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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 957

In the Matter of an Investigation of the)
Extended Area Service Process and)
Standards.)

ORDER

**DISPOSITION: EXTENDED AREA SERVICE PROCEDURES
MODIFIED**

In this order, the Commission makes several modifications to the standards governing extended area service (EAS) to streamline and expedite EAS implementations. We amend the petitioning process, to allow subscribers to sign the petition as many times as they have lines if access lines are used as a surrogate for customer accounts. We eliminate the review of calling pattern data as a decisive measure of a community of interest in objective criteria determinations. As a result, all EAS petitions will first proceed to a demographic hearing to determine whether a community of interest exists between the petitioning and target exchanges. At these hearings, however, we will continue to examine, with other information submitted, the measurable toll data to help determine the existing calling patterns between the exchanges. Finally, we shorten the annual deadline for EAS implementations. To fully realize the benefits of earlier modifications to the EAS schedule, we move the traditional EAS deployment date from October to August. We will apply these new procedures to all down-state EAS petitions and Phase I dockets currently pending before the Commission.

INTRODUCTION

In Order No. 99-743, the Commission opened a limited investigation of extended area service (EAS). Based on a Staff recommendation—made on the industry's behalf—we initiated this docket to examine:

whether any changes should be made with respect to: (1) Phase I issues, including EAS petitioning, traffic/data collection and community of interest reviews; and (2) Phase II issues, including cost and rate reviews. The goal of this investigation will determine whether any further modifications can be made to these procedures to help streamline and expedite EAS procedures.

Order No. 99-743 at 3.

We noted, however, that the investigation would be limited in nature. Specifically, we clarified that the docket would not address EAS rate and cost standards used in Phase II proceedings. Moreover, we excluded a review of broader issues such as the role of EAS in a

competitive marketplace, as well as any examination of procedures utilized in petitions seeking expansion of the Portland EAS Region.

PREHEARING CONFERENCE

On January 25, 2000, Michael Grant, an Administrative Law Judge for the Commission, held a prehearing conference in this matter in Salem, Oregon. The following appearances were entered: James Jensen, authorized representative, on behalf of Malheur Bell (Malheur); Larry Hall, authorized representative, on behalf of Oregon Telecommunications Association; Edwin Parker, authorized representative, on behalf of Parker Communications (Parker); Laura Imeson, authorized representative, on behalf of AT&T Communications; Dean Randall, authorized representative, on behalf of Verizon Northwest, Inc. (Verizon) (formerly GTE Northwest Incorporated); Kay Barley, authorized representative, on behalf of Qwest Corporation (Qwest) (formerly U S WEST Communications, Inc.), Celynn VanDeventer, authorized representative, on behalf of United Telephone Company of the Northwest, dba Sprint (Sprint); Paul Hauer, authorized representative, on behalf of Beaver Creek Cooperative Telephone Company; and David Hatton, Assistant Attorney General, on behalf of the Commission Staff (Staff).

ISSUES

Pursuant to the established procedural schedule, Verizon, Qwest, Sprint, Malheur, Parker and Staff filed proposed issues lists to better define the scope and substance of the investigation. On March 21, 2000, ALJ Grant issued a ruling adopting the following as issues for the docket:

Petitioning

1. In determining the sufficiency of an EAS ballot, should the Commission reduce the requirement of signatures from 25 percent to 15 percent of customers in the exchange?
2. In the petitioning process, should the Commission rely on the number of access lines or customer accounts?
3. If counts are based on the number of lines in lieu of subscribers, should customers with multiple lines be allowed to sign EAS petitions as many times as they have lines?

Phase I

1. Should the Phase I traffic study be expanded to include all land-line toll carriers? Wireless carriers?
2. If the Commission is unable to obtain accurate calling data between exchanges, should it:
 - a. Adopt certain assumptions about traffic carried by wireless and other interexchange carriers?

- b. Forego a Phase I study and proceed with a demographic study?
- c. Combine a Phase I and demographic study?

Phase II

- 1. If accurate Phase I data cannot be obtained, can Phase II data be normalized to correct Phase I distortions?

Timing Issues

- 1. Should the Phase I and Phase II EAS schedules be shortened to require that the Commission issue a final EAS order within 12 months of receipt of a valid petition? If so, how?
- 2. Should the schedule be extended to allow carriers up to six months from the effective date of the order to implement approved EAS routes?

On June 14, 2000, ALJ Grant also issued interrogatories asking the parties to address two other issues:

- 1. If the Commission decides to eliminate the Phase I review of calling data and proceed with demographic hearings for all valid EAS petitions, should the Commission conduct an advisory ballot of customers in the petitioning exchange during Phase II to help determine community support for EAS at the projected costs?
- 2. If customers can file EAS petitions at any time of the year, is it possible for the Commission to issue a final EAS order within 12 months if the Phase II tariff analysis continues to be conducted on a consolidated basis beginning in August of each year? For example, how would the Commission complete an annual review of a valid EAS petition received in January?

COMMENTS AND CONCLUSIONS

The Commission received opening and reply comments from Parker, Verizon, Sprint, and Staff. The parties also filed opening and reply briefs. We group our discussion of the comments, legal arguments, and conclusions by issue as follows:

Petitioning

Positions of the Parties

Staff and **Parker** believe that the Commission should make two changes to the current petitioning process. Currently, EAS petitions must bear “25 percent of subscribers or 5,000 signatures, whichever is less.” Order No. 89-815 at 34. Because the

signature threshold requires petitions to be evaluated on a customer account basis, Staff allows customers only one signature, regardless of the number of phone lines. In practice, however, Staff has had difficulty in obtaining customer account information from local exchange companies and has been compelled to use line counts as a surrogate for customer accounts to determine whether the 25 percent threshold has been met. The inconsistency of using line counts but allowing only one signature per customer has caused customer confusion and frustration. Moreover, Staff has noticed that larger exchanges have had greater difficulty in satisfying the 25 percent signature requirement.

In determining the sufficiency of an EAS ballot, Staff and Parker first propose the Commission adopt a “tapered” signature requirement based on the size of the petitioning exchange. To help address the fairness concerns raised by larger exchanges without opening the floodgate of EAS petitions, Staff and Parker recommend that the Commission impose a lower signature requirement as the size of the petitioning exchange increases. For example, they propose that the existing 25 percent standard could be used for exchanges of 1,000 access lines or less, but that a 20 percent signature requirement could be established for exchanges with between 1,001 and 3,000 lines, and a 15 percent standard for exchanges with over 3,001 lines.

Second, Staff and Parker contend the Commission should eliminate the inconsistent use of line counts and customer account information. Both parties believe that counting lines as a surrogate for customer accounts, while limiting multiple-line customers to one signature per petition is inequitable. They recommend that the same measure be used in both the numerator and denominator to calculate the percentage of signatures required. If Staff continues to use the number of access lines in the denominator, the parties believe that the Commission should allow customers to sign the petition as many times as they have lines.

Verizon and Sprint oppose any change to the current petitioning process. Because mandated EAS establishes cross-subsidies between customers and affects the competitive marketplace, Verizon does not believe the Commission should lower procedural thresholds until it examines broader EAS public policy issues. Sprint acknowledges that larger exchanges might have more difficulty in obtaining a sufficient number of customers, but notes that current standards already offer some relief by capping the number of signatures required to 5,000. It also notes that, because it is becoming more difficult to measure customer demand and calling patterns, the petitioning process remains one of the true indicators of community support for the proposed EAS.

Commission Resolution

As Staff explains, the Commission currently requires a valid EAS petition to be signed by 25 percent of the customers in the petitioning exchange, or 5,000, whichever is less. This requirement provides the Commission some verification that a genuine and significant level of interest for EAS exists among customers in the petitioning exchange. It also helps ensure that the petitions are representative of more than just a small minority of customers. This is important, because the implementation of a new EAS route affects all customers within the petitioning exchange, including low-volume customers who may not benefit from EAS conversion.

We acknowledge that, by requiring a minimum percentage of customer signatures, the petitioning standards place a higher burden on larger telephone exchanges. While petitioners in an exchange of just 100 customers need obtain just 25 signatures, petitioners in a larger exchange of 3,000 customers must gather 750 signatures. We do not believe, however, that this increased burden is an unfair one. As noted above, the petitioning requirement was established to ensure a genuine and representative support for EAS conversion. While a threshold representation of just 25 percent of the customer requires more signatures for larger exchanges, the increased signatures are simply proportionate to the number of customers that would be affected by EAS implementation. Moreover, as Verizon notes, the current standards already address the difficulty of EAS proponents obtaining signatures in larger exchanges by capping the number of signatures at 5,000.

For these reasons, we are not persuaded that the current signature requirement should be reduced to make it easier for petitioners to initiate EAS dockets. Because EAS conversion affects all customers within a petitioning exchange, we continue to believe that the current 25 percent customer requirement—capped at 5,000 signatures—provides a proper balance between the need to ensure that petitions are representative of more than just a small minority interest in the community and the difficulty of petitioners in larger exchanges in meeting the signature requirement.

We further conclude, however, that the same measure should be used in the numerator and denominator when calculating whether a submitted petition meets the signature requirement. We prefer that petitions continue to be evaluated on a customer account basis. Accordingly, prior to providing a petitioner with signature forms, our Staff should continue to request customer account information from the affected telephone company. If provided, our Staff will be able to inform the petitioner of the number of signatures needed, as well as the limitation that a customer can only sign the petition once. If the local telephone company is unable to provide accurate account information, however, Staff should advise the petitioner that access lines will be used as a surrogate for customer accounts and that, in such circumstances, customers may sign the petition as many times as they have lines. We believe that this modification is required in the interest of fairness and accuracy, and will hopefully eliminate the customer confusion caused by current practice.

Phase I

Positions of the Parties

In Phase I of an EAS investigation, the Commission determines whether a community of interest exists between the petitioning exchange and target exchange(s). Staff first attempts to make this determination based on an analysis of calling pattern data. In this process—called objective criteria determination—Staff reviews calling data to determine whether a sufficient number of calls are placed between the exchanges, and whether a sufficient percentage of customers in the petitioning exchange are making those calls.¹ If a

¹ The calling volume criterion requires that an average of four toll calls per access line per month be placed between the exchanges, while the calling distribution criterion requires that more than 50 percent of the customers in the petitioning exchange make at least two toll calls per month to the target exchange(s). See Order Nos. 89-815 and 92-1136. The objective criteria determination also requires that the petitioning exchange share a common boundary with the target exchange(s), although the Commission recently modified its standards to

petition fails to meet these calling criteria, petitioners may request the opportunity to make an alternative showing of a community of interest through demographic, economic, financial, or other evidence.

All parties to this investigation agree that the accuracy of Staff's Phase I investigation results, based on a measurement of calling pattern data, are becoming more suspect due to competitive changes in the telecommunications industry. Due in part to jurisdictional limitations, Staff's analysis is limited to intraLATA toll traffic carried by primary toll-carriers, such as Qwest, Verizon, and Sprint. However, the increased use of other interexchange and wireless carriers, together with the implementation of intraLATA dialing parity, has conspired against the continued use of this traffic as a surrogate of toll use to judge the extent of a community of interest between two or more exchanges.

Due to these problems, **Staff**, **Parker**, and **Sprint** recommend that the Commission discontinue use of the objective criteria determinations. The parties note that, due to the lack of measurable toll data, most recent EAS petitions underwent demographic reviews before proceeding to Phase II. In fact, over 70 percent of the successful EAS petitions for the prior two years established a community of interest through demographic evidence. Given this existing trend and the inaccuracies of the objective criteria determinations, Staff, Parker, and Sprint believe that the Commission should forego the review of calling pattern data and proceed with a demographic hearing for all EAS petitions.

Verizon acknowledges the deficiencies of Staff's objective criteria determinations. It does not believe, however, that the Commission should disregard calling pattern data in its community of interest determinations. Verizon contends that the sole use of demographic data may result in EAS implementations for routes where there is, in fact, little toll calling. Verizon argues that the Phase I traffic studies should be expanded to include traffic carried by all land-line toll and wireless carriers. It also suggests that, if accurate data cannot be obtained, the Commission could adopt certain assumptions about traffic carried by wireless and other interexchange carriers.

Commission Resolution

Under current EAS procedures, the Commission relies on Staff's objective calling determinations for two purposes. As addressed by the parties, Staff's results are first used as a preliminary determination of a community of interest. If a petition meets the objective criteria, the Commission will deem that a community of interest exists and allow the petition to proceed to Phase II for tariff analysis without further review. The other use of Staff's objective calling determinations, not specifically mentioned by the parties, is during the alternative showing of a community of interest through demographic evidence. In this stage, the Commission considers numerous factors, including the results of the objective criteria test.²

allow a community of interest determination between non-contiguous exchanges in certain circumstances. *See* Order No. 99-038.

² Those 11 factors are as follows:

- (1) geographic and demographic information; (2) location of schools;
- (3) governmental and jurisdictional issues; (4) emergency services; (5) social

There is no dispute that the Staff's objective criteria determinations are becoming less reliable as an accurate indicator of a community of interest. Given this fact, we agree with Staff, Parker, and Sprint that the objective criteria determinations should no longer be used as an initial measure of a community of interest. Due to the lack of measurable toll data, we will forego the initial review of calling pattern data and proceed with a demographic hearing for all docketed EAS petitions. This modification is consistent with the increasing use of demographic hearings, and will help expedite Phase I reviews.

However, we further conclude that objective calling information remains an important and necessary part of EAS proceedings. While calling data will no longer serve as a decisive measure of a community of interest, it is a relevant factor that should be considered with the other evidence submitted in demographic hearings. Although admittedly imprecise, the calling data might still be representative of the average calling volume and distribution in a given exchange. In fact, it may demonstrate large and widespread dependence by the petitioning exchange on the target exchange. It may also provide valuable information about the relative calling habits of petitioners seeking EAS to more than one exchange.

Accordingly, when docketing an EAS petition, Staff should continue to request calling pattern data from the local telephone companies. Upon receipt, Staff should summarize the data to identify the calling volume and distribution between the petitioning and target exchanges, without reference to the objective calling criterion adopted in Order Nos. 89-815 and 92-1136. Such data will be added to the record and reviewed with other information submitted during the Phase I proceeding.

Phase II

Positions of the Parties

In its proposed issues list, **Sprint** raised the question whether Phase II data is undermined if, in fact, Phase I calling data is faulty and unrepresentative. Based on that observation, Sprint proposed that the Commission examine whether Phase II data can be normalized to correct any Phase I distortions.

Staff was the only party to offer specific comments on the issue. It explains that it currently uses calling data during both Phase I and Phase II in an EAS investigation. For Phase I, Staff uses both calling volume and customer distribution to determine a community of interest. For Phase II, Staff uses calling volume, but not customer distribution, to help determine revenue neutrality. Staff believes that it can obtain the necessary calling volume information to establish revenue neutrality in Phase II by means of a simple data

services; (6) medical and dental providers; (7) employment and commuting patterns; (8) business and commercial dependence or interdependence; (9) transportation patterns; (10) the results of the objective criteria test; and (11) other factors deemed relevant by the Commission. *See In the Matter of the Consolidated Applications for Expansion of the Portland Extended Area Service Region*, Order No. 93-1045, at 12 (emphasis added).

request. According to Staff, local exchange carriers should be motivated to respond to such requests in an accurate manner because the response would be the first step taken to guarantee revenue requirement neutrality.

Commission Resolution

From Staff's explanation, it appears that, despite the noted difficulties in obtaining accurate and complete Phase I data, Staff has had no difficulty in obtaining the necessary calling volume information to establish revenue neutrality in Phase II. Indeed, as Staff notes, local exchange carriers are motivated to provide accurate information to help guarantee proper revenue recovery. Because there is no evidence that the Phase II data is distorted by Phase I calling data, there is no need to further address this issue.

Timing Issues

Under current standards, EAS petitions undergo a Phase I, Community of Interest determination as they are received. On August 1 of each year, the Commission consolidates all petitions that have successfully completed Phase I and begins Phase II, Tariff Analysis. In mid-October, telephone companies file proposed tariffs and cost information, which is reviewed by Staff to ensure that the proposed rates meet Commission criteria. After discussions with all companies involved, Staff files stipulations and supporting testimony in March. Traditionally, public comment hearings were held during April through June, with a Commission order issued around mid-July. The new EAS routes were then implemented the first Saturday of the following October.

We recently shortened the Phase II schedule by accelerating the public hearing schedule and shortening the time between the close of the evidentiary record and the issuance of the final order. With these changes, the Commission now holds hearings in March and April, and issues an order in May of each year. In addition, local exchange carriers may implement new EAS routes at anytime between the date of the Commission order and the traditional deployment date of the first Saturday in October.

In an effort to further expedite the Phase I and Phase II EAS schedule, **Staff** has proposed an annual schedule to process all petitions received by early August that would result in a Commission order by the following July. First, with the elimination of the objective criteria determinations, all valid petitions would be grouped together each August with demographic hearings scheduled shortly thereafter. The Commission would then issue community of interest determinations by late September, and the local exchange carriers would file proposed costs and rates for all successful routes by November 1. Staff would evaluate the filings and file testimony in support of stipulations by mid-March. Public comment hearings would follow in April and May, with a final Commission order being issued by mid-July. **Parker** and **Sprint** support Staff's proposal.

Verizon suggests that the schedule might be shortened by consolidating the objective and demographic review, so that both studies would be conducted concurrently. Verizon is concerned, however, that this approach could raise false hopes in areas that fall short of meeting the objective calling standards.

Finally, in its proposed issues list, **Malheur** questioned whether the schedule should be extended to allow carriers up to six months from the effective date of the order to implement approved EAS routes. Only Staff and Parker addressed the issue, and both opposed extending the current standard.

Commission Resolution

Staff's proposal is, essentially, one to eliminate the separate and multiple Phase I proceedings by consolidating them within the current Phase II schedule. This may help streamline the overall EAS investigation; however, it will not substantially shorten the overall review of EAS petitions. Under Staff's proposal, some applications could be pending as long as in the current timeline. For instance, a petition filed in September would sit idle for some 11 months before the next annual EAS cycle is commenced.

More problematic is the allowance of just two months for demographic hearings for all EAS petitions. Since 1995, the Commission has docketed an average of more than 20 EAS petitions every year. While the number of petitions is expected to decline in the future, it would be difficult for the Commission to schedule, conduct, and issue orders for a large number of EAS petitions in such a short time period.

Accordingly, we decline to adopt Staff's proposal to establish an annual cycle for both Phase I and Phase II proceedings. The proposal does not reduce the overall time required for EAS investigations, but rather simply consolidates it at the expense of the flexibility currently enjoyed by the Commission in conducting demographic hearings throughout the year. All EAS petitions should continue to undergo a community of interest examination on a sequential basis, as they are received. As is current practice, those petitions successfully completing Phase I will be consolidated for Phase II on August 1 of each year.

We do believe, however, that the Phase II schedule can be further modified to allow quicker deployment of EAS by as much as two months. As noted above, we traditionally allowed carriers approximately three months after the effective date of the order to implement the new EAS routes. The Commission generally issued a order in early July, and requested carriers to implement the new EAS routes on the first Saturday in October. *See, e.g.,* Order No. 99-409.

We recently modified the Phase II schedule, however, by accelerating the hearings and reducing the time for Commission review. With these changes, we now approve new routes by mid-May of each year. *See* Order No. 99-743. However, while the new schedule allows EAS conversion to occur at anytime following the date of the order, it retains the traditional October deadline for the telephone companies to actually implement the new routes. Because the new schedule provides the phone companies earlier notice of final Commission action on any particular EAS petition, we believe that, in order to fully realize the benefits of this abbreviated process, the October deadline should be moved up to the first Saturday in August. This will ensure that all new approved EAS routes will be implemented within one year after Phase II proceedings begin.

Finally, we reject Malheur's proposal to extend the schedule to allow carriers up to six months from the effective date of the order to implement approved EAS routes. No

party supported the proposal, which is contrary to the goal of this docket to streamline and expedite EAS implementations.

Balloting

Positions of the Parties

If the Phase I review of calling data is eliminated, **Staff** and **Verizon** believe that the Commission should conduct an advisory ballot of customers in the petitioning exchange to help determine support for the EAS at the projected costs. Staff notes that evidence presented at demographic hearings might be anecdotal, incomplete and possibly inconsistent with established calling patterns. Furthermore, Staff believes that demographic proceedings might overstate customer preference for EAS, because customers attending the hearings do not have access to actual rates for the service. Staff and Verizon contend that an advisory ballot that includes proposed EAS rates would provide a “safety valve” to ensure that petitioning customers desire the deployment of an EAS route.

Sprint and **Parker** do not believe that customer balloting is warranted if the Phase I proceedings are modified. Parker contends that balloting would add an additional and unnecessary step to an already complex process in a proceeding initiated to simplify and shorten EAS investigations. For these reasons, it believes that balloting should, at most, be limited to rare and unusual cases as is current practice.

Commission Resolution

We have concluded that calling pattern data will continue to be examined during Phase I proceedings. While it will no longer be used as an initial and decisive measure of a community of interest, measurable toll data will provide the Commission with some objective evidence of existing calling patterns between exchanges.

In light of this decision, we find no reason to modify the current practice of limiting customer balloting to unique cases. We have used balloting to obtain additional customer input in cases where projected costs are higher than expected, or where federal restrictions have imposed mandatory charges for interLATA EAS routes. *See, e.g.*, Order Nos. 98-385 and 99-001. We prefer to retain Staff’s ability to recommend customer balloting if circumstances warrant, rather than mandating this additional and potentially costly step for all EAS proceedings.

Implementation of Revised Standards

One issue not specifically addressed by the parties is the implementation of the revised EAS standards. Given the benefits of the changes detailed above, we conclude that the new standards should apply to all EAS petitions and Phase I dockets currently pending before the Commission, except those seeking expansion of the Portland EAS Region.

ORDER

IT IS ORDERED that the Commission modifies the following standards governing extended area service (EAS) to streamline and expedite EAS implementations:

1. The EAS petitioning process, set forth in Order No. 89-815 at 34, is amended to allow subscribers the ability to sign the petition as many times as they have lines if local exchange companies are unable to provide accurate customer counts and Staff is required to use access lines as a surrogate for customer accounts. If the local exchange companies can provide accurate customer account information, customers will continue to be limited to one signature per account.
2. The review of calling pattern data, as a decisive measure of a community of interest in objective criteria determinations, is eliminated. All docketed EAS petitions will first proceed to a demographic hearing to determine whether a community of interest exists between the petitioning and target exchanges. In determining whether petitioners have established a community of interest through demographic and other information, the Commission will continue to examine, among other things, calling pattern data submitted by local exchange carriers.
3. Local exchange carriers will be required to implement new approved EAS routes by the first Saturday in August of each year.
4. These new standards will apply to all EAS petitions and Phase I dockets currently pending before the Commission.

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 applicable law.