

ALJ/TIM/tcg **

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Decision 99-03-008 March 4, 1999

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Delores Guyot & Jessie A. Wheeler, et al.,

Complainant,

vs.

Pacific Bell (U-1001-C),

Defendant.

Case 98-05-045
(Filed May 26, 1998)

OPINION

1. Summary

This decision denies the complaint filed by Delores Guyot and Jessie A. Wheeler et al. (Complainant), against Pacific Bell (Pacific) in which Complainant seeks one-way extended area service from the Bridgeville Exchange to the Eureka, Fortuna, and Hydesville Exchanges. This proceeding is closed.

2. Background

Complaint Case 98-05-045 (Complaint) was filed on May 26, 1998. Complainant alleges that telephone subscribers in Pacific's Bridgeville Exchange¹ must pay exorbitant rates to telephonically access providers of essential services located in Pacific's Eureka, Fortuna, and Hydesville Exchanges.² Pacific filed its

¹ Each telephone exchange has a point designated as a rate center which is used to measure the distance of calls. Calls originating and terminating within an exchange are local toll-free calls. Calls between rate centers less than 12 miles apart are local calls, while calls between rate centers more than 12 miles apart are toll calls.

² Pursuant to Public Utilities (Pub. Util.) Code § 1702, a complaint alleging unreasonably high rates may be filed if the complaint is signed by at least 25 actual or prospective customers of

Footnote continued on next page

answer to the Complaint on July 1, 1998. Pacific states that it has done nothing wrong since it has acted in accordance with its tariffs.³

Complainant asks the Commission to order Pacific to establish the following one-way extended area service routes:

1. Bridgeville Exchange to the Hydesville Exchange (17 miles).
2. Bridgeville Exchange to the Fortuna Exchange (22 miles).
3. Bridgeville Exchange to the Eureka Exchange (30 miles).

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. EAS is not an optional service. Once authorized, EAS applies to all subscribers in an exchange, and an additional monthly fee is assessed on all affected subscribers, including those who do not take advantage of EAS calling. The additional monthly fee, calculated under what is called the "Salinas formula," is intended to reimburse the telephone company for the lost toll revenue for calls between the exchanges.⁴

The Commission has traditionally used three criteria when deciding whether to grant EAS complaints: (1) whether EAS is justified by a "community

the utility. The Complaint satisfied this requirement by including the signatures of approximately 201 actual or prospective customers of Pacific.

³ The Bridgeville, Hydesville, Fortuna, and Eureka Exchanges are located in Humboldt County. The Bridgeville Exchange serves 112 business lines and 242 residential lines. The Hydesville Exchange serves 134 business lines and 1,013 residential lines. The Fortuna Exchange serves 2,281 business lines and 5,682 residential lines. The Eureka Exchange serves 20,391 business lines and 24,244 residential lines. Calls from the Bridgeville Exchange to the Hydesville, Fortuna, and Eureka Exchanges are rated as toll calls.

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

of interest" between the exchanges; (2) whether there is substantial customer support for the monthly EAS service charge; and (3) whether EAS can be implemented at reasonable rates to subscribers. To determine the existence of a community of interest, the Commission applies three tests: (i) the average number of calls per line each month between the complainant's exchange and the target exchange, with three to five deemed the minimum necessary to justify EAS; (ii) the percentage of affected subscribers who make at least one call per month to the target exchange, with 70% to 75% deemed sufficient; and (iii) whether affected subscribers have toll-free access to most essential calling needs (e.g., police, fire, medical, schools, and shopping). If these community-of-interest tests appear to have been met, the Commission requires a customer survey to determine customers' support for paying the monthly fee for EAS.⁵ As a final step in considering EAS, the Commission determines if the rates for the proposed EAS route would be unduly burdensome for any customer group.

On July 8, 1998, assigned Administrative Law Judge (ALJ) Kenney issued a ruling which directed Pacific to submit data on whether the EAS routes proposed by the Complainant satisfy the Commission's first two community-of-interest tests. Pacific complied on August 7, 1998.⁶ Pacific's data, summarized in Table 1 below, shows that one of the proposed EAS routes does not pass the first community-of-interest test, and that none of the proposed EAS routes pass the second test.⁷

⁵ See Decision (D.) 98-03-076, slip op. at 3 and 4, and cases cited therein.

⁶ On September 10, 1998, Complainant served written comments responding to Pacific's data.

⁷ Pacific provided data for the 11-month period of August 1997 through June 1998.

TABLE 1

EAS Route	Test #1 Average # of Calls Per Line Per Month (minimum necessary: 3 to 5)	Test #2 % of Accounts Making At Least One Call Per Month (minimum necessary: 70 to 75%)
1. Bridgeville to Hydesville	2.83 (fails test)	39.7% (fails test)
2. Bridgeville to Fortuna	9.05 (passes test)	63.4% (fails test)
3. Bridgeville to Eureka	9.64 (passes test)	66.4% (fails test)

On October 15, 1998, the assigned ALJ issued a ruling which stated that because none of the EAS routes proposed by the Complainant ("the Bridgeville EAS routes") satisfy the Commission's second community-of-interest test, there was insufficient cause to require Commission staff to conduct a survey of Bridgeville subscribers regarding their support for the Bridgeville EAS routes.

A Prehearing Conference (PHC) was held on October 29, 1998. During the PHC, the parties did not dispute the accuracy of the community-of-interest tests depicted in Table 1 above. The only factual issue raised during the PHC was by the Complainant who asserted that an evidentiary hearing should be held in order for Complainant to demonstrate that Bridgeville subscribers lack toll-free access to most providers of essential services. Pacific stipulated at the PHC that Bridgeville subscribers lack toll-free access to most essential service providers.

On November 6, 1998, assigned Commissioner Duque issued a ruling which set forth the scope, schedule, and need for hearing in this proceeding in accordance with Rules 6(b)(3) and 6.3 of the Commission's Rules of Practice and Procedure. Included in the Commissioner's ruling was the determination that an

evidentiary hearing was not necessary since there were no material issues of fact. We affirm that determination.

3. Position of the Parties

Complainant contends that the Bridgeville EAS routes are justified on the basis that Bridgeville residents must place toll calls to Hydesville, Fortuna, and Eureka in order to telephonically access the hospital, pharmacy, high school, government services, and businesses. Complainant argues that the cost of toll calls is particularly burdensome to Lifeline customers who have the most pressing need to call medical and social services located in Fortuna and Eureka. Complainant adds that because Bridgeville residents lack a nearby library and public transportation, it is imperative that they have access to the internet without incurring toll charges. Complainant also believes there is strong support in Bridgeville for the proposed EAS routes since most Bridgeville residents signed the Complaint.

Complainant states that the failure of the Bridgeville EAS routes to satisfy the second community-of-interest test can be explained by the "common practice" among Bridgeville residents who work in the Hydesville, Fortuna, and Eureka Exchanges to make as many calls as possible to these Exchanges while at work in order to avoid toll charges. Complainant also believes that the failure of the Bridgeville EAS routes to satisfy the second community-of-interest test is evidence that most Bridgeville residents simply cannot afford to place toll calls to Hydesville, Fortuna, and Eureka.

Pacific opposes the Bridgeville EAS routes for several reasons. First, Pacific states that the Commission's general policy is to establish EAS routes only if the routes meet all the of the Commission's community-of-interest tests. Since the Bridgeville EAS routes fail the second community-of-interest test, Pacific

believes these EAS routes should not be implemented. Second, Pacific states that the proposed EAS routes are unnecessary since Bridgeville subscribers have numerous calling options available to them, including toll calling plans offered by Pacific and other carriers. Finally, Pacific states that the proposed EAS routes would not be a cost-effective solution for most Bridgeville subscribers.

4. Framework for Decision

In D.98-06-075, we stated that no new complaint cases seeking to establish EAS would be accepted beginning with the effective date of that decision. We also stated in D.98-06-075 that any EAS complaint cases then pending would be decided based on the merits of each case, that is, based on whether the EAS route sought by the complainant satisfies the traditional EAS criteria described previously in this decision. Since this Complaint was pending at the time D.98-06-075 was issued, we shall decide this case based on the traditional criteria.

5. Determination of Whether Complaint Satisfies Traditional EAS Criteria

The starting point in considering whether to implement the proposed Bridgeville EAS routes is to determine if these EAS routes satisfy the three community-of-interests tests described previously. If the three community-of-interest tests are satisfied, we would then consider if the Bridgeville EAS routes satisfy the remaining EAS criteria. Conversely, if one or more of the community-of-interest tests is not satisfied, then the Bridgeville EAS routes should not be implemented, and there is no need for us to consider the remaining EAS criteria.

As shown in Table 2 below, each of the proposed Bridgeville EAS routes fails the second community-of-interest test:

Table 2

EAS Route	Test #2 Percentage of Accounts Making At Least One Call Per Month (minimum necessary: 70 to 75%)
1. Bridgeville to Hydesville	39.7% (fails test)
2. Bridgeville to Fortuna	63.4% (fails test)
3. Bridgeville to Eureka	66.4% (fails test)

Since the Bridgeville EAS routes fail the second community-of-interest test, we conclude that these EAS routes should not be implemented. Accordingly, there is no need for us to consider if these EAS routes satisfy the remaining EAS criteria.⁸ Our conclusion that the Bridgeville EAS routes should not be implemented is reinforced by information submitted by Pacific, summarized in Table 3 below, that shows most Bridgeville subscribers would have to pay more for the Bridgeville EAS routes than they currently spend for calls to Hydesville, Fortuna, and Eureka. In other words, most Bridgeville subscribers would be financially worse off if the Bridgeville EAS routes were implemented.

⁸ We also conclude that the Bridgeville-to-Hydesville EAS route should not be implemented since this route does not satisfy the first community-of-interest. More specifically, the average number of calls per line each month from Bridgeville to Hydesville is 2.83, which is less than the minimum of three to five deemed necessary to justify EAS.

TABLE 3

EAS Route	Business		Residential	
	Monthly Fee For EAS (Salinas Formula)	% of Accounts Spending Less than Monthly EAS Fee	Monthly Fee for EAS (Salinas Formula)	% of Accounts Spending Less than Monthly EAS Fee
Bridgeville to Hydesville	\$4.30	98.4%	\$1.45	86.0%
Bridgeville to Fortuna	\$9.50	95.5%	\$3.15	70.2%
Bridgeville to Eureka	\$12.95	95.6%	\$4.25	70.9%

We are sympathetic to the residents of rural communities such as Bridgeville who may have to make more toll calls than do residents in suburban and urban areas. While we cannot change the geographic circumstances of Bridgeville's residents, we have opened the market for toll calls to competition in order to reduce costs and increase the range of services available to consumers. Our efforts have already borne fruit: There are more than 100 carriers available to Bridgeville residents for placing calls to Hydesville, Fortuna, and Eureka,⁹ and some of these carriers offer rates that are substantially less than those charged by Pacific.¹⁰ In order to use these carriers, all Bridgeville subscribers need to do is to

⁹ See Pacific Bell's Response to Administrative Law Judge's Ruling Requiring Pacific Bell to Submit Information, p. 16 and Exhibit F.

¹⁰ For example, AT&T and MCI offer calling plans under which residential customers pay five cents per minute for calls from Bridgeville to Hydesville, Fortuna, or Eureka. There are no monthly charges for these plans. Pacific's rates for similar calls vary according to the calling plan selected, but no matter which plan is selected, Pacific charges more than AT&T and MCI, except for nights and weekends when Pacific charges \$0.042 for each "additional minute" of calls from Bridgeville to Hydesville. (*Id.*, pp. 17-19, and Exhibits G and H)

dial the carriers' seven-digit access codes when calling Hydesville, Fortuna, and Eureka. Therefore, if Bridgeville subscribers believe they are paying too much for service from Pacific Bell, they may wish to consider using one of Pacific's many competitors.

7. Pub. Util. Code Section 311(g)

The draft decision of the ALJ in this matter was mailed to the parties in accordance with § 311(g) and Rule 77.1 of the Commission's Rules of Practice and Procedure (Rules). No party filed comments regarding the draft decision.

Findings of Fact

1. Complaint Case 98-05-045 was filed on May 26, 1998. Complainant alleges that Bridgeville subscribers pay exorbitant rates to telephonically access essential services located in the Hydesville, Fortuna, and Eureka Exchanges. Complainant seeks relief in the form of EAS routes from the Bridgeville Exchange to the Hydesville, Fortuna, and Eureka Exchanges.

2. During a telephonic PHC held on October 29, 1998, there was no dispute regarding facts that are material to this proceeding.

3. In D.98-06-075, the Commission indicated that EAS complaint cases then pending should be decided based on the traditional criteria of: (i) whether the proposed EAS route is justified by a community of interest; (ii) whether there is substantial customer support for the proposed EAS route and the accompanying increase in service fees; and (iii) whether EAS can be implemented at reasonable rates to subscribers in the complainant's exchange.

4. This Complaint was pending at the time D.98-06-075 was issued.

5. In D.97-12-019, D.98-03-070, and D.98-03-076, the Commission indicated that a complaint which seeks to establish a one-way EAS route should be granted only if the proposed EAS route satisfies all three of the following community-of-

interest tests: (1) there are, on average, at least three to five calls per line each month from the complainant's exchange to the target exchange; (2) at least 70% to 75% of affected subscribers in the complainant's exchange make one or more calls per month to the target exchange; and (3) most essential calling needs are not met within the complainant's existing toll-free calling area.

6. The proposed one-way EAS route from Bridgeville to Hydesville fails the first community-of-interest test since there are, on average, fewer than three calls per line each month from Bridgeville to Hydesville.

7. Each of the proposed Bridgeville EAS routes fails the second community-of-interest test since (i) fewer than 70% of Bridgeville subscribers make one or more calls per month to Hydesville; (ii) fewer than 70% of Bridgeville subscribers make one or more calls per month to Fortuna; and (iii) fewer than 70% of Bridgeville subscribers make one or more calls per month to Eureka.

8. Most Bridgeville subscribers would be financially worse off if the Bridgeville EAS routes were implemented since most Bridgeville subscribers spend less for calls to Hydesville, Fortuna, and Eureka than the monthly fees for the Bridgeville EAS routes.

9. Numerous competitive toll providers are available to Bridgeville customers, some at lower rates than Pacific Bell.

Conclusions of Law

1. There is no need for an evidentiary hearing in this proceeding.
2. This Complaint should be decided based on (i) the traditional EAS criteria, and (ii) whether affected subscribers would be worse off if the proposed EAS routes were implemented.
3. The proposed Bridgeville EAS routes should not be implemented because these EAS routes do not satisfy the community-of-interest criterion, and because

most Bridgeville subscribers would be financially worse off if these EAS routes were implemented.

4. The relief sought by Complainant should be denied.
5. The Complaint should be dismissed.
6. The following order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The relief requested in Complaint Case (Case) 98-05-045 is denied.
2. Case 98-05-045 is dismissed.
3. Case 98-05-045 is closed.

This order is effective today.

Dated March 4, 1999, at San Francisco, California.

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