

P-427, 520, 407, 426, 421, 430, 405/CP-93-160 ORDER DENYING RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair  
Commissioner  
Commissioner  
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Commissioner

In the Matter of the Petition for Extended Area  
Service From the Big Lake Exchange to the  
Minneapolis/St. Paul Metropolitan Calling  
Area

ISSUE DATE: February 15, 1995

DOCKET NO. P-427, 520, 407, 426, 421, 430,  
405/CP-93-160

ORDER DENYING RECONSIDERATION

**PROCEDURAL HISTORY**

On September 2, 1994, the Commission issued its ORDER ADOPTING RATES FOR POLLING in this matter, a petition for EAS between the Big Lake exchange and the Minneapolis/St. Paul metropolitan calling area (MCA). The Big Lake exchange is served by Sherburne County Rural Telephone Company (SCRTC). In that Order, the Commission determined that:

1. the EAS traffic should be routed between Big Lake and the MCA via meetpoints at the Elk River and Buffalo exchange boundaries;
2. the Department's estimates of United and GTE's revenue requirements reflecting the results of the United and GTE earnings investigation should be used;
3. the most current subscriber line count (from the May 1994 annual report) should be used in calculating the EAS rates;
4. the costs of EAS should be allocated 100 percent to the Big Lake exchange because the rates in the adjacent Zimmerman exchange still exceed the Big Lake rates;
5. the monthly EAS rate additives should be \$35.50 for residential and \$62.32 for business customers in Big Lake; and

6. the same lower priced alternative should be offered in Big Lake as was offered in Zimmerman (both SCRTC exchanges).

On September 23, 1994, SCRTC filed a request for reconsideration with the Commission. SCRTC requested the Commission to revise its decisions in the September 2, 1994 Order with respect to:

1. the routing of the EAS traffic,
2. the Big Lake subscriber line count used to calculate the EAS rates, and
3. the GTE and United revenue requirements.

On October 4, 1994, U S West Communications, Inc. (USWC) filed a response to SCRTC's petition for reconsideration. USWC disputed SCRTC's arguments concerning the routing of the EAS traffic.

On November 2, 1994, SCRTC filed a reply to USWC's comments.

On November 8, 1994, the Department replied to all of the issues raised in SCRTC's petition for reconsideration.

On November 30, 1994, SCRTC filed a reply to the Department's comments on the routing and subscriber line count issues.

On December 5, 1994, the Department requested the opportunity to file comments in response to SCRTC's November 30, 1994 comments.

On December 22, 1994, the Department filed its comments in response to SCRTC's November 30, 1994 comments.

On January 31, 1995, the Commission met to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **I. ROUTING OF EAS TRAFFIC BETWEEN BIG LAKE AND THE MCA**

#### **A. The Commission's September 2, 1994 Order**

In its September 2, 1994 Order in this matter, the Commission approved USWC's routing proposal (basically the existing toll route) in which SCRTC would transport EAS calls to and from meetpoints on the borders of USWC's Buffalo and Elk River exchanges. The Commission rejected SCRTC's proposal: routing over SCRTC facilities to and from the MEANS building which is located in an exchange served by USWC. In explaining its decision, the Commission noted that SCRTC's proposal duplicated facilities already in place, was more costly, and provided no advantage (referring to the SS7 available through the MEANS option) that should be paid for with EAS rates.

#### **B. SCRTC's Argument on Reconsideration**

In support of its petition for reconsideration, SCRTC noted that subsequently revised cost studies from USWC showed that SCRTC's proposed route was in fact less expensive than USWC's

proposal. Hence, SCRTC argued, its lower cost proposal should be adopted.

SCRTC argued that the Commission had established a rule in the Zimmerman Orders<sup>1</sup> that a local exchange company (LEC) could transport EAS traffic through another LEC's exchange without having a certificate of authority to do so if no local telephone service was provided to customers within the territory in question. SCRTC asserted that the present case was no different from Zimmerman. SCRTC asserted that under the rule established in Zimmerman, SCRTC was not required to obtain a certificate of authority to transport EAS calls to the MEANS building even though that building is located in an exchange for which USWC has a certificate of territorial authority. In these circumstances, SCRTC argued, the lower cost of its proposal should be dispositive.

In addition to cost, SCRTC argued that USWC's proposed route was inferior for the additional reason that it did not provide SS7, a technology required to provide CLASS services. SCRTC asserted that there is a statutory requirement that SS7 be immediately available over EAS routes and that the costs of providing SS7 should be recovered through EAS rates.

### C. Commission Analysis of the Routing Issue

Having reviewed the Zimmerman Orders, the Commission finds that they do not control this case. In Zimmerman, the activity which the Commission found did not require a certificate of authority was SCRTC's transport of EAS calls across Bridge Water's Monticello exchange (an exchange that did not have EAS with Zimmerman) for hand off to USWC at the border of USWC's Buffalo exchange. The service provided by SCRTC in carrying an EAS call across the Monticello exchange to the border of USWC's Buffalo exchange is a local service because it is part of the EAS route and it is well established that EAS is a local service.

However, because Monticello did not have EAS with Zimmerman the transport in question could never constitute any part of local service to Monticello subscribers. Clearly, no intra-Monticello call could be routed (in whole or in part) over SCRTC's fiber and the local transport part of a Monticello toll call (whether originated by or directed to a Monticello subscriber) would never be transported over SCRTC's fiber. In short, SCRTC's lines or equipment were not used in whole or in part to furnish local telephone service to *Monticello telephone users*, the factor that the Commission found necessary in Zimmerman to render SCRTC subject to the certificate requirement of Subdivision 1.

In the instant case, the activity in question is SCRTC's transport of Big Lake EAS calls to the MEANS building which is located in USWC's Plymouth exchange, which is interconnected by EAS with all USWC's other metro exchanges.<sup>2</sup> As in Zimmerman, the transport service provided

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<sup>1</sup> In the Matter of a Petition for Extended Area Service between Zimmerman and the Minneapolis/St. Paul Metropolitan Calling Area, Docket No. P-427, 421/CP-85-652, ORDER ACCEPTING COMMENTS, DISAPPROVING NON-RECURRING CHARGES, AND REQUIRING FURTHER FILINGS (October 16, 1992) and ORDER GRANTING PARTIAL RECONSIDERATION, CLARIFYING PRIOR ORDER, SETTING RETURN ON EQUITY, AND REQUIRING FURTHER FILINGS (March 9, 1993).

<sup>2</sup> The MEANS building is undeniably located in USWC certificated territory. It is not relevant to the Commission's analysis to determine whether the MEANS building is located in USWC's "Plymouth exchange" or whether the Plymouth exchange as such has been eliminated and absorbed into a larger unit, USWC's "Metro Exchange". Under Minn. Stat. § 237.16, subd. 1 (1992) a company is not required to obtain a certificate of authority simply with respect to local

by SCRTC in carrying the call to the MEANS building is *local transport* because it is part of a set of services (transport and switching) that are required to complete an EAS call. In addition and unlike the Zimmerman situation, however, Big Lake would have EAS to the territory in question if subscribers in Big Lake vote in favor of the EAS.<sup>3</sup>

As a consequence, EAS (local) calls directed by Big Lake subscribers to subscribers in USWC's certificated territory would travel over SCRTC's fiber in USWC's certificated territory to the MEANS building where they would be switched to USWC local transport facilities for delivery to telephone users in USWC's certificated territory. For such calls, it is clear that SCRTC's local transport in USWC's certificated territory "furnishes local telephone service to the inhabitants or telephone users" of that territory. By terms of Minn. Stat. § 237.16, subd. 1 (1992), SCRTC clearly needs a certificate of authority to do so.<sup>4</sup>

To summarize: if Big Lake is added to the MCA via EAS, a call originating in Big Lake to a subscriber in USWC's certificated territory in the MCA would be classified as a local call. Under SCRTC's proposal, an essential part of the telephone services necessary to complete such a call would be SCRTC's transporting that call **in USWC certificated territory** to the MEANS building. Because the Company's transport of that call is an essential part of the Company's proposed route for such a call, the Company would be properly viewed as "furnishing local telephone service to the inhabitants and telephone users" in USWC certificated territory as that term is used in Minn. Stat. § 237.16, subd. 1 (1992). Accordingly, SCRTC cannot be allowed to provide this service without a certificate of authority pursuant to Minn. Stat. § 237.16, subd. 1 (1992).

#### **D. Commission Action Regarding the Routing Issue**

On the basis of the foregoing analysis, the Commission finds that SCRTC's routing proposal includes its provision of local transport in USWC's certificated territory without authority to do so in violation of Minn. Stat. § 237.16, subd. 1 (1992). SCRTC's proposal, therefore, despite its asserted lower cost, is ineligible for consideration. Accordingly, the Commission is required to maintain its decision approving USWC's routing proposal.

Given the Commission's analysis and findings, the Commission is not required to evaluate the weight to be given to the fact that SCRTC's proposal may be somewhat less expensive than USWC's. Nor need the Commission address the weight to be given the asserted technical superiority of SCRTC's route: that SS7 technology is currently available only by routing

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service furnished to telephone users in the "exchange" in which the company has facilities (here the facilities in question are SCRTC's fiber) for providing that service. The statute does not use the term "exchange" at all. Rather, the statute prohibits uncertificated local service to telephone users in any locality where there is in operation in the locality "or **territory** affected thereby" another telephone company already providing that service. Clearly, the **territory** in which USWC is already providing local service and which is *affected by* SCRTC's local transport service to the MEANS building is the **territory** within the reach of an EAS call: USWC's entire certificated territory in the MCA.

<sup>3</sup> As explained in footnote 2, the "territory in question" is the entire metro area for which USWC has territorial authority.

<sup>4</sup> Obviously, EAS calls travelling the reverse route (originated in USWC's certificated territory and directed to Big Lake) implicate the certificate requirement under Minn. Stat. § 237.16, subd. 1 (1992) pursuant to the same analysis.

through MEANS. The Commission will note, however, that it remains persuaded that SS7 capabilities are not necessary to the installation of the EAS and that costs of SS7 (to the extent that they exceed the cost of current technology) should not be recovered in EAS rates.

## **II. SUBSCRIBER LINE COUNT**

On February 9, 1994, the Commission issued an Order which required SCRTC to refile its cost studies in this matter and the Company did so on or before May 27, 1994. In its September 2, 1994 Order in this matter, the Commission noted that the Company did not use the most recent subscriber count in calculating its proposed rates, the subscriber count for year end 1993 reported in SCRTC's annual report filed May 19, 1994. The Commission stated

To the greatest extent feasible, the Commission seeks to establish EAS rates that reflect conditions that will exist during the operation of the rates. Usually, this means that the rates should be set using the most current information available.  
ORDER at page 3.

The Commission proceeded, therefore, to adopt rates adjusted to reflect the subscriber figures appearing in the Company's annual report filed in May 1994.

In its petition for reconsideration, SCRTC objected to the use of the subscriber figures appearing in the Company's annual report filed in May 1994.

First, SCRTC stated that these figures were not adjusted to eliminate optional local measured service customers and seasonal customers. The Commission agrees that both of these customer classes should not be included in the line count, but finds that the customer line count figure it used in establishing SCRTC's EAS rates is already adjusted to take into account customers likely to opt for optional measured service. The Commission will, however, further adjust that figure, as suggested by SCRTC, to eliminate seasonal customers.<sup>5</sup>

Second, SCRTC suggested that the Commission use the subscriber count figure from a different date. The Company proposed the mid-point date for the subscriber data generated from the Company's last official traffic study. This study was conducted between September 15 and December 14, 1993. The mid-point date would be, therefore, November 1, 1993. SCRTC argued that it would be inappropriate to use the end-of-1993 subscriber count, even adjusted to eliminate seasonal and optional local measured service customers. SCRTC argued that the year figure would be out of sync with the traffic study used by the Company to support its EAS cost study and resulting revenue requirements.

If the year-end subscriber count was used, SCRTC argued, it should be allowed to conduct a new traffic study, submit new EAS revenue requirements, and have EAS rates based accordingly. Otherwise, the Company's income neutrality would not be maintained as required by Minn. Stat. § 237.161, subd. 3 (b) (1992).

To the greatest extent feasible, the Commission seeks to establish EAS rates that reflect conditions that will exist during the operation of the rates. This is an important goal in meeting the requirement of Minn. Stat. § 237.161, subd. 3 (b) (1992) that the Commission set fair and equitable EAS rates considering the interests of all parties. Usually, this means that the rates should be set using the most current information available.

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<sup>5</sup> In addition, the Commission notes that lines for two additional services should be subtracted from the customer line count. If EAS is installed between Big Lake and the MCA, Big Lake subscribers will have no need for foreign exchange (FX) service and WATS to the Metro. Therefore, the FX lines and WATS to Metro lines also should be subtracted from the total line count.

In this case, the Commission is not convinced that it should make an exception to that practice. The fact that the time period used to calculate the revenue requirement does not perfectly match the date used to fix the subscriber count does not render the rates set unfair or unjust to SCRTC.<sup>6</sup> Moreover, given the history of general growth in the number of subscribers, SCRTC's selection of the *mid-point* of the period used to calculate its revenue requirement would unnecessarily underestimate the number of customers. The best date from the three-month period would be the most current date from that period: December 15, 1993.

The end-of-year 1993 figures used by the Commission are only 15 days later than the best date from SCRTC's cost study period. The difference in customer line count occurring in this 15 day period does not render unfair rates calculated using the end-of-year 1993 customer line count. Nor does it warrant the additional delay that would result from granting SCRTC's request that it be allowed to submit a revised traffic study, cost study, and proposed rates based on a new three month period.

In sum: the Commission will adjust the rates adopted in the September 2, 1994 Order to reflect a subscriber line count which appropriately accounts for lines currently used for the following services: seasonal service, foreign exchange (FX) service, and WATS to the Metro.

### **III. GTE/UNITED REVENUE REQUIREMENTS**

In its September 2, 1994 Order, the Commission adopted rates based in part on the revenue requirements that the Department estimated would result from its investigations of GTE and United's earnings. The Department estimated that GTE and United's revenue requirements would be \$15,541 and \$118,051, respectively.

In its petition for reconsideration, SCRTC requested that the EAS rates be revised to reflect GTE and United's actual rather than estimated revenue requirements. Actual revenue requirement figures resulting from the Department's earnings investigations were \$16,119 for GTE and \$118,589 for United, a total of only \$1,116 more than the amount estimated by the Department.

The Commission observes that the Department's estimates were very close to the reported actual figures. In fact, neither GTE nor United have objected to the Department's estimates of their revenue requirements. Accordingly, the Commission finds that the Department's estimated figures provided a reasonable basis for calculating EAS rates and will not require the rates to be revised on this account. The resulting rates are within the range of fairness and equity required by the EAS statute.

### **ORDER**

1. SCRTC's request for reconsideration of the routing of the Big Lake-Metro EAS traffic is denied.
2. SCRTC's request that a subscriber line count from November 1, 1993 be used is denied.
3. SCRTC's request that if a year-end 1993 subscriber line count is used, that SCRTC be allowed to conduct a new traffic study and submit new EAS revenue requirements is

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<sup>6</sup> To illustrate, by the time the projected EAS is implemented, the subscriber rate will undoubtedly be higher than it was at end-of-year 1993. This suggests that the EAS rate set will be more than adequate to recover the revenue requirement, even if that revenue requirement were adjusted upward slightly, as it would be under cost studies based on a three month period ending at end-of-year 1993.

denied.

4. SCRTC's request that the subscriber line count be adjusted to consider seasonal subscribers is granted. In addition, the subscriber line count shall be adjusted to take into consideration the elimination of FX and WATS to Metro lines upon the adoption of Big Lake to Metro EAS.
5. SCRTC's request for reconsideration that the subscriber line count be adjusted for optional measured service customers is denied because optional measured service customers were already factored into the calculation of the rates adopted for polling in the September 2, 1994 Order.
6. SCRTC's request for reconsideration that the actual results of the United and GTE earnings investigations be used is denied.
7. The resulting rates adopted for polling subscribers in the Big Lake exchange are:  

<u>Residence</u>	<u>Business</u>
\$37.53	\$65.89 <sup>7</sup>
8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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<sup>7</sup> The Commission notes that these rates include allocation of 100 percent of the costs of the EAS to Big Lake subscribers. Therefore, if Big Lake subscribers approve the EAS, there will be no increase to rates for existing MCA subscribers.