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Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive
Columbia, SC 29210

Re: Hargray & Bluffton EAS Docket
Docket No. 2005-204-C and 2006-99-C
Our File No. 19336-0017

Dear Mr. Terreni:

Enclosed for filing please find the proposed order of the South Carolina Cable Television Association in the above-referenced matter. In addition to electronically filing the proposed order, we will email a Word version of the proposed order to the Commission. By copy of this letter we are serving the same on all interested parties. Please stamp the extra copy of this letter provided as proof of filing and return it in with our courier. Should you need any additional information, please contact me.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/bds
Enclosure

cc/enc: All Parties of Record
Ms. Nancy Horne

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BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NOS. 2005-204-C and 2006-99-C

Order No. 2007-_____

In Re: **Docket No. 2005-204-C** – Request for Extended Calling Area from Bluffton/Sun City Hilton Head Area to Hilton Head Island AND **Docket No. 2006-99-C** – Petition of Bluffton Telephone Company and Hargray Telephone Company to Implement Extended Area Service (EAS)	))))))))))))))	ORDER DENYING PETITION OF BLUFFTON AND HARGRAY (proposed order of SCCTA)

This matter comes before the Public Service Commission of South Carolina ("Commission") by way of a petition filed by Bluffton Telephone Co. ("Bluffton Telephone") and Hargray Telephone Co. ("Hargray Telephone")(collectively "Companies") requesting implementation of an Extended Area Service Plan which would encompass the entire service areas of both companies. Because of the reasons stated below, the petition of Bluffton Telephone and Hargray Telephone is denied.

BACKGROUND

On June 3, 2005, a Bluffton Telephone customer, filed a letter with the Commission requesting that local telephone service be established from Sun City and

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Bluffton to Hilton Head Island. The Commission established Docket No. 2005-204 and then on July 19, 2005, issued Order No. 2005-382 in which it requested that the Office of Regulatory Staff ("ORS") investigate the costs of providing an EAS from Bluffton/Sun City area to Hilton Head Island with the affected utilities, and any possible alternatives to extended area calling. The Commission also requested that ORS make its report and recommendation to the Commission within 60 days of the Order.

After numerous delays, on December 19, 2005, ORS filed its report in which it recommended that the cost per line be recalculated based on June 2005 data and that Bluffton Telephone's customers be balloted in order to determine whether the majority would be willing to pay an additional charge for unlimited calling to the Hargray exchanges. On December 28, 2005, ORS filed a revised version of its report in which ORS calculated the monthly incremental cost based on June 2005 data and in which it again recommended balloting of customers as being in the public interest. (See also Tr. 20). According to ORS calculations, the Bluffton EAS arrangement would require an increase of $4.18 per month for residential customers and $8.36 per month for business customers.

On April 3, 2006, the Companies filed a motion to hold the proceeding in abeyance pending review and resolution of a petition filed by the companies requesting implementation of an EAS plan filed on the same day. The motion indicated that the Companies' EAS petition would replace existing plans and would negate the need for EAS between Bluffton and Hilton Head.

The Companies' April 3, 2006, petition indicated that Bluffton and Hargray both offer optional Measured Extended Area Service for certain exchanges and an optional

Extended Flat Rate Service that allows unlimited calling between the Bluffton and Hargray exchanges at a flat rate of $10/month for residential customers and $20/month for business customers. The Companies proposed replacing their current optional MEAS calling and Extended Flat Service plans with a mandatory EAS adder of $2.25 for residential lines and $4.50 for business lines. Thus the Companies proposed an EAS adder for customers of Bluffton Telephone **and** Hargray Telephone while the ORS proposed EAS arrangement only affected Bluffton Telephone customers.

The Commission established Docket No. 2006-99-C for the Companies' April 3rd petition and then consolidated dockets 2005-204-C and 2006-99-C in Order No. 2006-261 on April 26, 2006.

The South Carolina Cable Television Association ("SCCTA") intervened on May 15, 2006, on the ground that the Companies were not proposing a traditional EAS arrangement but were instead bundling a toll service into their basic local service. The SCCTA argued that the Companies should not be allowed to receive USF funding for lines used to provide this bundled product.

A hearing was held on November 30, 2006 in the Commission's hearing room; the Honorable G. O'Neal Hamilton, Chairman, presided. M. John Bowen, Jr., Esquire and Margaret M. Fox, Esquire represented Bluffton Telephone and Hargray Telephone. The Companies jointly presented the testimony of Mark D. Reinhardt. The SCCTA was represented by Frank R. Ellerbe, III, Esquire and Bonnie D. Shealy, Esquire. Nanette S. Edwards, Deputy General Counsel, represented the Office of Regulatory Staff. The SCCTA and ORS presented no witnesses.

After opening statements by all parties, Mr. Reinhardt, Director of Customer

Services and Government Affairs for the Hargray Communications Group, testified on behalf of the Companies. Mr. Reingardt testified that Bluffton Telephone serves approximately 20,700 access lines and that Hargray Telephone serves approximately 50,300 access lines. (Tr. 12, 17 & 37). Both companies currently offer a discounted MEAS rate of 4¢ per minute to certain exchanges and both offer an Extended Flat Rate Service that allows unlimited calling from between the Bluffton and Hargray exchanges at a flat rate of $10 per month for residential customers and $20 per month for business customers. (Tr. 12). The Companies propose replacing these optional plans with a mandatory EAS throughout the Bluffton and Hargray local and MEAS service areas. (Tr. 13).

Mr. Reinhardt indicated that if the proposed plan was implemented, residential customers of both Companies would pay an additional mandatory adder of $2.25 per month and $4.50 per month for business customers. (Tr. 14-15).

Mr. Reinhardt also testified that in the first docket which addressed only Bluffton Telephone customers ORS proposed an EAS increase of $4.18 for residential customers and $8.36 for business customers. (Tr. 20). Although ORS recommended balloting the customers, the balloting did not take place because the Companies filed the petition requesting approval of the proposed EAS plan for both Bluffton and Hargray. (Tr. 20-21 & 27). He also indicated that the Companies published the hearing notice in area newspapers but did not provide any notice of the proposed plan in the customers' bills. (Tr. 31 & 33). In addition, Reinhardt was not aware of any study performed on calling patterns. (Tr. 27).

Reinhardt indicated that under the proposed plan customers do not have any

choice whether they will pay the mandatory adder of $2.25 per month. (Tr. 21-22). He indicated that the cost study was done on a combined basis for both Companies. Hearing Exhibit 1 presented by Mr. Reinhardt summarized the calculation used to arrive at the $2.25 rate. The exhibit also illustrated that although Bluffton Telephone has only 20,000 lines in comparison to Hargray's 50,000 lines, Bluffton generates approximately $464,000 more annual MEAS revenue than Hargray. Mr. Reinhardt testified that the figures on Exhibit 1 indicate that the Bluffton customers are making a lot more use of the MEAS service than the Hargray customers. (Tr. 37-38). Therefore, the Bluffton customers will benefit more financially from the proposed EAS arrangement than the Hargray customers. (Tr. 38-39).

At the conclusion of the testimony, counsel for SCCTA moved to deny the application as a matter of law because the applicants failed to follow the Commission's procedure established by precedent in order for the Commission to evaluate and examine a request to establish an EAS arrangement.

DISCUSSION & FINDINGS OF FACT

FAILURE TO FOLLOW PRECEDENT

The Commission's prior EAS orders have established a procedure by which EAS arrangements are evaluated. The Commission cannot act arbitrarily in failing to follow established precedent. *330 Concord St. Neighborhood Ass'n v Campsen*, 309 S.C. 514, 424 S.E.2d 538, 540 (Ct. App. 1992). The SCCTA requested the Commission take judicial notice of its prior EAS orders. We have reviewed the orders and examined the procedure used to evaluate EAS applications to determine that the Companies did not

comply with the procedures for evaluating their request for approval of an EAS arrangement.

In *Petition of Town of Branchville Requesting Approval of EAS to Orangeburg,* Docket No. 85-134-C, Order No. 86-658, the Commission approved the EAS request after United Telephone's affected subscribers were surveyed. Of those responding, 73.3% indicated they wanted a non-optional flat rate EAS to Orangeburg. The United Telephone Co. witness testified that Branchville residents must pay an additional $5.58 per access line per month in order to have the flat rate, non-optional EAS. As a result of implementing Branchville to Orangeburg EAS, there would be a corresponding toll revenue loss which United testified should be recovered from subscribers in the Branchville exchange since they would be receiving the benefits of the new service. Order No. 86-658, p. 1-3. The Southern Bell witness testified that each residential customer in Orangeburg would be required to pay an additional 19¢ per month for EAS to Branchville and business customers would pay an additional 47¢ per month. The toll revenue loss associated with the specific exchange as a result of EAS was recovered by the customers of the company in that exchange. Pursuant to the order in that docket Branchville residents would pay $5.58 per line for EAS and Orangeburg residential subscribers would pay 19¢ while business subscribers would pay 47¢ per line.

In *Petition of Citizens of Awendaw Community Requesting EAS to Charleston,* Docket No. 86-61-C, Order No. 87-172, the Commission required Southern Bell and McClellanville Telephone Co. to develop a community of interest study which analyzed the calling patterns between Awendaw and Charleston. Each company was required to file cost studies related to the provision of the requested EAS. The Commission denied

the request to add the costs incurred by Southern Bell and McClellanville to provide EAS between Awendaw and Charleston and spread the total cost over the subscriber bodies of both companies as unreasonable. The companies were instructed to provide an optional long distance service on an interim basis until the growth of the communities involved warranted EAS implementation.

In *Establishment of EAS from Batesburg-Leesville Exchange to Gilbert, Lexington & Columbia Exchanges,* Docket No. 87-141-C, Order No. 89-60, the Commission ordered Southern Bell, Alltel and Pond Branch Telephone Co., to submit cost information and community of interest studies. The Commission then ordered the companies to poll the subscribers for Batesburg-Leesville, Gilbert and Lexington. Approximately 90% of the customers who returned ballots in the Lexington and Gilbert Exchanges voted "no" to non-optional EAS to Batesburg-Leeville. Seventy-three percent of the customers in the Batesburg-Leesville area voted "yes" for EAS to Columbia, Batesburg-Leesville and Gilbert. Based on the negative responses from Gilbert and Lexington subscribers, the Commission had its Staff send a second ballot for Batesburg-Leesville to Columbia EAS only. Of the 45% responding, 62% of the residents and 44% of business customers voted "yes." The Commission denied the EAS request based on the results of the polls noting that more than half of the subscribers polled were not interested enough to return a completed ballot and more than half of the business customers were opposed.

In *Request for EAS between Cowpens and Pacolet*, Docket No. 88-164-C, Order No. 89-366, the Commission required Southern Bell to submit community of interest and cost studies related to EAS between the Pacolet and Cowpens exchanges. The Staff

polled the Pacolet and Cowpens subscribers to determine whether they wanted EAS at the cost of 74¢ per access line. Forty-five percent of the ballots were returned and of these responding, 64% of the residential and 32% of the business customers voted "no." The Commission denied the request based on the results of the ballots.

In *Petition of Pelion for Approval of EAS to Columbia*, Docket No. 86-279-C, Order No. 89-536, Pond Branch Telephone and Southern Bell performed community of interest and cost studies. Based on the ballots returned, 63% of the residential and 45% of the business customers voted "no" for EAS. The Commission denied the request based on the poll results.

In *Request for EAS between Chapin and Lexington Exchanges*, Docket No. 88-520, Order No. 89-886, the Commission required Southern Bell and Alltel to perform community of interest and cost studies. Alltel's community of interest study from Lexington to Chapin indicated a low community of interest. The Commission Staff balloted the customers and 53% of residential and 27% of business customers voted "no" to EAS from Chapin to Lexington. The Commission denied the request based on the results of the poll and suggested that subscribers consider optional long distance plans available from their local carrier.

In *Request of Southern Bell for revisions to its General Subscriber Servive Tariff to Introduce Area Plus Service*, Docket No. 93-176, Order No. 93-808, BellSouth sought to provide a local exchange optional calling service or area plus plan which was designed to meet those customer and economic development needs which have been expressed in EAS petitions. Order 93-808, p. 4. Commission Staff witness Gary Walsh testified that

> he had been responsible for the review and preparation of cost studies and community interest studies involving a tremendous number of EAS requests. According to Walsh, the EAS requests generally have very similar characteristics, in that a small urban community or pocket of customers requests flat rated toll-free calling between their community and a larger community. Generally, when the Commission orders that a ballot process be conducted, these requests have failed due to a lack of interest for calling from larger community back to the smaller community. In addition, Walsh found many cases where the majority of individuals in the community requesting EAS had voted the proposals down. Walsh further stated, that although the Area Plus Service Tariff provides a feature of being an optional service, he feels the service will relieve a tremendous amount of EAS pressure. In addition, the Plan would provide the relief sought by a small pocket of customers without placing a financial hardship on their neighbors.

Order No. 93-808, p. 5-6. The Commission approved the optional Area Plus Plan. Order No. 93-808, p. 8.

In *Request for EAS from Ridgeland to Beaufort*, Docket No. 91-063-C, Order No. 94-600, the Commission addressed several proposals to convert the telephone services in several exchanges to the Beaufort Exchange. The Commission ordered the Staff to ballot each of the Ridgeland subscribers living in Beaufort County to determine their interest which resulted in evenly divided results. The Commission based its decision in part on the balloting process and a compromise reached by the parties. Order No. 94-600, p. 2-4.

In *Request for EAS between Graniteville,SC, and Augusta, Georgia,* Docket No. 93-445-C, Order No. 95-1473, the Commission required Southern Bell to perform community of interest and cost studies. In order to provide the proposed EAS, Graniteville subscribers would incur an additional monthly adder of $9.52. The adder would not affect the Augusta subscribers because Georgia's regulatory authorities require the smaller exchange to bear the full cost of the provision of EAS where there

appears to be little interest in calling from the larger exchange. The Staff then polled the residents and found 69% opposed to the EAS plan. The Commission denied the EAS requested based on the results of the poll.

The Commission's prior EAS orders have established a procedure to evaluate EAS applications. Companies in the areas affected have been required to prepare community of interest and cost studies for their own areas. The cost studies are then used to determine the cost to the customer for each telephone utility involved. Once an adder is calculated for each company, that company's customers are polled to determine whether they are in favor of paying an additional charge for unlimited calling to the expanded area.

The procedure described above was not followed in this case. In other EAS cases in which two telephone companies were involved, separate cost studies were performed to determine the EAS adder for each company. In this case, the companies presented an improperly combined cost study. (Hearing Exhibit 1). Even though Bluffton Telephone customers are using the current MEAS service more than Hargray customers, under the proposal, both would pay the same adder for the mandatory EAS. (Hearing Exhibit 1 & Tr. 37-39). As proposed, Hargray customers, who will use the EAS service less than Bluffton customers, are subsidizing the Bluffton customers. Spreading the total cost of providing EAS over the subscriber bodies of both Hargray and Bluffton would be unreasonable and should be denied. See Order No. 87-172.

After complaints by Bluffton customers gave rise to the initial docket opened in this case, the Office of Regulatory Staff ("ORS") filed its report with the Commission and recommended that the Commission require the customers served in this area to be

balloted to determine the desire for an EAS offering.

> While the Bluffton Telephone Co. believes that the majority of its customers are unwilling to pay an additional $xx per month per access line for unlimited calling to the Hargray exchanges, the Office of Regulatory Staff's position is that the best determinant of the consumers' interest would be through the balloting of the Bluffton customers. ORS recommends that all Bluffton customers be balloted using the incremental cost for residence and business classes of service as calculated pursuant to the above recommendation to determine their interest in paying an additional monthly fee for expanding toll free calling to the Hargray exchanges. We feel such a ballot is in the public interest and will maintain the financial integrity of Bluffton Telephone Co.

Revised Report of ORS filed 12/28/06.

According to the witness for the Companies, customers were not balloted because the Companies filed a petition requesting approval of the proposed EAS plan for both Bluffton and Hargray. (Tr. 20-21, 31 & 33). As indicated above, the combined proposal with the same adder for two different companies results in Hargray customers subsidizing Bluffton customers. In this case, the Companies propose the combination plan without even consulting their customers.

As indicated in the orders referenced above, the Commission has always relied on balloting customers in order to make its determination as to whether the customers want to pay additional costs for EAS. Neither the Companies nor ORS has given the Commission a substantial reason as to why the Commission should deviate from the requirement that customers be balloted. In each of the prior EAS orders referenced above, the Commission discussed the importance of balloting in its decision-making process for EAS requests. Therefore, we find that the application should be denied on the grounds that the Companies have failed follow established precedent of balloting their customers and by improperly combining the cost studies to arrive at one adder for

both Companies.

The approach which the Companies have requested would result in the customers of the larger company, Hargray Telephone, subsidizing the customers of the smaller company, Bluffton Telephone. Such a result is completely at odds with our precedent in which we have carefully attempted to prevent such results.[1]

UNIVERSAL SERVICE FUND BUNDLING

As discussed above, the plan which the Companies propose is not a traditional EAS arrangement established in accordance with precedent. Instead it is a proposal to merge basic local service with a toll service, MEAS, and call the bundle a basic local service. The Companies cannot bundle a toll serve with basic local exchange service and then call this new combination "basic local service" in order to continue receiving state Universal Service Fund ("USF") subsidies. USF subsidies are intended to support basic local service only. Pursuant to S.C. Code Section 58-9-280, basic local service is the only service that should receive support from the state USF. We find that the proposal of the Companies would result in a bundled service offering being characterized as basic local service which would allow the Companies to receive USF in violation of the USF statute. This is an additional reason why the petition must be

[1] There is a more fundamental issue which has not been specifically addressed in this docket. In considering a proposed EAS arrangement this Commission has required the preparation of "cost studies." In reality those cost studies have focused on how the impacted LECs should make up for the lost toll revenues which would result from the implementation of the proposed EAS arrangement. In other words, the focus of the EAS inquiry is how the proposed EAS arrangement could be implemented in a way that would be "revenue neutral" to the LECs involved. For rate-base regulated companies which have a specific revenue requirement in order to earn their authorized rate of return the concept of revenue neutrality was and is appropriate. However, Hargray and Bluffton, as well as most other South Carolina LECs, are no longer rate-base regulated companies and no longer have a specific revenue requirement. There is a substantial question as to how, and whether, this Commission should consider an EAS application for an alternatively regulated company which has chosen not to have its earnings regulated by this Commission.

denied.

CONCLUSION

The Commission cannot, as a matter of law, approve the proposed EAS arrangement. The Companies improperly combined the cost studies which would result in Hargray Telephone customers subsidizing the cost of EAS service for Bluffton Telephone customers. In addition, the Companies failed to ballot the customers to determine the public interest in the proposed plan. Finally, the proposal would allow the Companies to unlawfully collect state USF subsidies through bundling and merger of a toll product with basic local exchange service.

IT IS THEREFORE ORDERED THAT the request of Bluffton Telephone and Hargray Telephone to implement extended area service is denied.

BY ORDER OF THE COMMISSION:

_____
G. O'Neal Hamilton, Chairman

ATTEST:

_____
C. Robert Moseley, Vice-Chairman

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2005-204-C and 2006-99-C

In Re:	)
	)
Docket No. 2005-204-C -- Request for Extended Calling Area from Bluffton/Sun City Hilton Head Area to Hilton Head Island	)
	)
AND	)
	)
Docket No. 2006-99-C -- Petition of BlufftonTelephone Company and Hargray Telephone Company to Implement Extended Area Service (EAS)	)

CERTIFICATE OF SERVICE

This is to certify that I, Vickie V. Pietschker, a Legal Assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **PROPOSED ORDER DENYING PETITION OF BLUFFTON AND HARGRAY** in the foregoing matter by electronically mailing to:

jbowen@mcnair.net

pfox@mcnair.net

nsedwar@regstaff.sc.gov

and by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

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Dated at Columbia, South Carolina this 16th day of February, 2007.

Vickie V. Pietschker

Vickie V. Pietschker