

An initial prehearing conference was held April 22, 2003, to solicit issues and concerns to define the scope of Phase II. Both the Task Force and Staff filed proposed issue lists, and a final issue list was adopted by ruling on May 30, 2003. The issues can be grouped into two areas: those related to the proposed Southern Oregon EAS, and those related to individual routes into the Region.

Questions related to the proposed Southern Oregon EAS Region:

- What process will the Commission use to notify customers of proposed rates to the Southern Oregon Region and to obtain customer input on those rates?
- What standards should the Commission use to determine whether to allow an exchange to opt out of the proposed Region?

Questions related to individual routes into the Region:

- Should the Commission waive the petitioning requirement to allow certain exchanges to pursue individual EAS routes concurrently with the Southern Oregon EAS Region investigation?
- If the proposed EAS Region is created, will an outlying exchange be able to petition for EAS to an individual exchange in the Region? If so, what procedures should apply to initiate an investigation of individual routes?
- If a Southern Oregon EAS Region is created, will the Commission allow Region exchanges to maintain existing EAS routes to exchanges lying outside the Region?

Pursuant to the established schedule, comments in response to the issue list were filed by the following: United Telephone Company of the Northwest dba Sprint (Sprint), Qwest Corporation (Qwest), Citizens Telecommunications Company of Oregon (CTC), Verizon Northwest, Inc. (Verizon), the Task Force, Ellen Levine of the Greater Applegate Community Development Corporation, and Commission Staff (Staff).

After consideration of the comments offered by the participants, we resolve the matters of contention that were highlighted in the issue list in order to narrow the scope of the rate determination phase, Phase II. We group our discussion of the comments, legal arguments, and conclusions by issue as follows:

Customer Notification

Current Policy

The telephone companies notify customers, and a public hearing is held to gauge customer reaction. *See* Order No. 89-815 at 40. In addition, customer balloting is used on an advisory basis and is limited to unique cases, such as where projected rates are extraordinarily high. *See* Order No. 00-644 at 10; Order No. 89-815 at 40.

Positions of the Parties

The Task Force recommends that an advisory ballot be stuffed into bills, with a tear-off sheet offering two options: (1) the customer could indicate satisfaction with the proposed rates or (2) request a hearing to be held in that exchange. If responses equaling ten percent of the lines in the exchange indicated the desire for a hearing, then one would be held there. The Task Force emphasizes that the decision to hold a hearing should be made considering each exchange, not just the larger cities in the proposed Region.

Each of the telephone companies has a slightly different perspective. Both Qwest and Verizon endorsed the current process. Verizon and Sprint suggest holding hearings in a few of the larger exchanges, and Verizon adds that hearings should be held in exchanges with specific concerns, namely, Cave Junction, O'Brien, and Murphy-Provolt. CTC also suggests that at least one hearing per ILEC service area should be held. Sprint recommends advisory ballots as bill-stuffers or direct mailers, and Verizon and CTC both request that if such an advisory ballot were required, the companies should be able to recover the cost of printing and mailing through rates.

Staff concurs with the Task Force's recommendation to use bill-stuffers or direct mailers to notify consumers after the first and second rounds of rate filings. Staff also recommends the use of advisory ballots to gauge consumer reaction after the first round of proposed rates are filed, with possibly a second round of balloting after the second round of proposed rates are filed. Any costs incurred by the telephone companies for mailers should be recovered in rates, and, as such, must be reviewed for reasonableness. Staff also suggests that hearings be held.

Commission Resolution

We will adhere to the current procedure of having the telephone companies notify customers of EAS rates by bill-stuffers or direct mailers. Advisory ballots will only be required if there is a particular concern, such as if proposed rates are extremely high. With that procedure, we retain the flexibility to use advisory ballots when necessary but do not require the extra expense of ballots where the projected cost of EAS to consumers is minimal. The telephone companies may apply for recovery of the reasonable cost of printing and mailing the notices in their rates. In addition, at least a half-dozen hearings will be held in the Region at locations to be determined at a later date. Locations will vary from large

urban areas, to the exchanges applying for individual EAS routes, to areas where consumers are projected to see a large rate increase in their bills if they join the EAS Region. An effort will also be made to hold a hearing in each area served by a different telecommunications company. We will consult with the Task Force in determining the locations and format for the hearings.

Process for an Exchange to Opt Out of the Region

Current Policy

In the past, exchanges have been more interested in joining, rather than not joining, the EAS Region, so no formal procedures are in place for allowing exchanges to opt out of the Region.

Positions of the Parties

The Task Force recommends that larger exchanges – Grants Pass, Medford, and Central Point– should not be able to opt out. However, the Task Force tempers th at recommendation with concerns that inclusion of certain exchanges, such as White City, might be prohibitively expensive. The Task Force also notes its concern that, because noncontiguous exchanges cannot have EAS, centrally located exchanges should not be permitted to opt out.

The telephone companies do not specify standards for permitting an exchange to opt out of the EAS Region, but they are unanimous in stating that any exchange that opts out should not have an individual EAS route into the Region because of the possibility of toll by-pass and arbitrage problems. If a Region is designated so that an existing individual EAS route connects the Region and an outlying exchange, Sprint suggests those individual routes be severed. Qwest also states that an EAS Region could still work if financial and industrial hubs opt out. CTC recognizes that smaller exchanges might opt out due to cost, but reiterates that individual routes to the Region were unacceptable due to arbitrage problems.

Staff recommends that the "Commission should allow an exchange to opt out only after finding that doing so is in the public interest." To determine the public interest, the needs of an individual exchange should be balanced against the needs of the Region. Large exchanges at the center of the Region should be kept in, but smaller exchanges on the edge of the Region may opt out more easily. Staff also acknowledges the potential for arbitrage if certain exchanges opt out, so it recommends that individual routes to the Region be minimized.

Commission Resolution

We adopt Staff's recommendation as it provides the most flexibility and adequately addresses the concerns raised by the other parties. By balancing the interests of any exchange that wishes to opt out against the needs of the Region as a whole, we will be

able to consider the value of adding each exchange to the Region against the relative expense for customers of that exchange. Large, central exchanges provide services required by customers in smaller exchanges, and the costs are likely to be lower for customers of large exchanges making it easier for large exchanges to be kept in the Region. In contrast, smaller exchanges on the edges of the Region may be less of a calling destination for others in the Region, and if costs are prohibitive for customers, a smaller exchange may opt out more easily. In addition, we will attempt to prevent arbitrage by minimizing the individual EAS routes into the Region.

Concurrent Investigation into Individual EAS Routes

Current Policy

Currently, the Commission requires signatures of 25 percent of the customers in an exchange to pursue an EAS investigation. *See* Order No. 00-644 at 4-5. Preferably, the percentage is based on the number of customer accounts. However, when that data is unavailable, the percentage of signatures can be based on the number of lines. As long as the same measure is used in both the numerator and the denominator, the ratio is acceptable if it meets the 25 percent threshold.

Positions of the Parties

The Task Force contends that this requirement is too rigorous for rural areas where it is impossible to petition door to door. Instead, the Task Force recommends examining to see if one or more of the following criteria are met:

1. Rural density, where door-to-door petitioning is difficult,
2. Lack of local media presence,
3. Lack of access to local county seat,
4. Quality of life and safety,
5. Lack of access to commercial hubs,
6. No real business or governmental structure, or
7. Limited Internet access for dial-up service.

If one or more of those criteria are met, the Task Force proposes that the Commission waive the 25 percent petition signature requirement and find that a community of interest exists between two exchanges to form an individual EAS route. In particular, the Task Force recommends that the requirement be waived as to the Cave Junction, O'Brien, and Murphy-Provolt exchange. Ellen Levine, on behalf of the Greater Applegate Community Development Corporation, emphasized the need for waiver of the petitioning requirement as to the Murphy-Provolt exchange and otherwise supported the Task Force's position on this and other issues.

As to the telephone companies, CTC, Verizon, Qwest, and Sprint strongly oppose waiver because of the possibilities for toll by-pass and arbitrage for any individual

EAS routes into the EAS Region. Sprint also notes that having concurrent individual EAS processes could duplicate the amount of work required and would be unfair to other exchanges that complied with Commission requirements in past EAS proceedings.

Staff generally opposes waiving the petition requirement because that could lead to frivolous EAS petitions that are unsupported by consumers. Staff also points to many instances in which rural exchanges have successfully completed the petition process for EAS. However, in the unique situation of Cave Junction and O'Brien, where those exchanges are geographically isolated and do not have an individual EAS route to a larger exchange which provides health and safety services, Staff suggests that the Commission waive the petition process so that those exchanges can have concurrent investigations with the regional EAS process. On the other hand, Staff feels that the Murphy-Provolt EAS request to Jacksonville and Medford should only be "considered if a valid petition is submitted before UM 1061 is completed." Murphy-Provolt already has EAS to Grants Pass, it is not as isolated as Cave Junction and O'Brien, and its rates within the proposed EAS Region are likely to be lower than that of Cave Junction and O'Brien. For these reasons, Staff recommends that the petition process for Murphy-Provolt not be waived.

Commission Resolution

As a rule, the petitioning requirement should not be waived for rural exchanges, because it acts as a filter for EAS claims that are not well supported by the customers. Numerous rural exchanges that requested EAS in the past have successfully met the petitioning requirement. These rural exchanges include Long Creek and Monument in Grant County, Sprague River and Bly in Klamath County, Harper, Ridgeview, and Adrian in Malheur County, Prospect and Butte Falls in Jackson County, Silver Lake and Paisley in Lake County, and Ukiah and Pilot Rock in Umatilla County. The success of these exchanges—many of which have lower population densities than those seeking a waiver—disproves the Task Force's assertion that rural exchanges will find the petition requirement too onerous.

Investigations into individual EAS routes usually should not be pursued concurrently with Regional EAS routes to prevent problems with arbitrage and to promote a unified Region. However, in certain instances, where a rural exchange is geographically isolated from urban centers with safety and medical services, has no EAS service to a principal exchange, and might face prohibitively high costs if it joined the EAS Region, an individual EAS route may be necessary. Cave Junction and O'Brien meet these requirements, and a concurrent investigation should be held into individual EAS routes between these exchanges and the Grants Pass exchange. On the other hand, the Murphy-Provolt exchange already has an EAS route to Grants Pass. As discussed below, pre-existing individual EAS routes, including those developed through concurrent investigations, will be retained even if those exchanges opt out of the Region; however, new routes will not be put in place after the Region is formed. Because time is of the essence, the petition process will be waived as to the Cave Junction and O'Brien exchanges and the investigation into EAS with Grants Pass; however, the petition process is not waived as to Murphy-Provolt.

Furthermore, to allow for concurrent Phase II investigations for EAS between the Cave Junction and O'Brien exchanges and the Grants Pass exchange, we find, based on findings in Orders No. 02-666 and 03-148, that: (1) a community of interest exists between the Cave Junction and Grants Pass exchanges; and (2) a community of interest exists among the O'Brien, Selma, and Grants Pass exchanges.¹ Citizens and Qwest, which serve these exchanges, should file proposed rates for these proposed EAS routes by November 15, 2003. For purposes of this filing, Citizens and Qwest should treat these proposed EAS routes on an independent basis, without regard to the pending investigation and tariff filings for the proposed Southern Oregon Region. Procedurally, these concurrent investigations, docketed as UM 1116 (Cave Junction) and UM 1117 (O'Brien), will track the schedule adopted for other Phase II dockets, with the exception of the later filing date for proposed costs and rates.

New Individual Routes Into Established EAS Region

Current Policy

As a standard practice, after an EAS Region is created, new routes may not be created to connect individual exchanges to the EAS Region. "The Commission will not grant petitions for new EAS routes that would result in cross-boundary EAS. Petitioners will have to choose between obtaining EAS to the Region and EAS to other non-Region exchanges." *See* Order No. 92-1271 at 15.

Positions of the Parties

The Task Force believes that outlying exchanges should be able to petition for individual routes into the EAS Region for at least twelve months after the Region is finalized. The Task Force further recommends that an individual EAS route be created after the following procedure:

- The applicant requests a hearing,
- The community leaders in the exchange present a preponderance of supporting interest, and
- The exchange meets one or more of the criteria it proposed above regarding the waiver of the petitioning requirement.

As to concerns about toll by-pass, the Task Force contends that there are sufficient legal remedies to punish those that forward calls so that those concerns should not hinder the establishment of individual EAS routes.

In stark contrast, the telephone companies emphatically oppose any new individual EAS routes into the newly formed EAS Region due to the high likelihood of arbitrage and toll by-pass problems.

¹ The Cave Junction exchange already has EAS to the intervening Selma exchange.

Staff's position on future individual EAS routes into the newly formed EAS Region largely mirrors the telephone companies' position: No new routes should be added.

Commission Resolution

We agree with Staff's position, which comports with previous Commission policy. New individual EAS routes that connect to an EAS Region have the potential for arbitrage and are able to take advantage of the effort exerted and price paid by the other exchanges in forming the EAS Region. Consequently, new EAS routes will not be approved into an already established EAS Region.

Pre-existing individual routes into EAS Region

Current Policy

This issue, whether to retain pre-existing EAS routes into the new Region, also arose when the Portland EAS Region was formed. The Commission concluded that it would "only allow cross-boundary EAS in cases where there is pre-existing EAS. Monitoring and enforcement procedures will be relied upon to control EAS resale." *See* Order No. 92-1271 at 15.

Positions of the Parties

The Task Force agrees with the Commission's past position and wants to maintain existing individual EAS routes into the Region.

The telephone companies, on the other hand, argue that all individual routes into the Region should be severed due to problems with toll by-pass. The only wrinkle is CTC's position relative to the Azalea exchange: Azalea has EAS to Roseburg and Grants Pass, but Azalea is not in the proposed Southern Oregon EAS Region. CTC proposes that Azalea retain EAS with Grants Pass on an interim basis until after the Region is established. Once that occurs, CTC recommends that the Commission open an investigation into the impact of EAS routes outside the Region. Qwest directly addresses CTC's comments as to Azalea and proposes a different procedure: The Commission should establish whether Azalea has a greater community of interest with Grants Pass or Roseburg. If Grants Pass prevails, Azalea should become part of the Region, and its EAS route to Roseburg should be severed. If Roseburg prevails, Azalea should retain that EAS route, and the link to Grants Pass should be severed. Verizon also suggests that other EAS plans could be used to meet Azalea's needs, as long as Azalea does not have an individual EAS route to the Region.

Staff recommends that the Commission adhere to its current policy of retaining existing individual EAS routes, including those put in place after an investigation concurrent with the EAS Region investigation. However, Staff is also aware that may give rise to arbitrage problems, which should be closely monitored. At this early stage, Staff

states that it cannot know which exchanges will opt out, what individual EAS routes will remain, and whether a toll by-pass problem will develop.

Commission Resolution

We agree with Staff's position that individual EAS routes should be kept after the EAS Region is established. While we are cognizant of the potential for toll by-pass, we also believe that those routes were properly established through Commission procedure and should not be severed. We will continue to monitor those routes as the Region is established and afterwards to ensure that substantial problems do not develop.

ORDER

IT IS ORDERED that:

1. Telephone companies notify customers of proposed EAS Region rates through bill-stuffers or mailers.
2. Telephone companies may apply for recovery of the cost of the bill-stuffers or mailers.
3. If necessary, the Commission may use advisory ballots to gauge an exchange's interest in opting out of the Region.
4. Hearings will be held in exchanges in the proposed Southern Oregon EAS Region to determine customer interest in the Region.
5. The petition process is waived as to the proposed Cave Junction – Grants Pass and O'Brien – Grants Pass EAS routes; the petition process for EAS routes is not waived as to the Murphy-Provolt exchange.
6. A community of interest exists between the Cave Junction and Grants Pass exchanges and among the O'Brien, Selma, and Grants Pass exchanges.
7. Citizens Telecommunications Company of Oregon and Qwest Corporation shall file proposed costs and tariffs for the concurrent Phase II investigation consistent with the terms of this order.
8. Pre-existing EAS routes into the Region from a non-Region exchange shall be retained.
9. Future individual EAS routes into the Region from a non-Region exchange shall not be created.

10. These standards will apply to the Southern Oregon EAS Phase II docket currently pending before the Commission.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
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 applicable law