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

In the Matter of)
)
Request of Limited Modification of)
LATA Boundaries to Provide ELCS)
Between the Richland)
exchange and the Wortham and)
Mexia exchanges.)

96-159

DOCKET FILE COPY ORIGINAL

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 Richland exchange and the Wortham and Mexia exchanges.

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);

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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2. Direction of service: Two-way;
3. Exchanges involved: Richland in the Dallas, TX LATA, Wortham in the Waco, TX LATA and Mexia in the Waco, TX LATA;
4. Name of carriers: Richland of Contel/GTE Southwest, Inc., Wortham of Southwestern Bell Telephone and Mexia of Southwestern Bell Telephone;
5. State commission approval(s): See Attachment A;
6. Number of access lines or customers: Richland has 210 access lines, Wortham has 647 access lines and Mexia has 5,194 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 Richland customers returning ballots who voted in favor of ELC to Wortham: 96.00. Percentage of Richland customers returning ballots who voted in favor of ELC to Mexia: 98.00. 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 Richland exchange and the Wortham and Mexia exchanges.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By Marjorie Morris Weisman
Robert M. Lynch
Durward D. Dupre
Mary W. Marks
Marjorie M. Weisman

Attorneys for
Southwestern Bell Telephone Company

One Bell Center, Room 3520
St. Louis, Missouri 63101
(314) 235-2507

AUGUST 29, 1997

DOCKET NO. 13688

**PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE RICHLAND §
EXCHANGE TO THE EXCHANGES OF § OF TEXAS
MEXIA AND WORTHAM §**

ORDER NO. 8

DOCKET NO. 13689

**PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE NORDHEIM §
EXCHANGE TO THE EXCHANGE OF § OF TEXAS
KENEDY §**

ORDER NO. 9

DOCKET NO. 13690

**PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE FENTRESS §
EXCHANGE TO THE EXCHANGE OF § OF TEXAS
LULING §**

ORDER NO. 7

DOCKET NO. 13764

**PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
CALING SERVICE FROM THE MINEOLA §
EXCHANGE TO THE EXCHANGE OF § OF TEXAS
GRAND SALINE §**

ORDER NO. 7

DOCKET NO. 13878

**PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE §
YORKTOWN EXCHANGE TO THE § STATE OF TEXAS
EXCHANGES OF KENEDY AND RUNGE §**

ORDER NO. 6

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DOCKET NO. 13687
DOCKET NO. 13690
DOCKET NO. 13764
DOCKET NO. 13878
DOCKET NO. 13939

ORDER NO. 7
ORDER NO. 7
ORDER NO. 6
ORDER NO. 8

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. 13688

PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
RICHLAND EXCHANGE TO THE
DAWSON, MEXIA, AND
WORTHAM EXCHANGES

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PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER NO. 7
ORDER OF SEVERANCE

PROJECT NO. 14936

PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
RICHLAND EXCHANGE TO THE
DAWSON EXCHANGE

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ORDER NO. 1
ESTABLISHING PROJECT AND PROCEDURAL SCHEDULE

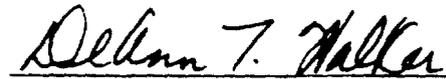
On July 28, 1994, a petition for expanded local calling service (ELCS) from the Richland Exchange to the Dawson, Mexia, and Wortham Exchanges was filed pursuant to P.U.C. SUBST. R. 23.49(c). The petition was assigned Project No. 13264. The Richland Exchange is in the Dallas Local Access and Transport Area (LATA) and the Dawson, Mexia, and Wortham 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 8, 1995, an interim order of the Commission became effective. The interim order found that a community of interest exists between the Richland Exchange and the Dawson, Mexia, and Wortham 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.

In order to process the portion of this petition that has been granted a waiver, the request for ELCS from the Richland Exchange to the Dawson Exchange is **SEVERED** from Docket No. 13688. It shall be processed as Project No. 14936 captioned *Petition for Expanded Local Calling Service from the Richland Exchange to the Dawson Exchange*. The attached procedural schedule establishes the relevant deadlines for this project. In the future, Docket No. 13688 shall be captioned *Petition for Expanded Local Calling Service from the Richland Exchange to the Mexia and Wortham Exchanges*.

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

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

Scheduling Order for Expanded Toll-free Calling Petition

- 12/11/95 **COST STUDIES 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.
- 12/27/95 **INTERIM APPROVAL GRANTED** - A presiding officer shall grant interim approval of the proposed fees.
- 01/08/96 Deadline for any party, including General Counsel, to contest the implementation schedule.
- 01/10/96 **IMPLEMENTATION PLAN** - The presiding officer issues an order approving, modifying, or denying implementation schedule.
- 01/25/96 Any interested party must file comments contesting the fees and requesting the docketing of the proceeding and requesting further investigation.
- 01/30/96 **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.
- 02/05/96 **IF FURTHER INVESTIGATION IS NOT REQUESTED**, the presiding officer shall issue an order granting **FINAL APPROVAL** of the fees.

DOCKET NO. 13688

PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
RICHLAND EXCHANGE TO THE
DAWSON, MEXIA, AND
WORTHAM EXCHANGES

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PUBLIC UTILITY COMMISSION
OF TEXAS

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 Richland Exchange and Dawson, Mexia, and Wortham 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 July 28, 1994, the Richland Exchange filed a petition for ELCS between it and the Dawson, Mexia, and Wortham Exchanges, among others.

11. The Richland Exchange is served by Contel, and it is in the Dallas LATA. The Dawson Exchange is served by GTE, and is in the Waco LATA. The Mexia and Wortham Exchanges are served by SWB, and are in the Waco LATA.

12. The parties to the proceeding are the petitioning Richland Exchange, SWB, GTE, 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 Richland Exchange is contiguous with the Wortham Exchange and is within 22-miles of the Dawson and Mexia Exchanges.

14. An affirmative vote of 93 percent of those subscribers that voted in the balloting favored expanding local calling scope from the Richland Exchange to the Dawson Exchange. An affirmative vote of 98 percent of those subscribers that voted in the balloting favored expanding local calling scope from the Richland Exchange to the Mexia Exchange. An affirmative vote of 96 percent of those subscribers that voted in the balloting favored expanding local calling scope from the Richland Exchange to the Wortham Exchange.

15. Richland is a small community that does not have the services offered by the other three exchanges.

16. In particular, the Wortham Exchange contains the following services utilized by citizens in the Richland Exchange: medical facilities; physicians; nursing home; pharmacy; schools; funeral home; bank; air conditioner business; building supply company, tax service; American Plant and Fertilizer Plant; and the fire department.

17. In particular, the Mexia Exchange contains the following services utilized by citizens in the Richland Exchange: hospital; physicians; nursing service; pharmacy; schools; factories; funeral home; bank; Mexia State School, which is the largest employer for the area; and, the fire department.

18. In particular, the Dawson Exchange contains the following services utilized by citizens in the Richland Exchange: bank; supplies for farms and ranches; the Navarro County Precinct Officer Barn, which employs persons and provides equipment; and the fire department.

19. There is a community of interest between the Richland Exchange and the Wortham Exchange. The exchanges are contiguous to each other. In addition, the petitioners proved a community of interest with the Wortham Exchange in the following ways: affirmative vote of the subscribers returning ballots; common utilization as a commercial center, employment center, and financial center; commonality of schools; and, common reliance upon medical providers.

20. There is a community of interest between the Richland Exchange and the Mexia Exchange. The exchanges are within 22 miles of each other. In addition, the petitioners proved a community of interest with the Mexia Exchange in the following ways: affirmative vote of the subscribers returning ballots; common utilization as a commercial center, employment center, and financial center; commonality of schools; and, common reliance upon hospital and medical providers.

21. There is a community of interest between the Richland Exchange and the Dawson Exchange. The exchanges are within 22 miles of each other. In addition, the petitioners proved a community of interest with the Dawson Exchange in the following ways: affirmative vote of the subscribers returning ballots; and, common utilization as a commercial center and financial center.

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

23. 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.

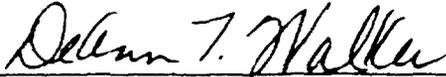
8. The standards contained within § 3 304(a)(2) of PURA and P.U.C. SUBST. R. 23.49(c)(3)(B) apply to both contested and uncontested ELCS proceedings.
9. P.U.C. SUBST. R. 23.49(c)(5)(D)(ii) and § 3 304 of PURA require an affirmative vote of at least 70 percent of those subscribers returning ballots to 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 Richland Exchange for expanded local calling service to the Dawson, Mexia, and Wortham Exchanges have shown a community of interest between the exchanges.
2. Within thirty (30) days of this Interim Order, Southwestern Bell Telephone Company (SWB) and GTE Southwest, Inc. (GTE-SW) 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, SWB and GTE are **DIRECTED** to file Judge Greene's judgment in this docket.

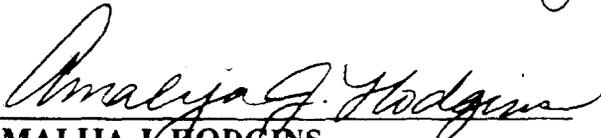
4 This Interim Order is effective August 8, 1995

Respectfully submitted,



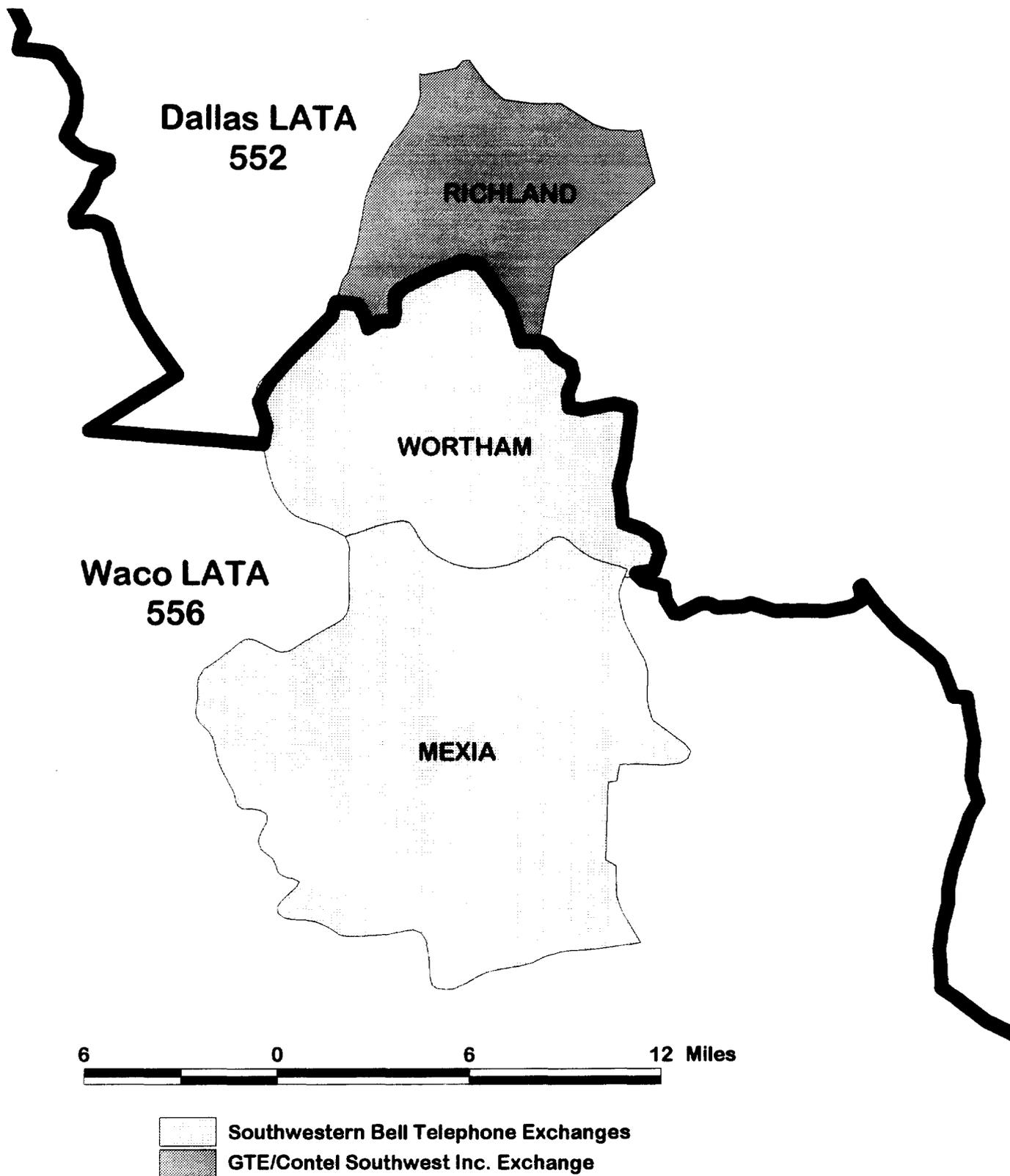
DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

APPROVED this 18th day of July 1995.



AMALIJA J. HODGINS
ACTING DIRECTOR OF HEARINGS

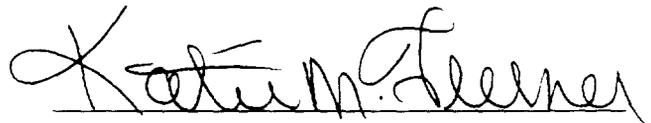
Richland To Mexia and Wortham



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