ALJ/BWM/eap

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Decision 99-01-019 January 20, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Charles Poley and Karen Poley, Complainants, vs. GTE California Incorporated, Defendant.	Case 97-12-036 (Filed December 8, 1997)

Kathleen M. Weinheimer, Attorney at Law, for Charles Poley, Karen Poley and Hollister Ranch Homeowners' Association, complainants.
Carol Bjelland, Attorney at Law, for GTE California Incorporated, defendant.

OPINION

1. Summary

Complainants seek an expansion of the local, toll-free calling area for residents of Gaviota to include Santa Barbara. Defendant opposes the request. The request is granted. Defendant may seek recovery of certain specified costs as Commission-mandated costs in defendant's next new regulatory framework price cap advice letter, subject to further review using the Commission's adopted criteria for such recovery. This proceeding is closed.

2. Procedural History

Hollister Ranch is a 14,000 acre rural residential development in Gaviota, near Point Conception on the Santa Barbara coast, about 30 miles northwest of

Santa Barbara. Hollister Ranch is the primary development in the Gaviota telephone exchange of GTE California Incorporated (defendant).

Charles and Karen Poley (complainants) allege that telephone calls from Hollister Ranch to Santa Barbara were toll-free for years. In April 1997, however, complainants assert defendant began assessing toll charges for these calls. Defendant provided some credits for disputed amounts in response to complaints. Complainants dispute additional charges, however, and seek a refund of $226.29 on deposit with the Commission from Charles Poley, and $381.57 on deposit with the Commission from Karen Poley, for a total of $607.86. Further, complainants seek one-way extended area service (EAS) from the Gaviota exchange to the Santa Barbara exchange. The complaint was signed by 27 of defendant's customers residing at Hollister Ranch.

In its timely answer, defendant denies all allegations. Defendant admits that in April 1997, subscribers in the Gaviota exchange had the ability to call the Santa Barbara exchange toll-free due to software errors in defendant's billing system, that defendant corrected the problem between April 1997 and September 1997, that defendant did not backbill charges to customers, and that defendant issued compromise credits to complainants in October 1997 (for calls appearing on complainants' July and August 1997 billing statements). Defendant denies that complainants are entitled to any remedy or reparations. Defendant states four affirmative defenses, and requests an order denying the requested relief.

By ruling dated December 31, 1997, defendant was directed to compile traffic and basic need data used in assessing EAS requests.[1] Defendant provided

[1] This ruling also converted the proceeding from an expedited complaint proceeding (ECP) to a regular complaint proceeding. Further, it continued the ECP hearing date (which had already been noticed to parties for January 14, 1998) to a date to be set. Because a determination was made before January 1, 1998 that a hearing would be held

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that data on February 27, 1998. A prehearing conference was held by telephone on March 4, 1998, to discuss dates and procedures for evidentiary hearing. On March 19 and 20, 1998, complainants and defendant, respectively, served lists of likely witnesses with a summary of probable testimony.

On March 26, 1998, defendant stipulated to additional credits on complainants' bills. The revised amounts due were $12.42 from Charles Poley and $53.62 from Karen Poley, for a total of $66.04. Defendant asked that funds on deposit with the Commission in excess of the final amounts due be returned to complainants.

Evidentiary hearing was held on March 30, 1998. Defendant stipulated to additional credits of all remaining disputed amounts, and requested the Commission return all funds on deposit. (Reporter's Transcript (RT), pages 4, 112.) All deposited funds were returned to complainants on April 8, 1998.

The only remaining issue is EAS from the Gaviota exchange to the Santa Barbara exchange. Sufficient evidence was presented at hearing to justify a customer survey. The survey was mailed on May 8, 1998, with responses due by June 8, 1998. Defendant collected and tabulated the responses.

On June 22, 1998, defendant served the results of the survey and its determination of EAS-related costs in two proposed exhibits. Defendant also moved for receipt of the proposed exhibits as evidence, with portions placed under seal. Complainants responded on June 28, 1998, commenting on the proposed exhibits, but neither objecting to their receipt nor the placement of

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(for a date to be set), this proceeding is not subject to the procedural rules established by Senate Bill 960. The Administrative Law Judge discussed this with parties at the hearing on March 30, 1998. (Reporter's Transcript, pp. 109-110.)

portions under seal. Concurrent briefs were served on July 29, 1998, and the matter submitted for decision.

On October 29, 1998, defendant served an amendment to the exhibit on EAS-related costs. By ruling dated November 12, 1998, the proceeding was reopened for the receipt of final evidence, the evidence received with portions placed under seal, and the matter resubmitted for decision.

The draft decision of Administrative Law Judge Mattson was filed and served on December 21, 1998. Neither comments nor reply comments were filed.

3. Exchanges And Extended Area Service

A telephone company's service territory is divided into exchanges. Exchanges vary greatly in size, from under 1 square mile to over 1461 square miles.[2] Each exchange has a single point designated as the rate center. Calls originating and terminating within an exchange are local, toll-free calls. Calls between exchanges are local, toll-free calls when the rate centers are within 12 miles of each other. Calls between exchanges are toll calls when the rate centers are more than 12 miles from one another.

The undisputed evidence in this proceeding is that the distance between the Gaviota and Santa Barbara exchange rate centers is 29.4 miles. Therefore, calls between Gaviota and Santa Barbara are toll calls.

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

[2] For example, in Pacific's territory, the Verdi exchange is 0.05 square miles, while the Bakersfield exchange is over 1461 square miles. (D.94-01-015, mimeo., page 3.)

calling in one direction between exchanges. Two-way EAS allows local, toll-free calling in both directions between exchanges.[3]

The Commission has authorized many EAS routes throughout California. EAS is not an optional service, however. Once authorized, it applies to all customers in an exchange, and an additional monthly service charge is assessed on all customers whether or not they take advantage of EAS. The additional service charge, calculated using the "Salinas formula,"[4] is intended to reimburse the telephone company for lost toll revenue between the two exchanges.

We consider several criteria in deciding whether to authorize 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 EAS can be implemented with reasonable rates for all customers. [5]

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"),

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

[4] D.77311, Pacific Telephone and Telegraph Company (1970) 71 CPUC 160.

[5] 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.97-12-019, D.98-03-070, and D.98-03-076.

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. We have not established specific minimum levels which must be passed before we authorize 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.

4. Positions of Parties

Complainants assert that the issue here is one of fundamental fairness: will the residents of Hollister Ranch be afforded a local calling area of sufficient size to permit them to receive basic services without incurring toll charges. In support, complainants compare the services available in Gaviota with those in Los Alamos, another community in defendant's service territory. Complainants claim that basic services are available in Los Alamos, but are not available in Gaviota. Nonetheless, complainants allege that Los Alamos residents have EAS at an additional monthly charge of $2.10, allowing toll-free calling to more than 14 prefixes as far away as over 19 miles (to the Santa Maria metropolitan area).

Complainants contend that the Commission's tests for establishing EAS are met here, and that the survey results show overwhelming support. Complainants state that they are willing to pay the additional monthly EAS service charge, and that defendant's reasonable implementation and other costs are recoverable through Commission-approved mechanisms. Complainants question the additional cost of $105,940 for interoffice facilities, saying that residents of Hollister Ranch were able to make toll-free calls to Santa Barbara for years (before the billing error was discovered in April 1997), the infrastructure is apparently already in place, only accounting changes appear necessary, and it is

hard to understand why new facilities are required to accommodate EAS now. Complainants conclude by urging adoption of EAS.

Defendant asserts that implementation of new EAS routes is inconsistent with today's competition. Further, defendant contends complainants have failed to show that defendant has violated any law, tariff, Commission rule or Commission order, and have thereby failed to substantiate their claim as required by the Public Utilities Code. Defendant alleges complainants have failed to establish that the proposed EAS route satisfies the Commission's EAS criteria. Finally, defendant requests recovery of its implementation costs from the California High Cost Fund-B (CHCF-B), or other appropriate mechanism, if ordered to implement EAS here.

5. Discussion

5.1 EAS and Competition

Defendant argues that the Commission's EAS policy and pricing formula is at odds with today's increasingly competitive telecommunications market, wherein defendant's toll and local exchange markets have been opened to competition, and defendant has implemented intraLATA equal access (allowing customers to use the services of defendant's competitors without dialing access codes).[6] According to defendant, it is inappropriate to consider implementation of the EAS requested here given the dynamics of the competitive market, and the Commission's recent decision to cease implementation of new EAS routes. (Decision (D.) 98-06-075.) Defendant asserts

[6] California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. IntraLATA refers to services and functions for telecommunications that originate and terminate within a single LATA.

EAS impedes competitive entry, impedes customer choice, and distorts pricing signals to both competitors and customers.

Defendant is correct that we no longer accept new complaints seeking EAS. (D.98-06-075, Ordering Paragraph 1.) EAS cases filed prior to the effective date of that order, however, are to be considered on the factual merits of each case. (Id., Ordering Paragraph 2.) This case was filed before the effective date of D.98-06-075. Therefore, we consider this case on its merits.

We generally believe that all telecommunications needs should be met by firms vigorously competing in unregulated, competitive markets. The level of competition may or may not yet be sufficient in all markets or all service areas, however, to fully rely on competition to replace EAS when EAS is otherwise justified. Other than relying on general policy arguments, defendant fails to show that the particular market here is sufficiently competitive to rely on competition to meet customers' basic needs absent EAS. Therefore, we give further consideration to this EAS request, consistent with our decision regarding pending EAS matters.

5.2 Violation of Law, Order or Rule

Defendant argues that complainants have not set forth any act or thing done or omitted to be done by defendant, including the application of any rule or the assessment of any charge, in violation of any provision of law or any order or rule of the Commission. (Public Utilities (PU) Code Section 1702.) Therefore, defendant asserts complainants have not justified their complaint, and the complaint must be dismissed.

To the contrary, the Commission must establish just and reasonable rates. (PU Code Section 451.) Complainants allege existing rates are unreasonable. The complaint is signed by more than 25 of defendant's

customers, thereby meeting the requirements to proceed. (PU Code Section 1702; Rule 9(a) of the Commission's Rules of Practice and Procedure.)

The Commission considers the reasonableness of rates in the context of granting or denying a requested EAS by applying the previously noted criteria. As explained below, complainants show that the route from the Gaviota exchange to the Santa Barbara exchange meets the criteria for EAS. Therefore, complainants meet their burden. As a result, existing rates are unjust and unreasonable, and thereby unlawful, while the EAS rates adopted herein are just and reasonable. (PU Code Section 451.) Defendant's assertion that the complaint must be dismissed for failure to establish a violation of law is rejected.

5.3 Community of Interest

The evidence shows a community of interest from the Gaviota exchange to the Santa Barbara exchange. First, the average number of calls is 22 per line per month. This is well in excess of our general minimum benchmark of three to five calls per line per month.

Second, the take rate is 70% in January 1998. This meets our minimum criteria for considering EAS.

Defendant argues that the take rate averaged over the whole study period is only 54%, and is below our benchmark.[7] While correct, the evidence also shows that the take rate increased each month of the study period, peaking at 70% in the most recent month. We give the greatest weight to the most recent data in reaching our conclusion.

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[7] Defendant studied traffic data for the months of January 1997, June 1997, October 1997, and January 1998.

Further, the 70% criterion is not an absolute threshold. Rather, it is a benchmark that is useful in combination with the other criteria. A steadily increasing take rate, with a sufficiently high take rate in the latest month, justifies further consideration of the requested EAS by examining the remaining factors.

Third, the evidence shows that basic need calls cannot be met toll-free within the Gaviota exchange. For example, Gaviota exchange customers cannot reach non-emergency police, fire, doctor or hospital services. They cannot reach schools, banks or retail services.

Defendant contends basic needs are met by customers dialing 911 to reach emergency police, fire and medical services. We are not persuaded. While the ability to reach emergency providers by dialing 911 is important, it is insufficient by itself to meet callers' basic calling needs.

Further, defendant claims toll-free calls to Santa Barbara are available to Gaviota customers when they subscribe to foreign exchange service. [8] While true, foreign exchange service is generally not a reasonable alternative for meeting basic needs. Rather, foreign exchange service can be relatively expensive, and is typically reasonable only for callers who place a particularly large number of calls to another exchange.[9] On the other hand, EAS is justified

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[8] Foreign exchange service allows a customer in one exchange to subscribe to a telephone number in another exchange. Calls within the other exchange are then toll-free.

[9] For example, defendant's residential service tariffs permit a non-recurring charge for foreign exchange service of $252.61, plus a one-time central office charge of $23.00, and a one-time charge of $42.10 if an outside facilities connection is required. In addition, recurring monthly charges are $17.25 for basic service, plus $9.28 for foreign exchange service, plus $3.50 per quarter mile from the service location of the primary line. (Exhibits 12, 13, 14, 15, 16; TR., pages 86-88.) As stated on the survey form sent to all customers, toll charges are currently $0.48 for a daytime four minute toll call from Gaviota to Santa Barbara. (Exhibit 19.) At current toll rates, many more than three

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by, and for, customers who make substantially fewer calls than would be necessary to warrant foreign exchange service (e.g., 3 calls per month; inclusion in the percentage that make one call per month to the targeted exchange). The availability of foreign exchange service does not negate the need to consider EAS.

Defendant contends that EAS is not required since state and federal universal service programs provide discounted rates for telecommunications services to schools, libraries, government and community organizations, subject to eligibility requirements. To the extent true, the universal service programs cited by defendant provide reduced rates for specific entities and agencies. These programs do not meet the needs of most customers within a typical exchange to make basic need calls toll-free. Moreover, defendant makes no showing that these programs provide most, if not all, Gaviota exchange customers with the general ability to make basic need calls toll-free.

Defendant says there are other communities in the vicinity of the Gaviota exchange where Hollister Ranch residents may transact business, including Solvang, Buellton, and Santa Ynez. Even if true, calls to these communities are not toll-free. Moreover, defendant presents no evidence that EAS to these communities is more reasonable than EAS to Santa Barbara.

Therefore, we find that alternatives to EAS suggested by defendant do not meet callers' basic calling needs. Further, we find that a community of interest exists from the Gaviota exchange to the Santa Barbara

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average daytime four minute calls per month are needed for a customer in the Gaviota exchange to justify paying the non-recurring and recurring costs to establish and continue foreign exchange service to Santa Barbara rather than simply paying toll charges.

exchange, and proceed to consider customer support and reasonable rate criteria in reaching our decision.

5.4 Customer Support

The evidence shows overwhelming endorsement, with 124 out of 127 survey respondents (97.6%) supporting EAS. Applied to all access lines (i.e., including non-respondents), 124 out of 206, or 60.2%, support EAS. That is, even if all non-respondents oppose EAS, the majority is still in favor. We think it unlikely that all non-respondents oppose EAS, thereby making the total percentage in support higher than 60.2%.

5.5 Reasonable Rates

Defendant calculates the per line monthly EAS incremental service charges pursuant to the Salinas formula to be: $4.23 for each residential customer ($2.12 for each residential lifeline customer), $12.80 for each business customer, and $6.40 for each coin semi-public customer. Complainants do not challenge these rates. These rates, calculated pursuant to Commission direction using the Salinas formula, are reasonable.

The revenues generated from the EAS incremental charges, however, will not cover all costs, according to defendant. Rather, defendant estimates it will incur additional non-recurring intrastate implementation costs of $5,266.85 (for such items as database administration, operator services, directories, customer billing, and customer notification), and additional annual recurring intrastate revenue requirements of $35,055.44 (for increased expenses, depreciation and rate base related to outside plant; plus revenue losses from toll-free calls that were previously toll calls, even after application of revenues from the EAS incremental charge).

Defendant asserts that the Gaviota exchange is a designated high cost exchange area and, as such, that recovery of these additional costs

through the CHCF-B is appropriate. Specifically, defendant requests Commission (1) approval of a one-time disbursement from the CHCF-B to permit recovery of the residential portion of the additional non-recurring implementation costs, and (2) modification of the CHCF-B per line cost of $52.36 for the Gaviota exchange to permit recovery of the residential portion of the additional annual revenue requirement. Alternatively, defendant requests treatment of these items as Commission-mandated costs recoverable through the limited exogenous (LE) cost mechanism adopted in D.98-10-026, with inclusion of these costs in defendant's next new regulatory framework price cap filing.[10]

We decline recovery through the CHCF-B. The CHCF-B fund is not designed for recovery of EAS costs. Rather, we allow defendant to seek recovery as an LE factor in defendant's next new regulatory framework price cap filing.

We find defendant's estimates of non-recurring and recurring additional costs reasonable, and thereby eligible for potential recovery in the next price cap filing, with one exception. We disallow $105,940 of outside plant. [11]

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[10] The new regulatory framework is an incentive-based regulatory approach initiated in 1989. (See D.89-10-031, 33 CPUC2d 43.) Among other things, utilities regulated under this approach may file an advice letter annually to seek recovery of exogenous costs (i.e., costs generally outside the control of utility management), and adjust the maximum prices they may charge (called price caps). D.98-10-026 modifies the approach in several ways, including recovery of exogenous costs. Recovery of exogenous costs is now largely discontinued, except for those cost increases or decreases resulting from (1) matters mandated by the Commission and (2) changes in total intrastate cost recovery resulting from changes between federal and state jurisdictions. (D.98-10-026, mimeo., p. 61, and Ordering Paragraph 1(g) at p. 93.)

[11] D.98-10-026 provides recovery for Commission-mandated costs only to the extent authorized in the underlying Commission decision. (D.98-10-026, Ordering Paragraph 1(h), mimeo., p. 93.) Therefore, we consider the requested cost recovery here. D.98-10-026, however, also provides that "for Commission mandated costs, the moving

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Defendant says that existing facilities can handle current levels of toll traffic between the Gaviota and Santa Barbara exchanges, but EAS (with unlimited "local" calling on a flat-rate basis) will result in increased traffic between exchanges. Defendant says distribution facilities will be adequate to support this additional "local" traffic, but feeder facilities will need to be augmented, at a cost of $105,940. We are not persuaded.

Due to an error in defendant's billing system, calls to Santa Barbara were toll-free until discovered in April 1997, and corrected between April 1997 and September 1997.[12] As complainants point out, facilities were adequate to carry toll-free calls then. There is no compelling evidence that those facilities will be inadequate now.

Further, telecommunications demand is generally growing throughout California. Demand may or may not grow in the Gaviota exchange, and between the Gaviota and Santa Barbara exchanges, with or without EAS. Defendant presents no clear forecast of demand correlated with increases in plant

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utility must present an evaluation of the nine criteria [used to determine the reasonableness of LE factor recovery] in the underlying proceeding in which LE factor treatment will be authorized or rejected." (D.98-10-026, mimeo., p. 64.) Defendant did not make that presentation here since the initial showing on EAS-related costs was made several months before D.98-10-026 was issued. Nonetheless, D.98-10-026 also provides that the application of the nine criteria can be deferred and an assessment made at the time the advice letter is filed. (D.98-10-026, mimeo., p. 64.) We adopt that process here, and direct defendant to include its assessment of the nine criteria with the advice letter.

[12] The record is unclear on the exact extent to which calls to Santa Barbara were toll-free. Complainants allege all calls were toll-free. Defendant's answer to the complaint "admits that, in April, 1997, subscribers from the Gaviota exchange had the ability to call the Santa Barbara exchange at no charge..." (page 3.) At hearing, defendant stated that some but not all customers in the Gaviota exchange were able to call Santa Barbara toll-free. (TR, p. 107.)

to support its claim that outside plant must be augmented due to an increase in demand. More importantly, even if we assume defendant is correct that outside facilities need augmentation, defendant presents no evidence to differentiate the augmentation needed due to routine demand growth compared to hypothetical EAS-caused demand growth. In fact, defendant presents no evidence of any demand growth purely due to EAS. Therefore, defendant has not met its burden of proof, and we disallow $105,940 of outside plant.

Elimination of outside plant reduces allowed annual recurring intrastate revenue requirements from $35,055.44 to $11,355.78. This results from eliminating the annual increased intrastate expense of $1,714.05 (calculated as an annual expense factor applied to outside plant), the annual intrastate depreciation expense of $8,524.19 (calculated by applying a depreciation rate to outside plant), and the intrastate rate base revenue requirement of $13,461.43 (calculated from outside plant added to rate base). (Exhibit 20.) This leaves an annual intrastate revenue requirement due to revenue losses (net of EAS incremental revenues) of $11,355.78.

LE factor recovery of $5,266.85 for non-recurring implementation costs, and $11,355.78 for annual recurring intrastate revenue requirements, spreads these costs over all of defendant's customers (including those in the Gaviota exchange). Spread over millions of customers, the effect on rates is very slight, and the resulting rates are not unreasonable.[13] Therefore, the EAS incremental charges assessed customers in the Gaviota exchange (calculated

[13] For example, a one-time charge of $5,266.85 spread over one million customers is $0.0053 per customer (or about one-half cent per customer). An annual charge of $11,355.78 is $946.32 per month. Spread over one million customers, the per customer monthly cost would be $0.00095, or less than one-tenth of a cent per month (about 1 cent per year).

pursuant to the Salinas formula), plus the other additional costs spread over millions of defendant's customers (including those in the Gaviota exchange), will not result in unreasonable rates for any customer.

Defendant says it is a party to two other EAS proceedings currently under review. Defendant asks that it be permitted to aggregate the costs and revenue losses associated with all ordered EAS routes for inclusion in the LE factor adjustment on a total-amount basis if the Commission ultimately mandates the implementation of these additional EAS routes. We decline to authorize this request. Rather, defendant should separately identify the recoverable costs and revenue losses with each approved EAS route, including workpapers to the extent necessary. This will facilitate review of the advice letter for conformance with each decision (e.g., disallowance of $105,940 of outside plant here). As long as the costs and revenue losses are each separately identified and supported within the advice letter, however, the total effect may be aggregated into one surcharge.

6. Other Services

We address one other matter raised by complainants. Complainants assert that EAS will allow the availability of advanced services (e.g., voice mail, smart ring, caller identification) for defendant's Gaviota exchange customers. To the contrary, the evidence shows that availability of these advanced services is a function of the equipment in the central office of each exchange. There is no evidence here that granting or denying EAS will itself change the equipment in the central office related to these advanced features. At the same time, however, we encourage defendant to modernize its equipment in the Gaviota exchange just a we encourage defendant to do so throughout its entire service territory--and as we encourage all telecommunications carriers to do throughout California--in

pursuit of the most advanced telecommunications system that is cost-effective and reasonable.

7. Implementation

Defendant asserts implementation of the requested EAS will require changes in billing systems, directories, customer services, support functions, network facilities and operations. Defendant says it can implement the requested EAS within six months of the effective date of this order.

To the extent up to six months are needed for plant augmentation, we are not persuaded that this is due to EAS (although it may be caused by other factors, such as normal growth in demand). Further, other than asserting the time requirement, defendant does not satisfactorily explain why it should take up to six months to accomplish the other tasks. Nonetheless, without any evidence to determine a different timeframe, we allow defendant up to six months to implement the EAS ordered here, but encourage defendant to implement this EAS as soon as possible.

8. Petition for Writ of 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. Complainants disputed charges totaling $607.86, and placed that amount on deposit with the Commission.

2. Defendant stipulated to the return of all money on deposit, and the full deposit was returned to complainants on April 8, 1998.

3. Calls between telephone exchanges are toll calls when the rate centers are more than 12 miles from one another.

4. The distance between the rate centers of the Gaviota and Santa Barbara exchanges is 29.4 miles.

5. This complaint was filed before the effective date of D.98-06-075.

6. No evidence here convincingly shows that the Gaviota to Santa Barbara telecommunications market is sufficiently competitive to rely on competition to meet customers' basic calling needs absent EAS.

7. Complainants allege existing rates between Gaviota and Santa Barbara are unreasonable, and the complaint was signed by more than 25 of defendant's customers.

8. The Commission assesses rate reasonableness when considering EAS requests by applying several criteria, including community of interest, customer support, and the reasonableness of resulting rates for all customers.

9. 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 basic calling needs (e.g., calls to police, fire, medical providers, schools, banks, retail services) are met in the existing local, toll-free calling area.

10. Specific minimum levels for community of interest factors have not been established, but an average of three to five calls per line per month to the targeted exchange 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, and the general inability to complete essential calls without incurring toll charges.

11. The average number of calls from the Gaviota exchange to the Santa Barbara exchange is 22 per line per month.

12. The percentage of customers placing at least one call per month from the Gaviota exchange to the Santa Barbara exchange steadily increased over the study period, and was 70% in January 1998, the last month in the study period.

13. Gaviota exchange customers cannot reach non-emergency police, fire, doctor or hospital services without incurring toll charges, and cannot reach schools, banks or retail services without incurring toll charges.

14. The ability to reach emergency providers by dialing 911 is important, but is insufficient by itself to meet callers' basic calling needs.

15. The availability of foreign exchange service is not a reasonable alternative to EAS for meeting basic calling needs in the Gaviota exchange.

16. State and federal universal service programs (providing discounted rates for telecommunications services to schools, libraries, government and community organizations, subject to eligibility requirement) are not a reasonable substitute for EAS from the Gaviota exchange to the Santa Barbara exchange.

17. Calls to Solvang, Buellton and Santa Ynez are not toll-free, and are not a reasonable substitute for EAS from the Gaviota exchange to the Santa Barbara exchange.

18. A community of interest exists from the Gaviota exchange to the Santa Barbara exchange.

19. Over 97% of survey respondents support EAS, and, even assuming all non-respondents oppose EAS, more than 60% support EAS.

20. The CHCF-B fund is not designed for recovery of EAS costs.

21. Facilities were adequate to carry toll-free calls from the Gaviota exchange to the Santa Barbara exchange through at least April 1997, when a billing error was discovered and corrections initiated.

22. Defendant presented no evidence differentiating the need for outside plant augmentation due to normal demand growth from that needed due to

hypothetical demand growth caused by EAS, and presented no evidence of demand growth purely from EAS.

23. Defendant's estimate of non-recurring implementation costs is $5,266.85, and annual recurring revenue requirements (for net revenue losses but without outside plant augmentation) is $11,355.78.

24. Defendant asserts it will take up to six months to implement this EAS.

Conclusions of Law

1. Pursuant to D.98-06-075, new EAS complaints are no longer accepted, while complaints filed before the effective date of D.98-06-075 are considered on their merits.

2. The relief sought in this complaint should be granted.

3. Existing rates for calls from the Gaviota exchange to the Santa Barbara exchange are unjust and unreasonable, and thereby unlawful, while the EAS rates adopted herein are just and reasonable.

4. Defendant's recurring annual revenue requirements for operating EAS from the Gaviota exchange to the Santa Barbara exchange should not include $105,940 for outside plant.

5. Non-recurring implementation costs of $5,266.85, and recurring annual revenue requirements of $11,355.78, are reasonable and eligible for potential recovery for the implementation and operation of EAS from Gaviota to Santa Barbara; will not result in unreasonable rates for defendant's customers when spread over all customers, including those in the Gaviota exchange; and should be treated as Commission-mandated costs.

6. Defendant should be authorized to seek recovery of the non-recurring and recurring EAS-related costs found reasonable here as an LE factor adjustment in defendant's next new regulatory price cap filing, subject to defendant there

showing whether or not the request meets the Commission's criteria for LE factor recovery adopted in D.98-10-026.

7. Defendant should not aggregate costs and revenues for all newly ordered EAS routes in its next price cap filing, but may aggregate the results to propose one surcharge.

8. 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.

9. This decision should be effective today to allow implementation of just and reasonable rates without delay.

O R D E R

IT IS ORDERED that:

1. The extended area service requested in this complaint is granted.

2. Within 150 days of the date of this order, GTE California Incorporated (defendant) shall file, in conformance with General Order 96-A, a compliance advice letter with revised tariffs. The revised tariffs shall implement one-way extended area service from defendant's Gaviota exchange to defendant's Santa Barbara exchange. The revised tariffs shall include an monthly extended area service charge for defendant's customers in the Gaviota exchange of $4.23 for each residential customer ($2.12 for each residential lifeline customer), $12.80 for each business customer, and $6.40 for each coin semi-public customer. The advice letter and revised tariffs shall become effective 30 days after the date filed, unless suspended.

3. Defendant may seek recovery of a one-time charge of $5,266.85, and an annual charge of $11,355.78, as Commission-mandated limited exogenous cost factor adjustments in its next new regulatory framework price cap advice letter.

The advice letter shall include an analysis which shows whether or not the requested adjustments merit recovery, pursuant to the criteria adopted in Decision 98-10-026.

4. Within 60 days of the date of this order, defendant shall prepare a draft notice. The draft notice shall inform defendant's Gaviota customers of the extended area service approved in this order. The draft notice shall be served on the Commission's Public Advisor. After review and approval of the draft notice by the Commission's Public Adviser, defendant shall serve the approved notice on its customers in the Gaviota exchange. The notice shall be by bill insert or direct mail, and shall be completed within 180 days of the date of this order.

5. This proceeding is closed.

This order is effective today.

Dated January 20, 1999, at San Francisco, California.

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