

P-405/GR-93-2 ORDER DENYING PETITION FOR RECONSIDERATION OR
CLARIFICATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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In the Matter of the Application of Vista
Telephone Company of Minnesota for
Authority to Increase Its Rates for Telephone
Service in the State of Minnesota

ISSUE DATE: March 18, 1994

DOCKET NO. P-405/GR-93-2

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RECONSIDERATION OR CLARIFICATION

PROCEDURAL HISTORY

On December 14, 1993, the Commission issued its ORDER MODIFYING SETTLEMENT AGREEMENT in the above-captioned rate case filed by Vista Telephone Company (Vista or the Company). In that Order the Commission accepted a Settlement Agreement reached by the parties to this rate case, with the exception of one provision of the Agreement: the development of a single, averaged outstate extended area service (EAS) rate. The Commission required instead that the Company maintain its existing outstate rate structure. The current EAS rate additives for the outstate routes would be increased in a manner that would recover the same annual revenue as would the EAS rate additives offered in the Settlement proposal. This was the position originally proposed by the Company before the parties entered into their Settlement Agreement.

On December 27, 1993, the Department of Public Service (the Department) filed a petition for reconsideration or clarification of the December 14, 1993 Order. The Department asked the Commission either to reconsider its modification of the EAS provision or to clarify that its modification of the Settlement was not meant to stand as precedent.

On December 27, 1993, Vista filed comments in support of the Department's petition.

On December 29, 1993, the Residential Utilities Division of the Office of Attorney General, the other participant in the Settlement Agreement, filed comments in favor of the Department's petition.

The matter came before the Commission for consideration on March 15, 1994.

FINDINGS AND CONCLUSIONS

I. The Department's Petition

The Department argued three main points in its petition for reconsideration: the Company's 1983 cost studies are not valid; the Commission ignored certain non-cost arguments raised by the Department; and the Commission's Order was based upon inappropriate policy considerations.

The Department argued that the Commission must reconsider its EAS modification because Vista's 1983 EAS cost studies are not currently valid and do not support EAS rate increases. In the absence of valid cost studies, the Commission should accept the parties' alternative: uniform, rate-averaged outstate EAS rates.

The Department stated that the invalidity of the cost studies is evident in a number of ways. The studies are ten years old and the Company did not offer them in the rate case as support for its EAS rate increases. According to the Department, its testimony showed that the cost studies must be invalid. Finally, the Department argued that the widely divergent rates in similar outstate EAS routes show that the rates are not properly supported by costs.

The Department stated that certain non-cost arguments it offered were ignored by the Commission in the December 14, 1993 Order. The Department reasserted that its EAS rate design proposal is consistent with elimination of the touch tone charge and with the EAS statute, which combines EAS rates with basic local rates as a single billing item.

Finally, the Department argued that the Commission's Order was based upon inappropriate public interest concerns. According to the Department, the Commission's concern with pending EAS changes and developments is misplaced. The Department also argued that the Commission failed to note that the EAS option in the Settlement Agreement is beneficial for the Company and its customers.

II. Commission Analysis

A. The Petition for Reconsideration

1. Cost Studies

At p. 9 of the Commission's December 14, 1993 Order, the Commission stated:

The EAS proposal in the Settlement Agreement represents a move from a pricing methodology which is based upon theories of cost towards an averaged pricing methodology. A move away from pricing methodologies based upon theories of cost should not be undertaken without sound reasons.

In this reconsideration, as in the original proceeding, the Department has not offered sound reasons to take this step.

The Department has not offered substantial evidence that the cost studies are invalid. As the Commission noted in its December 14 Order, the Administrative Law Judge found that "he has no basis upon the record here to recommend such a change to the Commission." The Department's testimony regarding trends and changes in the telecommunications industry does not constitute substantial evidence of cost changes in these particular EAS routes which would render the studies invalid.

The Commission stated in the December 14 Order that a "move from a pricing methodology which is based upon theories of cost towards an average pricing methodology" is not justified. The Commission did not maintain that the cost studies were perfect, but rather that a change from a pricing methodology based upon theories of cost to rate averaging is not warranted by this record.

No statute or rule indicates that after a certain period of time cost studies lose their validity and must be replaced by other rate design methods such as rate averaging. Only the Department's theory (embodied in the Settlement) creates such a presumption. In the absence of such statutory or rule requirements, the Commission must apply its discretion in this rate design decision. Having done so, the Commission continues to find that the Department's arguments regarding the cost studies do not support a change from EAS rate methodologies based on theories of cost to rate averaging.

2. The Department's Non-cost Arguments

The Department argued that the Commission improperly ignored certain of the non-cost factors cited by the Department in support of its EAS proposal. The Department noted the consistency of the proposal with local service rate design and with the elimination of the touch tone charge.

The Commission finds that these non-cost arguments do not justify reconsideration. Like the elimination of outstate zone and mileage rates and the consolidation of outstate rate groups, these rate design decisions are not analogous to the EAS proposal.

3. Public Interest Considerations

The Department stated that the Commission's concerns regarding EAS developments, including sunset of the EAS statute in 1994, are irrelevant to this proceeding. The Vista outstate EAS routes were created prior to the EAS statute, and the EAS statute does not govern rate case EAS decisions.

The Commission disagrees with the Department that recent EAS legislative developments are not relevant to this proceeding. Overall treatment of EAS is currently being considered in the legislature, in light of the imminent sunset of the governing law. The Commission's consideration of the access charge structure in other dockets¹ may also impact on EAS issues. These trends are relevant to the consideration of any EAS proposal. The Commission continues to find that it "could be confusing and unproductive to depart from EAS precedent at this time." December 14, 1993 order at p. 9.

The Department stated that its EAS proposal would better serve the public interest because it would be easier for the Company to administer and simpler for customers to understand. The

¹ See, for example, In the Matter of the Commission Solicitation of Comments Regarding Access Charges, Docket No. P-999/C-93-90.

Commission is not convinced that the Department's opinion would be borne out, particularly since the Company originally proposed the rate design which the Department opposes.

Finally, the Department argued that public policy demands adoption of its EAS proposal because it would have a moderating effect on customers' rate increases. Rate shock is always a matter of regulatory concern to the Commission. In this case, however, the possibility of a moderating effect on rate increases does not outweigh other evidentiary and public policy concerns.

B. The Petition for Clarification

The Department requested clarification of the December 14, 1993 Order if the Commission did not grant the request for reconsideration. The Department asked the Commission to clarify that its decisions regarding rate case determination of EAS rates and the use of cost studies are not meant to establish precedent.

The Commission finds that the Department's request for clarification is unnecessary. As with all Commission matters, this Commission decision was based upon an analysis of the particular facts and circumstances presented. As it has in the past, the Commission will continue to apply its discretion and expertise to each set of facts before it.

The Commission notes that this case presents a particularly individual set of facts. The EAS routes were established before the EAS statute was enacted and the rate case cost filings were submitted before telephone company filing rules established further filing requirements. The Settlement Agreement represented a one-time proposal for Vista's outstate EAS rates. A petition for clarification regarding precedent seems particularly unnecessary in this case.

III. Conclusion

The Department has offered no new argument which requires reconsideration or clarification of the Commission's December 14, 1993 Order. The Commission continues to find that modification of the EAS proposal of the Settlement Agreement is necessary because the parties' EAS proposal is neither supported by substantial evidence nor justified by public policy considerations. The Commission will deny the Department's request for reconsideration or clarification.

ORDER

1. The Commission denies the Department's December 27, 1993 request for reconsideration, clarification, or rehearing. All filing requirements from the December 14, 1993 Order remain in effect.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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