

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

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AUG 29 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

96-159

DOCKET FILE COPY ORIGINAL

In the Matter of )  
)  
Request of Limited Modification of )  
LATA Boundaries to Provide ELCS )  
Between the Grand Saline )  
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,<sup>1</sup> 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,<sup>2</sup> hereby makes application for a limited modification of LATA boundaries to provide ELCS between the Grand Saline 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;

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

<sup>2</sup> 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: Grand Saline in the Dallas, TX LATA and Tyler in the Longview, TX LATA;
4. Name of carriers: Grand Saline of Contel/GTE Southwest, Inc. and Tyler of Southwestern Bell Telephone;
5. State commission approval(s): See Attachment A;
6. Number of access lines or customers: The Grand Saline exchange has 2,413 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 Grand Saline customers returning ballots who voted in favor of ELC to Tyler: 81.40. 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 Grand Saline exchange and the Tyler exchange.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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AUGUST 29, 1997

DOCKET NO. 12335

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

ORDER NO. 13

DOCKET NO. 12413

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE BLESSING	§	
EXCHANGE TO THE EXCHANGE OF	§	OF TEXAS
BAY CITY	§	

ORDER NO. 17

DOCKET NO. 12922

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

ORDER NO. 13

DOCKET NO. 13226

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

~~ORDER NO. 9~~

DOCKET NO. 13248

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE GRAND	§	
SALINE EXCHANGE TO THE EXCHANGE	§	STATE OF TEXAS
OF TYLER	§	

ORDER NO. 8

DOCKET NO. 12335  
DOCKET NO. 12413  
DOCKET NO. 12922  
DOCKET NO. 13226  
DOCKET NO. 13248  
DOCKET NO. 13268  
DOCKET NO. 13318  
DOCKET NO. 13323

ORDER NO. 13  
ORDER NO. 17  
ORDER NO. 13  
ORDER NO. 9  
ORDER NO. 8  
ORDER NO. 10  
ORDER NO. 9  
ORDER NO. 8

DOCKET NO. 13268

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION  
CALLING SERVICE FROM THE PETTUS §  
EXCHANGE TO THE EXCHANGES OF § OF TEXAS  
KENEDY AND KARNES/FALLS CITY §

ORDER NO. 10

DOCKET NO. 13318

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION  
CALLING SERVICE FROM THE §  
FRANKSTON EXCHANGE TO THE § OF TEXAS  
EXCHANGES OF TYLER §

ORDER NO. 9

DOCKET NO. 13323

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

ORDER NO. 8  
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

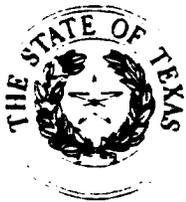
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ORDER NO. 13  
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ORDER NO. 9  
ORDER NO. 8

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.

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 31ST DAY OF JULY, 1997

DB-JM  
②

DOCKET NO. 13248

PETITION FOR EXPANDED LOCAL  
CALLING SERVICE FROM THE  
GRAND SALINE EXCHANGE TO THE  
VAN AND TYLER EXCHANGES

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§

PUBLIC UTILITY COMMISSION  
OF TEXAS

ORDER NO. 7  
ORDER OF SEVERANCE

PROJECT NO. 14715

PETITION FOR EXPANDED LOCAL  
CALLING SERVICE FROM THE  
GRAND SALINE EXCHANGE TO  
THE VAN EXCHANGE

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§

PUBLIC UTILITY COMMISSION  
OF TEXAS

ORDER NO. 1  
ESTABLISHING PROJECT AND PROCEDURAL SCHEDULE

On March 4, 1994, a petition for expanded local calling service (ELCS) from the Grand Saline Exchange to the Van and Tyler Exchanges was filed pursuant to P.U.C. SUBST. R. 23.49(c). The petition was assigned Project No. 12826. The Grand Saline Exchange is in the Dallas Local Access and Transport Area (LATA) and the Van and Tyler 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 July 28, 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.

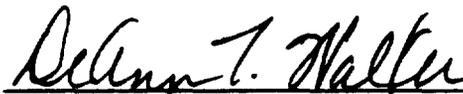
On July 4, 1995, an interim order of the Commission became effective. The interim order found that a community of interest existed between the exchanges and directed GTE and SWB to seek a waiver from Judge Greene. On August 10, 1995, Judge Greene issued an order that permits GTE to carry traffic between the exchanges of Grand Saline and Van. Judge Greene has not yet granted SWB's request.

In order to process the portion of this petition that has been granted a waiver, the request for ELCS from the Grand Saline Exchange to the Van Exchange is **SEVERED** from Docket No. 13248. It shall be processed as Project No. 14715 captioned *Petition for Expanded Local Calling Service from the Grand Saline Exchange to the Van Exchange*. The attached procedural schedule establishes the relevant deadlines for this project.

The record in Project No. 14715 will consist of the following items: Petition, Day 20 Recommendation, Geographic Proximity Recommendation, Day 40 Order, Balloting Results, Proof of Publication, Interim Approval Order and Judge Greene's Order. Copies of the record in this Project No. 14084 will not be attached to this Order. A copy will be provided to Central Records. The parties will be responsible for making/copying the record in Project No. 14715 for their files.

SIGNED AT AUSTIN, TEXAS the 14<sup>th</sup> day of September, 1995.

PUBLIC UTILITY COMMISSION OF TEXAS



**DEANN T. WALKER**  
**ADMINISTRATIVE LAW JUDGE**

DOCKET NO. 13248

PETITION FOR EXPANDED LOCAL  
CALLING SERVICE FROM THE  
GRAND SALINE EXCHANGE TO THE  
VAN AND TYLER 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 Grand Saline Exchange and the Van and Tyler 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 his orders: impact on competition; whether the calling plan has the attributes of a long distance toll call; and whether a community of interest exists 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 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 March 4, 1994, the Grand Saline Exchange filed a petition for ELCS between it and various exchanges, including the Van and Tyler Exchanges. The petition involving interLATA issues ultimately became Docket No. 13248.

11. The Grand Saline Exchange is served by GTE, and it is in the Dallas LATA. The Van Exchange is served by GTE, and it is in the Longview LATA. The Tyler Exchange is served by SWB, and it is in the Longview LATA.
12. The parties to the proceeding are the petitioning Grand Saline Exchange, GTE Southwest, Inc. (GTE), Southwestern Bell Telephone Company (SWB), MCI Telecommunications Corporation, 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 Grand Saline Exchange is contiguous with the Van Exchange, and it is less than 22 miles north of the Tyler Exchange.
14. The petition filed at the Commission included the signatures of 461 subscribers in the Grand Saline Exchange. An affirmative vote of 77.8 percent of those subscribers that voted in the balloting favored expanding local calling scope of the Grand Saline Exchange to the Van Exchange. An affirmative vote of 81.4 percent of those subscribers that voted in the balloting favored expanding local calling scope of the Grand Saline Exchange to the Tyler Exchange.
15. The City of Tyler represents the business and commercial center for those who live in the Grand Saline Exchange. Grand Saline has limited services. The town does not have any automobile dealers, daily newspapers, major department stores, or specialty stores. Residents of the Grand Saline Exchange go to Tyler for their shopping and dining centers, social security office, attorneys, politicians' offices, and other general services. Citizens in the Grand Saline commute daily to Tyler for work. Tyler is the only town within 50 miles radius that has facilities such as national chain stores, car dealerships, and major hospitals.
16. Cozby-Germany Hospital located in Grand Saline contracts for various health care services from medical providers in Tyler. If the medical matter is severe, the patient is transferred to a Tyler hospital, often times by helicopter. State law requires the receiving hospital to receive approval from the transferring physician prior to the transfer. These arrangements are typically made by telephone.

17. A mobile CAT scan unit from Tyler is located at the Cozby-Germany Hospital every Wednesday. This unit must communicate via telephone with its home-base hospital in Tyler.
18. Cozby-Germany Hospital has a pulmonary rehabilitation service that is based at Mother Frances Hospital in Tyler. Patients participating in the program are monitored in Tyler, and the respiratory therapist providing the rehabilitation communicates via telephone with Tyler. This service requires from two to five long distance lines.
19. Citizens in the Grand Saline Exchange commute daily to Tyler to attend Tyler Junior College and the University of Texas at Tyler.
20. Grand Saline is part of the East Texas Council of Government headquartered in Tyler.
21. Van is Grand Saline's closest neighbor and both cities are in Van Zandt County. Many people in the Van Exchange work in Grand Saline, go to church there, and are neighbors and relatives of people in Grand Saline. Van is 12 miles south of Grand Saline and the north portion of the Van Exchange is in County Precinct #1 with its office and yard in Grand Saline.
22. There is a community of interest between the Grand Saline Exchange and the Van Exchange. The exchanges are contiguous. In addition, the petitioners proved a community of interest with the Van Exchange in the following ways: affirmative vote of 77.8 percent of the subscribers returning ballots; commonality of local government; and common utilization as a commercial center.
23. There is a community of interest between the Grand Saline Exchange and the Tyler Exchange. The Grand Saline Exchange is less than 22 miles north of the Tyler Exchange. In addition, the petitioners proved a community of interest with the Tyler Exchange in the following ways: affirmative vote of 81.4 percent of the subscribers returning ballots; common utilization as a commercial center; and common reliance upon hospital and medical providers; and commonality in the educational facilities.

24. No issues of law or fact are disputed by any party.
25. 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. 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 Grand Saline Exchange for expanded local calling service to the Van and Tyler 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 before Judge Harold H. Greene.

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 July 4, 1995.

Respectfully submitted,

*Deann T. Walker*

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**DEANN T. WALKER**  
**ADMINISTRATIVE LAW JUDGE**

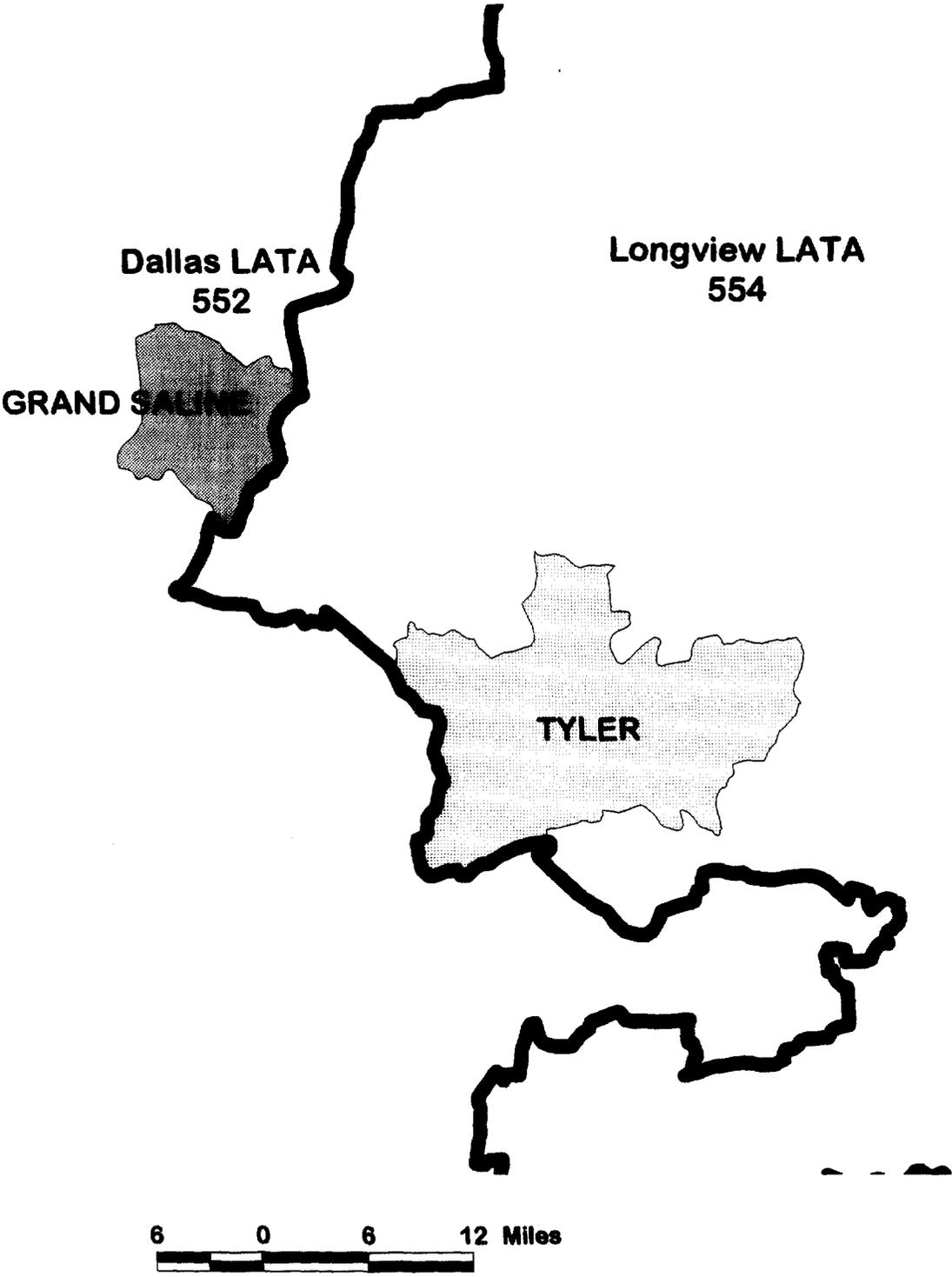
APPROVED this 13<sup>th</sup> day of June 1995.

*Amalija J. Hodgins for*  

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**JOHN M. BENFROW**  
**DIRECTOR OF HEARINGS**

# Grand Saline To Tyler

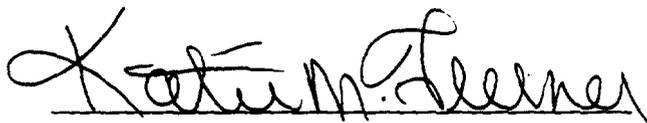


-  **GTE Southwest Inc. Exchange**
-  **Southwestern Bell Telephone Exchange**

This document was produced by the Texas Exchange Carrier Relations organization of Southwestern Bell Telephone Company on 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