

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Petitions Received by ) the Committee for Extended Area Services, ) From the Residential Telephone Consumers ) From Alta/Snowbird Exchange. )	<u>DOCKET NO. 91-049-15</u>
In the Matter of the EAS Petition Between ) Leeds and Hurricane. )	<u>DOCKET NO. 96-049-26</u>
In the Matter of the Petition for EAS From ) Brigham City to Ogden, Clearfield, and ) Kaysville. )	<u>DOCKET NO. 96-049-22</u>
In the Matter of the EAS Petition Between ) Alta and Salt Lake City. )	<u>DOCKET NO. 96-049-21</u>
In the Matter of the EAS Petition Between ) Blanding, Bluff, Lake Powell, and Mexican ) Hat. )	<u>DOCKET NO. 96-049-09</u>
In the Matter of the Petition for EAS From ) Lehi to Salt Lake City. )	<u>DOCKET NO. 96-049-02</u>
In the Matter of EAS for Tooele. )	<u>DOCKET NO. 97-049-07</u>
In the Matter of EAS Between Brian Head- ) Cedar City/Parowan. )	<u>DOCKET NO. 97-049-03</u>
In the Matter of the Petition for EAS From ) Richfield and the Junction Utah Area to Salt ) Lake City. )	<u>DOCKET NO. 97-049-19</u>
In the Matter of EAS for Nephi to Goshen, ) Payson, Provo, Orem, Salem, Santaquin, ) Spanish Fork, and Springville Exchanges. )	<u>DOCKET NO. 97-049-28</u>
	<u>ORDER</u>

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ISSUED: September 14, 1998

BY THE COMMISSION:

These dockets are associated with various petitions seeking extended area telephone service (EAS) between certain telephone exchanges in the State of Utah. EAS results in the conversion of calls that are routed and treated as message toll service (MTS), or long distance calling, between the exchanges into calls that are routed and treated as part of the customers' basic local exchange service, or local calling. MTS has traditionally been offered and priced on a measured basis to have users pay for the service that they actually use. Pricing is based upon an intentional goal of having users pay the costs believed to be associated with their usage, rather than high volume, low volume and non-users of the service being averaged together. This cost causation principle receives less weight when considering telephone service associated with dealings or relationships within the customers' local community. Utah has established a public policy that telephone calls within a "community of interest" ought not to be provided on a measured, per minute of use charge basis. These calls should be included in the flat rated, volume insensitive, basic local exchange offering to which most

Utah customers subscribe.<sup>(1)</sup> The policy rationale for EAS is to permit telephone customers to have local telephone service which covers the exchange customers' "community of interest" priced on a flat, volume insensitive basis without regard to high or low usage among the individual customers who make up the community. The combined customers' or community's overall interest and benefit, believed to be furthered by the flat rated calling capability, is often placed above the individual customer's interest in charges proportionate to the customer's actual, as opposed to averaged, usage.

Where all customers are served out of one central office, a "community of interest" has been assumed; usually implicitly rather than explicitly. Cost of service is straight forward as community calls can be completed by the physical plant within the office. However, a community's size, topography, technological and engineering considerations many require that customers be served by more than one office. This requires transport facilities to be built between the offices with additional costs for equipment and operation, so that customers connected to one office can complete calls to customers connected to other offices. The successive extension of connections between offices (constituting the telephone network in a county, state, country, continent, and, ultimately, the world) creates the need to establish a point of demarcation that considers calls or connections within a certain geographic area to coincide with customers' "community of interest" and within the local calling area, and those beyond the demarcation to be long distance MTS. These dockets are part of the process that the petitioners and the Commission undertake to establish the geographic boundaries of a "community of interest."

For a variety of reasons, telephone exchange boundaries may not encompass a "community of interest." Engineering considerations in designing and building telephone networks at one point in time do not necessarily track the actual growth and development of the community over time. Once telephone plant is built and in place, it is not as amenable to the changing scope of the area residents' social and economic relationships as the residents themselves. Operational planning horizons for utility plant that lasts for decades has some difficulty in accommodating the impact of swiftly growing communities. While we believe that telephone companies, generally, have tended to establish and modify local telephone calling area boundaries of their exchanges to capture the "community of interest" or offered calling plans which may satisfy a customer's calling needs withing his "community of interest," there have been failures where customers have not been satisfied with the utilities' responses. In these circumstances, and specifically in these dockets, customers have petitioned the Commission to order the creation or expansion of an EAS area. In evaluating these petitions, the Commission has primarily relied upon the call volume between the exchanges as useful evidence of the existence of a "community of interest" between exchanges. We have been circumspect in trying to prevent the demands of vocal, heavy users of MTS from imposing rate increases upon a majority of infrequent users by establishing mandatory EAS. If sufficient call volume exists between customers and between the exchanges, the customers, through a statistical sample, are then polled to determine whether the exchange customers are willing to pay an additional monthly amount for the proposed EAS. At times, we have dispensed with measuring calling volume by permitting elected local government officials' support of the EAS consideration to obviate the need to measure the call volumes. We have assumed that the locally elected officials reflect the interests of their constituents and the officials' support evidences a "community of interest."

Many telecommunications corporations have opposed Commission mandated EAS, arguing that customers' needs can and will be met by competition between companies. Possible competition among local exchange companies is of recent vintage, permissible under 1995 amendments to Utah's utility laws. While possible since 1995, we have seen very little competition between telecommunications corporations in residential local exchange service offerings. However, we are sensitive to the belief that the theory of competitive markets in telecommunications could moot Commission mandated EAS. We subscribe to the view that robust, effective competition in telecommunications markets, given time, will provide adequate calling plans that will meet consumers' demands. In that end, we have also, informally, considered the use of optional, instead of mandatory, EAS plans. While some companies responded that optional EAS was not feasible, at least one company, Citizens Telecommunications Company of Utah, offers optional EAS.

We began to receive comments that, after the conclusion of US West Communications' last general rate case, some of the provisions of Utah's 1995 Telecommunications Reform Act, Laws 1995, Ch. 269 (1995 Act) could preclude further EAS creation or expansion in US West's service territory. We consolidated these dockets for the specific purpose of receiving comment and briefs on whether the provisions of the 1995 Act, found in U.C.A. §54-8b-2.4 (4)(a), preclude us from ordering further EAS in US West's service territory. We solicited responses from telecommunications corporations and communities, the latter, through direct solicitation of the Utah League of Cities and Towns and the Utah

Association of Counties. We ultimately received filings from US West, the Division of Public Utilities (Division), the Committee of Consumer Services (Committee), Uintah Basin Telecommunications Association (Uintah), Tel America of Salt Lake City, Inc. (TelAmerica), the towns of Alta and Brian Head, and the cities of Blanding and Lindon.

U.C.A. §54-8b-2.4(4)(a) provides:

The prices of tariffed telecommunications services offered by an incumbent telephone corporations with more than 30,000 access lines in the state may not increase during the three-year period commencing with the date of the final order in the last rate case initiated before May 1, 1997. The prices of services offered pursuant to a price list or competitive contract shall be governed by Section 54-8b-2.3

US West's last rate case initiated before May 1, 1997, was resolved by our Order issued December 4, 1997, and Order on Rehearing issued February 17, 1998, in Docket No. 97-049-08. The contention raised in early 1998 meetings was that if the Commission ordered EAS, the additional monthly rate for the service would violate the §54-8b-2.4 price ceiling.

Of the comments received from the local governments, none provided any analysis of the Act's impact on consideration of EAS in their environs. Brian Head and Alta described the desirability of EAS for their towns and requested that the Commission approve EAS for the customers in their communities. Blanding's letter stated that the City Council opposed Commission ordered, mandatory EAS. Blanding is served through Citizens Telecommunications Company's optional EAS and the City Council expressed their support of the current service offering. Lindon City supported continued EAS creation by the Commission.

TelAmerica, Uintah Basin<sup>(2)</sup>, the Division and the Committee<sup>(3)</sup> filed responses which conclude that §54-8b-2.4 precludes further Commission ordered EAS in US West's service territory. These parties argue that §54-8b-2.4(4) clearly prevents the rates for tariffed services, set pursuant to the Commission's Orders in Docket No. 97-049-08, from increasing during the three year price ceiling period. As additional EAS that may be ordered in these dockets entails an increase in an existing EAS charge or the imposition of an EAS charge where none previously existed, these parties conclude that §54-8b-2.4(4) prevents the Commission from ordering additional EAS. They argue that to conclude otherwise is to consider EAS ordered by the Commission, after the conclusion of the 97-049-08 Docket, to be "services offered pursuant to a price list or competitive contract," rather than "tariffed telecommunications services." They conclude that this is not possible.

US West may offer services pursuant to a price list or competitive contract pursuant to U.C.A. §54-8b-2.3(2)(b) and (c). §54-8b-2.3(2)(b) applies where the incumbent telephone company has petitioned for pricing flexibility in geographic areas served by competing telecommunications corporations. Incumbent telephone companies may be granted pricing flexibility when the conditions in §54-8b-2.3(2)(b) have been met. This has not occurred for US West. Under §54-8b-2.3(2)(c), an incumbent telephone company may price any new public telecommunications service by means of a price list or competitive contract. "New public telecommunications service" is defined in U.C.A. §54-8b-2(8). This section provides:

(8)(a) "New public telecommunications service" means a service offered by a telecommunications corporation which that corporation has never offered before. (b) "New public telecommunications service" does not include: (i) a tariff, price list, or competitive contract that involves a new method of pricing any existing public telecommunications service; (ii) a package of public telecommunications services that includes an existing public telecommunications service; or (iii) a public telecommunications service that is a direct replacement for: (A) a fully regulated service; (B) an existing service offered pursuant to a tariff, price list, or competitive contract; or (C) an essential facility or an essential service as defined in Subsection 54-8b-2(3).

TelAmerica, Uintah Basin, the Division and the Committee argue that "new public telecommunications service" can not be applied to EAS offered by US West. US West has previously offered EAS, so (8)(a) applies. EAS is offered by US

West on a flat rated monthly price in place of individually measured and billed MTS calls, so (8)(b)(i) applies. The EAS to be ordered in these dockets would be mandatory EAS that is unavoidably included in the rates that each exchange customer will pay for local exchange services, made up of their prior services and the additional EAS. Hence, (8)(b)(ii) is triggered. EAS operates as a direct replacement for MTS calls, therefore (8)(b)(iii)(A) and (B) are also applicable.

US West, alone, argues "that the establishment of new EAS does not result in a rate increase for any existing tariffed service. When new EAS is established, a charge is made for a service which was not previously available." US West Memorandum, page 8. US West's position is inviting, if considering only an effort to order EAS in these and future EAS dockets. However, we believe that the position is too expansive and would create an opportunity for abuse at odds with the intent and purpose of the 1995 Act. We understand the definition of 'new service' as representing the Legislature's intent to distinguish truly new services, never before offered by the telecommunications corporation, from services which may not have been offered in an exchange or area, but were available in other exchanges/areas and eventually are made available throughout a company's service area. An example is ISDN service. ISDN service has been available for a over a decade, albeit in limited areas of US West's Utah service territory. We do not believe that the Legislature intended ISDN to be treated as an old, price ceiling tariffed service in those exchanges where it was available in December, 1997, but to have the identical ISDN service be considered a "new" service when it becomes available in remaining Utah exchanges post December, 1997. Otherwise, the Legislature's purpose in distinguishing new, price listed services from previous, tariffed services would be made simply on the fortuity associated with the uneven deployment of a service within US West's territory, rather than the policy considerations which we believe underlie the 1995 Act's provisions. This approach subverts the intended distinction. Its application would permit every service made available to a new development/subdivision to literally be a "new" service if the area had no prior service.

We also believe that US West is wrong in stating that new EAS would not result in a rate increase for an existing tariffed service. As an example, we currently have pending an EAS application from Lehi exchange customers for the extension of their Utah County wide EAS into various Salt Lake area exchanges. US West's current tariffs provide, in Exchange and Network Services, Section 5, the EAS rates applicable within EAS area exchanges. The tariff provides specific dollar rates applicable to Lehi and Salt Lake's exchange areas based on their current EAS area coverage. If EAS between Lehi and these Salt Lake area exchanges were to be ordered, the tariffed EAS rate, for Salt Lake City's Main exchange, for example, would have to be changed, increased, to reflect the addition of the Lehi area to Salt Lake City's EAS calling territory. We are not able to order EAS in these dockets without also making the concomitant increase in rates for the additional service.

We conclude that we are unable to order the establishment of additional or new EAS in US West's service territory during the three year price ceiling period referred to in U.C.A. §54-8b-2.4(4). This period began at the conclusion of US West's last general rate case, in Docket No. 97-049-08; our last order being issued on February 17, 1998. During this three year period of time, we will stay any further consideration of all EAS dockets. Whether service offerings voluntarily made available by incumbent telephone companies and/or whether the anticipated competition between telecommunications service corporations during this three year period moot further consideration after the three year period remains to be seen. If a need remains, we intend to explore whether the provisions of U.C.A. §54-8b-2.4(5), which control the regulatory regime for the time after the three year price ceiling period, would permit us to make further deliberations on and consideration of EAS service within US West's Utah service territory.

### ORDER

WHEREFORE, the Commission hereby orders that, to the extent that there remained further proceedings or Commission deliberations in these Dockets for EAS service that would be provided in US West Communications' Utah service territory, the same are stayed until February 18, 2001.

DATED at Salt Lake City, Utah, this 14th day of September, 1998.

/s/ Stephen F. Mecham, Chairman

(SEAL) /s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

1. Some customers in Utah subscribe to a local exchange service offering that can be characterized as offered on a 'measured' basis, rather than a flat rated or set price per billing cycle, volume insensitive basis. However, even in these cases, EAS still has an impact. These local service offerings typically measure the number of completed calls in the billing period, not the duration of each individual call. Hence, an EAS call would be counted toward the offerings's call allowance, but would not be billed on a per minute of use basis as MTS.
2. The Briefs filed by TelAmerica and Uintah Basin are identical.
3. The Division and the Committee filed a joint memorandum.