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ALJ/GEW/avs

Decision 99-07-034 July 22, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Robert W. Merwin, et al.,

Complainants,

vs.

Citizens Communications,

Defendants.

Case 97-09-054
(Filed September 25, 1997)

Mark Pruner, Attorney at Law, and Robert W. Merwin, for complainants.

Barbara L. Snider, Attorney at Law, for Citizens Communications, defendant.

O P I N I O N

Summary

This decision directs the establishment of extended toll-free calling from the Courtland/Clarksburg exchange (744 and 775 prefixes) to the Main District Area of the Sacramento exchange. Residential subscribers with these prefixes will pay \$2.10 a month more and businesses \$6.35 a month more for this extended service.

1. Extended Area Service

The complaint, brought by Robert W. Merwin and endorsed by 500 persons in the Delta region near Sacramento, seeks extended area service (EAS) from the Courtland/Clarksburg exchange to the Sacramento Main exchange. Citizens Telecommunications Company of California Inc., doing

business as Citizens Communications, is the incumbent local exchange carrier in this area.

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To briefly explain, EAS extends the geographic reach of a local toll-free calling area. Generally, the service territories of local telephone carriers are divided into exchanges. Each exchange has a point designated as a rate center that is used to measure the distance of calls for billing purposes. Generally, if the centers for two exchanges are within 12 miles of one another, the calls between those exchanges are rated as local calls. If the rate centers are greater than 12 miles apart, the calls between the exchanges are rated as toll calls. EAS permits customers in one exchange to extend the toll-free local calling area into another exchange when the rate center is more than 12 miles away.

EAS routes traditionally have been established through formal complaint cases filed by customers. In the past, in deciding whether to authorize an EAS route, the Commission has considered: (1) whether there is a community of interest between the local exchange and a target area beyond the existing toll-free calling area; (2) whether there is customer support for extending the area of service; and (3) whether the EAS route can be implemented with reasonable rates. To determine the existence of a community of interest, the Commission has applied three tests: (1) whether the number of calls per line between the complainants' exchange and the target exchange averages at least three to five per month; (2) whether the percentage of affected subscribers who make at least one call a month to the target exchange is at least 70-75%; and (3) 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. (Collin v. Pacific Bell, Decision (D.) 98-03-076 (March 26, 1998).)

If all of these tests appear to be met, the Commission requires a survey of subscribers to determine whether they are willing to pay the additional monthly

service charge in order to have toll-free calling to the target exchange. The cost of an EAS route, borne by all subscribers in the affected exchange, is calculated pursuant to a "Salinas formula," adopted by the Commission in D.77311 in 1970. Any additional costs borne by the telephone company are recovered through a company-specific surcharge intended to subsidize rural phone service.

In Rulemaking re Local Exchange Service, D.98-06-075, issued on June 18, 1998, the Commission concluded that increased competition introduced in local toll calling on January 1, 1995, had given consumers a choice of carriers and rates not previously available. Accordingly, the need for EAS routes had diminished. The Commission ruled that no further EAS complaints would be considered unless filed prior to June 18, 1998. The Commission ruled that pending EAS cases, like this one, were to be processed under the Commission's traditional guidelines.

2. Procedural History of This Complaint

This complaint was filed on September 25, 1997. A prehearing conference was conducted on January 30, 1998, in Walnut Grove. Complainant and his neighbors argued that essential calling needs of their community were to the Sacramento exchange, and that toll charges for those calls were burdensome and unfair. The rate centers for the Courtland/Clarksburg and Sacramento Main exchanges are located about 18 miles apart.

At the hearing, Citizens opposed establishment of an EAS route because of the cost, and it suggested optional calling plans as an alternative. The company was directed to supply calling data to the Commission's Telecommunications Division to determine whether Courtland/Clarksburg calls to nearby exchanges met the traditional EAS tests.

The Telecommunications Division analyzed toll billing data between the 1,200 Citizens lines in Courtland/Clarksburg and three nearby exchanges for the

months of November and December 1997. The results showed that there are insufficient calls for customers to qualify for extended local service from the Courtland exchange to the Elk Grove exchange, or from the Courtland exchange to the Northern District Area of the Sacramento exchange, but that the number of calls from Courtland to the Main District Area of the Sacramento exchange would justify an EAS.

The analysis showed that in November 1997 there were an average of 1.48 calls per residential line and 0.74 calls per business line from Courtland to Elk Grove. There were 0.76 calls per residential line and 0.56 calls per business line from Courtland to the Sacramento North District Area exchange. None of these averages is sufficient to meet the EAS test of three to five calls per line per month to the proposed EAS target exchange.

However, calls from Courtland to the Sacramento Main District Area exchange averaged 4.98 per residential line and 3.36 per business line. The analysis also showed that approximately 72% of subscribers made one or more calls per month to the Sacramento Main exchange. (The Sacramento Main District Area covers a large portion of Sacramento, including the state government offices located around the State Capitol.) This volume of calls is sufficient to support an EAS arrangement.

Staff's analysis also included a cost of EAS service based on the Salinas formula. Staff concluded that all subscribers with Citizens prefixes of 744 and 775 would be required to pay an additional monthly increment of \$2.10 (residential) and \$6.35 (business) if an EAS route were established from these prefixes to the Sacramento Main District Area exchange. The advantage to subscribers, of course, would be that calls to Sacramento Main numbers would be toll-free.

Citizens would be permitted to seek recovery of any shortfall in expenses and lost revenue from the general body of Citizens' ratepayers via an advice letter filing. Citizens agrees that this would be an appropriate means of recovery if an EAS route is established.

The Telecommunications Division on two occasions in 1998 mailed questionnaires to Citizens subscribers in Courtland and Clarksburg asking whether they were willing to pay the Salinas formula rates for an EAS route to the Sacramento Main exchange. The results, attached to this decision as Appendix A, show a 65.55% approval of the EAS route and surcharge among those responding, based on 476 responses out of 1,271 subscribers surveyed.

3. Evidence at Hearing

A draft decision of the administrative law judge (ALJ) granting the request for an EAS route on the basis of the staff survey was distributed to the parties on March 18, 1999. Citizens objected to the draft, arguing that it had not had an opportunity to present its case at formal hearing and that evidence of essential calling needs had not been established on the record. On April 15, 1999, the ALJ ruled in favor of Citizens on its request for hearing, and he set a formal hearing for May 19, 1999, in Walnut Grove.

At hearing, complainant presented three witnesses, all of them long-time residents of the Courtland/Clarksburg area, who testified that this rural unincorporated area must make toll calls for non-emergency police information, most medical and legal needs, and virtually all substantial banking or shopping needs. Complainant introduced pages from various telephone directories to demonstrate subscribers' need to call into the Sacramento Main exchange for a significant portion of their essential services. (Exhibits 1-4.)

Citizens prepared and presented an exhibit showing that many essential calling needs of the community could be met with toll-free calls. (Exhibit 7.) It

showed that local calls served elementary and high schools; that toll-free 1-800 numbers were available for many government services, and that a number of grocery stores and restaurants could be reached by local calls. On cross-examination, however, its witness acknowledged that most major shopping, medical and banking outlets probably would require a toll call, and he admitted that Exhibit 7 included a number for the Isleton City Police Department that would not be useful for service to the unincorporated areas of Courtland and Clarksburg.

Citizens also showed that only 187 of the 500 signatures on complainant's petitions are served in the 744 and 775 prefixes, and it challenged whether the community supported EAS since only 476 of the 1,271 customers (37.45%) surveyed had responded to the staff questionnaires.

4. Discussion

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In its decision in June 1998 foreclosing new EAS complaints, the Commission recognized that the need for extended area service diminished with the introduction of local toll competition four years earlier. Where subscribers in rural areas previously had no choice but to place toll calls through their monopoly telephone carrier, the same subscribers today may place such calls using any of numerous telephone companies with competing rate plans.

(D.98-06-075.)

Responding to arguments that rural communities had come to rely on existing EAS routes, the Commission declined suggestions that it eliminate existing EAS service, and it provided that EAS complaints pending at the time of its decision would "proceed based on the factual merits of each case."

(D.98-06-075, slip op. at 10.) In dicta, the Commission commented that the Salinas formula was based on outdated cost assumptions, but the Commission did not require a change in those assumptions for pending cases. (D.98-06-075,

slip op. at 8.) Indeed, after three decades of reliance on the Salinas formula, a change in that calculation arguably would require a rulemaking proceeding in which all interested parties could be heard.

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It follows, therefore, that a pending EAS case like this one should be judged based on the criteria and calculations, including the Salinas formula, that have been applied to all such cases for many years. Based on those standards, this record shows that complainants have established that frequency of calls and number of calls per month meet and exceed the traditional EAS tests, and that Courtland/Clarksburg subscribers support establishment of an EAS route to the Sacramento Main exchange with a surcharge based on the Salinas formula. By the same token, Citizens Communications would be entitled to seek recovery of costs and revenue shortfall attributable to the EAS route.

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Complainants have shown by credible testimony and other evidence that essential calling needs of the community are not adequately met within the current local calling area.¹ Citizens errs in suggesting lack of support for EAS because only 187 of the 500 petition signatures are in the 744/775 prefixes. The petitions, submitted with the complaint, are relevant here not for an indication of support but rather for the jurisdictional requirement that a complaint challenging rates must be signed by at least 25 ratepayers. (Pub. Util. Code § 1702.) That test, of course, is amply met by 187 signatures. By the same token, we give little credence to Citizens' challenge of the survey on the basis that only 37.45% of those surveyed returned their questionnaires. The fact is that all of those

¹ The Pacific Bell telephone directory for the Sacramento area shows a toll-free number for Delta residents to the Sacramento County Sheriff's Department. (Exhibit 2.) However, this number is not listed in the Citizens telephone book for the Delta region, and neither complainants' witnesses nor defendant's witness appeared to be aware of the toll-free number in their testimony at hearing.

surveyed had the opportunity to respond, and that 65.55% of those responding favored the EAS route.

Accordingly, the complaint is sustained, and Citizens is directed to establish a one-way EAS route from the Courtland/Clarksburg exchange (744 and 775 prefixes) to the Sacramento Main District Area exchange. Evidence at hearing establishes that Citizens will require up to six months to implement the EAS route. Our order today requires implementation within that period.

Our order today requires Citizens to file an advice letter for inclusion of the new EAS route in its tariffs. We also authorize Citizens to file a separate advice letter, subject to Commission resolution, that identifies the implementation costs associated with the new EAS route and proposes a billing surcharge to recover those costs. The implementation costs will be subject to review by our Telecommunications Division staff.

Pursuant to a Scoping Memo by Assigned Commissioner Duque, this proceeding has been designated a ratesetting proceeding as defined by Rule 5(c) of the Rules of Practice and Procedure.

5. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Citizens in its comments argues that the evidence demonstrates that Courtland/Clarksburg subscribers can call basic, essential services through local calls or by using 1-800 numbers, and that, therefore, an EAS route is not justified. On the contrary, credible testimony and exhibits at hearing established that toll calls were required for most medical and legal needs and virtually all banking and shopping needs. In our judgment, this showing by complainants was sufficient to meet the essential-calling-needs test in establishing a community of interest with an EAS target exchange.

Findings of Fact

1. The complaint was brought by Robert W. Merwin and was accompanied by a petition signed by 500 persons in the Delta region of California.
2. The complaint seeks an EAS route from the Courtland/Clarksburg exchange (744 and 775 prefixes) to the Sacramento exchange.
3. The distance between these exchanges is approximately 18 miles.
4. Essential calling needs of the Courtland/Clarksburg community are met in part through the Sacramento exchange.
5. A Telecommunications Division analysis shows that the community meets traditional EAS tests for the Sacramento Main District Area exchange, but not for the Elk Grove or Sacramento North District Area exchanges.
6. The Telecommunications Division conducted two mail surveys of the 1,200 Citizens lines in Courtland/Clarksburg to determine whether subscribers were willing to pay an additional monthly fee of \$2.10 (residential) and \$6.35 (business) for toll-free calling to the Sacramento Main District Area exchange.
7. Based on the survey, 65.55% of respondents favored an EAS.
8. Citizens Communications should be permitted to seek recovery of any shortfall in expenses and lost revenue via an advice letter filing.
9. The Commission in D.98-06-075 ruled that no further EAS complaints would be considered unless filed prior to June 18, 1998, but it permitted this case and other pending EAS cases to proceed under traditional EAS guidelines.

Conclusions of Law

1. The Commission has jurisdiction to decide this complaint case pursuant to Pub. Util. Code § 1702.
2. Complainants have established that essential calling needs are not satisfactorily met within their local calling area.

3. Complainants have established that frequency of calls and number of calls per month meet traditional EAS tests, and that subscribers support establishment of an EAS route to the Sacramento Main exchange with an increment based on the Salinas formula.

4. Citizens Communications is directed to file an advice letter for inclusion of the new extended area service route in its tariff.

5. Citizens Communications is authorized to file a separate advice letter, subject to Commission resolution, that identifies the implementation costs associated with the new extended area service route and proposes a billing surcharge to recover those costs. Proposed implementation costs will be subject to review by the Telecommunications Division.

O R D E R

IT IS ORDERED that:

1. The complaint of Robert W. Merwin, et al. vs. Citizens Communications is sustained, and the relief described below is granted.

2. Within 150 days from the date of this order, Citizens Communications shall file an advice letter in conformance with General Order 96-A that contains revised tariffs which (i) implement one-way extended area service (EAS) from the Courtland/Clarksburg exchange (744 and 775 prefixes) to the Main District Area of the Sacramento exchange no later than 180 days after the date of this order and (ii) include a monthly EAS charge for affected subscribers of \$2.10 per residential line, \$1.05 per Lifeline customer, and \$6.35 per business line. The revised tariffs shall become effective 30 days after they are filed, unless suspended.

3. Within 30 days from the date of this order, Citizens Communications shall (i) prepare a draft notice that informs its customers in the Courtland/Clarksburg

exchange (744 and 775 prefixes) of the EAS route and the accompanying monthly service charges approved in this order and (ii) serve the draft notice on the Commission's Public Advisor for the Public Advisor's review and approval. Citizens Communications shall serve the notice approved by the Public Advisor on its customers in the Courtland/Clarksburg exchange (744 and 775 prefixes) by bill insert or direct mail at least 30 days prior to the date that Citizens Communications implements the EAS route to the Main District Area of the Sacramento exchange.

4. Citizens Communications may seek to recover its costs to implement the EAS route by filing an advice letter, subject to Commission resolution, that identifies the implementation costs associated with the new EAS route and proposes a billing surcharge to recover these costs.

5. Case 97-09-054 is closed.

This order is effective today.

Dated July 22, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners

COURTLAND EAS SURVEY RESULTS

CUSTOMERS SURVEYED	R E S P O N S E S							
	TOTAL RE-SPONSES	RESPONSES AS % OF CUSTOMERS SURVEYED	YES	NO	COMMENTS	NO CHOICE	NON DELIVER-ABLE	YES AS A % OF TOTAL RESPONSES
RESIDENCE 1076	419	38.94%	286	122	163	3	8	68.26%
BUSINESS 195	57	29.23%	26	29	14	2	0	45.61%
GRAND TOTAL 1271	476	37.45%	312	151	177	5	8	65.55%

(END OF APPENDIX A)