

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

§26.217. Administration of Extended Area Service (EAS) Requests.

- (a) **Purpose.** This section establishes procedures for processing requests for extended area service (EAS) in accordance with Public Utility Regulatory Act (PURA), Chapter 55, Subchapter B. On or after September 1, 2011, the commission will not require a telecommunications provider to provide mandatory or optional extended area service to additional metropolitan areas or calling areas.
- (b) **Extended Area Service.** The term “utility” in this section refers to a dominant certificated telecommunications utility.
- (1) **Filing requirements.**
- (A) In order to be considered by the commission, a request for EAS must be initiated by at least one of the following actions:
- (i) a petition signed by the greater of 5.0% or 100 of the subscribers in the exchange from which the petition originates;
 - (ii) a resolution adopted and filed with the commission by the governing body of a political subdivision provided that said governing body properly represents the exchange requesting EAS;
 - (iii) a resolution adopted and filed with the commission by the board of directors or trustees of a community association representing an unincorporated community; or
 - (iv) an application filed by one or more of each affected utility.
- (B) A request for establishment of a particular EAS arrangement in accordance with subparagraph (A)(i), (ii), or (iii) of this paragraph must not be considered sooner than three years after either a determination of the failure of a previous request to meet eligibility requirements, or final commission action on a previously docketed request. An exception to this requirement may be granted to any petitioning exchange which demonstrates that a change of circumstances may have materially affected traffic levels between the petitioning exchange and the exchange to which EAS is desired.
- (C) A request for EAS must state the name of each exchange to which EAS is sought.
- (D) The petition must set forth the name and telephone number of each signatory and the name of the exchange from which the subscribers receive service.
- (E) Each signature page of a petition for EAS must contain information which clearly states that establishment of the requested EAS route may require that subscribers to the service change their telephone numbers and pay a monthly EAS rate in addition to their local exchange service rates, as well as applicable service connection charges.
- (F) Requests for EAS into metropolitan exchanges will be grouped by relevant metropolitan exchange. For each metropolitan exchange, commission staff will file a motion to docket a proceeding for the determination of uniform EAS rate additives as directed by paragraphs (3), (4), and (5) of this subsection for all pending EAS requests to that metropolitan exchange. Upon the docketing of such a proceeding, the petitioned utility must publish notice in a newspaper of general circulation in the metropolitan area for two consecutive calendar weeks. The notice must contain such information as deemed reasonable by the presiding officer in the proceeding. The demand studies required by paragraph (3) of this subsection must be initiated no earlier than 60 days from the date of final publication of notice. New petitions for EAS into the metropolitan exchange may be accepted prior to the initiation of the demand studies.
- (2) **Community of interest.**
- (A) Upon receipt of a proper filing under the provisions set out in paragraph (1) of this subsection, the utility involved will be directed by the commission staff to initiate

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appropriate calling usage studies. Within 90 days of receipt of such direction, the utility must provide the results of such studies to the commission staff and to a representative of each petitioning exchange. The message distribution and revenue distribution detail from the studies must be considered proprietary unless the parties agree otherwise and must not be released for use outside the context of the commission's proceedings. The data to be provided must be based upon a minimum 60 day study of representative calling patterns, must be in such form, detail, and content as the commission staff may reasonably require and must include at least the following information:

- (i) for business customers and residential customers and for the combined total, the number of messages and either minutes-of-use or billed toll revenues per customer account per month, in each direction over the route being studied;
 - (ii) a detailed analysis of the distribution of calling usage among subscribers, in each direction over the route being studied, showing the number of subscriber accounts placing zero calls, one call, etc., through ten calls, the number of subscriber accounts placing between 11 and 20 calls, the number placing between 21 and 50 calls, and the number of subscriber accounts placing more than 50 calls, per month;
 - (iii) data showing, by class of service, the number of subscriber accounts in service for each of the exchanges being studied;
 - (iv) the distance between rate centers, and the average revenue per message for the calls during the study period;
 - (v) the number of foreign exchange (FX) lines in service over each route and the estimated average calling volumes on these lines expressed as messages per month;
 - (vi) a listing of known interexchange carriers providing service between the petitioning exchange and each exchange to which EAS is desired.
- (B) A community of interest between exchanges must be considered to exist from one exchange to the other when:
- (i) there is an average of no less than ten calls per subscriber account per month from one exchange to the other, and
 - (ii) no less than two thirds of the subscribers' accounts place at least five calls per month from one exchange to the other.
- (C) A request for EAS must be assigned a project number and notice must be provided, in accordance with paragraph (7) of this subsection, when a community of interest is found to exist as described in subparagraph (B) of this paragraph:
- (i) on a bilateral basis between exchanges, or
 - (ii) on a unilateral basis from the petitioning exchange to the other exchange.
- (D) The project must be established as a formal docket upon the motion of the commission staff.
- (E) Following the docketing of a request, a prehearing conference must be scheduled to establish each exchange to which EAS is sought, and to report any agreements reached by the parties. The utility involved must conduct appropriate demand and costing analyses according to paragraphs (3) and (4) of this subsection.
- (3) **Demand analysis.**
- (A) The utility involved must conduct analyses of anticipated demand for the requested EAS. The data must be in such form, detail, and content as the commission staff may reasonably require and must include, at a minimum, the following information:
- (i) the number of subscribers who are expected to take the requested service at the estimated rates recommended in accordance with paragraph (5) of this subsection and the associated probability of that level of subscribership;

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- (ii) how call traffic within the requested extended area is expected to change given the rates and subscribership under clause (i) of this subparagraph; and
 - (iii) the total volume of traffic upon which to base the anticipated switching and trunking requirements resulting from clauses (i) and (ii) of this subparagraph.
 - (B) Unless the utility demonstrates good cause to expand the time schedule, the utility must provide to the commission staff and to other parties to the proceeding, no later than 120 days after the prehearing conference, the results of these analyses, together with supporting schedules and detailed documentation needed to understand and verify the study results.
- (4) **Determination of costs.**
 - (A) The utility involved must conduct studies necessary to determine the changes in costs and revenues which may reasonably be expected to result from establishment of the requested EAS. These studies must consider and develop the long run incremental costs as follows:
 - (i) switching and trunking costs associated with existing toll traffic which converts to EAS traffic plus the costs of switching and trunking required to handle the additional traffic as determined in paragraph (3)(A)(ii) of this subsection;
 - (ii) the increases and decreases in expenses resulting from the new service and the net effect on operating expenses; and
 - (iii) direct costs incurred by the utility(ies) in conducting demand analyses in compliance with paragraph (3) of this subsection.
 - (B) The utility(ies) may analyze the effect on toll revenues in order to present evidence on the overall revenue effects of providing the requested EAS. Revenue effects supported by such evidence, if presented, may be included in the EAS rate additives specified in paragraph (5)(D) of this subsection.
 - (C) The utility must file with the commission's the proceeding the results of these studies, together with supporting schedules and detailed documentation needed to understand and verify the study results according to the following schedule, unless the utility can demonstrate that good cause exists to expand the time schedule for a particular study:
 - (i) incremental costs identified in this paragraph must be filed no later than 90 days from the filing of the results of the demand analysis conducted in accordance with paragraph (3) of this subsection; and
 - (ii) toll revenue effects, if analyzed in accordance with subparagraph (B) of this paragraph, must be filed no later than 90 days from the filing of the results of the incremental costs, in accordance with clause (i) of this subparagraph.
- (5) **EAS rate additives.**
 - (A) Coincident with the filing of cost study results, or coincident with the toll revenue effect results, if filed, the utility must file recommendations for proposed incremental rate additives, by class of service, necessary to support the cost of the added service, as well as to support the toll revenue effect, if such effect is filed.
 - (i) EAS rate additives to be assessed on EAS subscribers in each petitioning exchange are to recover the incremental cost of providing the service according to paragraph (4)(A) of this subsection plus 10% of the incremental cost.
 - (ii) The rate additives to be assessed on subscribers in the metropolitan exchange for which EAS has been requested are to recover revenues determined by the following formula: net lost toll multiplied by percent outbound toll, and multiplied by the estimated EAS take rate. The terms in the formula are defined as follows:

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- (I) net lost toll - lost toll revenue calculated according to paragraph (4)(B) of this subsection less the revenue recovered through the EAS rate additive identified in clause (i) of this subparagraph;
 - (II) percent outbound toll - this factor is calculated by dividing toll minutes of use originating in the metropolitan exchange and terminating in the petitioning exchanges by the total number of toll minutes of use between the metropolitan exchange and each petitioning exchange; and
 - (III) estimated EAS take rate - the estimated number of EAS subscribers in the petitioning exchanges divided by the total number of subscribers in each petitioning exchange.
- (B) Service connection charges will be applicable.
- (C) A non-recurring charge to defray the direct incremental costs of the demand analyses identified in paragraph (4)(A)(iii) of this subsection must be charged to subscribers who order the service within 12 months from the time it is first offered. The non-recurring charge must not exceed \$5.00 per access line.
- (D) The EAS rate additive to be used in each affected exchange must meet the following standards.
- (i) No increase in rates must be incurred by the subscribers of non-benefiting exchanges, that is, by subscribers whose calling scopes are not affected by the requested EAS service.
 - (ii) If the petitioning exchange demonstrated a unilateral but not a bilateral community of interest through the requirements of paragraph (2)(C)(ii) of this subsection, the EAS arrangements must be priced using those rate increments designed to recover the added costs for each route, plus the toll revenue effect, if reasonably substantiated. The total increment chargeable to subscribers within an exchange must be the sum of the increments of all new EAS routes established for that exchange.
 - (iii) If the petitioning exchange demonstrated a bilateral community of interest through the requirements of paragraph (2)(C)(i) of this subsection and requested that the costs be borne on a bilateral basis, the additional cost for the new EAS route must be divided between the two participating exchanges according to the ratio of calling volumes between the two exchanges.
 - (iv) In establishing a flat rate EAS increment, all classes of customer access line rates within each exchange must be increased by equal percentages.

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- (6) **Subscription threshold.**
- (A) A threshold demand level must be established by the commission's order in the docketed proceeding prior to the design or construction of facilities for the service. A reasonable pre-subscription process must then be undertaken to determine the likely demand level. If the likely demand level equals or exceeds the threshold demand level, then EAS must be provided in accordance with the commission's order. If the threshold demand level is not met, the affected utility is not required to provide the EAS approved by the commission.
- (B) The cost of pre-subscription must be divided between the utility and the petitioners. The petitioners must pay for the printing of bill inserts and ballots and the utility must insert them in bills free of charge. In the alternative, upon the agreement of the parties, the utility must provide, free of charge, and under protective order, the mailing labels of the subscribers in the petitioning exchange, and the petitioners must pay the cost of printing and mailing the bill inserts and ballots.
- (7) **Notice.**
- (A) Notice of the filing of an EAS application must be provided to all subscribers within each petitioning exchange, by publication for two consecutive weeks in a newspaper of general circulation in the area. Notice must also be given to individual subscribers either through inserts in customer bills, or through a separate mailing to each subscriber. The notice must state: the project number, the nature of the request, and the commission's mailing address and telephone number to contact in the event an individual wishes to protest or intervene. The commission must also publish notice in the *Texas Register*.
- (B) Written notice containing the information described above must be provided to each governing official of all incorporated areas within the affected exchanges and each county commission, or each board of directors or trustees of a community association representing any unincorporated areas within the affected exchanges.
- (C) The cost of notice must be borne by the petitioners.
- (8) **Joint filings.**
- (A) EAS agreements. The commission may approve agreements for EAS or EAS substitute services filed jointly by the representatives of petitioning exchanges and the affected utility so long as the agreements are in accordance with subparagraph (C)(i)-(x) of this paragraph. Notwithstanding any other provisions of this paragraph, if more than one political subdivision is affected by a proposed optional calling plan under PURA §55.023, the agreement of each political subdivision is not required.
- (B) Multiple exchange common calling plans. Joint filing agreements for EAS or EAS substitute services among three or more exchanges must be permitted in accordance with subparagraph (C)(i)-(x) of this paragraph.
- (C) Standards for joint filings. Joint filings must be permitted subject to the following:
- (i) The parties to joint filings must include the name of each utility which provides service in the affected exchanges and one duly appointed representative for each affected exchange. Each exchange representative must be designated jointly by the governing officials of all incorporated areas within the affected exchange and each county commission representing any unincorporated areas within the affected exchange.
- (ii) Joint filings are exempt from the traffic requirements contained in paragraph (2) of this subsection.
- (iii) Joint filings may include rate proposals which are flat rate, usage sensitive, block rates, or other pricing mechanisms. If usage-sensitive rates are proposed, joint applicants must include the commission staff in their negotiations.

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- (iv) Joint filings may propose either one-way or two-way calling.
- (v) Joint filings may propose either optional or non-optional calling.
- (vi) Joint filings must specify all non-recurring and recurring rate additives to be paid by the various classes and grades of service in the affected exchanges.
- (vii) Joint filings must demonstrate that the proposed rate additives:
 - (I) are in the public interest, and in the case of non-optional joint filings which include flat rate additives, the filing must demonstrate that more than 50% of the total subscribers who will experience a rate change are in favor of this joint filing at the proposed rates; and
 - (II) recover, for the utility providing the service, the appropriate cost of providing EAS including a contribution to joint costs.
- (viii) The notice requirements of paragraph (7) of this subsection are applicable to joint filings. In addition, the commission must publish notice of the proposed joint filing in the *Texas Register* and must provide notice to the Office of Public Utility Counsel upon receipt of the joint filing.
- (ix) If intervenor status is not granted within 60 days of completion of notice, the joint filing must be handled administratively, with the commission determining whether the service meets the criteria listed in clause (vii) of this subparagraph. If requested by an intervenor or the commission staff, the joint filing must be docketed for hearing and final order. Any of the parties to the joint filing may withdraw the joint filing without prejudice at any time prior to the rendition of the final order. Any alteration or modification of the joint filing by the commission may only be made upon the agreement of all parties to the proceeding.
- (x) The exchanges to be included within the proposed common calling plan area must be contained within a continuous boundary and all exchanges within that boundary must be included in the common calling plan.