

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

<b>In the Matter of the Workshop</b>	)	<b>Edwin B. Parker</b>
<b>To Examine the Concept of</b>	)	<b>Comments</b>
<b>Statewide Extended Area Service</b>	)	<b>December 9, 2004</b>

**1. Name and Qualifications**

My name is Edwin B. Parker. I am president of Parker Telecommunications, a consulting business located in Gleneden Beach, Oregon. In former careers I was at different times: Professor of Communication at Stanford University; co-founder, Chairman, President and Chief Executive Officer of a publicly traded competitive telecommunications carrier; and president of the data networks division of a large telephone company subsidiary. I am currently a member of the Oregon Telecommunications Coordinating Council. I have written extensively on the role of telecommunications in economic and community development, including the book *Electronic Byways: State Policies for Rural Development through Telecommunications*.

**2. Issues are Larger than Statewide EAS**

Statewide Extended Area Service (EAS) would benefit the economy of the state of Oregon, businesses and consumers throughout the state and wireline carriers providing local telephone service in Oregon. Statewide EAS would solve problems of inter-carrier compensation for intrastate Oregon telephone service. It would permit the Oregon Public Utility Commission (PUC) to complete the task of undoing implicit subsidies in Oregon telephone rates and thus make Oregon the first state completely ready for full competition in telecommunications services. In the process, the PUC would have to pay close attention to two policy areas that will require continuing PUC oversight in an era of deregulated telecommunications competition, namely protection of service for low income Oregonians and protection of service to rural communities. I recommend that the PUC open a docket to address intrastate inter-carrier compensation issues, including statewide EAS as one possible solution. The scope of the docket should be broad enough to include other issues necessary to ensure adequate service availability for low income Oregonians and for rural communities in the event of statewide EAS implementation.

**3. Competitive Advantages of Statewide EAS**

In the era of regulated telephone monopoly, state and federal regulators kept basic local telephone rates low by requiring long distance carriers to subsidize local service through per minute terminating access charges. That implicit (hidden) subsidy mechanism, which was not visible to consumers, was implemented to achieve the policy goal of “universal service.” By subsidizing all users of local telephone service whether rich or poor, business or residential, regulators kept rates for long distance service higher than would be the case in an unregulated competitive marketplace. By maintaining that subsidy mechanism at a time when long distance services are otherwise competitive and

unregulated, regulators have created a world of unfair competition in which competitors are not really competing in a normal marketplace. Instead, long distance providers are competing through what amounts to regulatory arbitrage. Wireless long distance providers have an unfair economic advantage over wireline long distance providers because wireless providers do not pay the same terminating access charges as wireline long distance providers do, and because customers of wireless providers do not pay into the Oregon universal service fund as customers of wireline providers do. Internet telephony, called Voice over Internet Protocol (VoIP), which the Federal Communications Commission (FCC) has declared to be a federally regulated service exempt from state regulatory jurisdiction, avoids payment into both federal and state universal service funds and avoids per minute long distance terminating access charges. Some wireline long distance carriers have attempted to avoid regulated charges by routing intrastate calls through an out-of-state point where an advertising message is inserted to justify a claim that it is an enhanced service not subject to standard telephone connection charges. Some wireline long distance carriers have attempted to avoid regulated charges by claiming that they are an Internet service because they use Internet Protocol on part of the route.

Another consequence of using a regulated implicit subsidy mechanism to keep local telephone rates low has been to protect local telephone service providers from competition. It is not surprising that there has been little successful competition for basic local telephone service at a time when incumbents have a regulatory subsidy that helps them keep prices low for all users. The policy goal of universal service is a desirable regulatory goal that should be maintained in the new era of telecommunications competition, but not in a way that distorts the competitive marketplace. According to the latest FCC report on the subject, 96 percent of Oregon households have telephone service. Instead of subsidizing the 96 percent of households that already have service, the Oregon PUC should pursue the goal of universal service by subsidizing the four percent of households that lack service and the low income households (perhaps 10 to 15 percent?) that could be harmed if local telephone rates were to rise.

Statewide EAS would permit wireline carriers in Oregon to offer their customers flat rate statewide calling in competition with the flat rate plans of their unregulated competitors that use wireless or Internet technology. The proven attractiveness to consumers of flat rate EAS plans, wireless flat rate long distance plans, and flat rate VoIP options has clearly demonstrated the desire of both business and residential consumers for flat rate calling plans. Statewide EAS would not only undo the last Oregon regulatory barrier to competitive telecommunications services, but would also permit Oregon wireline carriers to offer the kind of competitive flat rate calling plan that consumers want and that their competitors already offer. The current per minute terminating access charge for intrastate long distance calls is the main barrier preventing wireline carriers from offering competitive flat rate calling plans in Oregon.

#### **4. Statewide EAS would Protect Rural Consumers**

Rural consumers served by small rural telephone carriers are at risk of having to pay unreasonably high basic telephone rates or of losing service altogether if their local provider loses the revenue from long distance per minute terminating access charges. It is unclear at this point how quickly long distance telephony will transition to VoIP. Some observers predict that the transition will be quick, now that the FCC has prohibited states from regulating Internet telephony. If so, the resulting rapid loss of per minute terminating access charges could devastate small rural carriers and their customers. Since such a transition would also involve the loss of revenue to both the federal and the Oregon universal service fund, it is unlikely that universal service funds would be sufficient to make up the lost revenue. A case can be made that the transition will be slow and the loss of revenue gradual. However, there is no certainty of that. The long run outcome is clear; the problem will not go away. The only question is: How much time do we have to fix it before disaster strikes? Since the problem will have to be fixed at some point, and will get worse over time, there appears to be no good reason to delay implementing a solution that can protect rural consumers. I urge the PUC to fix it now before it becomes a crisis. Implementing statewide EAS in Oregon appears to be a reasonable solution to the intrastate inter-carrier compensation issue. It will be easier to fix now before the funds needed to fix it are lost altogether in a flight to providers that are totally outside Oregon PUC jurisdiction.

#### **5. Do Not Wait for Federal Solutions**

The inter-carrier compensation problem is a serious one for both federal and state jurisdictions. It is likely to be very difficult to achieve a consensus among affected parties at the federal level. Any FCC order that does not reflect a consensus position is likely to be litigated, causing further implementation delays. Some observers suggest that new federal legislation may be required. If the Telecommunications Act of 1996 is an appropriate example, federal legislation will take even longer and will lead to further delays at the FCC and the courts as regulations to implement new law are enacted and litigated. Under current federal law the FCC cannot solve the intrastate inter-carrier compensation problem. It is most unlikely that Congress would pass a federal law that would transfer to the FCC the regulatory powers over intrastate telephony now held by state regulatory commissions. Since the Oregon intrastate inter-carrier compensation issues can be resolved now using a revenue-neutral statewide EAS plan, there is no good reason to wait for a federal solution to the similar problem in the interstate jurisdiction. Indeed there is an economic advantage for Oregon to solve the intrastate inter-carrier compensation problem now before more of the telecommunications traffic in Oregon switches to competitors that are outside of state jurisdiction.

#### **6. Statewide EAS Will Boost the Oregon Economy**

Flat rate statewide calling could be a huge boost to the Oregon economy. It will expand the market area for both urban and rural businesses and level the competitive playing field for both. It would permit consumers to reach businesses anywhere in the

state without additional telephone charges. Eliminating intrastate per minute terminating access charges will undo the drag on the Oregon economy caused by long distance rates that are often higher for intrastate long distance calls than for out-of-state calls. Statewide EAS should create incentives to do business in-state instead of out-of-state. Flat rate statewide calling should make it easier to start new businesses anywhere in the state and make it easier to recruit businesses to communities that would otherwise not be considered as desirable relocation sites because of communication costs and the psychological barrier consumers have against paying for long distance calls to reach businesses. An improved economy means more jobs, more customers and a win-win result for all Oregonians. Oregon law may not require the PUC to take into account the effect of its decisions on the Oregon economy, but the governor, the legislature and local governments in Oregon are united behind the need to take whatever actions are available to stimulate the Oregon economy and create more Oregon jobs. Statewide EAS is the best thing the PUC could do for the Oregon economy. A plan that is revenue-neutral now but brings a promise of increased future intrastate business activity should be a winner for everybody. The PUC should do the right thing for the Oregon economy.

## **7. Protect Low Income Oregonians from Unaffordable Rates**

Some analysts have indicated that the revenue-neutral price point for flat rate statewide calling would be slightly less than an additional \$5 per month per telephone line, at least for residential customers. For most Oregonians, that would be a welcome alternative to metered intrastate long distance charges. However, for some Oregonians, especially those living at or below the poverty line, such an increase could be a hardship. The PUC has a continuing responsibility to foster the longstanding telecommunications policy goal of universal service and to protect low income consumers. The most important way to protect low income Oregonians would be to better promote and publicize the availability of the FCC's Lifeline low income subsidy program. Oregon ratepayers contribute to both the FCC program and to the Oregon matching funds required by the FCC. If need be, the PUC could increase the level of Lifeline support to Oregon residents by increasing the Oregon subsidy component beyond the minimum required to leverage the available federal funds. Some analysts have indicated that less than a third of eligible Oregonians take advantage of this subsidy program to lower their monthly telephone bill. At a minimum, the PUC should require any new EAS notices sent by telephone carriers to their customers to include information about eligibility rules and procedures for their customers to obtain the Lifeline subsidy. Another way to protect such consumers would be to treat statewide flat rate calling as an extension of existing EAS plans and continue to permit a metered rate option for all local and EAS calls.

## **8. Protect Rural Oregonians from Unaffordable Rates**

Previous EAS implementations in Oregon have permitted statewide averaging of rates within each telephone carrier, but have not created a "pool" or other means of averaging rates across carriers. Continuation of that policy in the course of implementing statewide EAS could cause severe hardship to customers of some of the smaller independent telephone carriers in the state. Carriers serving only a small rural territory

might have to charge their customers as much as \$80 per month for statewide EAS instead of a statewide average number closer to \$5. Such a result would violate the PUC's legislative requirement to avoid such wide disparities in telephone rates. One way to resolve this potential problem would be to create a statewide pooling or averaging mechanism to insure that no Oregon telephone customers would be subject to such an unfair result. However, it may be administratively simpler and cheaper to include EAS as a component within the existing Oregon universal service fund rather than set up a new and different fund for EAS. Use of the Oregon universal fund rather than a new pooling mechanism would be more consistent with the accepted policy of making subsidies explicit rather than implicit through inter-carrier pooling.

Unfortunately, achieving that simpler result may require legislation to change the definition of "basic service" for purposes of the Oregon universal service fund in a way that would not affect the definition of "basic service" for purposes of the price cap regulation sections of the Oregon statutes. A different term or definition could be used for these two statutory sections. If that definitional separation is achieved, it appears that the PUC would have sufficient legislative authority to change the definition of what is included for purposes of the Oregon universal service fund. Section 759.425 (2)(a) of the Oregon Revised Statutes (ORS) says, "The Public Utility Commission shall establish the price a telecommunications utility may charge its customers for basic telephone service. The commission in its discretion shall periodically review and evaluate the status of telecommunications services in the state and designate the services included in basic telephone service. The commission in its discretion shall periodically review and adjust as necessary the price a telecommunications utility may charge for basic telephone service." The small telephone company exception created in ORS section 759.425 (2)(b) would perhaps not be a legal barrier if those small companies voluntarily waived their rights to that exemption, which they might well do if they would otherwise be ineligible to receive Oregon universal service funds to cover the costs of statewide EAS in their territories. Alternately, the legislation could be changed to remove the applicability of that exemption for purposes of universal service fund participation. If the PUC decides that use of the universal service fund would be preferable to creating a new EAS pooling mechanism, then the PUC should move quickly to get such changes made during the 2005 legislative session.

## **9. Do Not Wait for State Legislation**

With the possible exception of the potential change to universal service fund legislation discussed above, it does not appear that any state legislation is required to implement a statewide expansion of current EAS plans. Prior precedents for expanding EAS throughout the state plus state and federal legislative direction to promote competition should provide sufficient authority for the PUC to implement statewide EAS on its own initiative. Absent any legislative instruction to the contrary, the PUC should just move ahead to solve a problem it is already tasked to solve. If the legislature has a better solution for solving the intrastate inter-carrier compensation problem than the expert agency that has already been given the task, they will have ample opportunity in the 2005 session.

## **10. Implementation Issues**

Since statewide EAS will cross area code boundaries, it may be technically easier to implement such an EAS region by implementing statewide 10-digit dialing at the same time. If that proves to be the case, it should not be an impediment to statewide EAS. The successful implementation of 10-digit dialing in most of the 503 area code has shown that 10-digit dialing should not be a problem.

Statewide EAS will also cross Local Access and Transport Area (LATA) boundaries. LATA boundaries in Oregon will become irrelevant on April 15, 2006 unless Qwest fails to get a routine order from the FCC permitting them to offer inter-LATA service without a separate subsidiary after that date. If the date of implementation of statewide EAS precedes April 15, 2006, then a waiver from the FCC would be required. Such a waiver should not be too difficult to obtain given the precedent set by the FCC's approval of prior Oregon PUC requests for LATA boundary waivers for purposes of EAS implementation.

## **11. Conclusion**

I recommend that the PUC proceed immediately to open a formal docket to address the issues of intrastate inter-carrier compensation, including but not limited to discussion of implementation of a statewide EAS region as a potential solution to the intrastate inter-carrier compensation problem. The scope of the docket should be broad enough to include consideration of various means to protect low income Oregonians and rural communities served by small independent telephone carriers from any potential adverse effects of statewide EAS implementation. I urge the PUC to determine quickly whether they believe any legislative changes would be desirable to give them better tools to solve the problems of intrastate inter-carrier compensation or to implement statewide EAS and if so to draft such legislation soon so that it could be considered in the 2005 legislative session. Given the timing of the legislative session, such proposed legislation, if desired, should not wait for the outcome of the proceedings in the new docket.