

ISSUE DATE: December 2, 1997

DOCKET NO. P-413/M-97-964

ORDER APPROVING REVISED TARIFF, AS MODIFIED AND REQUIRING CUSTOMER
NOTICE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
Gregory Scott
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Lakedale Telephone
Company's Proposal to Restrict Adjacent
Exchange Service in Areas With Extended
Area Service

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PROCEDURAL HISTORY

On June 9, 1997, Kerry Maus, a customer in Lakedale Telephone Company's (Lakedale's) South Haven exchange, filed a complaint with the Consumer Affairs Office of the Commission. Ms. Maus alleged that Lakedale had refused her request to provide adjacent exchange service to the Kimball exchange of Melrose Telephone Company. The Kimball exchange has EAS to the St. Cloud calling area.

On June 27, 1997, Lakedale Telephone Company (Lakedale) submitted a tariff filing proposing to introduce restrictions on adjacent exchange service (AES) in areas with extended area service (EAS) to the St. Cloud and Minneapolis/St. Paul Metropolitan Calling Area (MCA). In most cases, AES enables a customer who resides within two miles of an exchange boundary to receive local exchange service from the adjacent exchange. Typically, an AES customer must also retain the local service from the exchange in which they live. Under the proposal, Lakedale will grandfather those customers who currently have adjacent exchange service to areas that have EAS to either the St. Cloud or the Minneapolis/St. Paul MCA.

On July 1, 1997, the Minnesota Department of Public Services (the Department) filed an objection to Lakedale's proposal. The Department stated that it wished to commence an investigation into the application relating to the adjacent exchange service to determine:

- The impact of the restriction on Lakedale's customers, and,
- The impact of the restriction on a related case that is currently pending before the Commission, i.e., the application to redesignate the corporate limits of the Village of Roscoe, Docket No. P-413, 415/SA-97-814.

On August 13, 1997, the Department filed comments recommending that the Commission approve

the proposed restrictions to AES subject to modification upon the Commission's decision in Docket No. P-413, 415/SA-97-814. The Department also recommended that the Commission direct Lakedale to provide 45 day written notice to all its customers prior to instituting the proposed restrictions to adjacent exchange service and to comply with Ms. Maus' request for AES to the Kimball exchange.

On August 25 and September 5, 1997, Lakedale filed reply comments.

On September 9, 1997 the Department filed reply comments.

On September 18, 1997 the Company filed further reply comments.

The Commission met on November 18, 1997 to consider this matter.

FINDINGS AND CONCLUSIONS

A. Lakedale's Proposed Tariff

Lakedale's current adjacent exchange service (AES) tariff enables a customer who resides not more than two miles from the exchange boundary of a contiguous exchange to receive local exchange service from that exchange in addition to the exchange in which the customer is located. The AES tariff provides as follows:

Service of a given exchange may be provided to an applicant of an adjacent exchange who resides not more than two miles from the exchange boundary of the serving exchange subject to the concurrence of management of both exchanges.

Lakedale proposed to amend this tariff to restrict AES into areas with extended area service and grandfather the service for current AES customers. The proposed tariff language stated that AES would not be provided to exchange areas with EAS to either the Minneapolis/St. Paul metropolitan calling area or the St. Cloud calling area.

B. The Department's Objection

1. Proposed Restrictions

The Department did not object to Lakedale's proposal to restrict AES, as specified in the proposed language amending the tariff. The Department argued, however, that it was improper for Lakedale to have restricted EAS prior to establishing that policy in its tariff.

2. Interpretation of Current Tariff

The Department interpreted Lakedale's **existing** tariff to mean that Lakedale must provide AES to

an applicant who resides within two miles of the exchange boundary unless it is not technically feasible to do so. The Department stated that since there was nothing in the record indicating that it is not technically feasible to provide adjacent exchange service to Ms. Maus, Lakedale must provide her with the requested service to comply with the anti-discrimination requirements of Minn. Stat. § 237.09.

The Department stated that Ms. Maus and any Lakedale customer who inquired about subscribing to AES prior to the Commission's approval of the Company's proposed tariff and who resides within two miles of the exchange boundary of the serving exchange should be eligible to receive that service. The Department recommended that the Commission require the Company to provide a notice period to all its customers before applying the proposed restrictions so that any customers in addition to Ms. Maus whose requests for AES have been rejected in violation of Minnesota law will have the opportunity to receive this service.

3. Relationship to Docket No. P-413, 415/SA-97-814

Finally, the Department stated that it had been unable to determine, based on Lakedale's filings to date, how the Company's proposal may affect the outcome of the proposal in Docket No. P-413, 415/SA-97-814 which involves a proposal to redesignate the corporate limits of the village of Roscoe. Therefore, the Department recommended that the Commission's approval of the proposed restrictions to AES be subject to modification upon the Commission's decision in Docket No. P-413, 415/SA-97-814.

C. Lakedale's Response

Lakedale objected to the Department's interpretation that Lakedale's current tariff requires the Company to provide AES to customers within the two mile band unless it is technically infeasible to do so. Lakedale noted that the current tariff uses the word "may" and argued that it contains other language that authorizes the Company to withhold the service if five conditions are not met. The third of these conditions, according to Lakedale, is "whether concurrence will be granted by the management of both exchanges." Based on its interpretation of the existing tariff, the Company rejected the Department's recommendation that the Commission require Lakedale to provide AES to Ms. Maus.

Lakedale also objected to the Department's recommendation that approval of the proposed tariff changes be subject to modification upon the Commission's decision in Docket No. P-413, 415/SA-97-814. According to Lakedale, the 814 Docket concerns the exchange boundary location and is unrelated to the current docket.

D. Commission Analysis

1. Ms. Maus' Application

Ms. Maus applied for AES under Lakedale's existing tariff and her application must be treated consistent with that tariff. Interpreting its existing tariff, Lakedale notes three conditions precedent that are stated in (or fairly implied from) the tariff:

Condition #1: that the requesting customer is located within the two miles of the exchange boundary;

Condition #2: that the customer agree to pay the construction charges for both exchanges; and

Condition #3: that the customer agree to pay the monthly recurring charges including the mileage charge.

Lakedale asserted that the current tariff contains two additional conditions applicable to Ms. Maus' request: 1) that the requested AES must not involve service to St. Cloud or the Minneapolis/St. Paul Metropolitan Calling Area and 2) that the management of both exchanges must concur in the customer's request.

- Regarding the asserted prohibition of AES involving service to St. Cloud or the Minneapolis/St. Paul Metropolitan Calling Area, the existing tariff contains no such language. Unless such restrictions are stated in the tariff, they may not be imposed by the Company simply as a matter of "company policy" as asserted by Lakedale.
- Regarding the requirement of management concurrence, the Commission does not accept Lakedale's interpretation of the "concurrence" language, which in effect would give the Company unfettered discretion to refuse to provide AES to Ms. Maus, even if she meets the other properly tariffed conditions. Such a broad interpretation of Company discretion is not consistent with the AES tariffs of other companies. In short, the Commission accepts the Department's position that, once the three above-stated conditions are met, Lakedale's current tariff limits the Company's discretion to deny AES to situations in which it is technically infeasible to do so.¹

Rather than rejecting Ms. Maus' request because it involved obtaining EAS service, ultimately, to St. Cloud, Lakedale should have determined whether she was within two miles of the relevant exchange boundary (Condition #1) and, having established that she was, provided her with an estimate of the costs of AES to see if she was willing to pay those amounts, thereby meeting Conditions #2 and #3, identified above. If she did, the Company would then provide her with

¹ Failure of an adjacent exchange to have a tariff providing for AES would be an example of a condition that would render the provision of AES technically infeasible.

AES service to Kimball, unless it was technically infeasible to do so. The Commission will direct Lakedale to respond to Ms. Maus' application in this manner.

2. Tariff Revisions Restricting AES

Several companies including Danube, Mid-State, Eckles and Lonsdale Telephone Companies have restricted and/or grandfathered adjacent exchange service. For example, in December of 1991, Lonsdale Telephone Company added the following language to its tariff in Docket No. P-542/M-91-987:

Adjacent exchange service is not available to exchanges in the Minneapolis/
St. Paul Metro Area unless service was provided or an application for service was received
prior to August 31, 1992.

The Commission does not find the substance of Lakedale's proposed tariff revisions objectionable and will approve them. The Commission will require, however, that the first sentence of the revised tariff be edited to delete the words "of management" to bring the wording in line with the tariffs of other companies.

In addition, the Commission clarifies that since it has been unable to determine at this time how approval of the revised tariff may affect the outcome of the proposal in Docket No. P-413, 415/SA-97-814 and has no intention to prejudice that docket in any way, the Commission will make its approval of the revised tariff in this Order subject to any modification that may be required for consistency with the Commission's decision in Docket No. P-413, 415/SA-97-814.

Finally, the Commission will require the Company to institute the revised tariff in a fair, reasonable and nondiscriminatory manner as described in the following section.

3. Notice

The Commission will approve the revised tariff, edited to remove the words "of management" and subject to the Commission's determination in Docket No. P-413, 415/SA-97-814, as described in the previous section. However, prior to allowing this revised tariff to become effective, the Commission will require Lakedale to notify its customers of the changes.

The purpose of such notification will be to assure proper treatment for any customer who 1) applied for AES while the current tariff was in effect and 2) was rejected improperly, i.e. pursuant to the company "policy" not to provide AES when the adjacent exchange has EAS to either St. Cloud or the MCA. As discussed above, proper treatment for the AES applicant in that situation is:

- 1) determine whether the customer is located within two miles of the relevant exchange boundary;
- 2) if the customer meets that condition, provide the customer with an estimate of the costs of AES (construction charges and monthly recurring charges including mileage charge) to see if the customer is willing to pay those costs; and
- 3) if the customer is willing to pay these costs, the Company would then provide the requested AES , unless it was technically infeasible to do so.

To assure proper notification, the Commission will require Lakedale to provide a copy of the draft notice to the Commission for review and approval. The Executive Secretary will have authority to approve the notice or require modifications as he deems appropriate. The Commission finds that the Company's proposal to publish the approved notice in newspapers relevant to the affected exchanges twice, on two consecutive weeks, is reasonable and will accept it.

ORDER

1. Lakedale Telephone Company's (Lakedale's or the Company's) proposed Adjacent Exchange Service (AES) tariff is approved,
 - a) modified to delete the phrase "of management" from the first sentence of the revised tariff, i.e., from the description of the service and
 - b) subject to the outcome of Docket No. P-413, 415/SA-97-814.
2. Lakedale shall prepare a notice to its customers regarding the tariff changes authorized in this Order and informing customers regarding their rights under the existing AES tariff (as described in this Order) and submit such notice to the Commission for approval.
3. The Executive Secretary shall have authority to approve or modify the notice, consistent with this Order.
4. Lakedale shall cause the approved notice to be published in a newspaper(s) relevant to the affected exchanges on two consecutive weeks, with the final publication date being 45 days or more before the effective date of the revised tariff.
5. Within 15 days of this Order, Lakedale shall provide an estimate of the costs of AES to Ms. Maus. If after reviewing these cost estimates Ms. Maus is willing to pay the costs of AES service to Kimball, the Company shall provide the service unless it is technically infeasible to do so.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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