

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Request of Limited Modification of)
LATA Boundaries to Provide ELCS)
Between the Montalba)
Exchange and the Tyler)
Exchange.)

PETITION

I. INTRODUCTION

Southwestern Bell Telephone Company (SWBT), pursuant to Section 3(25) of the Communications Act of 1934, as amended,¹ and in accordance with the guidelines established in the Commission's Memorandum Opinion and Order (MO&O) released July 15, 1997 in CC Docket No. 96-159,² hereby makes application for a limited modification of LATA boundaries to provide ELCS between the Montalba exchange and the Tyler exchange.

II. SUPPORTING INFORMATION

As prescribed in paragraph 23 of the aforementioned Commission MO&O, SWBT provides the following information in support of its application:

1. Type of service: Flat-rate, non-optional Expanded Local Calling (ELC);
2. Direction of service: Two-way;

¹ The Communications Act of 1934, as amended, 47 U.S.C. *et al.*

² Memorandum Opinion and Order, Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations, CC Docket No. 96-159, released July 15, 1997. By way of this MO&O the Commission adopted a format for and criteria under which such petitions would be granted. The format and criteria are detailed in paragraphs 23 and 24.

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3. Exchanges involved: Montalba in the Dallas, TX LATA and Tyler in the Longview, TX LATA;
4. Name of carriers: Montalba of Sprint/United/Centel Telephone and Tyler of Southwestern Bell Telephone;
5. State commission approval(s): See Attachment A;
6. Number of access lines or customers: The Montalba exchange has 1,212 access lines, and the Tyler exchange has 76,784 access lines;
7. Usage data: Usage data is not available to Southwestern Bell Telephone. SWBT does not currently carry traffic across LATA boundaries;
8. Poll results: Percentage of Montalba customers returning ballots who voted in favor of ELC to Tyler: 81.20. Where SWBT is the petitioning exchange, there is no proposed rate increase. Where SWBT is not the petitioning exchange, SWBT does not have information as to any proposed rate increase.
9. Community of interest statement: The Public Utility Commission of Texas includes a Community of Interest Finding in their Order(s). See Attachment A.
10. Map: See Attachment B; and,
11. Other pertinent information: None

III. PRIMA FACIE SHOWING

SWBT believes that it has made a *prima facie* case supporting grant of the proposed modification because the instant ELCS petition (1) has been approved by the state commission; (2) proposes only traditional local service (i.e., flat-rate, non-optional ELCS); (3) indicates that the state commission found a sufficient community of interest to warrant such service; (4) documents this community of interest through such evidence as poll results and descriptions of the communities involved; and, (5) involves a limited number of customers or access lines. These requirements for a *prima facie* case are detailed in the aforementioned Commission MO&O paragraph 24.

IV. CONCLUSION

Wherefore, SWBT request that the Commission approve its application for a limited modification of LATA boundaries to provide ELCS between the Montalba exchange and the Tyler exchange.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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AUGUST 29, 1997

SWB

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DOCKET NO. 14250

**PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
MONTALBA TO THE TYLER AND
JACKSONVILLE EXCHANGES**

§
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§
§

**PUBLIC UTILITY COMMISSION
OF TEXAS**

**ORDER NO. 3
ORDER OF SEVERANCE**

PROJECT NO. 15150

**PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
MONTALBA EXCHANGE TO THE
JACKSONVILLE EXCHANGE**

§
§
§
§

**ORDER NO. 1
ESTABLISHING PROJECT AND PROCEDURAL SCHEDULE**

On January 20, 1995, a petition for expanded local calling service (ELCS) from the Montalba Exchange to the Tyler and Jacksonville Exchanges was filed pursuant to P.U.C. SUBST. R. 23.49(c). The petition was assigned Project No. 13854. The Montalba Exchange is in the Dallas Local Access and Transport Area (LATA) and the Tyler and Jacksonville Exchanges are in the Longview LATA. Federal court orders prohibit Southwestern Bell Telephone Company (SWB) and GTE Southwest, Inc. (GTE) from providing service across the LATA boundary. Consequently, on May 23, 1995, Order No. 1 docketed this petition so that the Commission could formally process the interLATA petition and issue an interim order to allow SWB and GTE to seek waivers from Judge Harold H. Greene.

On October 9, 1995, an interim order of the Commission became effective. The interim order found that a community of interest exists between the exchanges and directed GTE and SWB to seek a waiver from Judge Greene. On November 22, 1995, Judge Greene issued an order that permits GTE and Contel to carry traffic between the exchanges. Judge Greene has not yet ruled on SWB's request.

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PROJECT NO. 15150

ORDER NO. 3

ATTACHMENT A
SHEET 2

In order to process the portion of this petition that has been granted a waiver, the request for ELCS from the Montalba Exchange to the Jacksonville Exchange is severed from Docket No. 14250. It shall be processed as Project No. 15150 captioned *Petition for Expanded Local Calling Service from the Montalba Exchange to the Jacksonville Exchange*. The attached procedural schedule establishes the relevant deadlines for this project.

SIGNED AT AUSTIN, TEXAS the 21st day of December, 1995.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

Scheduling Order for Expanded Toll-free Calling Petition

- 01/29/96 **COST STUDIES AND IMPLEMENTATION PLAN SUBMITTED BY LEC** indicating the costs to provide for the expansion of toll-free calling, the initial fees for the service, and the implementation schedule for the service.
- 02/05/96 **INTERIM APPROVAL GRANTED** - The presiding officer shall grant interim approval of the proposed fees and implementation plan.
- 02/15/96 Any interested party, including General Counsel, must file comments contesting the the fees and implementation schedule and requesting further investigation.
- 02/20/96 **IF FURTHER INVESTIGATION** is requested, the presiding officer shall set up a procedural schedule to contest the rate determination.
- IF FURTHER INVESTIGATION IS NOT REQUESTED**, the staff shall file its final recommendation regarding the fees.
- 02/26/96 **IF FURTHER INVESTIGATION IS NOT REQUESTED**, the presiding officer shall issue an order granting **FINAL APPROVAL** of the fees.

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JM (2)

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| PETITION FOR EXPANDED LOCAL CALLING SERVICE FROM THE MONTALBA EXCHANGE TO THE TYLER AND JACKSONVILLE EXCHANGES | § § § § | PUBLIC UTILITY COMMISSION OF TEXAS |
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INTERIM ORDER

On behalf of the Public Utility Commission of Texas (Commission) the Administrative Law Judge (ALJ) finds that this docket is based on a evidentiary record and has been processed in accordance with applicable statutes and Commission rules. There were no disputed issues in this petition.

The following findings of fact and conclusions of law are **ADOPTED**:

Findings of Fact

1. The expanded toll-free local calling service (ELCS) petition that is the subject of this Interim Order request non-optional "to and from calling" between the Montalba Exchange and the Tyler and Jacksonville Exchanges.
2. The processes for petitioning and balloting included notice that the service would have a fee of up to \$3.50 for residential and \$7.00 for business customers on a non-optional basis.
3. Judge Harold H. Greene established the LATA boundaries for Southwestern Bell Telephone Company (SWB) in the Modified Final Judgment, *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982) and *United States v. Western Elec. Co., Inc.*, 569 F.Supp. 990 (D.D.C. 1983), and for GTE Southwest, Inc. and Contel of Texas, Inc. (collectively GTE) in the Decree, *United States v. GTE Corp.*, 1985-1 Trade Cas (CCH) §66,355 (D.D.C. 1985). (The collective orders of Judge Greene will hereinafter be referred to as MFJ.)
4. A LATA is a geographic area in which SWB and GTE can provide telecommunication services within its boundaries. In the MFJ, Judge Greene restricted the two local exchange carriers from

providing interLATA transport. In order for the companies to span the LATA boundaries established by the MFJ, they must obtain a waiver from Judge Greene.

5 Judge Greene has relied upon the following issues for SWB or GTE to obtain a waiver of the MFJ: impact on competition, whether the calling plan has the attributes of a long distance toll call, and whether a community of interest exist between the two exchanges.

6. On October 19, 1993, the Commission amended P.U.C. SUBST. R. 23.49 by adding a section pertaining to ELCS in accordance with Senate Bill 632, (Act of May 11, 1993, 73rd Leg. R.S., ch.271, 1993 Tex. Sess. Law Serv. 1276 (Vernon))(to be codified as an amendment to TEX. REV. CIV. STAT. ANN., Art. 1446c, § 93A) and § 93A of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1994). The rule became effective on December 7, 1993.

7. The statute and the rule referred to in Finding of Fact No. 6 provide certain requirements for petitioning exchanges to meet in order to receive ELCS. One such requirement is a showing of a community of interest.

8. In recommending approval of various waivers before Judge Greene, the Department of Justice (DOJ) has relied upon an affirmative finding of the Public Utility Commission of Texas that a community of interest exists between two exchanges, often based on a vote of the responding subscribers, and whether the two exchanges share such needs as local governments; employment; shopping; and use of educational and medical services.

9. An affirmative vote of 70 percent of the subscribers responding to the ballot is necessary for an ELCS petition to proceed at the Commission. The percentage of affirmative votes from those subscribers returning ballots is a compelling showing of a community of interest. This factor can and should be considered with the same weight as other factors, such as the sharing of local government, schools, employment, and commercial centers.

10. On January 20, 1995, the Montalba Exchange filed a petition for ELCS between it and the Tyler and Jacksonville Exchanges, among others.

11. The Montalba Exchange is served by United Telephone Company of Texas, Inc (United), and it is in the Dallas LATA. The Tyler Exchange is served by SWB, and the Jacksonville Exchange is served by GTE. The Tyler and Jacksonville Exchanges are in the Longview LATA.

12. The parties to the proceeding are the petitioning Montalba Exchange, GTE, SWB, United, and General Counsel. A hearing on the merits was not held because there are no contested issues. There is no statutory deadline for this proceeding.

13. The Montalba Exchange is within 22 miles of the Jacksonville and Tyler Exchanges.

14. An affirmative vote of 81.2 percent of those subscribers that voted in the balloting favored expanding local calling scope from the Montalba Exchange to the Tyler Exchange. An affirmative vote of 74.9 percent of those subscribers that voted in the balloting favored expanding local calling scope from the Montalba Exchange to the Jacksonville Exchange.

15. There are no public schools in the Montalba Exchange. Students attend school in other exchanges. The Tyler Junior College and the University of Texas at Tyler in the Tyler Exchange are attended by citizens in the Montalba Exchange. The Jacksonville College in the Jacksonville Exchange is attended by citizens in the Montalba Exchange.

16. Citizens in the Montalba Exchange rely upon hospitals and medical providers in the Tyler and Jacksonville Exchanges. The East Texas Medical Center Hospital, Mother Francis Hospital, the University of Texas Health Center, the Tyler Rehabilitation Hospital, Doctors Memorial Hospital, and the Nan Travis Memorial Hospital serve the Montalba area. Doctors, dentists, pharmacists, physical therapists, funeral homes, and monument providers serving the Montalba Exchange are located in the Tyler and Jacksonville Exchanges.

17. The following governmental offices are located in the Tyler Exchange and serve the Montalba area: federal courts, Federal Bureau of Investigation, U.S. District Judge, grand jury, Bankruptcy Court, armed forces recruiting stations for the Army, Navy, Marines, and National Guard, Bureau of

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INTERIM ORDER

Alcohol, Tobacco and Firearms, U S Magistrate, Secret Service, and mental health and mental resources office

18. The Montalba Exchange is in a rural area without many places for employment or commercial shopping. There are no stores or markets for residents to trade goods. Farmers markets, feed stores, veterinarians, exterminators, shopping malls, Wal-Mart, dry cleaners, book stores, financial institutions, automobile sales and repair shops, building material suppliers, septic service, an airport., tax services, insurance providers, entertainment providers, theaters, and restaurants located in thte Tyler and Jacksonville Exchanges serve the Montalba Exchange.

19. There is a community of interest between the Montalba Exchange and the Tyler Exchange. The exchanges are within 22 miles of each other. In addition, the petitioners proved a community of interest with the Tyler Exchange in the following ways: the affirmative vote of the subscribers returning ballots; commonality as a commercial and employment center; commonality of medical facilities and providers; and, commonality of government facilities.

20. There is a community of interest between the Montalba Exchange and the Jacksonville Exchange. The exchanges are within 22 miles of each other. In addition, the petitioners proved a community of interest with the Jacksonville Exchange in the following ways: the affirmative vote of the subscribers returning ballots; commonality as a commercial and employment center; and, commonality of medical facilities and providers.

21. No issues of law or fact are disputed by any party.

22. No hearing on the merits or Commission action is necessary and administrative review is warranted.

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INTERIM ORDER

Conclusions of Law

1. The Commission has jurisdiction in this proceeding pursuant to the Public Utility Regulatory Act of 1995, S.B. 319, §§ 1.101, 3.051, 3.151, 3.155, 2.201, 3.251, and 3.304, 74th Leg., R.S. 1995.
2. The standards for community of interest for ELCS in Texas are established in § 3.304(a)(2) of PURA and in P.U.C. SUBST. R. 23.49(c)(3).
3. Pursuant to P.U.C. SUBST. R. 23.49(c)(11), ELCS petitions filed prior to the adoption of P.U.C. SUBST. R. 23.49(c) must satisfy the criteria contained within the rule.
4. To meet the community of interest standard, P.U.C. SUBST. R. 23.49(c)(3)(B) and § 3.304(a)(2) of PURA require a petitioning exchange to have either a contiguous boundary with the petitioned exchange or require the exchanges covered by the petition to be within a distance of 22 miles of each other. As established in Finding of Fact No. 14, the petitioning exchange satisfies the requirement.
5. P.U.C. SUBST. R. 23.49(c)(3)(C) provides that if the exchanges are greater than 22 miles apart, but less than 50 miles, the petitioners must show a community of interest through schools, hospitals, local governments, business centers, or other relationships so that, without ELCS, a hardship on the residents of the petitioning exchange would occur.
6. An ELCS docket that has the two exchanges within 22 miles of each other or which are contiguous to each other constitutes a *per se* showing of community of interest. Judge Greene requires, however, a greater showing of community of interest in order to grant a waiver of the MFJ; thus, the Commission shall address additional findings of a community of interest between the exchanges in this type of proceeding.
7. A community of interest standard similar to P.U.C. SUBST. R. 23.49(b)(2) is not applicable to proceedings involving ELCS.

8. The standards contained within § 3.304(a)(2) of PURA and P.U.C. SUBST. R. 23.49(c)(3)(B) apply to both contested and uncontested ELCS proceedings.
9. P.U.C. SUBST. R. 23.49(c)(5)(D)(ii) and § 3.304 of PURA require an affirmative vote of at least 70 percent of those subscribers returning ballots to establish a community of interest. The statute and rule do not require an affirmative vote of at least 70 percent of all subscribers in the exchange.
10. This petition does not constitute a major rate proceeding as defined by P.U.C. PROC. R. 22.2.
11. All requirements for administrative review under P.U.C. PROC. R. 22.32(a) have been satisfied; therefore, the proposed petition may be approved by a Hearings Officer under the administrative review provisions of P.U.C. PROC. R. 22.32 as authorized by § 1.101(d) of PURA.

In accordance with the findings of fact and conclusions of law, the Commission issues the following Interim Order:

1. The petitioners in the petition filed by the Montalba Exchange for expanded local calling service to the Tyler and Jacksonville Exchanges have shown a community of interest between the exchanges.
2. Within thirty (30) days of this Interim Order, GTE Southwest, Inc. (GTE) and Southwestern Bell Telephone Company (SWB) are **DIRECTED** to file a request for a waiver of the Modified Final Judgment with the Department of Justice or Judge Harold H. Greene, as appropriate.
3. Within thirty (30) days of the receipt of the ruling by Judge Greene, GTE and SWB are **DIRECTED** to file Judge Greene's judgment in this docket.

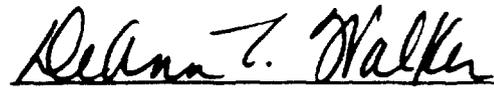
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INTERIM ORDER

ATTACHMENT A
SHEET 10

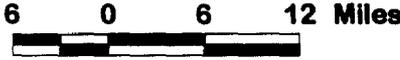
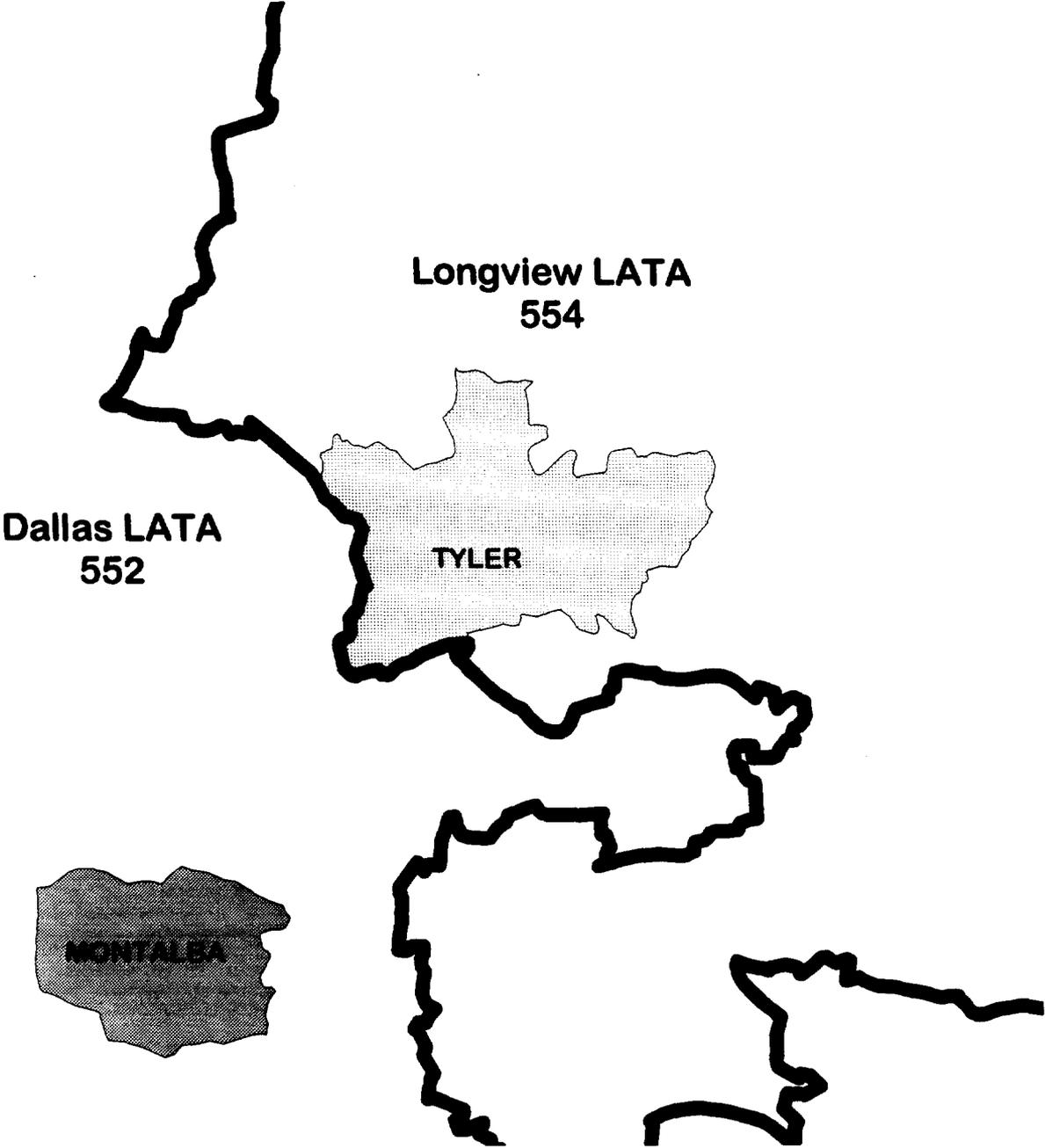
4 This Interim Order is effective October 9, 1995

Respectfully submitted,

A handwritten signature in cursive script that reads "Deann T. Walker". The signature is written in black ink and is positioned above a horizontal line.

DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

Montalba To Tyler



-  Sprint/United Telephone Exchange
-  Southwestern Bell Telephone Exchange

This document was produced by the Texas Exchange Carrier Relations organization of Southwestern Bell Telephone Company on 7/1/97, based on the best information it could obtain from other sources at that time. In addition, it is the Telephone Company's understanding that the data underlying the creation of this document may be subject to change. Southwestern Bell makes no representation as to the accuracy of the information provided to it and used to create this document.

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "PETITION OF SOUTHWESTERN BELL TELEPHONE COMPANY" in Docket No. 96-159 has been filed this 29th day of August, 1997 to the Parties of Record.

A handwritten signature in cursive script that reads "Katie M. Turner". The signature is written in black ink and is positioned above a horizontal line.

Katie M. Turner

August 29, 1997

Texas Public Utility Commission
1701 North Congress
Austin, Texas 78701