

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of a Petition for
Extended Area Service From the
Sherburn Exchange to the
Fairmont Exchange

ISSUE DATE: August 18, 1992

DOCKET NO. P-405/CP-89-1080

ORDER ADOPTING RATES FOR POLLING

PROCEDURAL HISTORY

On January 27, 1992, Vista Telephone Company (Vista), the telephone company serving both the Sherburn and Fairmont exchanges, filed revised cost studies and proposed rates. Vista stated that the revisions reflected recent Commission Orders regarding the status of interexchange carriers.

On May 26, 1992, the Minnesota Department of Public Service (the Department) filed its report and recommendations.

No party filed comments on the Department's filing during the comment period provided by previous Commission Order in this matter.

On August 11, 1992, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

The Commission has previously found that the Sherburn petition meets the initial statutory criteria: adjacency and adequate traffic. Minn. Stat. § 237.161, subd. 1 (1990). The Commission will now proceed to determine whether the petition meets the final criterion: adequate subscriber support. Before polling Sherburn subscribers, however, the Commission will adopt EAS rates to appear on the ballots to inform subscribers regarding the rates that they will experience if EAS is approved.

A. Department Concerns Regarding Sherburn EAS Rates

The Department raised three issues for the Commission to consider in setting these rates: 1) what level of gross receipts tax, if

any, should be included in calculating Sherburn's EAS rates; 2) what stimulation factor should be used to estimate the new facilities required to accommodate the increase in traffic anticipated under EAS; and 3) whether interexchange toll contribution should be taken into account in calculating these rates.

1. Gross Receipts Tax

It is well established and no party disputed that since the gross receipts tax has been repealed by the legislature, it would be inappropriate to include any amount for gross receipts tax in calculating EAS rates.

2. Stimulation Factor

The Department recommended that a 400 percent stimulation factor be used in this case, but also recommended that Vista be required to conduct a stimulation factor study to determine the accuracy of the figure. The Commission shares the Department's concern for the accuracy of the 400 percent stimulation factor, but believes that before traffic under EAS is actually experienced any stimulation study would be premature. Based on the information currently available, the Commission finds that the 400 percent stimulation figure is reasonable. Further, as noted in a recent EAS case, good faith and reasonable estimation of factors used in calculating EAS rates for polling will not result in irrevocable harm even if not completely accurate. The statutory cap on EAS recovery applies: the company must remain income neutral. Minn. Stat. § 237.161, subd. 3 (b) (1990). If the rates adopted result in Vista overrecovery, the Department can request the Commission to review these rates. In the Matter of the Petition of Certain Subscribers in the North Branch Exchange for Extended Area Service to the Minneapolis/St. Paul Metropolitan Calling Area, Docket No. P-421/CP-86-272, ORDER DENYING PETITION FOR RECONSIDERATION AND REHEARING (August 18, 1992), p. 2.

3. Interexchange Carrier Toll Contribution

The Department reiterated a position previously rejected by the Commission that interexchange carriers that currently provide toll service to the exchanges subject to the EAS petition are "affected telephone companies" within the meaning of Minn. Stat. § 237.161, subd. 3 (b) (1990). In this case the interexchange carrier in question is U S West Communications, Inc. (USWC).

USWC does not serve any involved exchange as a local exchange company but simply provides intraLATA toll service between these companies. When the EAS statute is read properly, i.e. as a whole, it is clear that the legislature did not intend to apply the term "affected telephone company" to such a company nor to

require that EAS rates be set to maintain the income neutrality of such a company. The statute focuses entirely on EAS as a local service. The term "interexchange company" appears nowhere in the entire statute. On the contrary, terms evincing a local focus appear throughout the statute, e.g. "exchange," "local calling area," "the telephone company serving the petitioning exchange," a list of costs incurred by a local exchange company installing EAS, "the petitioning exchange," "the telephone company serving the added exchange," "a local telephone exchange that is newly included," "a telephone company that provides local telephone service in an exchange that is included."

In these circumstances, it would be unreasonable to assume that the legislature abruptly switched focus in Section 3(b) and intended a characterizing phrase ("affected telephone company") to include a company whose sole relationship to the exchanges in question is as an IXC.¹

Accordingly, the Commission will require Sherburn's EAS rates to be calculated without regard to the toll contribution USWC has provided to Vista as an IXC between these exchanges.

B. Other Rate Issue: 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.

¹ The Commission reached a similar conclusion in In the Matter of a Petition for Extended Area Service From the Hokah Exchange to the La Crosse, Wisconsin Calling Area, Docket No. P-401/CP-89-951, ORDER DETERMINING STATUS OF INTEREXCHANGE CARRIERS UNDER MINN. STAT. § 237.161, SUBD. 3 (B) (1990) (November 26, 1991).

The legislature did not tie the obligation to pay 75% of the costs to the right to vote on whether EAS should be installed. According to the statutory process, subscribers in the petitioning exchange are the only subscribers polled in all cases. At the same time, 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.²

The benefits to be derived from the proposed EAS are not totally one-sided. After all, toll free calling from Sherburn to Fairmont would not simply benefit the calling party. It would also benefit the Fairmont 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 additional consideration is the comparative burden borne by subscribers in the involved exchanges under various cost allocation proposals. It is clear in this case that the Sherburn subscriber's burden of providing EAS rises significantly compared to the increase in the burden to subscribers in the Fairmont exchange when more than 25% of the costs are recovered in their rates. This is due to the smaller number of Sherburn subscribers available to absorb such costs.

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.

² 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.

ORDER

1. The Commission hereby adopts for polling extended area service (EAS) rates for the petitioning Sherburn exchange that
 - a. incorporate a 0 percent gross receipts tax figure and a 400 percent stimulation factor;
 - b. maintain Vista Telephone Company income neutral without taking into account USWC's toll contribution;
 - 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:

SHERBURN		FAIRMONT	
<u>Residential</u>		<u>Residential</u>	
One-party	\$3.03	One-party	\$0.22
Two-party	\$2.58	Two-party	\$0.19
<u>Business</u>		<u>Business</u>	
One-party	\$6.79	One-party	\$0.49
Rural Four Party	\$5.27	Rural Four Party	\$0.38
Trunk	\$9.97	Trunk	\$0.76
Semi-public	\$6.79	Semi-public	\$0.49
Customer-Owned Coin	\$6.79	Customer-Owned Coin	\$0.49

3. Vista Telephone Company (Vista) shall cooperate fully with Commission Staff and Commission contractors to expedite the polling of Sherburn subscribers. As part of this cooperation, Vista shall provide Commission Staff upon request with a customer list for the Sherburn 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

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