

Decision 99-04-002 April 1, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Independence Civic Club,

Complainant,

vs.

GTE California Incorporated,

Defendant.

Case 98-04-021
(Filed April 16, 1998)

ORDER

Summary

The Independence Civic Club (Complainants) complain that they are required to pay toll rates on calls to Bishop, north of Independence. Complainants seek to have their local calling area extended to Bishop.

Jurisdiction

Complainants filed this complaint against GTE California, Inc. (Defendant) pursuant to § 1702 of the Public Utilities Code.¹ This code section enables a complaint against a public utility under our jurisdiction regarding the reasonableness of rates to be considered by the Commission if it is filed by a petition signed by not less than 25 actual or prospective consumers of the utility service in question. The complaint was signed by approximately 570 actual or prospective consumers of telephone service in the Independence exchange.

¹ All code sections refer to the Public Utilities Code rules otherwise noted.

Defendant is a public utility subject to the jurisdiction of this Commission as defined in § 234 and subject to the jurisdiction of this Commission, as set forth in § 1702 and Rule 9 of the Commission's Rules of Practice and Procedure (Rules).

Location

Independence is the county seat of Inyo County. Independence is in the Eastern Sierra, approximately 250 miles northeast of Los Angeles and about 40 miles south of the City of Bishop. Lone Pine is approximately 15 miles to the south of Independence. Telephone service is provided to subscribers in Independence through Defendant's Independence exchange.²

Complaint

Complainants contend that the Independence exchange (local calling area) is unduly restricted compared with adjacent calling areas. For example, the Independence calling area is approximately ten miles long with the majority of telephone connections concentrated in a one-mile area. By contrast, the adjacent Bishop calling area extends from ten miles north of Independence to the Mono County line, approximately 50 miles; the adjacent Lone Pine calling area extends from Lone Pine, south to Coso Jct., approximately 40 miles, and east to Darwin, approximately 35 miles; and the near-by Mammoth Lakes calling area extends from Mammoth Lakes south to Tom's Place and north to Lee Vining, approximately 60 miles.

Complainants represent that the restricted Independence calling area increases the cost of telecommunications such as telephone and facsimile. Complainants also represent that the restricted Independence calling area is the

² An exchange is an identifiable geographic area serviced by one or more central offices in which telephone services and prices are the same.

primary reason that affordable Internet service is not available in Independence and restricts telecommunication opportunities for the Inyo County government and Independence residences and businesses.

A less restricted calling area would boost the economic interest of Independence and other communities, cut the current telephone cost for local residents, and enable other communities to do business with Independence-based agencies such as the County of Inyo, the Owens Valley Unified School District, and the Inyo County Office of Education.

Complainants seek to alleviate the alleged inequity in their local calling area through an enlarged toll-free calling area combining the Independence local calling area with the adjacent Bishop local calling area, located to the north of Independence.

Defendant's Response

Defendant filed its response to the complaint on June 3, 1998. Defendant denied Complainants allegation that the community of Independence has an unfair, restricted and unduly restricted calling area. Defendant avers that it has acted properly and in full accordance with the Public Utilities Code. Defendant explained that the Independence exchange has local calling only within the Independence exchange and that Defendant is providing such service pursuant to its Tariff Schedule A-26.

However, Defendant asserted that Complainants may avail themselves of foreign exchange service for toll-free calling to certain other exchanges pursuant to Defendant's Tariff Schedules A-4 and A-19 or discounted intraLATA toll calling plans to subscribers in the Independence exchange pursuant to Defendant's Tariff Schedule B-4 and B-5.

Proceeding Type

Pursuant to Rule 6(b)(1), Complainant requested that this matter be classified as a ratesetting proceeding and that hearings not be held. On May 4, 1998, the Commission, in its instructions to the defendant to answer the complaint and consistent with complainant's proposal, preliminary categorized this complaint to be a ratesetting proceeding. The assigned Commissioner ratified the ratesetting categorization in his August 5, 1998, assigned Commissioner's Scoping Memo and Ruling. There was no appeal of this ratesetting categorization.

Prehearing Conference

A Prehearing Conference (PHC) was held on July 23, 1998, to discuss and clarify the complaint and to schedule an evidentiary hearing, if necessary. Complainants and Defendant are the only parties to this proceeding.

Presiding Officer and Scope of Proceeding

The assigned Commissioner's Scoping Memo and Ruling designated the principal hearing officer in this proceeding to be the assigned Administrative Law Judge (ALJ). An evidentiary hearing was not scheduled. The scoping memo and ruling identified only one issue in this proceeding.

Issue

The issue in this proceeding is whether two-way Extended Area Service (EAS)³ between Independence, California and Bishop, California should be approved. Therefore, Defendant was instructed to prepare and submit to the Commission's Docket Office by October 30, 1998, a two-way EAS study to

³ Two-way EAS allows for local calling in both directions between two exchanges that are beyond the normal local calling area.

address the community of interest factors required to be evaluated, the cost to implement the EAS route, and the additional monthly rate that business and residential customers would incur for the EAS service.

Upon submittal of its EAS study, Defendant was instructed to review, consider, and discuss the results of its EAS study with Complainants to determine whether a settlement could be reached on the EAS issue.

Extended Area Service

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, it applies to all subscribers in an exchange, and an additional monthly service charge is assessed on all affected subscribers whether they take advantage of EAS calling or not. The additional service charge, calculated under the "Salinas formula,"⁴ is intended to reimburse the telephone company for the lost toll revenue for calls between the two exchanges.

EAS routes have been sought directly by subscribers in a hybrid of complaint proceedings brought pursuant to § 1702. Frequently, such complaints also allege violation of § 453(a), prejudice or disadvantage in service, and § 453 (c), unreasonable difference in service between locations.

Customer calling patterns is the primary factor in determining whether to institute EAS between different exchanges.⁵ In considering EAS, the Commission

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

⁵ Richard Kirschman vs Pacific Bell (1991) 39 Cal PUC2d 208.

considers three factors.⁶ The Commission first determines whether EAS is justified by a "community of interest" between the two exchanges. The Commission applies three tests to determine the existence of a community of interest: (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) percentage of affected subscribers who make at least one call a month to the target exchange, with 70% to 75% deemed sufficient; and (3) a basic calling needs test to determine whether most essential calling needs (police, fire, medical, legal, schools, banking, and shopping) can or cannot be met within subscribers' existing toll-free calling area.

If the community of interest tests appear to have been met, the Commission then requires a survey of subscribers to determine whether they are willing to pay the additional service charge in order to have toll-free calls to the other exchange. As a final step in considering EAS, the Commission weighs whether the costs of extending local calling are justified, and whether those costs create unreasonable rates for any customer group.⁷

By Decision (D.) 98-06-075, dated June 18, 1998, we adopted modifications to our established EAS policy. By that decision we determined that removal of the EAS option could stimulate development of more competitive alternative rate plans and that EAS is not essential to emergency services located outside of the local exchange since such services can be reached by dialing 9-1-1, whereby the call is automatically routed to the nearest appropriate emergency service provider based on the subscriber's telephone number.

⁶ See Bailey v. Calaveras Telephone Company Decision (D.) 97-07-057, slip op. At 9, and cases cited therein (July 16, 1997).

⁷ Pacific Telephone and Telegraph Company (1970) 71 CPUC 160, 164.

This change in EAS policy resulted from the beginning of intra-Local Access and Transport Area (LATA)⁸ toll competition on January 1, 1995. IntraLATA toll competition enables business and residential customers to choose from among multiple carriers to carry their intraLATA calls, reducing the toll costs rural customers face for calls beyond their local calling area.

Therefore, we grandfathered existing EAS routes, prohibited the filing and processing of new EAS complaint cases, and required pending EAS cases to be processed on the factual merits of each individual case. Because this complaint case was filed prior to the issuance of D. 98-06-075, this complaint is being processed based on the factual merits of the complaint.

Motion to Seal EAS Study

Defendant filed its EAS study with the Docket Office on October 30, 1998. A non-redacted EAS study accompanied a motion to place the document under seal, pursuant to Section 2.2(b) of General Order 66-C. Defendant represented that portions of the EAS study contained proprietary and competitively sensitive traffic and network operation information. This is because the recent introduction of intraLATA toll competition and intraLATA toll equal access and pre-subscription make its traffic and network operation and utilization data compiled for purposes of evaluating the EAS routes of value to Defendant's competitors. Defendant represented that public disclosure of this traffic and network operation and utilization data would place Defendant at an unfair business advantage. Therefore, Defendant requested that the non-redacted EAS study be placed under seal.

⁸ California is divided into ten LATAs of various sizes, each containing numerous local telephone exchanges. IntraLATA describes services, revenues, and functions that relate to telecommunications originating within a single LATA.

Concurrent with the filing of its non-redacted EAS study, Defendant filed a redacted version of its EAS study that excluded the traffic and network operation and utilization data. Defendant's redacted EAS study was filed with the Docket Office and placed in the public record.

Defendant has stated grounds, under General Order 66-C and authority there cited, for the requested relief. There was no opposition to Defendant's motion. With good cause appearing, Defendant's motion to place its non-redacted EAS study under seal should be granted. The non-redacted EAS study should remain under seal for a period of one year from the date of this order, and during that period should not be made accessible or disclosed to anyone other than Commission staff except on the execution of a mutually acceptable nondisclosure agreement between Defendant and any interested party or on further order or ruling of the Commission, the assigned Commissioner, the assigned ALJ, or the ALJ then designated as the Law and Motion Judge.

EAS Study Results

Defendant's EAS study consisted of a calling pattern analysis of calls originating in Independence and terminating in Bishop, and originating in Bishop and terminating in Independence during a specific time period. For study purposes, Defendant selected one month from each quarter of the year, with the concurrence of Complainants. The actual period of time studied was December 1997, March, May, and September of 1998. The EAS study results were summarized and the call detail was stratified by the number of calls per account per month segregated between business and residential subscriber class.

Defendant's EAS study revealed that the majority of subscribers in the Bishop exchange place almost no calls to Independence. Although most of the calling between the studied exchanges occurred from subscribers in the Independence exchange calling into the Bishop exchange, the percentage of

affected subscribers who make at least one call a month into the Bishop exchange is substantially below the 70% to 75% minimum requirement to consider establishing an EAS route. The following tabulation compares the calling patterns between Bishop and Independence and between Independence and Bishop to the Commission's minimum EAS calling pattern criteria.

	<u>Business</u>	<u>Residential</u>	<u>Minimum Criteria</u>
Bishop to Independence			
Monthly Average Calls Per Line	0.23	2.66	3 - 5
Percent With At Least One Call	23.87%	8.38%	70-75%
Independence to Bishop			
Monthly Average Calls Per Line	9	6	3 - 5
Percent With At Least One Call	34.83%	51.69%	70-75%

The EAS study also revealed that business and residential subscribers in the Bishop and Independence exchanges, respectively, have access to emergency medical, law enforcement and fire department services on a toll-free basis by using E911 calling arrangements. Bishop and Independence subscribers are able to place toll-free calls to their local schools and local government offices. Inyo County government offices, Owens Valley Unified School District and the Inyo County Office of Education are located in Independence and can be called by Independence subscribers on a toll-free basis. Bishop subscribers are able to make non-emergency calls to local medical facilities on a toll-free basis. However, Independence subscribers do not have non-emergency toll-free access to medical services.

Defendant's EAS study identified and quantified the cost associated with the two-way EAS between Independence and Bishop. The cost consisted of a one-time implementation cost of approximately \$6,764 and a monthly subscriber

cost, based on the Salinas formula. The following tabulation sets forth the additional monthly subscriber cost for the proposed EAS route.

	Business	Residential
Bishop to Independence	\$ 1.48	\$ 0.00
Independence to Bishop	\$20.36	\$ 6.70

Settlement Discussion

By letter of November 9, 1998, Defendant notified the assigned ALJ that the parties of record would hold a December 29, 1998 meeting of all parties to discuss the possibility of a settlement of this matter and a timetable for formally addressing any unresolved issues.

On December 30, 1998, Defendant and Complainants jointly submitted a proposed settlement agreement to the assigned ALJ. The parties concurred that this proceeding should consider a one-way EAS from Independence to Bishop and should no longer consider the two-way EAS between Independence and Bishop. The parties recommended that the Commission conduct a subscriber survey to determine the level of subscriber support for a one-way Independence to Bishop EAS.

However, the parties differed on the monthly cost that subscribers should be required to pay for the one-way EAS route. Defendant recommended that the monthly EAS rate for business and residential subscribers be based on the Commission's Salinas formula. By letter of January 10, 1999, Complainants recommended that the monthly EAS rate should be consistent with the current EAS rate additives between Olancho and Lone Pine, Big Pine and Bishop, and the proposed (based on newspaper reports) EAS rate additive between Trona and Ridgecrest.

On January 20, 1998, Defendant filed an opposition to Complainants proposal to deviate from the Salinas Formula. Defendant opposed a deviation

from the Salinas Formula because Complainants offered no substantive or quantitative support for the deviation and because EAS rates have been based on the unique and specific characteristics of the exchanges under consideration. Defendant concluded that any deviation from the Salinas Formula would unreasonably shift the financial burden of this EAS from those who will benefit to those who will not.

The following tabulation compares the difference between Defendant's and Complainants recommended one-way Independence to Bishop EAS monthly cost that business and residential subscribers should be required to pay.

<u>Party</u>	<u>Business</u>	<u>Residential</u>
Defendant	\$ 20.36	\$ 6.70
Complainants	8.51	2.80

The parties further agreed that an evidentiary hearing is not necessary in this matter. However, they wanted to submit facts for inclusion in the record using declarations or affidavits submitted under penalty of perjury in conjunction with the extent to which essential needs are not met with existing toll-free calling arrangements; the burden on Independence subscribers if EAS is implemented; Defendant's revenue requirement; Defendant's A-38 limited Exogenous treatment factor; and a draft tariff reflecting the EAS rate additive to be applied on all subscribers in the Independence exchange. The parties also requested that they be permitted to submit briefs and reply briefs.

Discussion

Section 1702 and Rule 9 require that a complainant must allege that the defendant has violated one or more of the following: (1) a law; (2) a Commission rule, order, or General Order; or, (3) a tariff rule. In this complaint proceeding, Complainants alleged that Defendant has unduly restricted the Independence

local calling area in comparison to adjacent local calling areas, a violation of §§ 453(a) and (c). Sections 453(a) and (c) state as follows:

453(a): No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

453(c): No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between locations or as between classes of service.

Irrespective of whether a local calling area is unduly restricted when compared with adjacent exchanges, we have held in numerous proceedings that exchanges and exchange rate centers, once established, are permanent and not changed.⁹ Hence, an expansion of the Independence exchange into the Bishop exchange is not a viable solution to this complaint. The appropriate consideration of relief to the Complainants is an EAS route, to the extent that the established EAS factors can be met.

Although the parties entered into a proposed settlement agreement we are not required to accept the agreement, pursuant to Rule 51.7 of the Commission's Rules of Practice and Procedure. That rule enables us to reject a proposed stipulation or settlement without hearing, whenever we determine that the stipulation or settlement agreement is not in the public interest.

Upon careful review and consideration of the facts already presented in this proceeding, including the results of the undisputed EAS study, we find that there is already sufficient information in this proceeding to determine the

⁹ API Alarm Systems v. General Telephone Company of California (1990) 36 Cal PUC2d 369 @ 396.

appropriateness of an EAS route between Independence and Bishop. Any prolonging of this proceeding to address an appropriate monthly EAS rate, conduct a subscriber survey, and permit the filing of briefs is not in the public interest. Therefore, pursuant to Rule 51.7, we reject the proposed settlement.

EAS From Bishop to Independence

The EAS study substantiated that the subscriber calls from Bishop to Independence failed to meet even one of the community of interest tests. The majority of subscribers in the Bishop exchange placed almost no calls to Independence. Bishop exchange subscribers averaged 0.23 business and 2.66 residential calls to the Independence exchange, below the minimum 3 to 5 calls required for the community of interest test.

There were only 23.87% business and 8.38% residential Bishop exchange subscribers that place at least 1 call a month to Independence, well below the 70% to 75% minimum community of interest test. In other words, 76% business and 92% residential Bishop exchange subscribers place no calls to the Independence exchange.

Bishop exchange subscribers already have access to emergency medical, law enforcement and fire department services on a toll-free basis by using E911 calling arrangements. These subscribers also have access to place toll-free calls to their local schools and local government offices, and are able to make non-emergency calls to local medical facilities on a toll-free basis.

Approval of an EAS from Bishop to Independence would require 76% of business and 92% of residential subscribers in Bishop to pay a monthly rate for a service they do not use. The calling pattern from Bishop to Independence does not meet the community of interest factors. Hence, an EAS from Bishop to Independence should not be approved.

EAS From Independence to Bishop

The EAS study substantiated that the pattern of calls from the Independence to Bishop exchange met the first community of interest test. This is because the Independence subscribers averaged 9 business and 6 residential monthly calls per line, above the minimum required 3 to 5 monthly calls per line community of interest test.

However, the Independence to Bishop calling pattern failed the second community of interest test. Only 35% of business and 52% of residential Independence subscribers place at least 1 call a month from Independence to Bishop, below the minimum 70% to 75% minimum community of interest test. In other-words, 65% business and 48% residential Independence exchange subscribers place no calls to Bishop.

The placement of calls from Independence to Bishop also failed the basic calling needs test. Independence exchange subscribers have access to emergency medical, law enforcement and fire department services on a toll-free basis by using E911 calling arrangements. These subscribers are also able to place toll-free calls to their local schools and local government offices. Although Independence exchange subscribers must place a toll call to reach non-emergency medical services, we do not find this to be grounds for concluding that Defendant has violated § 453(a) or § 453(c).

Approval of an EAS from Independence to Bishop would require 65% of business and 48% of residential subscribers in Independence to pay a monthly rate for a service they do not use. It failed to meet this community of interest factor. Business subscribers would be required to pay an additional \$20.36 a month and residential subscribers \$6.70 a month, based on the Salinas formula.

Conclusion

Our application of the EAS community of interest tests in this complaint case is consistent with our consideration of approving other EAS routes within California. Because the calling pattern between Independence and Bishop does not pass all of the Commission's community of interest tests there is no need to address the remaining two EAS factors: the subscriber survey, and whether the additional monthly costs associated with an EAS route create unreasonable rates for any customer group. Defendant has not provided discriminatory telephone service to Complainants and has not provided Complainants unreasonable difference in rates between localities or classes of service. Defendant has not violated §§ 453(a) or 453(c). The calling pattern between Independence and Bishop does not justify the requested EAS. Hence, an EAS route between Independence and Bishop should be denied.

Our denial of this complaint is based solely on the facts of this case. We are sympathetic to rural communities such as Independence whose telephone subscribers may have to make more toll calls than do subscribers in adjacent rural, suburban, or urban areas. While we cannot change the geographic circumstances of Independence, we have opened the market for toll calls to competition in order to reduce costs and increase the range of services available to consumers.

Comments on Draft Decision

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No comments were received.

Findings of Fact

1. This complaint was filed against Defendant pursuant to § 1702.

2. The complaint was signed by approximately 570 actual or prospective consumers of telephone service.

3. Defendant is a public utility subject to the jurisdiction of this Commission as defined in § 234 and subject to the jurisdiction of this Commission, as set forth in § 1702 and Rule 9 of the Commission's Rules.

4. Complainants and Defendant are the only parties to this proceeding.

5. Defendant is providing such service pursuant to its Tariff Schedule A-26.

6. Complainants may avail themselves of foreign exchange service for toll-free calling to certain other exchanges pursuant to Defendant's Tariff Schedules A-4 and A-19 or discounted intraLATA toll calling plans to subscribers in the Independence exchange pursuant to Defendant's Tariff Schedule B-4 and B-5.

7. The final categorization of this complaint case is ratesetting as defined in Rule 6(b)(1).

8. The issue in this proceeding is whether two-way EAS between Independence and Bishop should be approved.

9. EAS permits a telephone company to expand an exchange's local calling area to include another exchange.

10. EAS is not an optional service. Once authorized, it applies to all subscribers in an exchange, and an additional monthly service charge is assessed on all affected subscribers whether they take advantage of EAS calling or not.

11. In considering EAS, the Commission considers (1) whether EAS is justified by a community of interest between the two exchanges; (2) whether there is substantial customer support for EAS and the accompanying increase in service charge; and (3) whether EAS can be implemented at reasonable rates.

12. Three tests are applied to determine the existence of a community of interest: (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) 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 can or cannot be met within subscribers' existing toll-free calling area.

13. The final step in considering EAS is to determine whether the additional costs of extending local calling are justified, and whether such cost creates unreasonable rates for any customer group.

14. IntraLATA toll competition enables business and residential customers to choose from among multiple carriers to carry their intraLATA calls, reducing the toll costs rural customers face for calls beyond their local calling area.

15. A motion to place Defendant's non-redacted EAS study under seal was filed pursuant to General Order 66-C and was unopposed.

16. Exchanges and exchange rate centers, once established, are permanent and not changed.

17. The Commission is not required to accept a proposed settlement agreement.

18. Bishop exchange subscribers averaged only 0.23 business and 2.66 residential calls per month to the Independence exchange.

19. Only 23.87% business and 8.38% residential Bishop exchange subscribers place at least 1 call a month to Independence.

20. Approximately 76% of the Bishop exchange business subscribers and 92% of Bishop exchange residential subscribers place no calls to the Independence exchange.

21. Bishop exchange subscribers already have access to emergency medical, law enforcement, and fire department services on a toll-free basis by using E911 calling arrangements.

22. Bishop exchange subscribers have access to place toll-free calls to their local schools and local government offices, and are able to make non-emergency calls to local medical facilities on a toll-free basis.

23. Only 35% business and 52% residential Independence exchange subscribers place at least one call a month to Bishop.

24. Approximately 65% business and 48% residential Independence exchange subscribers place no calls to Bishop.

25. Independence exchange subscribers have access to emergency medical, law enforcement, and fire department services on a toll-free basis by using E911 calling arrangements.

26. Independence exchange subscribers are able to place toll-free calls to their local schools and local government offices.

Conclusions of Law

1. The non-redacted EAS study should be placed under seal.
2. It is not in the public interest to address an appropriate monthly EAS rate, conduct a subscriber survey, or to receive briefs on this complaint case.
3. The proposed settlement agreement should be rejected.
4. Complainants have not shown unreasonable conduct or a violation of law, rule, or Commission order by Defendant.
5. The relief sought by Complainants should not be granted.

O R D E R

IT IS ORDERED that:

1. The non-redacted Extended Area Service study shall be placed and remain under seal for a period of one year from the date of this order, and during that period shall not be made accessible or disclosed to anyone other than Commission staff except on the execution of a mutually acceptable nondisclosure

agreement between GTE California, Incorporated and any interested party or on further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as the Law and Motion Judge.

2. The complaint in Case 98-04-021 is denied.
3. Case 98-04-021 is closed.

This order is effective today.

Dated April 1, 1999, at San Francisco, California.

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