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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

DOCKET FILE COPY ORIGINAL

96-159

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 Frost exchange and the Hillsboro 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;

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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.

3. Exchanges involved: Frost in the Dallas, TX LATA and Hillsboro in the Waco, TX LATA;
4. Name of carriers: Frost of Contel/GTE Southwest, Inc. and Hillsboro of Southwestern Bell Telephone;
5. State commission approval(s): See Attachment A;
6. Number of access lines or customers: The Frost exchange has 414 access lines, and the Hillsboro exchange has 6,094 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 Frost customers returning ballots who voted in favor of ELC to Hillsboro: Greater than 70 percent. 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 Frost exchange and the Hillsboro exchange.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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AUGUST 29, 1997

DOCKET NO. 13324

SHEET 1

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
 CALLING SERVICE FROM THE JARRELL §
 EXCHANGE TO THE EXCHANGE OF § OF TEXAS
 BARTLETT §

ORDER NO. 9

DOCKET NO. 13435

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
 CALLING SERVICE FROM THE ALBA §
 EXCHANGE TO THE EXCHANGE OF § OF TEXAS
 MINEOLA §

ORDER NO. 8

DOCKET NO. 13486

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
 CALLING SERVICE FROM THE BOGATA §
 EXCHANGE TO THE EXCHANGE OF § OF TEXAS
 MT. PLEASANT §

ORDER NO. 9

DOCKET NO. 13498

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
 CALING SERVICE FROM THE §
 BROWNSBORO-EDOM EXCHANGE TO THE § OF TEXAS
 EXCHANGES OF LINDALE, MINEOLA, §
 OWENTOWN AND TYLER §

ORDER NO. 10

DOCKET NO. 13556

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
 CALLING SERVICE FROM THE CHESTER §
 EXCHANGE TO THE EXCHANGE OF § STATE OF TEXAS
 WOODVILLE §

ORDER NO. 7

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 PUBLIC UTILITY COMMISSION

DOCKET NO. 13324
DOCKET NO. 13435
DOCKET NO. 13486
DOCKET NO. 13498
DOCKET NO. 13556
DOCKET NO. 13649

ORDER NO. 9
ORDER NO. 8
ORDER NO. 9
ORDER NO. 10
ORDER NO. 7
ORDER NO. 10

DOCKET NO. 13649

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE FROST §
EXCHANGE TO THE EXCHANGE OF § OF TEXAS
HILLSBORO §

**ORDER NO. 10
UNABATING AND DIRECTING LOCAL EXCHANGE COMPANY
TO FILE FOR LIMITED MODIFICATION**

On July 28, 1997, the Commission Staff recommended that, in light of the recent Federal Communications Commission (FCC) order addressing the procedures for Southwestern Bell Telephone Company (SWBT) to request limited modifications of local access and transport area (LATA) boundaries for the provision of expanded local calling service (ELCS), that these applications be unabated. A community of interest has previously been established in these cases and a waiver request was filed by SWBT with the Department of Justice under the *Modified Final Judgment*. Therefore, these applications are unabated.

Within thirty days of the effective date of this order, SWBT shall file a request for limited modification of the LATA boundary in accordance with the procedures outlined *In the Matter of Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, CC Docket No. 96-159, FCC 97-244, (rel. July 15, 1997) *Memorandum Opinion and Order*, §§ 23 & 24.

DOCKET NO. 13324
DOCKET NO. 13435
DOCKET NO. 13486
DOCKET NO. 13498
DOCKET NO. 13556
DOCKET NO. 13649

ORDER NO. 9
ORDER NO. 8
ORDER NO. 9
ORDER NO. 10
ORDER NO. 7
ORDER NO. 10

ATTACHMENT A
SHEET 3

Additionally, within 10 days of the receipt of orders or notices from the FCC relating to these petitions, SWBT shall file such orders or notices with the Commission.



**ISSUED BY THE OFFICE OF POLICY DEVELOPMENT
ON BEHALF OF THE PUBLIC UTILITY COMMISSION OF TEXAS
ON THE 30th DAY OF JULY, 1997**

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DOCKET NO. 13649

PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
FROST EXCHANGE TO THE
DAWSON, HILLSBORO, BRANDON,
HUBBARD, IRENE, MALONE,
AND BYNUM EXCHANGES

§
§
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§

PUBLIC UTILITY COMMISSION

OF TEXAS

**ORDER NO. 9
ORDER OF SEVERANCE**

PROJECT NO. 14937

PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
FROST EXCHANGE TO THE
HUBBARD AND IRENE EXCHANGES

§
§
§
§

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

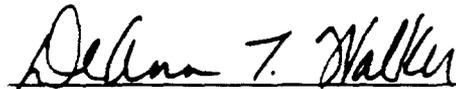
On June 23, 1994, a petition for expanded local calling service (ELCS) from the Frost Exchange to the Dawson, Hillsboro, Brandon, Hubbard, Irene, Malone, and Bynum Exchanges was filed pursuant to P.U.C. SUBST. R. 23.49(c). The petition was assigned Project No. 13155. The Frost Exchange is in the Dallas Local Access and Transport Area (LATA) and the Dawson, Hillsboro, Brandon, Hubbard, Irene, Malone, and Bynum Exchanges are in the Waco LATA. Federal court orders prohibit Southwestern Bell Telephone Company (SWB) and GTE Southwest, Inc. (GTE) from providing service across the LATA boundary. Consequently, on November 15, 1994, 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 August 9, 1995, an interim order of the Commission became effective. The interim order found that a community of interest exists between the Frost Exchange and the Hillsboro, Hubbard, and Irene Exchanges and directed GTE and SWB to seek a waiver from Judge Greene. On October 12, 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.

The portion of the docket involving the Dawson, Brandon, Malone, and Bynum Exchanges is **DISMISSED**. In order to process the portion of this petition that has been granted a waiver, the request for ELCS from the Frost Exchange to the Hubbard and Irene Exchanges is **SEVERED** from Docket No. 13649. It shall be processed as Project No. 14937 captioned *Petition for Expanded Local Calling Service from the Frost Exchange to the Hubbard and Irene Exchanges*. The attached procedural schedule establishes the relevant deadlines for this project. In the future, Docket No. 13649 shall be captioned *Petition for Expanded Local Calling Service from the Frost Exchange to the Hillsboro Exchange*.

SIGNED AT AUSTIN, TEXAS the 31st day of October, 1995.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

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 the 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 June 23, 1994, the Frost Exchange filed a petition for ELCS between it and the Dawson, Hillsboro, Brandon, Hubbard, Irene, Malone, and Bynum Exchanges.

11. On July 11, 1995, Order No. 8 was issued in the proceeding. The order found that sufficient evidence was not presented to show a community of interest exists between the Frost Exchange and the Dawson, Brandon, Malone, and Bynum Exchanges.

12. The Frost Exchange is served by GTE, and it is in the Dallas LATA. The Hillsboro, Hubbard, and Irene Exchanges are in the Waco LATA. The Hillsboro Exchange is served by SWB; the Hubbard Exchange is served by GTE; and, the Irene Exchange is served by Contel.

13. The parties to the proceeding are the petitioning Frost Exchange, GTE, SWB, 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.

14. The Frost Exchange is contiguous to the Irene Exchange and is within 22-miles of the Hillsboro and Hubbard Exchanges.

15. An affirmative vote of over 70 percent of those subscribers that voted in the balloting favored expanding local calling scope from the Frost Exchange to the Hillsboro, Irene, and Hubbard Exchanges.

16. The Frost Exchange is a small community with approximately 345 customers listed in the local directory.

17. Fifteen percent of the residents of the Frost Exchange reside in Hill County. The county seat of Hills County is Hillsboro, and is in the Hillsboro Exchange. Likewise, the following services located in the Hillsboro Exchange provide services to the Frost Exchange: the Hill County Appraisal District, the Alert Care Ambulance Service, Inc., and the Hillsboro Fire Department. Ambulance service is also provided by the Southern Hill County Ambulance Service in the Hubbard Exchange.

18. Many of the residents of the Frost Exchange are provided health care primarily by the Hill Regional Hospital in Hillsboro and the Parkview Clinic in Hubbard. Nursing homes located in the Hillsboro Exchange provides care for elderly residents of the Frost Exchange.

19. Thirty-two percent of the students enrolled in the Frost Independent School District reside in the Irene Exchange.

20. There is a community of interest between the Frost Exchange and the Hillsboro Exchange. The exchanges are within 22 miles of each other. In addition, the petitioners proved a community of interest with the Hillsboro Exchange in the following ways: affirmative vote of the subscribers returning ballots; commonality of medical providers, hospitals, and nursing homes; commonality of emergency needs, such as a fire department and ambulance service, and, commonality of local government.

21. There is a community of interest between the Frost Exchange and the Hubbard Exchange. The Frost Exchange and the Hubbard Exchange are within 22 miles of each other. In addition, the petitioners proved a community of interest with the Hubbard Exchange in the following ways: affirmative vote of the subscribers returning ballots and commonality of hospitals and ambulance service.

22. There is a community of interest between the Frost Exchange and the Irene Exchange. The Frost Exchange and the Hubbard Exchange are contiguous to each other. In addition, the petitioners proved a community of interest with the Irene Exchange in the following ways: affirmative vote of the subscribers returning ballots and commonality of school districts.

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

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

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. 13, 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 Frost Exchange for expanded local calling service to the Hillsboro, Hubbard, and Irene 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.

4. This Interim Order is effective August 9, 1995

Respectfully submitted,

Deann T. Walker

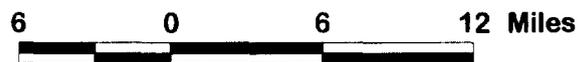
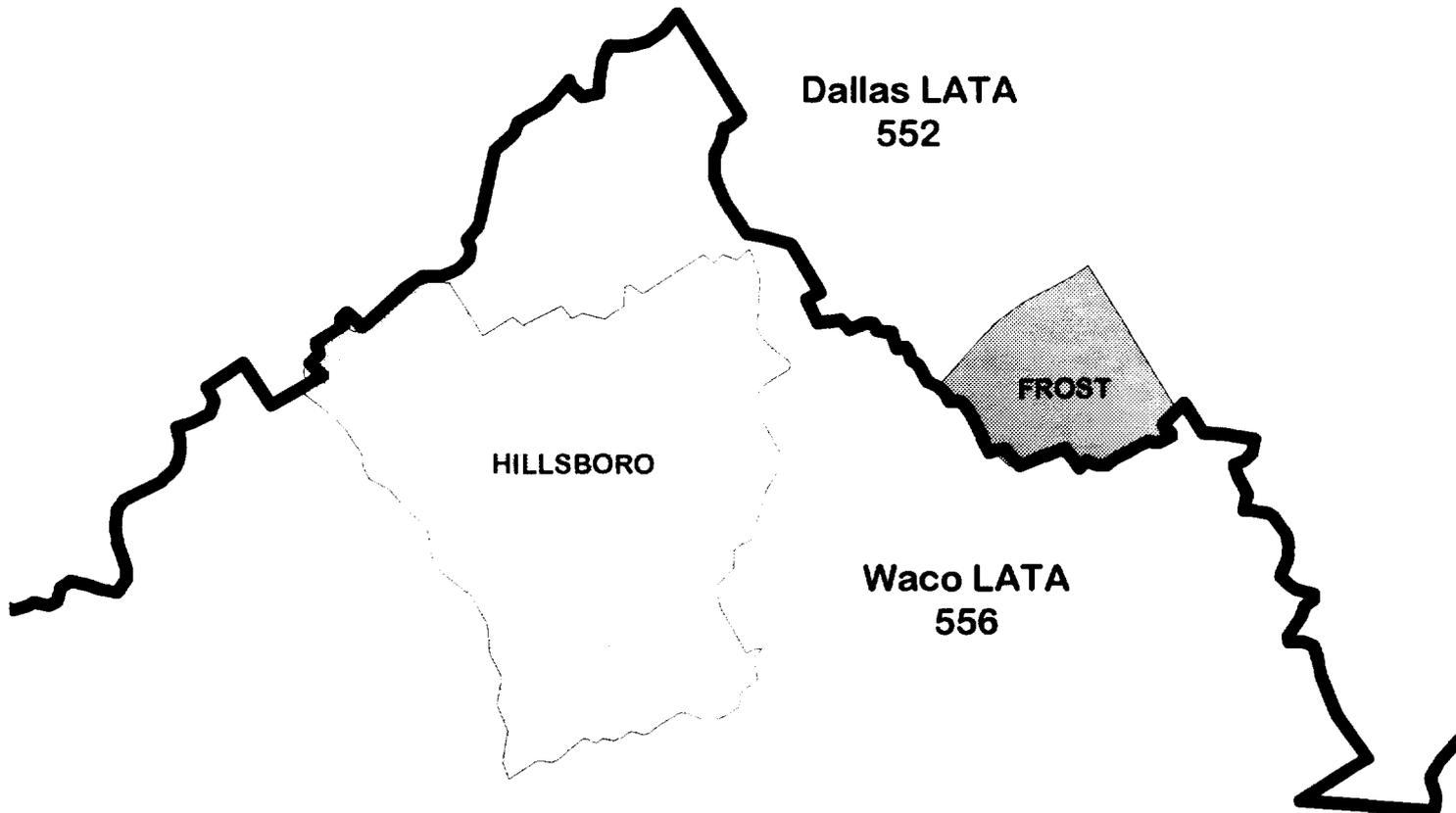
DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

APPROVED this 19th day of July 1995.

Stephen J. Dai

AMALIJA J. HODGINS
ACTING DIRECTOR OF HEARINGS

Frost To Hillsboro



-  **GTE Southwest Inc. Exchange**
-  **Southwestern Bell Telephone Exchange**

This document was produced by the Texas Exchange Carrier Relations organization of Southwestern Bell Telephone Company on 8/7/97, 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