ORDER NO. 00-150

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 915

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

DISPOSITION: STIPULATION ADOPTED;
U S WEST COMMUNICATIONS, INC. DIRECTED TO PURSUE LATA WAIVERS

SUMMARY

In this order, the Commission grants a petition for Extended Area Service (EAS) between the Jefferson and Salem telephone exchanges. The petition is unique, in that it seeks EAS across a LATA boundary. [1] The Jefferson exchange is located in the Eugene LATA, while the Salem 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. The local exchange company involved in this proceeding, U S WEST Communications, Inc. (U S WEST), is prohibited under federal law from providing telecommunications services across LATA boundaries. Consequently, to allow this interLATA EAS route, U S WEST must obtain a waiver of the LATA restriction from the Federal Communications Commission (FCC).

The Commission directs U S WEST 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 7, 2000.

[1] LATAs, 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 November 30, 1998, the customers of the Jefferson telephone exchange filed a petition for extended area service (EAS) to the Salem telephone exchange. The Commission docketed the request as UM 915 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 warrants 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 Salem exchange, the Jefferson 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 July 29, 1999, the Commission Staff filed testimony for Phase I, Community of Interest Determination. Based on a review of geographic and telephone usage information, Staff concluded that the petition satisfied the objective community of interest criteria set forth in Order Nos. 89-815 and 92-1136.

On September 21, 1999, Michael Grant, an Administrative Law Judge for the Commission, held a hearing in Jefferson, Oregon, to allow the petitioners an opportunity to make a showing of "critical needs." Approximately 100 people attended the hearing, many of whom testified in support of the petition. Based on the evidence presented, the Commission concluded that the interLATA EAS route is necessary to meet the critical needs of customers in the Jefferson exchange. *See* Order No. 99-633.

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, U S WEST 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. 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, U S WEST filed cost studies and proposed tariffs for the interLATA EAS route between the Jefferson and Salem exchanges. Staff reviewed the cost studies and proposed tariffs and, after conducting discovery and the exchange of information, entered into a stipulation with the company. No party filed an objection to the stipulation, which is set forth in Appendix A. The stipulated EAS rates for the Jefferson and Salem exchanges are set out in Appendix B. On March 3, 2000, James Stanage, 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 U S WEST substantially meet these rate and cost recovery criteria and recommends that the Commission adopt them. Under the stipulated rates, Jefferson customers would pay $2.05 and $3.00, respectively, for flat rate residential and business EAS to the Salem exchange. Salem customers would pay $0.05 and $0.07, respectively, for flat rate residential and business EAS to the Jefferson exchange.

2. Customer Balloting and Public Hearings

During the month of December 1999, U S WEST mailed Jefferson and Salem 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, and that both exchange customers would be required to pay a nonoptional flat rate for the proposed EAS route. Because the ballots were printed and mailed before Staff completed its review, the stated rates were actually higher than those later agreed to by Staff and U S WEST. The ballot indicated that, for Jefferson exchange residents, the proposed EAS rate to Salem would be $3.56 per month for residential customers and $4.75 per month for business customers. For Salem exchange customers, the ballot stated the proposed EAS rate to Jefferson would be $0.06 per month for residential customers and $0.08 per month for business customers.

To provide additional information and to answer customer questions, Administrative Law Judge Michael Grant conducted public comment hearings in Salem and Jefferson on January 5, 2000, and January 12, 2000, respectively. At both hearings, Staff member James Stanage made an informational presentation explaining the Commission's interLATA EAS policy and requirements imposed by federal law. Mr. Stanage also prepared and distributed a handout explaining the companies' proposed EAS rates.

Less than 15 customers attended the hearing in Salem, while over 40 attended the hearing in Jefferson. Some 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. Other customers opposed the EAS rates. In general, these opponents testified that they had little need to call the other exchange and did not anticipate a future need to do so. These customers felt strongly that any increase in their EAS rate was a charge for a service they would not use.

The Commission received similar input from the advisory customer ballot. A total of 9,002 Salem customers returned valid ballots to the Commission. Approximately 63 percent of those responding opposed EAS expansion to the Jefferson exchange, primarily due to the lack of a perceived need to call the exchange. The remaining 37 percent favored EAS expansion to the Jefferson exchange, notwithstanding the nonoptional flat EAS rate. A total of 622 Jefferson customers returned valid ballots to the Commission. Not surprisingly, a greater percentage of Jefferson customers favored EAS expansion. Of those responding, about 82 percent favored EAS expansion to the Salem exchange. The remaining 18 percent opposed EAS expansion.

Resolution -- Phase II

Based on the entire record in this proceeding, the Commission concludes that the interLATA EAS route between the Jefferson and Salem 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 and U S WEST, 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 Jefferson and Salem exchanges. The interLATA EAS route is necessary to meet the critical needs of Jefferson exchange customers. These customers depend heavily on the Salem 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 certain amount of opposition to EAS expansion, especially from customers in the Salem exchange. This opposition was expected. Given the size difference between the exchanges, many Salem customers may perceive a lack of need to call the smaller petitioning exchange. Indeed, the Commission has determined that the Jefferson exchange lacks sufficient business resources to support the needs of their own customers, let alone the needs of residents located in a larger neighboring exchange. Some Jefferson and Salem customers objected to the EAS implementation because they will be required to pay a nonoptional flat EAS rate for the service. Given the federal LATA restrictions imposed by the FCC, the Jefferson and Salem customers will lack a measured option for the interLATA EAS routes. *See discussion*, Order No. 98-201 at 3.

Due to these reasons, the Commission took efforts to mitigate the concerns of the Jefferson and Salem customers. In addition to conducting a customer ballot, the Commission directed U S WEST 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 both companies to provide flexible billing to the Jefferson and Salem customers. Under this billing method, U S WEST must provide customers both flat rate and measured rate options on *intra*LATA EAS routes, and nonoptional, flat rate service on *inter*LATA EAS routes. In other words, the flexible billing will enable the U S WEST to maintain the Commission's customer choice EAS billing policy for non-interLATA routes for customers in the two exchanges. 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, U S WEST and Staff were able to stipulate to relatively low rates for the interLATA EAS routes. For Jefferson exchange residents, the stipluated EAS rate to Salem was $2.00 per month for residential customers and $3.00 per month for business customers. For Salem exchange customers, the stipulated EAS rate to Jefferson is $0.05 per month for residential customers and $0.07 per month for business customers. Both Jefferson and Salem exchange customers are also able to continue to select either a flat or measured EAS rate for other existing EAS routes.

Perhaps due to these relatively low rates, opposition from the Salem exchange customers was lower than might be expected. As noted above, almost 40 percent of those customers returning valid ballots were in favor of EAS expansion to the Jefferson exchange, despite the nonoptional flat EAS rate and limited need to call the smaller exchange.[2] Many Salem exchange customers favoring EAS expansion realize significant benefits of including the Jefferson exchange into their toll-free calling area. Additional support of outlying areas will help local businesses, which in turn will provide a greater number and variety of services to local residents in Salem. These customers believe that the implementation of an EAS route to Jefferson will help further strengthen Salem's local economy to the benefit of Salem exchange customers.

There was greater support for EAS expansion in the Jefferson exchange. Even with a stated EAS rate of $3.56 for residential customers and $4.75 for business customers, over 80 percent of Jefferson exchange residents returning ballots favored the interLATA EAS route. It is reasonable to conclude that support would have been even greater had the ballots been mailed listing the substantially lower stipulated rates of $2.05 and $3.00, respectively, for residential and business customers.

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 Jefferson and Salem exchanges. Furthermore, the Commission notes that the nonoptional, flat EAS rates imposed on customers of the Jefferson and Salem customers are not permanent. While U S WEST 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. Once U S WEST obtains such approval, the nonoptional, 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 Jefferson and Salem exchange is in the public interest. U S WEST is directed to pursue a LATA waiver to allow the interLATA EAS route. If and when FCC approval is obtained, the Commission will provide additional information regarding customer notification, requirements for default service, and other matters necessary to allow implementation of the interLATA routes by October 7, 2000.

ORDER

IT IS ORDERED that:

1. The petition filed by the Jefferson exchange for EAS with the Salem exchange is granted.

[2] It is important to note that the results might have been even more favorable had the ballots included the lower stipulated EAS rates, as opposed to the higher rates initially proposed by U S WEST.

2. The stipulation entered between Staff and U S WEST Communications, Inc., set forth in Appendix A, is adopted.

3. U S WEST Communications, Inc., 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 ____________________.

Ron Eachus Chairman	**Roger Hamilton** 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.