

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of Extended Service Service)
(EAS) for Uintah and Duchesne Counties)

DOCKET NO. 02-053-02

ORDER GRANTING EAS APPLICATION

ISSUED: May 13, 2003

By The Commission:

On May 28, 2002, Uintah Basin Telecommunications Association, Inc. (UBTA) and its wholly owned subsidiary UBET Telecom, Inc. (UBET) filed a request for agency action to approve the creation of an Extended Area Service (EAS) which would provide local calling within all of Uintah and Duchesne Counties and the Strawberry Valley portion of Wasatch County (Uintah Basin). UBTA is a telephone cooperative operating exchanges in LaPoint and Randlet, Uintah County, and in Fruitland, Flattop, Nelo, and Tabiona, Dushesne County. UBET operates exchanges in Dushesne and Roosevelt, Dushesne County, and in Vernal, Uintah County. The Dushesne, Roosevelt and Vernal exchanges were previously operated by Qwest Communications and acquired in an exchange sale consummated April 6, 2001. The exchanges served by UBTA and UBET constitute all of the public telecommunications service land-line exchanges in Dushesne and Uintah Counties.

In support of the EAS application, UBTA and UBET state that the EAS is in the public interest. They state that there is a strong community of interest among all of the exchanges served by the two companies in the Uintah Basin. The proposed EAS will facilitate communication between telecommunications service users in the area, benefit and strengthen the economic opportunities of the area, and foster greater community of interest within the area. UBTA and UBET conducted a survey in November 2000, which indicated over 85 percent of the respondents favored the establishment of a Dushesne County/Uintah County EAS. UBTA's membership unanimously supported a Dushesne County/Uintah County EAS at their April 25, 2002 annual membership meeting. According to the companies, the companies sponsored public meetings in Vernal and Roosevelt in which the overwhelming majority or all of those in attendance supported the creation of the EAS. Governmental leaders and organizations and local business associations are in support of the EAS application.

Currently there is no EAS in the UBET service territory. In the UBTA service territory, residential customers pay \$4.95 and business customers pay \$6.95 for a limited area EAS and may subscribe to an optional service plan, for \$3.00 per month, which provides a set number of minutes of calls to the UBET service territory. In their application, UBTA and UBET propose a new EAS which would include all of the service territory of their exchanges and would permit customers of each company to make an unlimited number of calls, without any duration limitation, with all residential customers paying a monthly EAS charge of \$4.95 and \$6.95 for all business customers.

Prior to the filing of the companies' request and subsequently, the Commission has received numerous letters and inquiries from customers of the two companies concerning the proposed EAS, some in support and some in opposition. On May 29, 2002, the Commission directed the Division of Public Utilities (DPU) to investigate the proposal of UBTA and UBET and to provide a report/memorandum thereon to the Commission. A Protective Order was issued by the Commission on April 4, 2003, to facilitate the use of confidential information in these deliberations. The DPU submitted its Memorandum on April 11, 2003. UBTA and UBET submitted a response to the DPU's Memorandum on April 22, 2003 supplementing their material with additional documents on April 29, 2003. On May 5, 2003, WWC Holding Co., Inc., doing business as Cellular One (Western Wireless), petitioned to intervene. For the reasons discussed hereafter, the Commission does not grant Western Wireless' petition to intervene and approves the creation and operation of the proposed EAS, pursuant to the Commission's modifications noted in this Order.

DISCUSSION

The DPU does not oppose the companies' Uintah Basin EAS proposal. In its April 11, 2003, Memorandum, the DPU does, however, recommend that additional action or steps be taken prior to further Commission consideration of the request or in approval of the request. There are three areas of concern raised by the DPU: 1. The companies' costs of providing the EAS and the proposed rates for EAS. 2. Inter-company payments, or cross-payments, to permit each company to recover EAS expenses without unintended consequences on the State of Utah Universal Public Telecommunications Service Support Fund (USF) and rates for other public telecommunications services offered by the companies. 3. Customer survey(s) indicative of customer support for the EAS proposal.

Western Wireless' intervention petition indicates it wishes to participate in these proceedings in relation to UBTA's original cost study in support of the EAS and public survey(s) evidencing support for the proposal. On these two issues, we see no uniqueness to Western Wireless's participation, compared to that of the DPU. As discussed hereafter, UBTA's original cost study is no longer used to support a proposed rate. On these two issues, Western Wireless' participation appears to duplicate the DPU's efforts or addresses an irrelevant point. Western Wireless does identify a unique issue in relation to UBTA's "current dialing and routing practices for landline calls to wireless numbers" and that "UBTA is treating wireless traffic differently from landline traffic, and is furthermore treating some wireless traffic different from other wireless traffic." Petition to Intervene, page 2. We are interested in this allegation, but do not deem it necessary to pursue it in this docket. We conclude that it is appropriate and a better use of regulatory agencies' resources for this point to be explored separately, in a separate docket if necessary. We direct the DPU to investigate Western Wireless' claims and report back to the Commission on the results of its investigation. Alternatively, if Western Wireless deems it appropriate, it should file its own Request for Agency Action for the Commission to investigate UBTA's allegedly discriminatory treatment of wireless traffic. For these reasons, we deny Western Wireless' Petition to Intervene.

EAS COSTS AND EAS RATES

In their original proposal, UBTA and UBET proposed to collect a uniform charge of \$4.95 from residential customers and \$6.95 from their business customers in each of the EAS exchanges. These charges were expected to compensate the companies for their expenses in providing the Uintah Basin EAS. During its investigation, the DPU analyzed the companies' original cost study of anticipated EAS costs. As a result of the investigation and numerous technical meetings between the DPU and the companies' representatives, the supporting cost study underwent many modifications and iterations to project the costs of providing Uintah Basin- wide EAS. The Committee of Consumer Services also participated, through the services of an outside consultant, in review of the cost studies. A final, revised cost study was completed on April 8, 2003. A summary of this final cost analysis is attached to the DPU's April 11, 2003 Memorandum as a confidential exhibit. All participants in the review of the cost study either recommend or make no objection to the use of the April 8, 2003, study to estimate the costs of the EAS for each company individually and for the two combined.

The DPU objected to the uniform EAS rates proposed by the companies. The DPU observed that EAS rates, previously approved by the Commission, have used a different rate design than that underlying the uniform rates proposed by UBTA and UBET. Past EAS rates have been calculated and based on much more exchange and cost specific bases than the uniform rates originally proposed by the companies. During the pendency of the DPU's investigation, the companies departed from their original proposal. In recognition of the DPU's objection and past EAS rate calculations, the companies acquiesced to the DPU's position and proposed different rates for the exchanges to be included in the Uintah Basin EAS. The companies now propose charging UBET's Vernal exchange customers \$0.80, Roosevelt exchange customers \$2.25, Duchesne exchange customers \$3.25, and UBTA's customers \$5.75. In proposing these revised prices, the companies note that they do not abandon their rationale for the original uniform rates, indeed they maintain that the uniform rates are in the public interest and may still be considered by the Commission. However, to end DPU opposition and facilitate approval of the EAS proposal, the companies will accept the differing rates for their exchanges.

We agree that the methodology for the calculation of the specific rates described is significantly closer to our past practice than the original uniform rates. We believe that the method by which they have been determined is consistent with other EAS rate determinations. At this juncture, it is important to note that the Commission has limited ratemaking authority with regard to the rates to be charged to UBTA's customers. As a telephone cooperative, UBTA's rates may be

set pursuant to Utah Code 54-7-12(6); that is, through the cooperative's Board of Directors. UBTA has followed this procedure in proposing the \$5.75 rate for its customers/members. The Commission may only address the \$5.75 EAS rate if the requisite conditions of Utah Code 54-7-12(7) are met; at this point, they have not. Based on our review of the revised cost study and the information and documentation submitted in support of the revised rates, we conclude that the proposed rates are just and reasonable for a Uintah Basin EAS.

While the DPU supports the proposed rates as appropriate to recover the estimated expenses associated with a Uintah Basin EAS on a combined company basis, it notes that the UBTA rate produces revenues insufficient to cover UBTA's company specific EAS costs. The DPU also notes that the UBET rates would overcollect that company's specific EAS costs. The DPU raises a concern that, without some adjustment, this disparity in the recovery levels of the individual company's EAS expenses can have unintended consequences in approving the Uintah Basin EAS. As an example, if UBTA's revenues and expenses were examined some time in a future ratemaking setting, the undercollection of EAS revenues versus EAS expenses could cause pressure, if viewed in isolation, to increase UBTA's other rates or draws from the USF to make up for the EAS shortfall. The inverse complement applies to UBET.

To address the individual company impact when the EAS proposal is considered on a combined company basis, the DPU proposes that UBET transfer to UBTA, on an annual basis, excess EAS revenues so that combined company EAS revenues are consistent with the combined company analysis used to support the EAS proposal. This intercompany transfer could be obviated if both companies' ratemaking situations were conducted on a coordinated and combined or referential basis. It could also end when the companies' plans for a complete combination of the two companies into one are realized. The companies do not oppose the specific mechanism proposed by the DPU. They note that effectively the same result could occur as any profits realized by UBET, as a wholly owned subsidiary of UBTA, would ultimately flow to and be available to UBTA. We conclude that the annual transfer is appropriate and will order that it occur. Such explicit transfers will facilitate auditing of the companies' revenues and expenses and ease ratemaking responsibilities and efforts.

SURVEY OF CUSTOMER SUPPORT

The DPU proposes that an additional survey of customers be undertaken by the companies. The DPU observes that the prior survey commissioned by the companies does not strictly comply with the Commission's current rule requirements concerning EAS surveys. Utah Admin. Code R746-347-5. The DPU notes that the companies' survey results of +/- 6% do not meet the requisite 5% confidence level of the current rule. The DPU further notes that the companies' survey results do not meet the percentage approval level which the DPU believes should be applicable, that the survey includes polling of business customers as well as residential customers, and that the manner in which the survey was conducted was not completely consistent with the existing rule or past practice.

The companies oppose any additional survey of customers. They note that an additional survey will entail additional costs without commensurate additional benefit. They note that the survey was conducted and their application filed when the Commission had had no rule addressing EAS considerations for a period of more than two years. No need to survey or specific survey requirements were applicable at the time. They argue that the survey was in substantial compliance with past practice and the parameters included in the currently effective rule. They disagree with the DPU on the level of approval which may be relied upon. They note that unlike the "petitioning/non-petitioning" exchange scenario contemplated by many of the past EAS applications and the current rule, this application constitutes an area wide application; hence lower approval thresholds are appropriate.

We generally agree with the companies. We conclude that the survey conducted by the companies may be referenced by the Commission as evidence of substantial customer support for the Uintah Basin EAS. We conclude that there is adequate support for the EAS, even considering the potential effect that the polled business customers may have had or the specific questions that were used in the survey. We note that the survey results are based on an anticipated EAS rate higher than the rates that are now under consideration. We expect that there would be greater support with lower EAS rates. We have recently proposed an amendment to our current EAS rule to lower the requisite approval level which we presume indicative of appropriate customer support. We consider UBTA's members/customer support is also evidenced through the cooperative's Board of Directors' reaffirmation of the EAS proposal and acceptance of the revised rate. We also conclude that evidence supporting the Uintah Basin EAS is made through the numerous governmental officers and

local government bodies supporting the proposal. Our past practice (even explicitly included in a past rule) has referenced local governmental support to be appropriately considered as evidence indicating support for an EAS proposal. We conclude that there is sufficient evidence of customer support for the Uintah Basin EAS and no additional customer survey is needed. As we have concluded that no additional survey needs to be undertaken, we need not address the DPU's recommendations concerning specific survey techniques.

CONCLUSION

We conclude that the establishment of a Uintah Basin EAS is in the public interest. There is sufficient customer support and public benefit to authorize UBTA and UBET to implement the EAS proposal with the revised rates discussed herein. It will be necessary for UBET to make annual EAS revenue transfers to UBTA so that combined company EAS revenues are consistent with the combined company analysis utilized to support the EAS application and the determinations made in this Order. We do not intend our approval of the EAS application to become a vehicle for either company to change future USF draws to provide additional support for this service. As UBET and UBTA are currently conducting reviews of their rates with the DPU, we conclude that the new EAS should be implemented and made available after the conclusion of the reviews and at the same time as any rate changes resulting from the reviews become effective. This will provide the DPU and the companies the opportunity to explicitly recognize the EAS expenses and revenues in their reviews and appropriately consider any appropriate changes in other services' rates.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Application of UBTA and UBET to provide a Uintah Basin EAS is granted, with the conditions and modifications discussed in this Order.
2. The service approved herein may become available and the rates effective at the same time as any rate changes that may arise from the conclusion of the companies' current reviews.
3. This Order represents the Commission's final order in this docket. Review or reconsideration of this Order by the Commission may be sought pursuant to the provisions of the Utah Administrative Procedures Act, Utah Code Sections 63-46b-1 et seq. and Utah Code Section 54-7-15. Judicial review may be sought pursuant to the same provisions.

DATED at Salt Lake City, Utah, this 13th day of May, 2003.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

GW #33648