

P-519, 403/CP-89-703 ORDER RECONSIDERING JUNE 11, 1991 ORDER AND  
ADOPTING RATES FOR POLLING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
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In the Matter of a Petition for  
Extended Area Service From the  
Easton Exchange to the Wells  
Exchange

ISSUE DATE: July 6, 1992

DOCKET NO. P-519, 403/CP-89-703

ORDER RECONSIDERING JUNE 11,  
1991 ORDER AND ADOPTING RATES  
FOR POLLING

**PROCEDURAL HISTORY**

**I. PROCEEDINGS TO DATE**

On August 23, 1989, customers within the Easton exchange filed a petition requesting extended area service (EAS) from the Easton exchange to the Wells exchange.

On December 15, 1989, following the submission of traffic studies, cost studies, and community of interest information by the Easton Telephone Company (Easton) serving the Easton exchange and the Blue Earth Telephone Company (Blue Earth) serving the Wells exchange, the Minnesota Department of Public Service (the Department) submitted a stipulation of facts.

On April 27, 1990, the Minnesota legislature enacted legislation regulating the installation of extended area service in Minnesota. The legislation specifies the circumstances under which the establishment of extended area telephone service is required. Minn. Stat. § 237.161 (1990).

On June 26, 1990, the Commission met to consider the implications of this legislation for petitions from three greater Minnesota area exchanges seeking EAS to areas other than to the metropolitan calling area, including the Easton EAS petition. <sup>1</sup>

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<sup>1</sup> On June 26, 1990, in addition to the petition from the Easton exchange which is the subject of this Order, the Commission addressed EAS petitions from the Nickerson and Winnebago exchanges, Docket No. P-407, 421/CP-89-105 and Docket

On July 5, 1990, the Commission issued its ORDER REQUIRING FILING OF COST STUDIES AND PROPOSED RATES.

On August 17, 1990, the accounting firm that represents Blue Earth and Easton filed cost studies and proposed rates.

On September 11, 1990, the companies' accounting firm filed revised cost studies.

On October 26, 1990, the Department filed its recommendation regarding the cost studies and proposed rates.

On November 15, 1990, Blue Earth and U S West Communications, Inc. (USWC) submitted response comments regarding the Department's recommendation.

On June 11, 1991, the Commission issued its ORDER REQUIRING REVISED COST STUDIES AND PROPOSED RATES.

On July 25, 1991, USWC submitted toll contribution information pursuant to the Commission's June 11, 1991 Order.

On July 25 and 31, 1991, the accounting firm representing Easton and Blue Earth filed costs and proposed rates.

On September 13, 1991, the Department filed its comments on the companies' cost studies and proposed rates.

On October 3, 1991, Easton responded to the Department's comments.

On November 5, 1991, the Minnesota Independent Coalition (MIC) petitioned to intervene and submitted comments.

On April 17, 1992, the Department filed an exhibit illustrating the difference in EAS rates for Easton subscribers resulting from including and excluding USWC's toll contribution.

On April 21, 1992, the Commission met to consider this matter.

## FINDINGS AND CONCLUSIONS

### **II. BACKGROUND**

On June 11, 1991, the Commission issued its ORDER REQUIRING FILING OF COST STUDIES AND PROPOSED RATES in this matter. In

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No. P-403/CP-89-930 respectively.

that Order, the Commission treated USWC as an "affected telephone company" that had to be maintained income neutral during the installation and operation of EAS under Minn. Stat. § 237.161, subd. 3 (b) (1990). The Commission ordered Easton and Blue Earth to file proposed EAS rates calculated on the assumption that they would be maintained income neutral not only through EAS rates but through continued receipt of USWC's toll contribution.

Subsequent to that Order, the Commission initiated a formal comment and reply proceeding in the context of three other EAS dockets to determine what constituted an "affected telephone company" within the meaning of Minn. Stat. § 237.161.

On November 21, 1991, the Commission issued its ORDER DETERMINING THE STATUS OF INTEREXCHANGE CARRIERS UNDER MINN. STAT. § 237.161, SUBD. 3 (B) (1990) in the Hokah-Northfield-Cannon Falls proceeding. In that Order, the Commission considered the arguments of the parties at length and conducted a thorough analysis of the statute. The Commission found that the term "affected telephone company" does not include interexchange carriers (IXCs) and that, therefore, the statute does not require that EAS rates be set to maintain IXCs income neutral. On January 29, 1992, the Commission affirmed this decision, denying the Department's petition for reconsideration. Hereafter, the Commission's November 21, 1991 Order in those three joined dockets will be referred to as the Hokah Order.

## **II. MIC'S PETITION TO INTERVENE**

MIC meets the requirement for intervention as a party under Minn. Rules, Part 7830.0600 and will be allowed to intervene in this matter. MIC represents approximately 84 independent telephone companies (ILECs) operating in Minnesota. MIC members who serve petitioning exchanges for proposed EAS routes where USWC serves only as an IXC have a current interest in how the term "affected telephone company" is defined.

## **III. RECONSIDERATION**

On its own motion, the Commission will reconsider the finding in the June 11, 1991 Order that USWC is an "affected telephone company" that must be kept income neutral. The Commission finds that the current Easton docket is similar to the Hokah-Northfield-Cannon Falls dockets respecting the treatment of USWC's toll contribution. In both Hokah and Easton, USWC serves proposed EAS routes solely as an IXC.

Having found Easton similar to Hokah on the material facts, the Commission must apply the precedent established in the Hokah

Order unless it finds sound reasons to do otherwise.

#### **A. Parties Opposing Reconsideration**

##### 1. Blue Earth Valley Telephone Company

On October 3, 1991, prior to the Commission's decision in Hokah, Blue Earth stated that USWC's interpretation that it was not an "affected telephone company" ignored the plain language of the statute and benefitted itself (USWC) at the expense of Wells and Easton subscribers. Blue Earth's argument based on perceived benefit is not persuasive. The basic question of what a statute means is not answered by simply looking at who benefits most by any proposed construction. Likewise, Blue Earth's "plain meaning" assertion has no force at this point. In the Hokah Order, the Commission thoroughly examined and properly rejected the arguments of those who maintained that USWC was an "affected telephone company" under the "plain meaning" of the statute. Blue Earth offered no aspect of the "plain meaning" argument not considered in Hokah.

##### 2. Residential Utilities Division/Office of the Attorney General (RUD/OAG)

The RUD/OAG filed no written comments in this matter. In oral argument, however, the RUD/OAG argued that USWC was an affected telephone company in the plain meaning of that phrase, that under an established canon of legislative construction it is to be assumed that the legislature did not intend an absurd result (i.e. not treating USWC as an "affected telephone company"), and that under the canons of statutory construction an interpretation that favors the public interest as against a private interest is favored. The RUD/OAG also stated that if USWC were treated as an affected telephone company and required to make payments to affected LECs in the amount of their previous toll contribution, a rulemaking or a true-up mechanism could be employed to prevent USWC from being required to continue to make those payments to the LECs in perpetuity.

The RUD/OAG's argument regarding the plain meaning of the statute was previously considered and rejected in the Hokah Order. The RUD/OAG offered no new argument to alter the Commission's evaluation of the "plain meaning" argument.

Regarding the RUD/OAG's absurdity argument, it is not the Commission's role to second guess the legislature and amend statutes through interpretation in order to avoid what some parties, viewing the matter from their particular perspective, would characterize as an absurd result. Whether the alleged absurdity resulting from the Commission's interpretation is characterized as a "windfall" for USWC or higher EAS rates, those

results appear the result of the legislature's decision that the beneficiaries of EAS will bear the costs of that service. The Commission's view on that matter is reinforced by the fact that the legislature met following the Commission's decision in Hokah and maintained the current statutory language. If the legislature disagreed with the Commission's interpretation of the statute, it could have amended the statute to clearly indicate that it desired a different result.

The RUD/OAG further asserted that the interpretive presumption in favor of the public interest militates against the Commission's interpretation. Minn. Stat. § 645.17 (5) (1990). Implicit in the RUD/OAG's argument is the assumption that its interpretation that an IXC is an affected telephone company favors the "public interest" against USWC's "private interest". This is not at all clear. In this particular case, the RUD/OAG's interpretation favors the LEC serving the petitioning and petitioned exchange (Blue Earth) and the prospective EAS customers for that route at the expense of the customers of the IXCs. However, in cases where the toll route to be displaced by EAS is profitable, the RUD/OAG's interpretation would favor the IXC and disfavor the EAS customers by raising the EAS rates to compensate the IXC for loss of income from that route. Clearly, identifying the public interest with the interest of any particular group of customers in the EAS context is unsatisfactory.

More fundamentally, the RUD-OAG erred in automatically equating the interest of Winnebago EAS consumers with the "public interest" and overlooking the fact that under its proposed interpretation, rates paid by other telephone consumers (USWC's IXC customers) would subsidize the lower EAS rates of Winnebago customers.<sup>2</sup>

Reading the entire statute, however, it appears that the legislature, the ultimate arbiter of the public interest in this matter, has established a system that requires the beneficiaries of an EAS system to pay for it. The RUD/OAG is free to disagree with the legislature's determination of what serves the public interest in this matter. However, in interpreting the statute, the Commission recognizes the legislature as the ultimate definer of the public interest. The Commission will not substitute its judgement for the legislature's.

Finally, the RUD-OAG acknowledged that an "absurd" result of its

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<sup>2</sup> According to the RUD-OAG's interpretation, USWC's interexchange customers would be required to bear the burden of continuing contribution payments to Winnebago's LEC in order to lower the EAS rates paid by Winnebago subscribers. The Commission finds no basis in the statute for that subsidization of Winnebago subscribers by USWC's IXC customers.

proposal to treat USWC as "affected telephone company" would be that USWC as an IXC would be required to continue making "contribution payments" to Blue Earth indefinitely even though it no longer provided any IXC service to that exchange. The RUD-OAG's suggestion of a rulemaking or true up mechanism do not cure this fundamental problem.

More fundamentally, the RUD-OAG's attempt to ameliorate the absurd result of its interpretation by suggesting a rulemaking or a true up misinterpreted the basis of the Commission's rejection of the proposition that IXCs are "affected telephone companies." The foundation of the Commission's analysis in Hokah was not the projected results of that interpretation. Such an approach, determining what the statute says based upon the projected results of that interpretation, is backwards. The Commission's interpretation is based upon a full reading of the EAS statute which fully reveals the legislature's intent.

### 3. The Department

#### a. September 13, 1991 Filed Comments

In comments filed September 13, 1991, the Department stated that since USWC receives toll revenue from and pays access charges on the route, it is an "affected telephone company" within the meaning of the EAS statute. The Department noted that in conversations with USWC before the Department filed its initial comments on this docket on October 26, 1990, USWC indicated to the Department that it acknowledged that it was an affected telephone company. Finally, the Department noted that the Commission, in its June 11, 1991 Order in this matter, found that USWC, in its role as an interexchange carrier, is an affected telephone company.

With respect to these comments, the Commission notes that they provide no analysis of the statute in question and the Commission is certainly not constrained by a view of the issue taken at one time by USWC.

Nor is the Commission is bound by its June 11, 1991 decision in this matter because there are valid reasons for departing from that decision, as were set forth in detail by the Commission in the subsequent Hokah Order. In a recent Order in the Winnebago EAS Docket, the Commission fully explained the weight to be given to the June 11, 1991 Order in this matter following the Hokah Order.<sup>3</sup> At page 5 of that Order the Commission stated:

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<sup>3</sup> In the Matter of the Petition of Certain Subscribers in the Winnebago Exchange for Extended Area Service to the Blue Earth Exchange, Docket No. P-403/CP-89-930, ORDER GRANTING PETITIONS TO INTERVENE AND FOR CLARIFICATION AND ADOPTING RATES

In the Commission's June 11, 1991 Order in the Easton-Wells case [and the August 9, 1991 Order in the Winnebago case], the determination of what is an affected telephone company was not a contested issue and the Commission merely accepted the Department's cost study formula which had incorporated their definition of an affected telephone company. Shortly thereafter, however, in responding to a Department motion to clarify the meaning of the term, the Commission had occasion to interpret the statute following briefing and oral argument by many parties on the question of what is an "affected telephone company".<sup>4</sup> The resulting Hokah Order (November 21, 1991) provided extensive analysis of the statute in question. Based on that extensive statutory analysis, Hokah expressly interpreted the term and held that an interexchange company that carries toll traffic over proposed routes is not an affected telephone company. The holding in the Hokah Order is appropriately now the precedent for this case. The Hokah Order has been upheld by the Commission following reconsideration and has not been overturned by any subsequent Commission Order.

b. April 17, 1992 Filed Exhibit

On April 17, 1992, the Department filed an exhibit illustrating the difference in EAS rates resulting from including and excluding USWC's toll contribution. The Department argued that the interpretation of "affected telephone company" adopted by the Commission in the Hokah Order "radically increased" the EAS additive for the petitioning customers. The Department stated that these rates must be reduced so that EAS petitioners will have a fair and real choice to make when they vote upon EAS.

The Commission acknowledges that in this instance EAS rates will be higher than they would have been if the Commission adopted the

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FOR POLLING (July 2, 1992).

<sup>4</sup> In a motion filed April 22, 1991, the Department asked the Commission to clarify its definition of what is an affected telephone company. As a result of the Department's request the Commission asked for comments and received comments from GTE Minnesota, USWC, United Telephone Company, Vista Telephone Company, AT&T, Metromedia Telephone Company Access Plus Telephone Company, MCI, Telecom\*USA, Allnet and the Department. As a result of the extensive comments the Commission first gave its first articulated rationale for its interpretation of the Minn. Stat. § 237.161, subd. 3 (1991) in the Hokah Order, November 21, 1991.

Department's construction of the statute and forced USWC's customers to subsidize LEC customers' receipt of EAS. Having examined the statute fully, the Commission does not find that the legislature intended such a subsidy to occur. The aim of statutory construction is to find the meaning of the language used by the legislature. The Commission may not substitute another goal, as the Department appears to suggest, such as making EAS more attractive to subscribers by lowering EAS rates.

c. Oral Argument

In oral argument, the Department argued that the plain language of Minn. Stat. § 237.161, subd. 3(b) (1990) makes USWC an "affected telephone company" whose income must remain neutral when the Commission sets EAS rates. The Department also argued that the legislative history supported finding that USWC was an "affected telephone company". Finally, the Department stated that not treating USWC as an affected telephone company will increase EAS rates to ILEC to ILEC routes astronomically. The Department reiterated those positions, illustrating the rate impacts with visual aids. The Department stated that it did not believe these increases were in the public interest.

The Commission has addressed these arguments previously in this Order. The Commission finds nothing in these arguments to alter the analysis of the statute adopted by the Commission in the Hokah Order. In fact, further review of the statute reveals additional support for the view that the statute does not include IXCs as "affected telephone companies" and does not require the IXCs to be held income neutral.

The term "income neutral" appears only once in the statute and the sole mechanism provided by the legislature for achieving income neutrality is rates. The statute states:

The Commission shall establish rates that are income neutral for each affected telephone company at the time which the Commission determines the extended area service rates. (Emphasis added.) Minn. Stat. § 237.161, subd. 3(b) (1990).

It may be inferred from the mechanism selected by the legislature to achieve income neutrality (i.e. rates) what telephone companies the legislature intended to be maintained income neutral. Since the Commission does not set rates for IXCs "at the time it determines the extended area service rates," the only possible conclusion is that the legislature did not intend the IXCs to be held "income neutral."

To achieve income neutrality among IXCs "at the time it determines the extended area a service rates", the Commission would have to 1) order the IXC to continue making payments to the

affected LEC for routes that had been unprofitable and 2) order the LEC to continue making payments to the IXC for routes that had been profitable. However, the statute refers only refers to achieving income neutrality through rates.<sup>5</sup> From this it is clear that the legislature did not contemplate that the EAS process would maintain the IXCs income neutral. If the legislature had wanted the Commission to hold the IXCs income neutral it would have adopted language giving the Commission broader mechanisms than rate-setting to achieve it. In short, the Department's position that IXCs are "affected telephone companies" who must be kept income neutral is contradicted by the text of the statute.

Finally, the Department asserted that the statutory language requiring the Commission to "consider the interests of all parties..." requires the Commission to order IXCs to pay LECs on unprofitable toll routes and to order LECs to pay IXCs for profitable toll routes. However, the complete sentence in which the "interests of all" phrase appears clearly applies solely to the Commission's rate-setting for the local exchange and does not authorize, let alone require, the Commission to order payments from one company to another to maintain an IXC income neutral. The statute states:

The commission shall consider the interests of all parties when determining a fair and equitable extended area service rate for a local telephone exchange that is newly included in the extended are service.  
(Emphasis added.) Minn. Stat. § 237.161, subd. 3 (b) (1990).

#### 4. Minnesota Independent Coalition

In comments included as part of its Petition to Intervene in this matter, MIC simply asserted that failure to treat USWC as an "affected telephone company" would be contrary to Minn. Stat. § 237.161, subd. 3 (b) (1990). MIC provided no specific analysis of the statute. MIC filed no subsequent argument opposing USWC's petition.

In oral argument before the Commission, MIC stated that the Commission's earlier decisions on this issue (the June 11, 1991 Order in this matter and August 9, 1991 Winnebago Order) were correct. MIC asserted that the plain meaning of the statute indicated that USWC was an affected telephone company and noted that the effect of not considering USWC an affected telephone

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<sup>5</sup> Clearly, the only income neutrality that can be achieved through EAS rates is income neutrality for the companies who have EAS rates, i.e. the LECs serving the petitioning and petitioned exchanges.

company would greatly increase their customers' EAS rates.

Arguments based on the "plain meaning" of the statute and the effect on EAS rates resulting from not considering USWC an "affected telephone company" have been considered and rejected for reasons expressed in Hokah and previously in this Order. For reasons stated previously in this Order,<sup>6</sup> the finding of the Commission in Hokah that IXCs are not "affected telephone companies" takes precedence over the June 11, 1991 Order in this matter.

#### **B. Commission Action: Reconsideration**

The Commission finds nothing among the arguments presented to alter the analysis of the statute adopted by the Commission in the Hokah Order. In short, the Hokah Order is the appropriate precedent for this case. Accordingly, the Commission will reconsider its June 11, 1991 Order and find that USWC is not an affected telephone company within the meaning of Minn. Stat. § 237.161, subd. 3 (b) with respect to the proposed EAS route between Easton and Wells. As a result, EAS rates for Easton subscribers will be calculated without regard to USWC's current toll contribution to Easton.

### **III. ADDITIONAL RATE ISSUES**

#### **A. Stimulation Factor**

EAS rates are calculated to recover, among other things, the cost of facilities required of the telephone company serving the petitioning exchange to implement EAS. Minn. Stat. § 237.161, subd. 2 (1990). Calculation of the facilities so required must take into account the growth in telephone calls between the petitioning and petitioned exchanges that will be stimulated by the availability of EAS service. Often the parties to EAS proceedings have disagreed whether the proper stimulation factor to use in making those projections should be 5 or 7.

Because Blue Earth serves the Easton exchange by a host-remote installation, it plans to simply install line cards to handle the EAS traffic between Easton and Blue Earth. Those cards can handle up to 24 circuits of EAS traffic, adequate capacity regardless of whether call growth is stimulated by a factor of 5 or 7.<sup>7</sup> Since no different line card investment is required

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<sup>6</sup> See infra, pages 6-7.

<sup>7</sup> If traffic growth is stimulated by a factor of 5, 16 of those circuits will be used. If stimulation factor of 7 is achieved, 21 circuits will be used.

regardless of which stimulation factor is more accurate, the Commission need not determine which stimulation factor is more likely to be accurate in this case. Instead, the Commission will simply find that Blue Earth's proposed line card investment is appropriate and require that amount to be included in calculating EAS rates.

## **B. Allocation of Revenue Requirement**

The EAS statute divides EAS petitions into two groups: petitions for EAS to the metropolitan calling area and all other EAS petitions. For petitions to the metropolitan calling area the statute mandates that the petitioning exchange rates defray 75% of the costs of providing EAS. For other petitions, however, the statute leaves to the sound discretion of the Commission what percentage (between 50 and 75%) of EAS costs the petitioning exchange will be required to defray in its rates.

Minn. Stat. § 237.161, subd. 3 (a) (1990) states in pertinent part:

When the proposed extended service area is not the metropolitan calling area, the commission shall determine the apportionment of costs, provided that between 50 and 75 of the costs must be allocated to the petitioning exchange.

The Department argued that because the EAS implementation process allows Easton subscribers to vote whether EAS will be installed but denies the same opportunity to subscribers in the petitioned local calling area, it is fair that Easton subscribers defray the maximum statutory amount of EAS costs, i.e. 75% of those costs. The traffic studies indicated that many more Easton subscribers call the Wells exchange than the other way around. According to the Department, this suggests that Easton subscribers will receive the bulk of the benefit of the proposed EAS, which supports the maximum cost allocation (75%) to Winnebago.

The Commission does not find these considerations dispositive in this case.<sup>8</sup>

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<sup>8</sup> For a similar discussion and analysis see: In the Matter of a Petition for Extended Area Service From the Loman Exchange to the International Falls, Ericsburg, and Ranier Exchanges, Docket No. P-407/CP-90-547, ORDER ADOPTING RATES FOR POLLING (March 25, 1992) and In the Matter of the Petition of Certain Subscribers in the Winnebago Exchange for Extended Area Service to the Blue Earth Exchange, Docket No. P-403/CP-89-930, ORDER GRANTING PETITIONS TO INTERVENE AND FOR CLARIFICATION AND ADOPTING RATES FOR POLLING (July 2, 1992), pages 12-14.

**The Voting/Payment Link:** The legislature did not establish a link between voting and payment of 75% of the costs. According to the statutory process, subscribers in the petitioning exchange are the only subscribers polled in all cases. Knowing this, the legislature clearly stated that rates for non-metro petitions could be set between 50 and 75 percent. This indicates that the legislature intended other factors to control the percentage of cost to be allocated to the petitioning exchange.

**Benefit/Burden Balancing:** The benefits to be derived from the proposed EAS are not totally one-sided. After all, toll free calling from Easton to Wells would not simply benefit the calling party. It would also benefit the Wells recipients of those calls. Further, analysis of the benefit must take into account not only the location of subscribers currently placing calls between the petitioning and petitioned exchanges, but must also consider the value to the petitioned exchanges of the additional calls from the petitioning exchange that EAS will stimulate. Finally, it is likely that the proposed EAS will also stimulate additional calling from the petitioned exchanges to the petitioning exchange.

An analysis of who benefits from the installation of the proposed EAS must be balanced with consideration of the relative burden to be borne by subscribers in the involved exchanges under various cost allocation proposals. Regarding the burden of absorbing the costs of providing the proposed EAS, it is clear that in this case that the Easton subscriber's burden of providing EAS rises significantly compared to the increase in the burden to subscribers in the Wells exchange when more than 25% of the cost are recovered in their rates. This is due to the smaller number of Easton subscribers available to absorb such costs.

The Commission is impressed by the effort to link and build Easton and Wells discussed by the Easton representative but finds that the relative sizes of the communities does not support assessing a full 50% of the costs against the petitioned exchange, Wells. Weighing the benefits and burdens of the proposed EAS within the statutory framework, the Commission concludes that in this case a 60/40 allocation of EAS expenses results in fair and equitable rates. The Commission will adopt rates for polling that are structured on that basis.

#### ORDER

1. Minnesota Independent Coalition's (MIC's) Petition to Intervene in this matter is granted.

2. The Commission hereby adopts for polling extended area service (EAS) rates for the petitioning Easton exchange that
  - a. maintain Easton Telephone Company and the Blue Earth Telephone Company income neutral without taking into account USWC's toll contribution;
  - b. absorb Blue Earth's proposed investment in line cards;
  - c. absorb 60% of the costs of providing the proposed EAS; and
  - d. comply with Minn. Stat. § 237.161 (1990) in all other respects as well.

The EAS rate additives are:

EASTON		WELLS	
<u>Residential</u>	<u>Business</u>	<u>Residential</u>	<u>Business</u>
\$9.36	\$14.06	\$0.81	\$1.52

3. Easton Telephone Company (Easton) shall cooperate fully with Commission Staff and Commission contractors to expedite the polling of Winnebago subscribers. As part of this cooperation, Easton shall provide Commission Staff upon request with a customer list for the Easton exchange and associated information in a timely fashion.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)