

ORDER NO. 04-158

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1076

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

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

In this order, the Commission grants a petition for Extended Area Service (EAS) between the Siletz and Lincoln City telephone exchanges. The petition is unique, in that it seeks EAS across a LATA boundary. The Siletz 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. Based on the entire record in this matter, the Commission 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 October 2, 2004.

Procedural History

On March 19, 2003, the customers of the Siletz telephone exchange filed a petition for EAS to the Lincoln City telephone exchange. The Commission docketed the request as UM 1076 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, customers in the Siletz exchange, which is served by Qwest, 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 a 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 May 8, 2003, Michael Grant, an Administrative Law Judge for the Commission, held a hearing in Siletz, Oregon. Based on the evidence presented, the Commission concluded that a community of interest existed between the Siletz and Lincoln City exchanges and that the interLATA EAS route is necessary to meet the critical needs of customers in the Siletz exchange. *See* Order No. 03-385.

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 local exchange carriers (LECs). 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 nonoptional, flat rate EAS on interLATA EAS routes in Oregon. Often, customer ballots are also used to advise the Commission in making its decision. *See* Order No. 98-201. However, ballots were not used in this case because it was a Qwest exchange that initiated the EAS request, showing the interest of Qwest customers. The Commission then reviewed the LEC filings and other evidence in the record to determine whether the interLATA EAS conversion was 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), which serves the Lincoln City exchange, filed cost studies and proposed tariffs for the interLATA EAS route between the Siletz 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 Appendices A and B. The stipulated EAS rates for the Siletz and Lincoln City exchanges are set out in Appendix C. On March 1, 2004, 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, Siletz customers would pay a nonoptional flat rate of \$0.45 and \$0.90, respectively, for residential and business EAS to the Lincoln City exchange. These rates are in addition to charges Siletz customers must pay for EAS calling to the Newport and Toledo exchanges. Siletz customers have the option of paying \$1.28 and \$1.95 per month, respectively, for flat rate residential and business EAS. Customers may also choose \$0.04 per minute for measured EAS to these exchanges, with an off-peak discount of 50 percent for evenings, nights, and weekends.

Lincoln City customers would see a larger increase, but not all of the increase is attributable to the addition of EAS to Siletz. Sprint, which serves Lincoln City, has recently changed the way in which it calculates EAS rates for each exchange. *See* Order No. 04-093. The Commission approved Sprint's use of this new method of calculating EAS rates because it is more equitable between customers in similarly situated exchanges. Under this pricing method, customers are charged by the number of access lines available to them as a local, or non-toll, call. This method is in compliance with long-standing Commission policy favoring asymmetrical rates, *see* Order No. 89-815 at 20-21, and the practices of other telephone companies such as Qwest and CenturyTel.

Lincoln City customers currently pay \$1.90 and \$3.16 per month, respectively, for flat rate residential and business EAS to the Depoe Bay, Gleneden Beach, and Newport exchanges. Due to the new matrix calculation, Lincoln City customers will pay an additional \$1.78 and \$3.01 per month, respectively, for flat rate residential and business EAS. In addition, Lincoln City customers would pay an additional \$0.36 and \$0.60 per month, respectively, for flat rate residential and business EAS to the Siletz and South Beach exchanges, if all currently proposed EAS routes are approved.¹ The new total EAS rate for Lincoln City customers would be \$4.04 and \$6.67, respectively, for flat rate residential and business EAS. Lincoln City customers have the option of paying a measured rate of \$0.06 per minute to all approved EAS exchanges, with an off-peak discount of 25 percent for evenings and 50 percent for nights and

¹ The Commission is currently considering Phase II of a proposed EAS route between South Beach and Lincoln City in docket UM 1075.

weekends. Sprint is not subject to the FCC's restrictions regarding interLATA EAS.

2. Public Hearing

To provide additional information and to answer customer questions, Administrative Law Judge Christina Smith conducted an open house public comment hearing in Siletz on February 26, 2004. Staff members Dave Sloan and Bob Valdez and representatives from Qwest and Sprint were present to answer questions from customers. Information was presented by posterboards and informal conversations with customers. Customers had the opportunity to submit comments on note cards or a tape recorder.

Nearly 20 customers attended the hearing in Siletz. The comments they submitted were five to one in favor of implementing the new EAS route. Most comments related to the headquarters of the Siletz Tribe in Siletz and the Chinook Winds Casino in Lincoln City. Many people live in Siletz and work in Lincoln City, and the new EAS route would make calling between the two cities less expensive. Customers also stated that the flat rate charges for the new EAS route seemed reasonable.

Resolution -- Phase II

Based on the entire record in this proceeding, the Commission concludes that the interLATA EAS route between the Siletz 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, 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 Siletz and Lincoln City exchanges. The interLATA EAS route is necessary to meet the critical needs of Siletz 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 some opposition to EAS expansion. Some Siletz customers objected to the EAS implementation, because they do not call Lincoln City and will be required to pay a nonoptional flat EAS rate for the service. In anticipation of these concerns, the Commission ordered Qwest to provide flexible billing to the Siletz customers. Under this billing method, Qwest must provide customers both flat rate and measured rate options on intraLATA EAS routes, and nonoptional, flat rate service on interLATA EAS routes. In other words, the flexible billing will allow Qwest 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. Due in part to these measures, Qwest and Staff were able to stipulate to relatively low rates for the interLATA EAS routes. 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 Siletz and Lincoln City exchanges.

CONCLUSIONS

Based on the record developed in this docket, the Commission concludes that the proposed EAS route between the Siletz and Lincoln City exchanges is in the public interest, and Qwest should 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 October 2, 2004.

ORDER

IT IS ORDERED that:

1. The petition filed by the Siletz exchange for EAS with the Lincoln City exchange is granted.
2. The stipulations entered into between Staff, Qwest Corporation, and Sprint, 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 _____.

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.