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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 979

In the Matter of the Petition for Extended)
Area Service filed by the NEWPORT) ORDER
TELEPHONE EXCHANGE.)

DISPOSITION: STIPULATION ADOPTED; QWEST CORPORATION
DIRECTED TO PURSUE LATA WAIVER

SUMMARY

In this order, the Commission grants a petition for Extended Area Service (EAS) between the Newport and Lincoln City telephone exchanges. The petition is unique, in that it seeks EAS across a LATA boundary.¹ The Newport exchange is located in the Eugene LATA, while the Lincoln City exchange is located in the Portland LATA.

The Commission has reviewed the proposed rates, terms, and conditions for the EAS route and believes they are reasonable. The Commission has also reviewed customer survey results and, based on the entire record in this matter, believes that the interLATA EAS route is in the public interest. Final approval of this route, however, does not rest with this Commission. One of the local telephone exchange companies involved in this proceeding, Qwest Corporation (Qwest), is prohibited under federal law from providing telecommunications services across LATA boundaries. Consequently, to allow this interLATA EAS route, Qwest must obtain a waiver of the LATA restriction from the Federal Communications Commission (FCC).

The Commission directs Qwest to petition the FCC for a LATA waiver with regard to this EAS petition. The Commission is hopeful that the FCC will complete its review of the matter and grant the requested relief in time to allow toll-free calling at EAS rates for the interLATA EAS route by August 3, 2002.

¹LATAs, or Local Access Transport Areas, are long distance calling regions created pursuant to the divestiture of the Bell system. There are essentially three LATAs within the State of Oregon: The Portland LATA, which covers the north half of the state and parts of Lake and Harney counties; the Eugene LATA, which covers the southwest and southcentral portions of the state; and the Boise LATA, which covers most of Malheur County.

PROCEDURAL HISTORY

On June 22, 2000, the customers of the Newport telephone exchange filed a petition for extended area service (EAS) to the Lincoln City telephone exchange. The Commission docketed the request as UM 979 for investigation. The Commission reviews EAS in two phases. In Phase I, the Commission determines whether a community of interest exists between the two telephone exchanges to warrant the elimination of toll calling. In Phase II, the Commission reviews company costs and tariffs to determine proper rates for the EAS route.

Phase I: Community of Interest and Critical Needs

In order to obtain EAS to the Lincoln City exchange, the Newport exchange customers must satisfy two Phase I requirements. Like all other EAS requests, petitioners must first establish that a community of interest exists between the two exchanges. Second, because the petition seeks EAS across a LATA boundary, petitioners must show that the proposed interLATA EAS route is necessary to meet the critical needs of residents due to the lack of essential services in their own exchange, or neighboring exchange located within the same LATA. In evaluating the critical needs of customers, the Commission considers the customers' access to emergency, dental, medical, professional, business, educational, and governmental services. *See* Order No. 95-1168.

On February 13, 2001, Michael Grant, an Administrative Law Judge for the Commission, held a hearing in Newport, Oregon. Approximately 40 people attended the hearing, many of who testified in support of the petition. Based on the evidence presented, the Commission concluded that a community of interest existed between the Newport and Lincoln City exchanges and that the interLATA EAS route is necessary to meet the critical needs of customers in the Newport exchange. *See* Order No. 01-244.

Phase II: Tariff Analysis

The Phase II portion of an EAS investigation primarily consists of an analysis of proposed rates and cost recovery for affected telephone companies. Staff reviews the filings to ensure that each company's rates comply with rate design criteria adopted by the Commission in Order No. 89-815. Those criteria require, among other things, that the LECs make available both a flat EAS rate for unlimited calling between the exchanges, as well as a measured rate option for low-volume customers.

The Phase II review for interLATA EAS petitions, however, is complicated by restrictions imposed by the FCC. In a prior docket, the FCC rejected the Commission's policy of allowing customers a measured EAS rate option. The FCC viewed measured EAS as discounted toll, not a low cost rate option for customers who do not desire a flat rate EAS. Thus, the FCC concluded that, if allowed, Qwest would essentially be providing interLATA toll service in violation of federal law. *See* FCC Order 97-244 at 11.

To secure the FCC's approval of interLATA EAS routes, the Commission modified its rate design criteria to allow only non-optional, flat rate EAS on interLATA EAS routes in Oregon. Due to this unique requirement, the Phase II procedures for interLATA routes also includes a balloting of customers to gauge the level of interest. The ballot results are not decisive, but rather advisory in nature. *See* Order No. 98-201. The Commission will then review the LEC filings and customer ballot results, as well as other evidence in the record, and determine whether the interLATA EAS conversion is in the public interest.

1. Proposed Tariffs and Cost Recovery

Pursuant to the procedural schedule, Qwest and Sprint/United Telephone Company of the Northwest (Sprint/United), which serves the Lincoln City exchange, filed cost studies and proposed tariffs for the interLATA EAS route between the Newport and Lincoln City exchanges. Staff reviewed the cost studies and proposed tariffs and, after conducting discovery and the exchange of information, entered into stipulations with the companies. No party filed an objection to the stipulations, which are set forth in Appendix A and B. The stipulated EAS rates for the Newport and Lincoln City exchanges are set out in Appendix C. On December 14, 2001, Dave Sloan, a member of the Commission Staff, filed testimony in support of the stipulations.

In Order Nos. 89-815 and 98-201, the Commission adopted rate design criteria that apply to interLATA EAS conversion. Staff states that the stipulated rates for Qwest substantially meet these rate and cost recovery criteria and recommends that the Commission adopt them. Under the stipulated rates, Newport customers would pay a non-optional flat rate of \$0.14 and \$0.21, respectively, for residential and business EAS to the Lincoln City exchange. These rates are in addition to charges Newport customers must pay for EAS calling to the Chitwood, Depoe Bay, Gleneden Beach, Siletz, South Beach, Tidewater, Toledo, Waldport, and Yachats exchanges. Currently, Newport customers have the option of paying \$1.28 and \$1.95 per month, respectively, for flat rate residential and business EAS, or \$0.04 per minute for measured EAS to these exchanges.

Under the stipulated rates, Lincoln City customers would pay an additional \$0.61 and \$0.97 per month, respectively, for flat rate residential and business EAS to the Newport exchange. Lincoln City customers currently pay \$1.46 and \$2.38 per month, respectively, for flat rate residential and business EAS to the Depoe Bay and Gleneden Beach exchanges. In addition to this flat rate, Lincoln City customers have the option of paying a measured rate of \$0.06 per minute to all three EAS exchanges. Sprint-United is not subject to the FCC's restrictions regarding interLATA EAS.

2. Customer Balloting and Public Hearings

During January 2002, Qwest mailed Newport exchange customers an advisory ballot informing them of the unique characteristics of interLATA EAS. The ballot also explained that, due to federal restrictions, no measured rate option would be available for EAS to the Lincoln City exchanges, and that Newport customers would be required to pay a non-optional flat rate for the proposed EAS route. The ballot indicated that, for Newport exchange residents, the proposed EAS rate to Lincoln City would be \$0.14 per month for residential customers and \$0.21 per month for business customers.

To provide additional information and to answer customer questions, Administrative Law Judge Michael Grant conducted a public comment hearing in Newport on February 13, 2002. At the hearing, Staff member Dave Sloan made an informational presentation explaining the Commission's interLATA EAS policy and requirements imposed by federal law. Mr. Sloan also prepared and distributed a handout explaining the companies' proposed EAS rates.

About 15 customers attended the hearing in Newport. Most of the customers testified that the proposed rates were reasonable and supported EAS implementation. Some had family or friends in the other exchange and viewed the proposed rates as an affordable alternative to existing toll charges.

The Commission received similar input from the advisory customer ballot. A total of 1,152 Newport exchange customers returned valid ballots to the Commission. 1034 (89.8%) of those responding favored EAS expansion to the Lincoln City exchange at the proposed rates. The remaining 118 (10.2%) opposed EAS expansion to the Lincoln City exchange.

Resolution -- Phase II

Based on the entire record in this proceeding, the Commission concludes that the interLATA EAS route between the Newport and Lincoln City exchanges should be implemented as proposed. The stipulated rates satisfy the rate design criteria for EAS conversion and are just and reasonable. Accordingly, the Commission adopts the stipulated rates and other provisions included in the stipulation between Staff, Qwest, and Sprint-United, subject to the terms of this order.

The Commission further concludes that the record, viewed as a whole, supports a finding that the proposed interLATA EAS route is in the public interest and should be approved. A community of interest exists between the Newport and Lincoln City exchanges. The interLATA EAS route is necessary to meet the critical needs of Newport exchange customers. These customers depend heavily on the Lincoln City exchange for emergency, dental, medical, professional, educational, and governmental

services. The implementation of this route will provide a much-needed service to customers.

In reaching this decision, the Commission acknowledges a small amount of opposition to EAS expansion. Some Newport customers objected to the EAS implementation, apparently because they will be required to pay a nonoptional flat EAS rate for the service. In anticipation of these concerns, the Commission took efforts to mitigate the rate impact on Newport exchange customers. In addition to conducting a customer ballot, the Commission directed Qwest to develop interLATA EAS flat rates that identify toll losses (or costs) on a route-specific basis. Due to the unique nature of interLATA EAS, the Commission believes that it is appropriate to isolate costs for each route and establish a distinct EAS rate class. The Commission also ordered Qwest to provide flexible billing to the Newport customers. Under this billing method, Qwest must provide customers both flat rate and measured rate options on *intra*LATA EAS routes, and non-optional, flat rate service on *inter*LATA EAS routes. In other words, the flexible billing will enable Qwest the ability to maintain the Commission's customer choice EAS billing policy for non-interLATA routes for customers. The Commission believes that these measures will help balance the interests of customers in both the target and petitioning exchanges. Thanks in part to these measures, Qwest and Staff were able to stipulate to relatively low rates for the interLATA EAS routes.

Accordingly, while the Commission is always reluctant to impose an unavoidable rate increase—particularly for those customers on fixed incomes—it believes that the EAS rates are reasonable to provide a valuable service to customers of both the Newport and Lincoln City exchanges. Furthermore, the Commission notes that the non-optional, flat EAS rates imposed on customers of the Newport exchange are not permanent. While Qwest is currently prohibited from carrying traffic across LATA boundaries, it can obtain such authority upon opening their local markets to competition and petitioning the FCC for approval under Section 271 of the Telecommunications Act of 1996. The Commission is currently reviewing this matter with Qwest to assist in its eventual application with the FCC. *See* Docket UM 823. Once Qwest obtains such approval, the non-optional, flat EAS rates will be eliminated.

CONCLUSIONS

Based on the record developed in this docket, the Commission concludes that the proposed EAS route between the Newport and Lincoln City exchange is in the public interest. Qwest is directed to pursue a LATA waiver to allow the interLATA EAS route. If and when FCC approval is obtained, Qwest will provide additional information regarding customer notification, requirements for default service, and other matters necessary to allow implementation of the interLATA routes by August 3, 2002.

ORDER

IT IS ORDERED that:

1. The petition filed by the Newport exchange for EAS with the Lincoln City exchange is granted.
2. The stipulations entered between Staff and Qwest Corporation and Sprint-United, set forth in Appendices A and B, are adopted.
3. Qwest Corporation shall promptly submit to the Federal Communications Commission a request for approval of a LATA boundary modification sufficient to allow it the ability to provide the proposed and existing EAS routes.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to ORS 756.580.