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

AUG 29 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

96-159

PETITION

DOCKET FILE COPY ORIGINAL

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 Jarrell exchange and the Bartlett 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: Jarrell in the Austin, TX LATA and Bartlett in the Waco, TX LATA;
4. Name of carriers: Jarrell of Contel/GTE Southwest, Inc. and Bartlett of Southwestern Bell Telephone;
5. State commission approval(s): See Attachment A;
6. Number of access lines or customers: The Jarrell exchange has 785 access lines, and the Bartlett exchange has 1,180 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 Jarrell customers returning ballots who voted in favor of ELC to Bartlett: 86.00. 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 Jarrell exchange and the Bartlett exchange.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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AUGUST 29, 1997

DOCKET NO. 13324

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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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 2

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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SWB

DOCKET NO. 13324

**PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
JARRELL EXCHANGE TO THE
BARTLETT, SALADO, AND
FLORENCE EXCHANGES**

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

**ORDER NO. 8
ORDER OF SEVERANCE**

PROJECT NO. 15131

**PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
JARRELL EXCHANGE TO THE
SALADO AND FLORENCE EXCHANGES**

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

On March 23, 1994, a petition for expanded local calling service (ELCS) from the Jarrell Exchange to the Bartlett, Salado, and Florence Exchanges was filed pursuant to P.U.C. SUBST. R. 23.49(c). The petition was assigned Project No. 12872. The Jarrell Exchange is in the Austin Local Access and Transport Area (LATA) and the Bartlett, Salado, and Florence Exchanges are in the Houston LATA. Federal court orders prohibit Southwestern Bell Telephone Company (SWB) and GTE Southwest, Inc. (GTE) from providing service across the LATA boundary. Consequently, on August 11, 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 2, 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 August 10, 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.

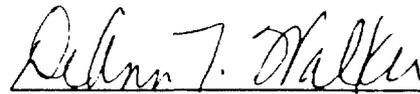
DOCKET NO. 13324
PROJECT NO. 15100

ORDER NO. 8

In order to process the portion of this petition that has been granted a waiver, the request for ELCS from the Jarrell Exchange to the Salado and Florence Exchanges is severed from Docket No. 13324. It shall be processed as Project No. 15131 captioned *Petition for Expanded Local Calling Service from the Jarrell Exchange to the Salado and Florence Exchanges*. The attached procedural schedule establishes the relevant deadlines for this project.

SIGNED AT AUSTIN, TEXAS the 15th day of December, 1995.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

DOCKET NO. 13324

PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
JARRELL EXCHANGE TO THE
BARTLETT, SALADO, AND
FLORENCE 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 Jarrell Exchange to the Bartlett, Salado, and Florence 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 considered the following factors, among others, 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 is considered along with other factors, such as the sharing of local government, schools, employment, and commercial centers.

10. On March 23, 1994, the Jarrell Exchange filed a petition for ELCS between it and the exchanges of Bartlett, Salado, and Florence, among other exchanges. The request for service to the Bartlett, Salado, and Florence Exchanges were severed because they involved interLATA issues.
11. The Jarrell Exchange has 640 access lines, is served by GTE, and is in the Austin LATA. The Bartlett, Salado, and Florence Exchanges are served by SWB, and are in the Waco LATA.
12. The parties to the proceeding are the petitioning Jarrell Exchange, MCI Telecommunications Corporation (MCI), 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 Jarrell Exchange is contiguous with the Bartlett, Salado, and Florence Exchanges; thus, there is a *per se* community of interest between these exchanges.
14. An affirmative vote of 86 percent of those subscribers that voted in the balloting favored expanding local calling scope of the Jarrell Exchange to the Bartlett Exchange. An affirmative vote of 84.7 percent of those subscribers that voted in the balloting favored expanding local calling scope of the Jarrell Exchange to the Salado Exchange. An affirmative vote of 86.2 percent of those subscribers that voted in the balloting favored expanding local calling scope of the Jarrell Exchange to the Florence Exchange.
15. There are four school districts in the vicinity. But the schools that the students attend and that the teachers are employed do not follow the LATA boundaries. Thus, students, teachers, and parents are required to call long distance to discuss education matters.
16. The communities of Jarrell, Bartlett, Salado, and Florence have a high percentage of elderly citizens who depend heavily on church, social, and community assistance. Many of the citizens from these exchanges volunteer time and efforts to the churches and the social agencies in the area. Their civic work transcends the LATA boundaries.

17. Citizens within the Jarrell, Bartlett, Salado, and Florence Exchanges rely upon each other for emergency services. Each community anticipates responding to such emergency needs as the volunteer firefighters. In addition, Salado is the only community with a "jaws of life" device, which is used by the other communities.

18. Agriculture is the main economy in the area, and the farmers in the community communicate for assistance in matters such as the weather and use of equipment. Likewise the farmers rely upon the telephone system to price commodities such as seed, fertilizers, insecticides, herbicides, and veterinary supplies.

19. The USDA Soil Conservation Service is located in Bartlett, and must make and receive numerous calls to the Jarrell Exchange.

20. The State of Texas is building a state jail facility in Bartlett. Many of the maintenance staff, inmates, suppliers, and contractors will be from the adjoining areas, instead of located within solely the Bartlett Exchange.

21. There is a community of interest between the Jarrell Exchange and the Bartlett, Salado, and Florence Exchanges. The exchanges are contiguous. In addition, the petitioners proved a community of interest with the Bartlett, Salado, and Florence Exchanges in the following ways: affirmative vote of the subscribers returning ballots; common utilization as commercial centers and employment centers; common reliance upon emergency personnel for aide to the emergency teams located within the exchange; and intermixing of the school districts in a manner not consistent with the LATA boundaries.

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, however, considers other factors showing a 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.

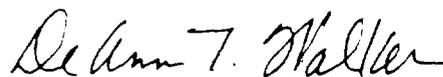
8. The standards contained within § 3.304(a)(2) of PURA and P.U.C. SUBST. R. 23.49(c)(3)(B) apply to both contested and uncontested ELCS proceedings.
9. P.U.C. SUBST. R. 23.49(c)(5)(D)(ii) and § 3.304 of PURA require an affirmative vote of at least 70 percent of those subscribers returning ballots to 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 Jarrell Exchange for expanded local calling service to the Bartlett, Salado, and Florence 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) 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, SWB and GTE are **DIRECTED** to file Judge Greene's judgment in this docket.

4. This Interim Order is effective July 2, 1995.

Respectfully submitted,



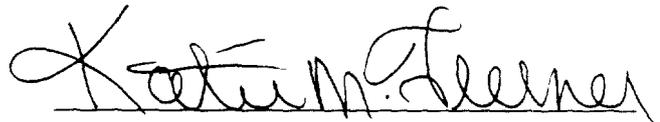
DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

APPROVED this _____ day of _____ 1995.

JOHN M. RENFROW
DIRECTOR OF HEARINGS

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