and for Orick to Trinidad, Arcata and Eureka, $9.40.

9. Calling data shows that 86% of Orick subscribers paid less in toll charges than the EAS surcharge for Trnidad; 70% paid less in toll charges than the EAS surcharge for Arcata; 76% paid less in toll charges than the EAS surcharge for Eureka.

10. Since the opening of intraLATA toll competition in the mid-1990s, approximately 90% of Orick subscribers have selected toll service providers other than GTEWC in order to reduce the cost of local toll calls.

Conclusions of Law

1. Complainants have not shown that an EAS route from Orick to Arcata or to Eureka is economically justified for the majority of Orick subscribers.

2. In considering whether to order a local exchange carrier to install an EAS route, the Commission must find that the service can be implemented at reasonable rates.

3. The record does not support a requirement that GTEWC establish an EAS route from Orick to either Arcata or Eureka, which is the relief requested by complainants.

4. The relief sought by complainants should be denied.

5. The complaint should be dismissed.

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 February 18, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners