The Public Utility Commission of Texas (commission) adopts new §26.217 relating to Administration of Extended Area Service Requests, new §26.219 relating to Administration of Expanded Local Calling Service Requests, and new §26.221 relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges with changes to the proposed texts published in the September 19, 1999 *Texas Register* (24 TexReg 7343). The rules are necessary to administer requests from telephone service customers for Extended Area Service (EAS) and Expanded Local Calling Service (ELCS) and to process applications from incumbent local exchange companies (ILECs) to establish or increase ELCS surcharges in accordance with the Public Utility Regulatory Act (PURA), Chapter 55, Subchapters B and C. These new sections are adopted under Project Number 20788.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews include, at a minimum, an assessment by the agency as to whether the reason for adopting a rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law or commission

organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has been established for all commission substantive rules applicable to telecommunications service providers.

The commission requested specific comments on the Section 167 requirement as to whether the reasons for adopting these rules continue to exist. The commission finds that, pursuant to PURA, Chapter 55, Subchapters B and C, the reasons for adopting the rules continue to exist.

A public hearing on the proposed sections was held at commission offices on November 9, 1999 at 1:30 p.m. Representatives from the Petitioning Cities of Texas (the Cities), General Telephone Company of Texas, Inc. (GTE), John Staurulakis, Inc. (JSI), the Office of Public Utility Counsel (OPC), Southwestern Bell Telephone Company (SWBT), Sprint Communications, Inc. (Sprint), Sugar Land Telephone Company (Sugar Land), Texas Alltel, Inc. (Alltel), the Texas Statewide Telephone Cooperative, Inc. (TSTCI), the Texas Telephone Association (TTA) and TXU Communications, Inc. (TXU) attended the public hearing and provided comments. To the extent their comments at the public hearing differed from their submitted written comments, such comments are also summarized herein.

The commission received no comments on proposed new §26.217. The commission received comments on proposed new §26.219 and §26.221 from Alltel, the Cities, GTE, OPC, Sprint, Sugar Land, SWBT, TSTCI, TTA and TXU.

Comments on §26.219(c)(4)

Subsection (c)(4) contains the requirements for notice to affected telephone service subscribers. GTE, SWBT and TXU opposed the requirement in subsection (c)(4) for ILECs to provide notice to petitioned exchanges. GTE estimated the added cost per notice to each petitioned exchange would be $230. SWBT estimated the added cost to provide notice to five petitioned exchanges in a typical petition would be an estimated $1,050 each time SWBT serves the petitioning exchange. Alltel and Sugar Land recommended the proposed rule specify that the company serving the petitioned exchange give notice to its customers. Similarly, TSTCI suggested the rule be clarified to state who is responsible for paying the cost of notice.

The commission accepts the recommendation of GTE, SWBT and TXU to delete the requirement in subsection (c)(4) for ILECs to provide notice to petitioned exchanges. The commission notes that ILECs must provide notice to all affected customers, pursuant to §26.221(f)(1), to establish or increase an ELCS surcharge.

Comments on §26.219(c)(5)

Subsection (c)(5) prescribes the process for intervening; however, the rule, as published, contained no intervention deadline. OPC recommended the intervention deadline be no sooner than ten days after

the last date notice is published. The commission accepts OPC's recommendation and modifies subsection (c)(5) accordingly.

Comments on §26.219(d)(1)

Subsection (d)(1) describes a process for reviewing the sufficiency of a request for ELCS. The Cities recommended the first sentence in subsection (d)(1) be modified either to change "sufficient" to "deficient" or to change "any" to "the." The commission accepts the Cities recommendation and modifies subsection (d)(1) to change "any" to "the." This change does not alter the substance of the rule; instead, the meaning is clarified.

Comments on §26.219(d)(3)

Subsection (d)(3) states the geographic proximity and community of interest requirements. For calculating geographic proximity (22 miles and 50 miles), GTE suggested the commission use toll rate centers rather than central switching offices. SWBT recommended the existing approach be retained. TXU stated that the use of toll rate centers may tend to increase the number of local exchanges to which petitioning exchanges have access.

It is not the intent of the commission to increase or decrease the number of local exchanges to which petitioning exchanges have access. Therefore, the commission declines GTE's suggestion to change the formula for calculating geographic proximity.

Comments on §26.219(e)(2)(F)

Subsection (e)(2) contains a list of exemptions that an ILEC may request to be exempt from the requirement to provide ELCS. TSTCI and TTA pointed out that an exchange with more than 10,000 access lines is not eligible to petition for ELCS pursuant to PURA §55.045. Hence, TSTCI and TTA recommended the commission retain the provision in the current rule automatically dismissing petitions from exchanges with more than 10,000 access lines and remove the exemption under proposed subsection (e)(2)(F). The commission agrees with TSTCI and TTA. Therefore, the commission modifies subsection (c)(1), consistent with PURA §55.045, to clarify eligibility requirements. Further, the commission deletes subsection (e)(2)(F).

Comments on §26.219(f)(2)(C)

Subsection (f)(2) lists the ballot format requirements for ballots sent to subscribers to vote on ELCS. GTE, SWBT, TTA and TXU opposed the requirement in subparagraph (C) to include a map of the petitioning exchange and petitioned exchanges with ELCS ballots mailed to petitioning subscribers. GTE estimated the cost of a map to be $275 per 2000 ballots. SWBT estimated the cost of a map to be

$250 per map plus another $250 in paper, copying, and folding services to include a copy in each ballot (assuming an average of 2,500 customers @ $.05 per page). Alltel, Sugar Land and Sprint suggested that, instead of a map, customers be provided with the NPA/NXXs of telephone exchanges affected by an ELCS petition. Although OPC recommended the "map" requirement be left in the proposed rule, OPC was not opposed to ILECs providing customers with NPA/NXXs instead of maps.

The commission accepts the recommendation of Alltel, Sugar Land and Sprint. Consistent with subsection (c)(2)(D)(ii) and (iii), the commission modifies subsection (f)(2)(C) to require an ILEC to provide customers with the name, area code and prefix of each affected telephone exchange, instead of maps.

Modification to §26.219(f)(2)(D)(i)

Subsection (f)(2) lists the ballot format requirements for ballots sent to subscribers to vote on ELCS. In adopting §26.219, the commission modifies §26.219(f)(2)(D)(i) to clarify that the maximum ELCS fees apply whether ELCS is obtained as the result of one or more petitions, in addition to basic local exchange service rates. The commission modifies this subsection to achieve consistency with subsection (c)(2)(D)(v) and to alleviate confusion among subscribers concerned about being billed more than one ELCS fee pursuant to PURA §55.048(b). Subscribers will be billed only one ELCS fee, pursuant to PURA §55.048(b), per access line.

Comments on §26.219(g)(2)

Subsection (g)(2) describes the ELCS fee formula. OPC and GTE recommended the commission explicitly define which access lines should be included or excluded for the purpose of calculating ELCS fees. GTE suggested the following lines be counted as access lines for development of ELCS fees: non-usage sensitive R1s, R2s, B1s, key lines, PBX trunks, Digital Channel Services, etc.

The commission agrees with OPC and GTE that uniformity in the use of the term "access line" is a valid objective. However, there is scant information in the record upon which to create a definition. Further, GTE's proposed definition is vague and open-ended with the use of the term "etc." Finally, no party identified a case where there was a dispute over the definition of access lines. Therefore, the commission does not define the term "access line" in this rule at this time.

Comments on §26.219(i)

Subsection (i) states the procedure leading to final approval of ELCS fees. The Cities recommended the rule be amended to limit the permanence of the rates until the provider files for relief under §26.221 where the fee would be considered in the context of the ILEC's total lost revenues and costs incurred and could be adjusted at that time. Alltel and Sugar Land urged the commission to reject the Cities recommendation. OPC noted that ILEC exchanges that were neither a petitioning nor a petitioned exchange would not have received notice of a filing under Substantive Rule §26.219(c)(4). OPC

recommended *res judicata* problems be avoided by modifying the rule to state that the presiding officer's final approval or modification of ELCS fees to be billed by the ILEC will not be given *res judicata* effect on the issue of ELCS surcharges. Alltel, Sugar Land and Sprint objected to this portion of OPC's comments.

The commission declines the recommendation of the Cities and OPC to limit the permanence of ELCS fees. The commission interprets the meaning of the sentence "A company may impose a fee *under this subsection* only until the company's next general rate case" in PURA §55.048(b) to apply to ELCS fees (for example, $3.50 for residential customers or $7 for business customers) described in §55.048(b). Notwithstanding the provision in §55.048(b) establishing the *duration* of ELCS fees, the commission may review and modify the *level* of ELCS fees consistent with the Order on Remand (May 28, 1999) in Docket Number 17809, *Petitions of Central Telephone of Texas and United Telephone of Texas doing business as Sprint to Recover Lost Revenues and Cost of Implementing Expanded Local Calling Service Pursuant to P.U.C. Substantive Rule §23.49(c)(12)* (Sprint). In the Order on Remand, the commission determined that it has authority to reconsider prior determinations of costs and lost revenues resulting from implementation of ELCS where the commission has expressly reserved the right to do so. Where the commission did not delimit in its final orders that previous costs and lost revenues would be reviewed, the commission lacks the authority to review such costs and revenues.

Subsection (i), as proposed, states "...the fees shall be considered permanent unless modified in the future, for good cause, by the commission." Consistent with the Order on Remand in Docket Number 17809 (Sprint), the commission may, for good cause, review and modify ELCS fees approved on or after the effective date of §26.219. Also, the commission may, for good cause, review and modify ELCS fees approved before the effective date of §26.219, if the commission delimited in its final orders that previous costs and lost revenues would be subject to review.

Comments on §26.221(a)

Subsection (a) states the purpose of the rule. Alltel and Sugar Land recommended duplicating the language in PURA §55.048(a) and Substantive Rule §23.49(c)(6)(B) in the proposed rule to indicate that the ELCS provider has the right to recover all of its costs and lost revenues due to ELCS. The commission accepts the recommendation of Alltel and Sugar Land and modifies subsection (a) accordingly.

Comments on §26.221(b)(2)

Subsection (b)(2) defines the term "costs incurred." The Cities recommended the commission modify the definition of "costs incurred" to clarify that "costs incurred" could be a negative number, depending on the level of avoided costs. In response to the Cities comments, Sprint stated that only if a service is priced well below LRIC could avoided costs be greater than the price of the service. According to

Sprint, ELCS is not priced below cost. Alltel and Sugar Land argued that, when ELCS is implemented, avoided costs consist primarily of costs associated with billing individual messages and not, as Cities suggest, on a per-minute of use basis. Alltel and Sugar Land recommended the Cities definition of "costs incurred" be rejected.

The recommendation of the Cities is already captured in subsection (b)(2) and, therefore, the commission declines to amend subsection (b)(2) in the manner suggested by the Cities. Under the formula contained in subsection (b)(2), "costs incurred" equal a positive number if avoided costs are less than the sum of recurring and non-recurring costs. "Costs incurred" equal a negative number if avoided costs are greater than the sum of recurring and non-recurring costs.

The commission modifies the definition of "costs incurred" in subsection (b)(2) to remove the term "actual" to obtain greater consistency with the language in PURA §55.048(a), consistent with the comments filed under subsection (a).

Comments on §26.221(b)(4) and (6)

Subsection (b)(4) defines the term 'Expanded local calling service (ELCS) fee." Subsection (b)(6) defines the term "Expanded local calling service (ELCS) surcharge." The Cities opposed creation of distinctions between the ELCS fee in subsection (b)(4) and the ELCS surcharge in subsection (b)(6) because, according to the Cities, such distinctions are not found in PURA §55.048(b) and §55.048(c).

GTE and OPC argued that PURA plainly recognizes two separate forms of cost recovery and that the proposed rule correctly recognizes the distinction. The commission agrees with GTE and OPC and, therefore, declines to amend subsections (b)(4) and (b)(6). The term "ELCS fee" in subsection (b)(4) and the term "ELCS surcharge" in subsection (b)(6) are both defined as fees, just as they are described in PURA §55.048(b) and §55.048(c), respectively. The distinguishing terms recognize an industry convention and are solely for ease of reference.

Comments on §26.221(b)(5)

Subsection (b)(5) defines the term "Expanded local calling service (ELCS) requirement." GTE recommends the rule clarify that a particular ILEC's ELCS requirement is the sum of lost revenue and costs incurred due to the implementation of ELCS – regardless of whether that ILEC served the petitioning exchange or the petitioned exchange(s) or both. The commission agrees with GTE that the ELCS requirement includes costs incurred and lost revenues for both petitioning and petitioned exchanges, yet declines GTE's recommendation because the multitude of ELCS surcharge cases administered at the commission clearly establish that the ELCS requirement pertains to both petitioning and petitioned telephone exchanges. No party alleged otherwise.

Modification to §26.221(b)(7)

Subsection (b)(7) defines the term "lost revenue." The commission modifies the definition of "lost revenue" in subsection (b)(7) to remove the term "actual" to obtain greater consistency with the language in PURA §55.048(a), consistent with the comments filed under subsection (a).

Comments on §26.221(c)(1)

Subsection (c)(1) is a general principle stating that the commission may initiate an investigation to determine whether ELCS surcharges comply with PURA §55.048. Sprint was unclear if the intent of §26.221(c)(1) is to provide the commission investigative powers at any time or only upon establishing or increasing ELCS surcharges. Sprint pointed out that the commission has acknowledged it is legally prohibited from adjusting previous costs and lost revenues ordered in prior ELCS surcharge cases. According to Sprint, the ELCS rates of a Chapter 59 company, such as Sprint, cannot be reduced unless the company agrees to it. OPC recommended the commission add clarifying language to subsection (c)(1) so that it is clear the investigation under this subsection is a compliance or show cause–type review rather than a reasonableness review. OPC stated that, unlike reasonableness reviews, compliance or show cause reviews are not prohibited under PURA §58.025 or §59.026.

The commission accepts the recommendation of OPC and modifies subsection (c)(1) to refer to compliance investigations and show cause investigations. Pursuant to Procedural Rule §22.241(b), the commission may initiate a show cause proceeding to determine the compliance or lack of compliance with any applicable statute, rule, regulation or general order. If a utility is found not to be in compliance,

PURA §15.021 authorizes the attorney general, on the request of the commission, to enjoin or require compliance.

In its Order on Certified Issues (July 1, 1999) in Docket Number 17809 (Sprint), the commission determined that it could not reevaluate its previous determinations of costs and lost revenues where it had not reserved the authority to do so. However, where the commission reserves the authority to reevaluate its previous determinations of costs and lost revenues, it may review the reasonableness of such costs and lost revenues in a future proceeding.

However, if significant changes in the telecommunications industry occur that cause a previous determination by the commission to no longer be reasonable, the previous determination may be corrected by the commission following a show cause or compliance investigation, rather than a reasonableness review, so that the ELCS surcharge may be brought into compliance with PURA §55.048. Significant changes in the telecommunications industry were discussed by the commission in the Order on Remand (May 28, 1999) in Docket Number 17809 (Sprint), where the commission determined that "The significant changes in the structure of toll calling precludes Sprint from relying upon the type and amount of revenues received in a historically different period as a proxy for its lost revenues in this docket. In a similar vein, if pending legislation regarding access fee reductions is enacted into law, then the amount of lost revenues would be lower since such loss could no longer be attributable to implementation of ELCS. This view comports with the final order in Docket Number 17641, *Application of Texas Alltel, Inc., to Recover Lost Revenues and Costs of Implementing*

Expanded Local Calling Service Pursuant to P.U.C. Substantive Rule §23.49(c)(12), in which the Commission held that there is no continuing right to recovery of any specific types or level of costs and lost revenues for an indefinite period of time."

Comments on §26.221(c)(2)

Subsection (c)(2) is a general principle describing the burden of proof regarding an ELCS surcharge. TSTCI suggested that subsection (c)(2), which places the burden of proof on the ILEC, goes beyond the intent of PURA §55.048, the intent being to enable ILECs to recover ELCS costs in an expedited manner. The Cities, on the other hand, referred to PURA §53.006 and to the commission's Order on Remand (May 28, 1999) in Docket Number 17809 (Sprint) to show that the burden of proof falls on a public utility in any proceeding involving a proposed rate change.

The commission modifies subsection (c)(2) to remove the term "actual" from the general principle. In the Order on Remand (May 28, 1999) in Docket Number 17809 (Sprint), the commission determined that a utility has the burden to show that its proposed rate is just and reasonable in accordance with PURA §53.006. Subsection (c)(2), as modified, is consistent with PURA and the commission's Order on Remand in Docket Number 17809 (Sprint).

Sprint considered the phrase "recovers costs necessary only for implementation of ELCS" to be too limited. Further, Sprint stated that this phrase does not recognize the impact expanded toll-free calling

can have on the costs of implementing an ELCS route. Sprint suggested the language in PURA §55.048(a) be used instead of the "implementation" phrase.

OPC was concerned with Sprint's distinction between "costs necessary only for implementation of ELCS" in subsection (c)(2)(B) and "costs incurred due to implementation" of ELCS in subsection (a). OPC argued that, as a matter of public policy, if costs are unnecessary, such costs cannot be passed on to subscribers (through an ELCS surcharge).

The Cities expressed concern about the possibility that costs associated with infrastructure commitments under PURA Chapters 58 and 59 could be mingled with ELCS costs and, therefore, urged that subsection (c)(2)(B) remain as proposed.

The commission declines to amend subsection (c)(2)(B). Subsection (c)(2)(B) is consistent with the commission's Order on Remand (May 28, 1999) in Docket Number 17809 (Sprint) where the commission determined, as part of its discussion about a utility's burden of proof, that "Such evidence must not only quantify the costs and lost revenues, but also show that such amounts were reasonably *necessary for the implementation* of ELCS." (emphasis added) Subsection (c)(2)(B) reflects the commission's interpretation of PURA §55.048(a).

Comments on §26.221(c)(3)

Subsection (c)(3) is a general principle describing the burden of proof if an ILEC departs from the filing requirements in subsection (e)(1)-(6). GTE requested clarification as to what is meant in the rule by "standard for review." The commission accepts GTE's suggestion to clarify what is meant by the term "standard for review" and modifies subsection (c)(3) to refer to the requirements in subsection (e)(1)-(6) instead of a "standard for review."

Sprint does not object to the requirement for an ILEC to demonstrate the reasonableness of a statistical method; however, Sprint does object if the requirement applies to previously approved surcharges. The commission agrees with Sprint that a utility does not bear the burden of demonstrating the reasonableness of a statistical sampling method used to support a previously approved ELCS surcharge as it relates to *the previously approved* surcharge. If a utility relies upon a statistical sampling method to establish a new, separate surcharge, the utility bears the burden of proving the reasonableness of the statistical sampling method as it relates to the new, separate surcharge. Further, a show cause investigation or a compliance investigation under subsection (c)(1) could include a review of a statistical sampling method.

Comments on §26.221(c)(6)

Subsection (c)(6) is a general principle describing the commission's goal that ELCS surcharges be revenue neutral. Sprint stated that the goal of revenue neutrality is not contained in the Public Utility Regulatory Act. The commission declines to amend subsection (c)(6) to remove the reference to

revenue neutrality. The reference to revenue neutrality in subsection (c)(6) is consistent with the commission's Order on Remand (May 28, 1999) in Docket Number 17809 (Sprint) where the commission found that "…further modifications to the design of Sprint's ELCS fees are needed to maintain a fundamental statutory goal of the ELCS fee: revenue neutrality." In the Order on Certified Issues (July 2, 1999) in Docket Number 17809 (Sprint), the commission reaffirmed "In the order on remand, the Commission recognized a fundamental statutory goal for ELCS fees: revenue neutrality." PURA §55.048(a).

Sprint was concerned that the term "restructure" is ambiguous and, therefore, Sprint recommended the statement "The commission may restructure ELCS charges" be struck from the rule. The commission accepts Sprint's recommendation to remove the statement "The commission may restructure ELCS charges" from subsection (c)(6). It is not necessary to state the commission's authority to restructure ELCS surcharges, for example from a flat ELCS surcharge to a 2-for-1 ratio between business customers and residential customers, because the commission clearly established that it has such authority in past ELCS surcharge cases.

Comments on §26.221(c)(7)

Subsection (c)(7) is a general principle stating that an ILEC has no continuing right to bill an ELCS surcharge for an indefinite period. GTE argued that subsection (c)(7) is unlawful and confiscatory and should be deleted. Sprint opined that this subsection thwarts the intent of the Legislature. Sprint

advised the commission to strive to be consistent with the law. TXU suggested deleting subsection (c)(7) and, instead, modifying subsection (i)(2) and (3) to allow for the recovery of ELCS costs "so long as they actually occur." OPC recommended subsection (c)(7) be modified as follows so that it can more easily be read in harmony with subsection (i)(1): *Except as provided under §26.221(i)(1)*, an ILEC has no continuing right to bill an ELCS surcharge for an indefinite period. (clarifying language italicized) Alternatively, OPC said subsection (c)(7) could be deleted from the proposed rule if subsection (i)(2) and (3) are modified to allow recovery of ELCS costs "so long as they actually occur."

The commission accepts the recommendation of OPC and modifies subsection (c)(7) to reference the exception in subsection (i)(1). In its Order (February 2, 1999) in Docket Number 17641 (Alltel), the commission determined that it is not appropriate to allow an ELCS surcharge to continue to recover costs indefinitely. In the Order on Remand (May 28, 1999) in Docket Number 17809 (Sprint), the commission reaffirmed its decision that there is no continuing right to recovery of any specific types or level of costs and lost revenues for an indefinite period of time. Subsection (c)(7), as modified, is consistent with the commission's stated policy.

Comments on §26.221(c)(9)

Subsection (c)(9) describes requirements for adjustments to previously approved ELCS surcharges. According to SWBT, subsection (c)(9) appears to be unlawful. SWBT stated that a previously approved surcharge may only be reopened by the commission if (a) the order approving that surcharge

expressly provides for such a reopening or (b) the ILEC is seeking to increase its ELCS surcharge to recover increased lost revenues or costs incurred as a result of the previously approved ELCS routes.

Sprint stated that modifying the ELCS rate based upon a change in (the number of) access lines is in direct violation of PURA Chapters 58 and 59. Sprint noted that there is no provision in subsection (c)(9) for the commission to determine if new access lines also create added ILEC costs. Sprint was concerned that the phrase "relevant to development of the residual" is ambiguous and that the intent of this phrase should be specifically described.

The Cities pointed to the commission's Order on Certified Issues (July 1, 1999) in Docket Number 17809 (Sprint) to show that the commission explicitly allowed for adjustments to previously approved ELCS surcharges but did not allow the provider to request additional lost revenues or costs based on the increased (number of) access lines.

GTE stated that the commission has the right to review new ELCS surcharges, but the commission cannot review previously approved surcharges in the current application, nor can the commission re-open an investigation of previously approved surcharges.

The commission deletes subsection (c)(9) from the rule because it is not a general principle and because the commission's rate design policy is set out in detail in subsections (g) and (h).

Comments on §26.221(e)

Subsection (e) identifies the required contents of an ELCS surcharge application. The Cities stated that the proposed rule represents a giant leap forward and noted that finally there will be explicit documentation requirements for a local exchange company seeking to implement a statewide fee pursuant to PURA §55.048(c). The Cities asserted that the rule will require companies to file much of the supporting information that has been sorely lacking in recent PURA §55.048(c) applications. The commission agrees.

With regard to applications to increase an existing ELCS surcharge, GTE preferred that ILECs be permitted to demonstrate allowable expenses with commission approval or disapproval of those expenses at the time the application is filed to alleviate the burden on ILECs to produce old documents and support material at a later date. The Cities opposed GTE's suggestion, unless GTE provides notice to all of its customers in the state and, subsequently, provides an opportunity to examine calculations of the ELCS surcharge. GTE clarified that it would be willing to provide statewide notice to its subscribers via bill message. However, GTE replied that it would not view its action as an application for an ELCS surcharge; rather, the proposed action would be an identification of a shortfall that would be included in a surcharge filing at some future date. The commission rejects GTE's recommendation because the commission is unclear exactly what GTE's proposal entails and because GTE did not describe how its proposal might be implemented procedurally within the rule.

Alltel and Sugar Land were uncertain as to whether the ELCS service provider may protect the confidentiality of its competitive toll and access data. The commission clarifies that subsection (e)(9) explicitly provides for the use of a confidentiality agreement.

Alltel and Sugar Land supported the use of validated sampling. At the public hearing, Alltel and Sugar Land clarified their use of the term "validated" as it relates to sampling to mean "accepted by the Staff for the purpose of establishing the monthly ELCS fees, and once accepted for that purpose they would also be accepted for the surcharge." The Cities asserted that if the Staff validates a two-month sample, the Cities and other intervenors should not be bound by any such validation, and a telephone company must still prove its costs. The commission agrees with the Cities that a recommendation from the Office of Regulatory Affairs neither binds an intervenor nor alters a utility's burden of proof. In response to Alltel and Sugar Land, the commission notes that the term "validated sampling" is used nowhere in the rule.

TSTCI suggested that requirements for the ELCS surcharge application be no different than what is required to justify the ELCS fee. The commission notes that §26.219(f)(4)(A)(i) and §26.221(e) are constructed so that, as TSTCI suggests, the requirements for the ELCS surcharge application and the ILEC's ELCS fee filing are nearly identical.

Comments on §26.221(e)(1)

Subsection (e)(1) describes the toll revenue data to be included in an ELCS surcharge application. Alltel and Sugar Land advised that it is not possible for Alltel and Sugar Land to obtain 12 months of toll revenue data for ELCS routes implemented before the effective date of the new rule. Therefore, Alltel and Sugar Land argue that the rule should be modified to impose the 12-month requirement only for ELCS routes implemented after the effective date of the proposed rule. Alltel and Sugar Land recommended amending subsection (e)(1) to permit either 12 months of actual toll or annualized data developed from a sample of representative months. Alltel and Sugar Land suggested using the months of March, April, September and October. The Cities opposed identification of sample months in the rule because of regional variations in telephone calling patterns.

The commission agrees with Alltel and Sugar Land that an ILEC may include a sample of representative months in its application. Nevertheless, the commission declines to amend subsection (e)(1) because subsection (e)(8) allows an ILEC to request an exemption from any of the requirements in subsection (e), thus allowing an ILEC to request exemption from the 12-month requirement in subsection (e)(1). Further, subsection (c)(3) indicates that the use of statistical sampling by some ILECs is anticipated by the commission. The commission prefers for the standard to be as stated in subsection (e)(1) with the flexibility in subsection (e)(8) for an ILEC to request exemption from the standard. If an exemption request is granted, an ILEC will be required to demonstrate the reasonableness of its proposed alternative method in accordance with subsection (c)(3).

Comments on §26.221(e)(2)

Subsection (e)(2) describes the access revenue data to be included in an ELCS surcharge application. Alltel and Sugar Land recommended subsection (e)(2) be modified to permit a company's application to include route-specific annualized data developed from the months for which carrier access billing system (CABS) data is available prior to the ELCS implementation and to allow terminating usage to be developed by using a terminating/originating ratio.

The commission agrees with Alltel and Sugar Land that an ILEC may propose an ELCS surcharge that is based, in part, upon CABS data and an ILEC may propose to use a surrogate for determining unquantifiable terminating access minutes. Nevertheless, the commission declines to amend subsection (e)(2) because subsection (e)(8) allows an ILEC to request an exemption from any of the requirements in subsection (e), thus allowing an ILEC to request exemption from the 12-month requirement in subsection (e)(2). Further, subsection (c)(3) indicates that the use of alternative methods by some ILECs is anticipated by the commission. The commission prefers for the standard to be as stated in subsection (e)(1) with the flexibility in subsection (e)(8) for an ILEC to request exemption from the standard. If an exemption request is granted, an ILEC will be required to demonstrate the reasonableness of its proposed alternative method in accordance with subsection (c)(3).

Comments on §26.221(e)(4)

Subsection (e)(4) describes supporting documentation to be included in an ELCS surcharge application. Sprint stated that subsection (e)(4) is unreasonable because it fails to recognize there are some costs for which no physical documents exist for proof, including switching and transport costs. According to Sprint, switching and transport costs require the use of a cost model. Sprint declared that it has no non-recurring costs related to ELCS.

Alltel and Sugar Land recommended subsection (e)(4) be modified to permit development of switching costs based on the average per-minute costs of switching times the additional ELCS minutes of use. Similarly, Alltel and Sugar Land suggested the subsection be amended to permit proof of transport facility costs based on the average per-mile costs of transport facilities times the route miles of transport installed to serve ELCS traffic. Alltel and Sugar Land stated that it is not a problem for a service provider to produce copies of its lease agreements with other carriers, as these leases are readily available and ELCS-specific in scope. Alltel and Sugar Land advised that it is not possible for Alltel and Sugar Land to obtain copies of receipts or invoices for equipment installed in historical periods. Therefore, Alltel and Sugar Land believe the rule should be modified to impose the requirement in (e)(4) only on ELCS routes implemented after the effective date of the proposed rule.

TXU uses a forward-looking long run incremental cost methodology to determine costs for new ELCS routes. TXU suggested that its method, although not based upon historical costs, is practical and reasonable and should be allowed. According to TXU, while it may appear that there are costs of a

one-time nature associated with ELCS, these costs are recorded in asset accounts and recovered through depreciation.

The Cities noted that TXU's initial comments about costs which continually occur imply that there are also costs which do not occur continually. Hence, the Cities supported the requirement in subsection (e)(4) for an ILEC to identify its recurring and non-recurring costs. The Cities also stated it is important that none of the costs to implement infrastructure commitments under PURA Chapters 58 and 59 be included in an ILEC's ELCS costs.

GTE asserted that 100% of the costs associated with ELCS, and particularly switching and transport costs, cannot be supported by documents such as invoices and work orders.

The commission agrees with the commenting ILECs that supporting documents may not exist for all costs incurred. Therefore, the commission modifies subsection (e)(4) to remove the reference to "100%" of the costs incurred. With respect to the various methods proposed by ILECs for recovering costs incurred, the rule is designed with sufficient flexibility to accommodate the variety of methods proposed.

The commission disagrees with the commenting ILECs that all ELCS implementation costs are recurring in nature. In its Order (February 2, 1999) in Docket Number 17641 (Alltel), the commission determined that certain costs of implementing ELCS reflect investments in infrastructure and other costs

of a non-recurring nature. Because these types of costs are wholly recovered at some future date, the commission stated that it is not appropriate to allow an ELCS surcharge to continue to recover these costs indefinitely. The commission ordered Alltel to structure its next ELCS surcharge application in a manner that ensures that non-recurring costs are not over-recovered. Subsection (e)(4), as modified, is consistent with the commission's policy decision in Docket Number 17641 (Alltel).

Comments on §26.221(e)(11)

Subsection (e)(11) states that an ILEC shall select its preferred duration of applicability of the proposed ELCS surcharges from three duration alternatives listed in subsection (i). Sprint stated that there is neither need nor a statutory requirement to set an ELCS surcharge duration because PURA allows for the surcharge to continue in place until the next general rate case.

The commission declines to amend subsection (e)(11). The commission interprets the meaning of the sentence "A company may impose a fee under this subsection only until the company's next general rate case" in PURA §55.048(b) to apply solely to ELCS fees (for example, $3.50 for residential customers or $7 for business customers) described in §55.048(b) and imposed upon customers in petitioning telephone exchanges, not to ELCS surcharges in PURA §55.048(c). (emphasis added) No such language regarding duration is included in PURA §55.048(c). Thus, the commission is neither obligated to establish nor prohibited from establishing a reasonable duration for the recovery of incurred costs and lost revenues through an ELCS surcharge.

Comments on §26.221(f)(1)

Subsection (f)(1) contains the notice requirements for an ELCS surcharge application. OPC requests the commission provide notice to OPC upon receipt of the filing of an application to establish or modify an ELCS surcharge. The commission accepts the recommendation of OPC and modifies subsection (f)(1) to require the ILEC filing an application with the commission's Filing Clerk to concurrently deliver a copy of its application to OPC.

Comments on §26.221(f)(2)

Subsection (f)(2) contains intervention requirements; however, the rule as published contained no intervention deadline. The Cities recommended the rule establish a standard intervention deadline not less than 45 days after the last day of the billing cycle in which notices are sent out as bill inserts. OPC recommended the intervention deadline be no sooner than ten days after the last date notice is published. The commission accepts the recommendation of OPC and modifies subsection (f)(2) to state that the intervention deadline shall be no sooner than ten days after the last date notice is published.

Comments on §26.221(f)(4)

Subsection (f)(4) addresses requests for interim relief. OPC recommended a change in the phrasing of subsection (f)(4) so that the presiding officer is not required to either grant or deny a request for interim surcharges; instead, as OPC proposed, the presiding officer "may grant a filed request for establishment of interim surcharges…." OPC reasoned that its proposed phrasing provides the presiding officer with the flexibility to grant in part, deny in part, modify, or alter the requested interim rate. The commission modifies subsection (f)(4) so that, not more than 30 days after the intervention deadline, the presiding officer shall grant or deny, in whole or in part, a request for interim relief and may approve or modify a proposed interim ELCS surcharge.

Comments on §26.221(f)(5)

Subsection (f)(5) contains a process for ORA to conduct a sufficiency review of an ELCS surcharge application and for an ILEC to respond to ORA's comments. The Cities preferred for the rule to state that a recommendation by the Office of Regulatory Affairs (ORA) that an application is sufficient or that requirements be waived not preclude an intervenor, within 30 days after the intervention deadline, from asserting that an application is insufficient or that an exemption from the requirements of the rule was erroneously granted. The commission declines to amend subsection (f)(5) as recommended by the Cities. The commission acknowledges, however, that a recommendation filed by the ORA in no way usurps the right of an intervenor to assert its position.

Sprint supported subsection (f)(5), yet preferred that an ILEC be afforded 30 days rather than ten days to respond to ORA's comments on its application and to amend or supplement the ILEC's application. The commission accepts Sprint's recommendation and amends subsection (f)(5) accordingly.

Comments on §26.221(f)(6)

Subsection (f)(6) contains the deadline to request docketing. Following docketing, this subsection provides three avenues for processing the case including: settlement negotiations, alternative dispute resolution or a contested hearing.

The Cities recommended the deadline to request docketing be extended to 60 days. OPC recommended the deadline to request docketing be increased from 20 days after the intervention deadline to 45 days after the intervention deadline. The commission agrees with OPC and the Cities that the deadline to request docketing should be extended, but not to the extent recommended. Therefore, the commission modifies subsection (f)(6) to extend the deadline to request docketing from 20 days to 30 days after the intervention deadline.

Alltel and Sugar Land recommended the current timeline for processing ELCS surcharge cases found in Substantive Rule §23.49(c)(12) be maintained in the proposed rule. The commission declines the recommendation of Alltel and Sugar Land because the proposed timeline provides greater flexibility to ILECs and other parties than the current rule. Nevertheless, the commission recognizes the necessity

for a provision in the rule directing the presiding officer to administratively approve or modify the application if no request for docketing is filed and, therefore, the commission modifies subsection (f)(6) to specify that, if neither the Office of Regulatory Affairs nor an intervenor requests docketing, the presiding officer shall administratively approve or modify the application within 40 days after the intervention deadline.

Comments on §26.221(g)

Subsection (g) describes the formula for calculating ELCS surcharges. The Cities opposed the application of statewide fees to ratepayers in petitioning exchanges who are already paying the maximum ELCS fees of $3.50 for residential customers and $7 for business customers. According to the Cities, the commission's policy decision to apply ELCS surcharges in addition to ELCS fees goes against the intent of the Texas Legislature. The Cities conceded that the commission may have authority to spread state-wide ELCS fees on a prospective basis to exchanges that request ELCS in the future as long as the notices contained in the proposed rules are given. GTE and OPC argued that there is no statutory maximum on the ELCS surcharge. OPC supported subsection (g). OPC reasoned that spreading the surcharge to all customers in the state results in a more equitable allocation of lost revenues and costs among ratepayers. Sprint stated that on a prospective basis, at least, the commission has the ability to spread new ELCS surcharges on all customers.

The commission declines to amend subsection (g). The commission's Order on Certified Issues (May 29, 1998) in Docket Number 18986, *Petition of United Telephone Company of Texas, Inc., doing business as Sprint for Authority to Recover Lost Revenues and Costs of Implementing Expanded Local Calling Service Pursuant to PUC Substantive Rule §23.49(c)(12),* set out the commission's policy that surcharges "applied pursuant to (PURA) §55.048(c) should be applied to all customers of a company, including those petitioning customers who are already paying the maximum amount of $3.50/$7 that can be charged pursuant to §55.048(b)." Subsection (g), which results in spreading ELCS surcharges established after the effective date of §26.221 to all customers in Texas, is consistent with the commission's stated policy.

GTE recommended the commission explicitly define which access lines should be included or excluded for the purpose of calculating ELCS fees. In response to GTE's recommendation, Alltel and Sugar Land suggested that, for ELCS purposes, the access line count be equivalent to the number of customers that a telephone company charges the ELCS fee to as shown in proposed subsection (g)(2). Alltel and Sugar Land stated that the ELCS surcharge may not be applied to lines used for pay telephone service. SWBT recommended access lines be defined as the total number of exchange access arrangements (EAAs) within a local calling area, less any access lines that would not be charged the ELCS surcharge, which should be determined on a case-by-case basis. TXU states that nonswitched circuits or private lines should not be included in the assessment of ELCS surcharges.

The commission agrees with GTE that uniformity in the use of the term "access line" is a valid objective. However, there appears to be little unanimity among the commentors on the use of the term and scant information upon which to create a definition. Therefore, the commission does not define the term "access line" in this rule at this time.

Comments on §26.221(h)

Subsection (h) describes the way in which ELCS surcharges may be adjusted to account for growth in access lines. Alltel and Sugar Land recommended subsection (h) (inadvertently referred to as (g) in the comments of Alltel and Sugar Land) either be omitted or, alternatively, amended to address (1) whether the commission will consider an increase in costs in the recalculation of a surcharge; (2) whether a service provider must prove up again the costs of ELCS to the initial group of exchanges addressed by the initial surcharge; (3) whether the cost per-minute of switching and/or the cost per-transport facility, established in the initial case, may be used in the second proceeding; and (4) whether a whole new revenue requirement is required?

The commission declines to address every methodological question raised by Alltel and Sugar Land about subsection (h). The commission notes that, in the Order on Remand (May 28, 1999) in Docket Number 17809 (Sprint), the commission determined that an ILEC's burden of proof is not met by merely showing that it followed a particular methodology used in prior proceedings, but rather, by demonstrating that its request is just and reasonable.

Sprint questioned whether the commission has authority to review previously approved surcharges because such a review is a violation of PURA Chapters 58 and 59. Sprint stated that implementing the formula without making a corresponding adjustment for additional costs and lost revenues for each new access line is inappropriate. OPC pointed out that the commission's Order on Certified Issues (July 2, 1999) in Docket Number 17809 (Sprint) allows the ELCS surcharge to be adjusted for increases in access lines without a corresponding adjustment to costs and revenues.

The commission modifies subsection (h) in three ways. First, the commission refers to "Adjustments to" ELCS surcharges instead of "Calculation of increases or decreases to initial" ELCS surcharges because, in the Order on Certified Issues (July 2, 1999) in Docket Number 17809 (Sprint), the commission concluded that the purpose of the commission's ELCS surcharge formula (contained in Attachment A to the Order on Remand, May 28, 1999) was to calculate a new statewide fee, not to calculate an incremental increase in the existing statewide fee.

Second, the commission clarifies paragraph (h)(1) by adding subparagraphs (A) and (B) to ensure consistency with the Order on Remand (May 28, 1999) in Docket Number 17809 (Sprint). In the Order on Remand, the commission concluded that because it did not delimit the prior final orders approving Sprint's ELCS fees, it lacked the legal authority to review the previous costs and lost revenue determinations in those prior ELCS projects. Subparagraph (h)(1)(A) memorializes the commission's decision not to review costs incurred and lost revenues associated with an ELCS surcharge approved in

the past, except where the commission reserved the right to do so in its order(s) approving a specific surcharge. In subparagraph (h)(1)(B), the commission explicitly reserves the right to modify lost revenues and costs incurred (the numerator), associated with an ELCS surcharge approved in the future, to consider new information relevant to development of the residual.

Third, the commission modifies subsection (h)(2), consistent with the commission's decision (January 27, 2000 open meeting) in Docket Number 17809 (Sprint), so that a previously approved surcharge spread over non-petitioning exchanges will continue to be spread over non-petitioning exchanges, even if adjusted for changes in the number of access lines. Subsection (h), as modified, complies with the commission's orders in Docket Number 17809 (Sprint), orders regarding the commission's legal authority to establish ELCS policy.

Comments on §26.221(i)

Subsection (i) provides ILECs with three options for the duration of applicability of proposed ELCS surcharges. Sprint argued that subsection (i) is in contravention of the intent of the Legislature. Sprint pointed out that PURA §55.048(b) states the $3.50/$7 ELCS fees are to be imposed only until the company's next general rate case. Sprint opined that if the Legislature intended the surcharge to be in place for a set duration, it would have so specified.

Alltel and Sugar Land stated that the commission does not have authority to terminate, without review, an approved ELCS surcharge after a two-year period or to require a phase-out or phase-down of an approved surcharge. According to Alltel and Sugar Land, for a non-electing company, the commission can investigate an ELCS surcharge and determine whether it remains reasonable. On the other hand, pursuant to PURA §59.026, an incentive-regulated company, during the period of its election, is not subject to a commission-initiated proceeding to review the reasonableness of its rates. Alltel and Sugar Land asserted that the rule's provision for terminating the surcharge may be viewed as a method to avoid the statutory restriction on review of the approved rates of an electing company.

TTA indicated that it does not believe the commission can, through a rulemaking, alter, phase-down, or phase-out a company's ability to recover the lost revenues due to them and protected for them by PURA for implementation of a service they are required to implement.

OPC stated that there is a need to have a provision in §26.221 dealing with the duration of the surcharge because the statutory language in PURA §55.048(b), providing for the surcharge to continue only until the company's next general rate case, was a definite ending point for recovery; however, PURA §55.048(b) was enacted prior to incentive regulation and does not account for PURA Chapter 58 and 59 electing companies not being subject to rate cases.

The commission declines to amend subsection (i) in the manner suggested. The commission interprets the meaning of the sentence "A company may impose a fee under this subsection only until the

company's next general rate case" in PURA §55.048(b) to apply solely to ELCS fees (for example, $3.50 for residential customers or $7 for business customers) described in §55.048(b) and imposed upon customers in petitioning telephone exchanges, not to ELCS surcharges in PURA §55.048(c). (emphasis added) No such language regarding duration is included in PURA §55.048(c). Thus, the commission is neither obligated to establish nor prohibited from establishing a reasonable duration for the recovery of incurred costs and lost revenues through an ELCS surcharge.

Further, in its Order (February 2, 1999) in Docket Number 17641 (Alltel), the commission limited the duration of Alltel's surcharge to two years. The commission reasoned that, although Alltel is entitled to recover costs and lost revenues resulting from implementing ELCS, in this time of increasing competition in the telecommunications industry, the calculation of lost revenues becomes more complicated. The commission determined that, as the toll market becomes more competitive, any right to recover lost toll revenues through the mechanism of an ELCS surcharge diminishes. In addition, the commission recognized that certain costs of implementing ELCS are non-recurring. The commission granted Alltel the authority to file a subsequent application if any incurred costs or lost revenues were not recovered during the two-year period. Similarly, the commission limited the duration of Sugar Land's ELCS surcharge to two years in its Order (October 6, 1999) in Docket Number 18978, *Application of Sugar Land Telephone Company to Recover Lost Revenues and Costs of Implementing Expanded Local Calling Service, Pursuant to P.U.C. Substantive Rule 23.49(c)*. Neither Alltel nor Sugar Land appealed the commission's decision to limit the duration of the ELCS surcharge.

Subsections (i)(2) and (i)(3), as proposed, are consistent with the commission's stated policy limiting ELCS surcharges to a finite period. Further, an ILEC may file a subsequent application to recover continuing costs incurred and revenues lost, if any, after expiration of the finite period. Subsection (i)(1) provides an additional alternative to ILECs resulting in an ELCS surcharge with a permanent duration.

Comments on §26.221(i)(1)-(3)

Subsection (i) identifies three options for the duration of applicability of an ELCS surcharge. Sprint and TSTCI argued that subsection (i)(1) is unlawful because PURA §55.048 states that all costs and lost revenues are to be recovered through a request "other than a revenue requirement showing." Sprint and TSTCI stated they believe subsection (i)(1) is a revenue requirement showing.

The commission views subsections (i)(1), (i)(2), and (i)(3) as distinctly separate options available to ILECs; no subparagraph in (i) can be considered a mandatory revenue requirement showing. The commission considers subsection (i)(1) to be a revenue requirement option.

TSTCI expressed concern that the proposed rule is so burdensome and costly that it would not be cost effective for a small company to apply for anything other than a two-year phase-out under subsection (i)(3). At the public hearing, OPC acknowledged that subsection (e)(8) provides small ILECs the opportunity to request exemption from one or more requirements in the rule.

The commission declines to amend subsection (i)(1)-(3) in the manner suggested. Subsection (i) is crafted overall so that the greater the breadth and depth of supporting information provided by an ILEC, the longer the duration available under subsection (i)(1)-(3) options. The commission views the decision of an ILEC to provide full or partial documentation of its ELCS implementation costs and lost revenues as a routine business decision. Subsection (i) provides an ILEC with a framework of options relevant to such a decision. Further, as OPC points out, a small ILEC may request exemption from any requirement in the rule.

Comments on §26.221(j)

Subsection (j) proposed the phased elimination of previously approved ELCS surcharges. GTE stated that subsection (j) is unlawful and, therefore, should not be adopted. Sprint objected to subsection (j) because it is inappropriate to require an ILEC to phase-down its previously approved surcharges and because subsection (j) is unlawful. OPC comments that the phase-down in subsection (j) reflects the commission's expectation that the cost of implementing ELCS decreases over time and should naturally be reflected in the surcharge. According to OPC, subsection (j) is not tantamount to retroactive ratemaking because the newly modified surcharge would be prospectively applied.

Consistent with its determination in the Order on Remand (May 28, 1999) in Docket Number 17809 (Sprint) regarding the review of previous costs and lost revenues, the commission removes subsection (j) from the rule.

In addition to modifications made in response to comments, the commission makes minor changes in the rules to clarify its intent and to correct typographical and grammatical errors. All comments, including any not specifically referenced herein, were fully considered by the commission.

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act, Chapter 55, Subchapters B and C, §58.061 and §59.042(a).

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

(a) **Purpose.** This section establishes procedures for processing requests for extended area service (EAS) pursuant to the Public Utility Regulatory Act (PURA), Chapter 55, Subchapter B.

(b) **Extended Area Service.** The term "utility(ies)" in this section refers to dominant certificated telecommunications utility(ies).

(1) **Filing requirements.**

(A) In order to be considered by the commission, a request for EAS shall 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 the affected utility(ies).

(B) A request for establishment of a particular EAS arrangement pursuant to subparagraph (A)(i), (ii), or (iii) of this paragraph shall 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 shall state the name of the exchange(s) to which EAS is sought.

(D) The petition shall 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, the 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, two weeks notice in a newspaper of general circulation in the metropolitan area shall be published. The notice shall contain such information as deemed reasonable by the presiding officer in the proceeding. No earlier than 60 days from the date of final publication of notice, the demand studies required by paragraph (3) of this subsection shall be initiated. 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(ies) involved will be directed by the commission staff to initiate appropriate calling usage studies. Within 90 days of receipt of such direction, the utility(ies) shall provide the results of such studies to the commission staff and to a representative of the petitioning exchange(s). The message distribution and revenue distribution detail from the studies shall be considered proprietary unless the parties agree otherwise and shall not be released for use outside the context of the commission's proceedings. The data to be provided shall be based upon a minimum 60 day study of representative calling patterns, shall be in such form, detail, and content as the commission staff may reasonably require and shall 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 the exchange(s) to which EAS is desired.

(B) A community of interest between exchanges shall be considered to exist from one exchange to the other when:

(i) there is an average (arithmetic mean) 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 shall be assigned a project number and notice shall be provided, pursuant to 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 shall be established as a formal docket upon the motion of the commission staff.

(E) Following the docketing of a request, a prehearing conference shall be scheduled to establish the exchange(s) to which EAS is sought, and to report any agreements reached by the parties. The utility(ies) involved shall conduct appropriate demand and costing analyses according to paragraphs (3) and (4) of this subsection.

(3) **Demand analysis.**

(A) The utility(ies) involved shall conduct analyses of anticipated demand for the requested EAS. The data shall be in such form, detail, and content as the commission staff may reasonably require and shall 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 pursuant to paragraph (5) of this subsection and the associated probability of that level of subscribership;

(ii) how call traffic within the requested extended area is expected to change given the rates and subscribership under clause (i) of this paragraph; and

(iii) the total volume of traffic upon which to base the anticipated switching and trunking requirements resulting from clause (i) and clause (ii) of this subparagraph.

(B) Unless the utility(ies) demonstrates good cause to expand the time schedule, the utility(ies) shall 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(ies) involved shall 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 shall 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(ies) shall file with the commission's Filing Clerk and serve copies on commission staff and other parties to 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(ies) can demonstrate that good cause exists to expand the time schedule for a particular study:

(i) incremental costs identified in this paragraph shall be filed no later than 90 days from the filing of the results of the demand analysis conducted pursuant to paragraph (3) of this subsection; and

(ii) toll revenue effects, if analyzed pursuant to subparagraph (B) of this paragraph, shall be filed no later than 90 days from the filing of the results of the incremental costs, pursuant to 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(ies) shall 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 the petitioning exchange(s) 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:

(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 the petitioning exchange(s); and

(III) estimated EAS take rate - the estimated number of EAS subscribers in the petitioning exchanges divided by the total number of subscribers in the petitioning exchange(s).

(iii) Tel-Assistance subscribers in the metropolitan exchange will not be assessed this rate additive.

(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 shall be charged to subscribers who order the service within 12 months from the time it is first offered. The non-recurring charge shall not exceed $5.00 per access line.

(D) The EAS rate additive to be used in the affected exchange(s) must meet the following standards.

(i) No increase in rates shall be incurred by the subscribers of nonbenefitting 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 shall 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 shall 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 shall 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 shall be increased by equal percentages.

(6) **Subscription threshold.**

(A) A threshold demand level shall 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 shall then be undertaken to determine the likely demand level. If the likely demand level equals or exceeds the threshold demand level, then EAS shall be provided in accordance with the commission's order. If the threshold demand level is not met, the affected utility(ies) is not required to provide the EAS approved by the commission.

(B) The cost of pre-subscription shall be divided between the utility and the petitioners. The petitioners shall pay for the printing of bill inserts and ballots and the utility shall insert them in bills free of charge. In the alternative, upon the

agreement of the parties, the utility shall provide, free of charge, and under protective order, the mailing labels of the subscribers in the petitioning exchange, and the petitioners shall 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 the petitioning exchange(s), 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 shall also publish notice in the *Texas Register*.

(B) Written notice containing the information described above shall be provided to the governing official(s) of all incorporated areas within the affected exchanges and the county commission(s) or the board of directors or trustees of a community association representing any unincorporated areas within the affected exchanges.

(C) The cost of notice shall 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(ies) (joint filings) 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 shall be permitted pursuant to subparagraph (C)(i)-(x) of this paragraph.

(C) **Standards for joint filing**s. Joint filings shall be permitted subject to the following:

(i) The parties to joint filings shall 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 shall be designated jointly by the governing officials of all incorporated areas within the affected exchange and the county commission(s) 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 shall include the commission staff in their negotiations.

(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 shall 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 shall 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 shall 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 shall publish notice of the proposed joint filing in the *Texas Register* and shall

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 shall 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 shall 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 shall be contained within a continuous boundary and all exchanges within that boundary shall be included in the common calling plan.

§26.219. Administration of Expanded Local Calling Service Requests.

(a) **Purpose**. The purpose of this section is to describe the process used to administer requests from telephone service subscribers for two-way toll-free expanded local calling service (ELCS) pursuant to the Public Utility Regulatory Act (PURA), Chapter 55, Subchapter C. Only incumbent local exchange companies (ILECs) are subject to the provisions of PURA, Chapter 55, Subchapter C.

(b) **Definitions**. The following terms, when used in this section, have the following meanings unless the context clearly indicates otherwise.

(1) Expanded local calling service (ELCS) – The meaning assigned in §26.221 of this title (relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges).

(2) Expanded local calling service (ELCS) fee – The meaning assigned in §26.221 of this title.

(3) Expanded local calling service (ELCS) surcharge – The meaning assigned in §26.221 of this title.

(4) Metropolitan exchange – The meaning assigned in PURA §55.041, including Austin, Corpus Christi, Dallas/Fort Worth, Houston, San Antonio and Waco.

(c) **ELCS requests, notice and intervention.**

(1) **Filing a request for ELCS.** Telephone subscribers in an exchange that has 10,000 or fewer access lines are eligible to request ELCS from the commission by filing information listed in paragraph (2) of this subsection. The request shall be assigned a project number. A presiding officer shall be assigned to the project and the request shall be reviewed administratively unless the presiding officer, for good cause, determines at any point during the review that the request should be docketed. A request from telephone subscribers in an exchange that has more than 10,000 access lines shall be dismissed by the presiding officer within 20 days of the date the request is filed.

(2) **Contents of a request for ELCS.**

(A) **Filing letter.** A request for ELCS shall include a letter that designates a contact person to respond to inquiries about the request for ELCS. The name, address, and daytime telephone number of the contact person shall be identified in the letter. The letter shall be sent with all other parts of the request to the commission's Filing Clerk.

(B) **Community of interest statement.** If the petitioning and petitioned exchanges do not meet the geographic proximity requirement set forth in subsection (d)(3)(C) of this section, the request for ELCS shall contain a statement describing the community of interest between the petitioning and petitioned exchanges, based upon standards in subsection (d)(3)(D) of this section. The statement must describe the existence of a community of interest

between the petitioning exchange and each petitioned exchange in sufficient detail to allow for verification of assertions made.

(C) **Statement of changed circumstances.** If subscribers in the petitioning exchange denied by ballot a petition for ELCS to any one or more of the same petitioned exchange(s) within the previous 18 months, the new request shall contain a statement explaining what circumstances have changed since the time of the prior ballot that materially affect the need for ELCS between the petitioning exchange and each petitioned exchange. A petition is denied by ballot if it fails to receive an affirmative vote of at least 70% of the voting subscribers in the petitioning exchange.

(D) **Petition.** A request for ELCS shall include a petition. A petition may request ELCS between a single petitioning exchange and one or more petitioned exchanges. A petition shall be signed by at least 100 subscribers or 5.0% of subscribers in the petitioning exchange, whichever is less. Each signatory shall include his or her name and telephone number on the petition. Each signature page of the petition for ELCS shall include:

(i) the name and telephone number of a petition coordinator, whom signatories may contact for further information about the petition;

(ii) the name, area code and prefix of the exchange from which the petitioners receive telephone service (the petitioning exchange);

(iii) the name, area code and prefix(es) of exchange(s) to which ELCS is sought (the petitioned exchange(s));

(iv) a clear statement that only subscribers in the petitioning exchange may sign the petition;

(v) a clear statement that subscribers in the petitioning exchange will be billed a monthly ELCS fee of up to $3.50 per residential line and $7.00 per business line for the first five petitioned exchanges granted, with an additional $1.50 per line for each exchange in excess of five, whether obtained in one or more petitions, in addition to basic local exchange service rates;

(vi) a clear statement that there must be an affirmative vote of at least 70% of those subscribers responding within the petitioning exchange as to each petitioned exchange before ELCS can be implemented to that petitioned exchange; and

(vii) a clear statement that, in addition to ELCS fees billed to petitioning subscribers, an ELCS surcharge may, if necessary, be billed to that ILEC's Texas customers to recover the costs of implementing ELCS.

(3) **Notice to affected ILECs**. Within five working days of receipt by the Office of Regulatory Affairs of a filed request for ELCS, the Office of Regulatory Affairs shall send a copy of the request by certified mail to each ILEC serving either a petitioning or a petitioned telephone exchange.

(4) **Notice to affected telephone service subscribers**. An ILEC serving a petitioning exchange shall arrange for publication of notice in the petitioning exchange and shall bear the cost of notice as a regulatory case expense. This notice shall be published once, not later than 15 days before ballots are mailed in accordance with subsection (f) of this section, in each local newspaper in the petitioning exchange. The information contained in subsection (f)(2)(A)-(D) and (F) of this section shall be published. Published notice shall identify the assigned project number, shall include the language in Procedural Rule §22.51(a)(1)(F) of this title (relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapter C-E, Chapter 51, §51.009; and Chapter 53, Subchapters C-E Proceedings) modified to reflect the appropriate intervention deadline and shall be written in both English and Spanish. Additionally, the presiding officer shall cause notice to be published in the *Texas Register* no later than 15 days before ballots are mailed.

(5) **Intervention**. The intervention deadline shall be no sooner than ten days after the last date notice is published in the petitioning exchange. On or before the intervention deadline stated in the published notice, any interested person may file a request to intervene in the project. The presiding officer shall rule on a request to intervene in accordance with Procedural Rule §22.103 of this title (relating to Standing to Intervene) within ten days from the date the request to intervene is filed with the commission's Filing Clerk. Intervention by an interested person does not by itself require that the project be docketed.

(d) **Initial review of a request for ELCS.**

(1) **Sufficiency.** The presiding officer shall, by order issued within 15 days of the filing of a request for ELCS, determine if the request is sufficient as to the requirements in subsection (c)(2) of this section. If the presiding officer finds that the request is deficient, the presiding officer shall notify the designated contact person so that the contact person may cure any such deficiencies. Deficiencies in the request for ELCS may be cured within 30 days of its initial filing. If not cured by the subsequent filing of sufficient information within that time, the presiding officer shall dismiss the request in whole, if appropriate, or in relevant part, without prejudice to the filing of another request involving the same petitioning and petitioned exchanges.

(2) **Changed Circumstances.** The presiding officer shall, by order issued no later than 15 days after the filing of the request for ELCS, determine whether a statement of changed circumstances required by subsection (c)(2)(C) of this section justifies allowing another ballot sooner than 18 months after the denial by ballot of a prior petition involving the same petitioning and petitioned exchanges. If the presiding officer finds that the statement does not justify allowing another ballot, the presiding officer shall dismiss the request in whole, if appropriate, or in relevant part.

(3) **Geographic proximity or community of interest.**

(A) Distance limitation. ELCS is not available where the most distant central switching offices in a petitioning and petitioned exchange are more than 50 miles

apart as measured by using vertical and horizontal (V&H) geographic coordinates.

(B) Determination. The presiding officer shall, by order issued no later than 15 days after the request for ELCS is filed, determine whether the request satisfies either the geographic proximity requirement set forth in subparagraph (C) of this paragraph or the community of interest requirement set forth in subparagraph (D) of this paragraph. If the presiding officer determines that neither the geographic proximity nor the community of interest requirements are satisfied, the presiding officer shall dismiss the request in whole, if appropriate, or in relevant part.

(C) Geographic proximity. The geographic proximity requirement is satisfied as to each petitioned exchange if the nearest central switching office in the petitioning exchange is located within 22 miles of the nearest central switching office in the petitioned exchange as measured using vertical and horizontal (V&H) geographic coordinates.

(D) Community of interest. A community of interest statement shall address situations where the nearest central switching offices in a petitioning and petitioned exchange are more than 22 miles apart and the most distant central offices in a petitioning and petitioned exchange are 50 or less miles apart. A community of interest between a petitioning exchange and a petitioned exchange exists, for purposes of this section, when the community of interest statement

includes information demonstrating that the petitioning and petitioned exchanges have a relationship because of schools, hospitals, local governments, or business centers, or that the petitioning or petitioned exchanges have other relationships that make the unavailability of ELCS a hardship on residents of the area.

(e) **Exemptions.**

(1) **ILEC requests for exemption**. An ILEC serving either the petitioning or the petitioned exchange may file a request for exemption from the potential requirement to provide ELCS. Such requests must be filed no later than 20 days after the filing of the request for ELCS. The request for exemption shall be accompanied by an affidavit identifying in detail which conditions described in paragraph (2) of this subsection exist. If the petition includes more than one petitioned exchange, the request for exemption shall clearly identify which conditions apply to which exchanges. The presiding officer shall look to facts or circumstances existing on the date the ELCS request is filed in determining whether a request for exemption may be granted.

(2) **Types of exemptions**. The following conditions shall be considered by the presiding officer in determining whether to exempt an ILEC from being required to provide ELCS:

(A) the ILEC serves fewer than 10,000 access lines statewide; or

(B) the petitioning or petitioned exchange is served by a telephone cooperative; or

(C) extended area service (EAS) or extended metropolitan service is currently available between the petitioning exchange and the petitioned exchange(s); or

(D) the petitioning or petitioned exchange is a metropolitan exchange as defined in subsection (b) of this section; or

(E) it is technologically or geographically infeasible to provide ELCS to the area; or,

(F) the request for ELCS proposes to split a petitioning or petitioned exchange.

(3) **Determination**. If one or more of the conditions described in paragraph (2)(A)-(D) or (2)(F) of this subsection exist, the presiding officer shall, within 40 days after the filing of the request for ELCS, dismiss the request in whole, if appropriate, or in relevant part. If the ILEC requests an exemption based on paragraph (2)(E) of this subsection, the presiding officer shall, by order issued no later than 40 days after the filing of the request for ELCS, determine whether the ILEC's affidavit sufficiently demonstrates that technology is not available in the marketplace to make ELCS feasible. If the exemption request is granted, the presiding officer shall dismiss the request for ELCS in whole, if appropriate, or in relevant part.

(f) **Balloting.** If all applicable requirements contained in subsections (c) and (d) of this section are met and no exemption requests are outstanding, the presiding officer shall issue an order directing the ILEC serving the petitioning exchange to begin balloting subscribers in that exchange, and the presiding officer shall notify the designated contact person for the petitioning exchange that balloting will take place.

(1) **Cost of balloting.** The cost of preparing and distributing ballots shall be borne by the ILEC serving the petitioning exchange as a regulatory case expense.

(2) **Ballot format.** No later than 30 days after the presiding officer's order directing the ILEC serving the petitioning exchange to begin balloting, that ILEC shall distribute a ballot, written in English and Spanish, to each subscriber in the petitioning exchange. The ballot shall require a separate vote from each subscriber for each petitioned exchange. The ballot must be in a standard form approved by the Office of Regulatory Affairs and each ballot shall include:

(A) a statement explaining ELCS;

(B) a statement that subscribers in the petitioning exchange have petitioned to expand the toll-free local calling area into the named exchange(s);

(C) a description of the proposed ELCS area, including the name, area code and prefix of the petitioning exchange and each petitioned exchange for which toll-free local calling is sought;

(D) a statement that if at least 70% of those subscribers responding vote "yes" as to any petitioned exchange:

(i) subscribers in the petitioning exchange will be billed, in addition to the company's local exchange service rates, a monthly ELCS fee of up to $3.50 per residential line and up to $7.00 per business line for the first five petitioned exchanges granted, with an additional $1.50 per line for

each exchange in excess of five, whether obtained as the result of one or more petitions; and

(ii) in addition to the ELCS fee billed to petitioning subscribers, an ELCS surcharge may, if necessary, be billed to all of the ILEC's Texas subscribers to recover the costs of implementing ELCS; and

(iii) the amount of the monthly ELCS fee and ELCS surcharge will depend on the revenue lost and costs incurred by the company providing the service;

(E) unambiguous instructions for voting, including the following statement in large print: "It is important that you return this ballot. If you are in favor of obtaining Expanded Toll-Free Local Calling to a listed exchange, check the box labeled 'YES' next to that exchange. If you do not want Expanded Toll-Free Local Calling to a listed exchange, check the box labeled 'NO' next to that exchange";

(F) a statement that a petitioned exchange will be included in the expanded toll-free local calling area only if at least 70% of the petitioning subscribers responding vote affirmatively for ELCS to that exchange;

(G) the date by which the returned ballot must be postmarked, which shall be 15 days from the date the ballot is mailed to the customer;

(H) the address to which the ballot should be returned upon completion of voting, identifying the commission as the recipient of returned ballots; and

(I) a unique identification number assigned by the ILEC serving the petitioning exchange to each subscriber in that exchange.

(3) **Master list of subscribers**. No later than 35 days after the presiding officer's order to the ILEC serving the petitioning exchange to begin balloting, that ILEC shall submit to the Office of Regulatory Affairs a master list of all subscribers within the petitioning exchange in an electronic spreadsheet format prescribed by the Office of Regulatory Affairs. The ILEC shall classify the master list as confidential, and the list shall be treated as such under the provisions of the Government Code, Title 5, Chapter 552. The master list shall be arranged sequentially by billing number and shall include for each subscriber in the petitioning exchange:

(A) the billing name;

(B) the billing number;

(C) the service address;

(D) the mailing address;

(E) the class of service; and

(F) the unique identification number assigned to the subscriber by the ILEC.

(4) **Response to balloting**. The Office of Regulatory Affairs shall, no later than 15 days after the date stated on the ballot for return of the ballot, notify the presiding officer, the contact person, and affected ILEC(s) of the results of the ballot by filing a ballot report. The ballot report shall specify the results of the ballot for each petitioned exchange.

(A) Affirmative vote.

(i) If at least 70% of petitioning subscribers responding vote affirmatively as to any petitioned exchange, the ILEC serving the petitioning exchange shall file with the commission, within 30 days after the filing of the Office of Regulatory Affairs' ballot report, an application to establish ELCS fees pursuant to PURA §55.048(b). The ILEC's application shall include the ILEC's proposed implementation schedule and proposed schedule of fees as well as other information described in §26.221(e)(1)-(9) of this title (relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges).

(ii) The implementation of ELCS shall be scheduled for completion within five months after an order is issued by the presiding officer acknowledging the ballot results. The ILEC shall explain and justify the reasons for any implementation delay beyond five months.

(iii) No later than 15 days after the ILEC's filing of its application to establish ELCS fees, the presiding officer shall issue an order granting interim approval of the ILEC's proposed fees, which may be billed as of the first billing cycle following implementation of ELCS from the petitioning exchange. All fees given interim approval are subject to refund.

(iv) No later than 30 days after the ILEC's filing of its implementation schedule, the presiding officer shall issue an order approving, modifying, or denying the schedule.

(B) Negative vote. If less than 70% of those responding vote in favor of ELCS to a petitioned exchange, the presiding officer shall, within 10 days after the filing of the Office of Regulatory Affairs' ballot report, deny the request for ELCS to that specific petitioned exchange.

(g) **Calculation of ELCS Fees.** ELCS fees shall be calculated using the formula described in this subsection unless the presiding officer, for good cause, modifies the formula. Key formula terms are defined in §26.221(b) of this title.

(1) **Regulatory case expenses.** In accordance with PURA §55.048(d), an ILEC may not recover regulatory case expenses under this subsection by surcharging petitioning subscribers.

(2) **ELCS fee formula**. First, sum lost revenues and costs incurred to determine the ILEC's annual ELCS requirement. Divide the annual ELCS requirement by 12 to obtain the monthly requirement, which is the numerator. Second, obtain the most current count of access lines in the petitioning exchange. Multiply the number of business lines by two and multiply the number of Tel-Assistance lines by 35%. Add the doubled business lines and the 35% of Tel-Assistance lines to the number of residential lines. This total is the denominator. Third, divide the numerator by the denominator to

obtain the monthly ELCS fee per residential line. Multiply the monthly ELCS fee per residential line by two to obtain the monthly ELCS fee per business line. Multiply the monthly fee per residential line by 35% to obtain the monthly ELCS fee per Tel-Assistance line. Round ELCS fees up or down to the nearest penny.

(3) **ELCS fee maximums**. The monthly ELCS fee per residential line shall not exceed $3.50 for up to five petitioned exchanges. The monthly ELCS fee per business line shall equal twice the monthly ELCS fee per residential line; however, the monthly ELCS fee per business line shall not exceed $7.00 for up to five petitioned exchanges. For each additional petitioned exchange beyond five, the monthly ELCS fee shall not exceed an additional $1.50 per residential or business line.

(4) **ELCS surcharge**. If ELCS fees do not recover the annual ELCS requirement, an ILEC may request establishment of an ELCS surcharge under §26.221 of this title.

(h) **Docketing.** Within 30 days of the issuance of an order under subsection (f)(4)(A)(iii) of this section granting interim approval of fees to be billed by the ILEC serving the petitioning exchange, any intervenor or the Office of Regulatory Affairs may request that the presiding officer docket the project. Docketing may be requested in order to allow further investigation of the ILEC's application or, for good cause shown, any other reason. Upon receipt of a request for docketing, the presiding officer shall docket the project and shall establish a procedural schedule. Upon docketing, discovery may commence in accordance with the

commission's Procedural Rules, Chapter 22, Subchapter H of this title (relating to Discovery Procedures).

(i) **Final approval.** If no request for docketing is timely filed under subsection (h) of this section, the presiding officer shall, within 60 days after the order granting interim approval of fees, issue an order granting final approval to or modification of the ELCS fees to be billed by the ILEC serving the petitioning exchange. Upon final approval by the presiding officer of either the proposed or modified tariff sheets, the fees shall be considered permanent unless modified in the future, for good cause, by the commission.

§26.221. Applications to Establish or Increase Expanded Local Calling Service Surcharges.

(a) **Purpose**. The purpose of this section is to provide the standard for review of an incumbent local exchange company (ILEC) application, filed pursuant to the Public Utility Regulatory Act (PURA) §55.048(c), to recover all costs incurred and all loss of revenue from an expansion of a toll-free local calling area.

(b) **Definitions**. The following terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) **Avoided costs –** ILEC costs that are reduced or eliminated due to implementation of ELCS.

(2) **Costs incurred –** The amount of recurring and non-recurring costs incurred by an ILEC to implement ELCS, minus avoided costs.

(3) **Expanded local calling service (ELCS) –** A two-way toll-free local calling service provided by an ILEC to telephone service subscribers pursuant to §26.219 of this title (relating to Administration of Expanded Local Calling Service Requests).

(4) **Expanded local calling service (ELCS) fee –** A fee billed by an ILEC, pursuant to PURA §55.048(b), to subscribers in a petitioning telephone exchange.

(5) **Expanded local calling service (ELCS) requirement –** The sum of lost revenue and costs incurred due to implementation of ELCS.

(6) **Expanded local calling service (ELCS) surcharge –** A fee billed by an ILEC, pursuant to PURA §55.048(c), to all of its Texas subscribers, unless an exception is granted by the commission. ELCS surcharges are designed to recover the residual in paragraph (8) of this subsection.

(7) **Lost revenue –** The loss of revenue an ILEC realizes due to implementation of ELCS.

(8) **Residual –** The sum of lost revenue and costs incurred, minus revenue collected from ELCS fees.

(c) **General Principles**. The commission shall consider these general principles when establishing or increasing ELCS surcharges.

(1) The commission may, at any time, initiate a show cause investigation or a compliance investigation of ELCS surcharges pursuant to Procedural Rule §22.241 of this title (relating to Investigations) to determine whether ELCS surcharges comply with the requirements in PURA §55.048.

(2) An ILEC bears the burden of demonstrating that a proposed ELCS surcharge:

(A) recovers lost revenue and costs incurred,

(B) recovers costs necessary only for implementation of ELCS and

(C) is just and reasonable.

(3) If an ILEC departs from the requirements in subsection (e)(1)-(6) of this section, and proposes instead to use statistical sampling or another method of calculating ELCS

surcharges, the ILEC bears the burden of demonstrating the reasonableness of the alternative method as it relates to the surcharge at issue.

(4) An application to establish an ELCS surcharge shall contain information that enables the Office of Regulatory Affairs to validate and replicate the method used by the ILEC to develop a proposed ELCS surcharge.

(5) When established, ELCS surcharges shall be based upon the most current count of local exchange access lines billed by an ILEC.

(6) The commission shall pursue the goal of revenue neutrality in designing ELCS surcharges.

(7) Except as provided under subsection (i)(1) of this section, an ILEC has no continuing right to bill an ELCS surcharge for an indefinite period.

(8) ELCS surcharges shall be designed so that business subscribers are billed twice the monthly per line charge billed to residential subscribers and Tel-Assistance subscribers are billed 35% of the monthly per line charge billed to residential subscribers.

(d) **Confidentiality**. Before filing an application regarding an ELCS surcharge, an ILEC shall obtain agreement from the Office of Regulatory Affairs on a method for securing the confidentiality of information the ILEC deems confidential. An application filed pursuant to subsection (e) of this section shall not exclude information deemed confidential by the ILEC.

(e) **Filing an application**. An application to establish or increase an ELCS surcharge shall be assigned a project number and a presiding officer shall be assigned to the project. An ILEC's application shall be reviewed administratively unless the presiding officer dockets the project. An application shall, at a minimum, include:

(1) twelve consecutive months of actual toll revenue data collected as near the ELCS implementation date as possible and, in no event, earlier than 18 months before the ELCS implementation date. Data provided by an ILEC shall show actual toll revenue billed by the ILEC for each direction of each pre-ELCS toll route for each of the 12 consecutive months collected;

(2) twelve consecutive months of actual access revenue data collected as near the ELCS implementation date as possible and, in no event, earlier than 18 months before the ELCS implementation date. Data provided by an ILEC shall show access revenue billed by the ILEC for each direction of each pre-ELCS access route for each of the 12 consecutive months collected;

(3) a calculation of the effect of any mechanism for pooling or settling revenue collected from and disbursed to telecommunications providers;

(4) copies of documents, such as invoices, work orders, receipts and lease agreements, that demonstrate the costs incurred by an ILEC to implement ELCS, with recurring costs and non-recurring costs separately identified for each pre-ELCS toll route;

(5) workpapers supporting all documents contained in the application, including but not limited to, the ILEC's development of factors, ratios, allocations, estimates, projections, averages and labor rates;

(6) a calculation of avoided costs;

(7) one or more tariff sheets reflecting the proposed rates;

(8) a request for exemption, if any, from one or more requirements in this subsection;

(9) a copy of the confidentiality agreement, if such an agreement is necessary, signed by a representative of the Office of Regulatory Affairs;

(10) the text of the proposed notice of an application to establish or increase ELCS surcharges; and

(11) the ILEC's preferred duration of applicability of the proposed ELCS surcharges among alternatives listed in subsection (i) of this section.

(f) **Administrative response to an application.**

(1) **Notice.** The presiding officer shall approve or modify the notice proposed under subsection (e)(10) of this section within 20 days after the filing of an application to establish or increase ELCS surcharges. The ILEC shall arrange for publication of notice at least once each week for four consecutive weeks, in newspapers having general circulation in each of the ILEC's affected telephone exchanges. Published notice shall identify the assigned project number, shall include the language in Procedural Rule §22.51(a)(1)(F) of this title (relating to Notice for Public Utility Regulatory Act,

Chapter 36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapters C-E, Proceedings) modified to reflect the appropriate intervention deadline, shall describe the application and shall be written in both English and Spanish. Notice shall be published within 40 days of the date the presiding officer files an order approving the notice format. The ILEC shall file an affidavit of completion of published notice within ten days following such completion. The presiding officer shall cause notice to be published in the *Texas Register* within 30 days of the date an order of approval of the notice format is filed. Additionally, the ILEC shall provide a copy of its application to the Office of Public Utility Counsel on the same day the application is filed with the commission's Filing Clerk.

(2) **Intervention.** The intervention deadline shall be no sooner than ten days after the last date notice is published. On or before the intervention deadline, any interested person may file a request to intervene in the project. The presiding officer shall rule on a request to intervene, in accordance with Procedural Rule §22.103 of this title (relating to Standing to Intervene) within ten days from the date the request for intervention is filed with the commission's Filing Clerk. Intervention by an interested person does not by itself require that the project be docketed.

(3) **Discovery.** Discovery may commence on the date the application is filed in accordance with the commission's Procedural Rules, Chapter 22, Subchapter H of this title (relating to Discovery Procedures).

(4) **Interim surcharges.** Not more than 30 days after the intervention deadline, the presiding officer shall grant or deny, in whole or in part, a request for interim relief and may approve or modify a proposed interim ELC surcharge in accordance with Procedural Rule §22.125 of this title (relating to Interim Relief).

(5) **Sufficiency review and requests for exemption**. Within 30 days after the filing of an ILEC application, the Office of Regulatory Affairs shall file comments on the sufficiency of the application and on any request for exemption filed by the ILEC under subsection (e)(8) of this section. Not more than 30 days after the Office of Regulatory Affairs' comments are filed, the ILEC shall file a response and may amend or supplement its application. Not more than ten days after the ILEC's response is filed, the Office of Regulatory Affairs shall file a recommendation to the presiding officer addressing whether the application is sufficient and whether any requests for exemption should be granted.

(6) **Docketing.** If the Office of Regulatory Affairs or any intervenor files, within 30 days after the intervention deadline, a request to docket the project, the presiding officer shall docket the project. Upon docketing, the presiding officer shall ascertain whether the parties prefer to pursue settlement negotiations or alternative dispute resolution. If so, the presiding officer shall abate the docket for a reasonable period. If the parties prefer to establish a procedural schedule, the presiding officer may refer the docket to the State Office of Administrative Hearings or may take other appropriate action. If neither the Office of Regulatory Affairs nor an intervenor requests docketing, the presiding

officer shall administratively approve or modify the application within 40 days after the intervention deadline.

(g) **Calculation of initial ELCS surcharges**. An initial ELCS surcharge shall be calculated using the formula described in this subsection unless the presiding officer, for good cause, modifies the formula.

(1) **Numerator.** First, sum the lost revenues and costs incurred to determine the ILEC's annual ELCS requirement. Second, use the most current count of access lines to calculate the amount of ELCS fee revenue received annually by the ILEC. Subtract the annual ELCS fee revenue from the annual ELCS requirement. The result is the annual residual. Third, divide the annual residual by 12 to obtain the monthly residual, the numerator.

(2) **Denominator.** First, obtain the most current count of residential, business and Tel-Assistance lines served by the ILEC in Texas. Second, multiply the number of business lines by two and multiply the number of Tel-Assistance lines by 35%. Third, add the doubled business lines and the 35% of Tel-Assistance lines to the number of residential lines. This total is the denominator.

(3) **ELCS surcharge formula**. Divide the numerator in paragraph (1) of this subsection by the denominator in paragraph (2) of this subsection to obtain the monthly ELCS surcharge per residential line. Multiply the monthly ELCS surcharge per residential line by two to obtain the monthly ELCS surcharge per business line. Multiply the monthly

ELCS surcharge per residential line by 35% to obtain the monthly ELCS surcharge per Tel-Assistance line. Round ELCS surcharges up or down to the nearest penny.

(h) **Adjustments to ELCS surcharges**. ELCS surcharges shall be adjusted using the formula described in subsection (g) of this section, except that:

(1) the numerator established in a previous application may be modified to consider new information relevant to development of the residual:

(A) for any ELCS surcharge approved before February 1, 2000, if the commission reserved the right to subsequently review the costs incurred and lost revenues associated with the ELCS surcharge; or

(B) for any ELCS surcharge approved after February 1, 2000; and

(2) the denominator shall be modified to reflect the most current count of local exchange access lines at the time of the adjustment. For ELCS surcharges approved before February 1, 2000, if the number of access lines in the denominator initially included only non-petitioning exchanges, an adjustment in the number of access lines shall include only non-petitioning exchanges.

(i) **Duration**. An ILEC shall select a preferred duration of applicability of its proposed ELCS surcharges from alternatives listed in this subsection. The commission may establish ELCS surcharges for any duration.

(1) **Permanent**. An ILEC may initiate a review of all of its rates and charges by filing a rate filing package. Following a review of the ILEC's cost of service pursuant to Substantive Rule §26.201 of this title (relating to Cost of Service), any resulting ELCS surcharge shall be considered permanent unless modified, for good cause, by the commission.

(2) **Phase-down**. If an ILEC's application to establish or increase an ELCS surcharge contains all information required in subsection (e)(1)-(6) of this section, the ILEC may propose a phase-down of its ELCS surcharge for a duration of five years. The phase-down shall be implemented by reducing each ELCS surcharge by 20% at the end of each year of the phase-down period. At the end of the five-year phase-down period, the ELCS surcharge shall be zero. Tariff sheet(s) filed by the ILEC shall contain ELCS surcharges for each of the five years of the phase-down period.

(3) **Phase-out**. An ILEC that files an application to establish or increase an ELCS surcharge may propose a phase-out of its ELCS surcharge. A proposed phase-out shall be for a duration not to exceed two years. At the end of the phase-out period, the ELCS surcharge shall be zero. Tariff sheet(s) filed by the ILEC shall contain ELCS surcharges for the two-year period and shall state the two-year duration of applicability of the ELCS surcharges.

This agency hereby certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that rule §26.217 relating to Administration of Extended Area Service Requests, rule §26.219 relating to Administration of Expanded Local Calling Service Requests, and rule §26.221 relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 22nd DAY OF FEBRUARY 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

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Chairman Pat Wood, III

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Commissioner Judy Walsh

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Commissioner Brett A. Perlman