

The Public Utility Commission of Texas (commission) proposes 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. These sections will replace §23.49 of this title (relating to Telephone Extended Area Service (EAS) and Expanded Toll-free Local Calling Areas).

The proposed sections establish administrative procedures for processing requests for extended area service (EAS) pursuant to the Public Utility Regulatory Act (PURA), Chapter 55, Subchapter B, and for expanded local calling service (ELCS) pursuant to PURA Chapter 55, Subchapter C and for applications to establish or increase ELCS surcharges pursuant to §55.048(c) of PURA. Project Number 20788 has been assigned to this proceeding.

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 shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the 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 industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and 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 duplicate sections of Chapter 23 are proposed for repeal as each new section is proposed for publication in the new chapter.

*General changes to rule language:*

The proposed new sections reflect different section, subsection, and paragraph designations due to reorganization of the rules. Citations to the Public Utility Regulatory Act have been updated to conform to the Texas Utilities Code and citations to other sections of commission rules have been updated to reflect new section designations. Some text is proposed for deletion because the text is obsolete or redundant. The new sections as published in the *Texas Register* will not indicate the language being proposed for deletion from the rule as it currently exist. The *Texas Register* publishes new sections as all new text. Persons who desire a copy of the proposed new sections as they reflect changes to existing §23.49 may obtain a redlined version from the commission's Central Records under Project Number 20788.

*Other changes specific to each section:*

Proposed new §26.217 will replace corresponding §23.49(a) and (b). Proposed new §26.217 contains modifications to reflect new references to sections and paragraphs as well as new titles describing certain sections.

Proposed new §26.219 will replace corresponding §23.49(c). Proposed new §26.219 contains the following modifications. First, several subsections were moved or consolidated for a more logical organization of the rule. Second, §26.219 now refers to ELCS requests instead of ELCS petitions because, in fact, a petition is only one of the four required components of a request submitted by subscribers in a telephone exchange. Third, consistent with the commission's recent change in policy to spread ELCS surcharges among both petitioning and petitioned subscribers, the provisions for public notice, the format of ELCS ballots and the format of ELCS petitions have been revised to reflect this policy change. Fourth, procedural timelines have been revised to reflect the actual procedures used by the agency; timelines in the current rule are obsolete. Fifth, various provisions are clarified and streamlined for ease of administration.

Proposed new §26.221 will replace and expand corresponding §23.49(c)(12). Proposed new §26.221 states the required components of an incumbent local exchange company application to establish or increase ELCS surcharges, provides a procedure for administering such applications, defines key terms and general principles, provides the formula for determining ELCS surcharges and offers incumbent local exchange companies three alternatives for seeking approval of future ELCS

surcharges. Finally, the new rule provides a procedure for review of ELCS surcharges established before the effective date of proposed new §26.221.

Mr. Charles Johnson, Attorney, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Johnson has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be expedited access to extended area service and expanded local calling service. There will be no significant change in the effect on small businesses or micro-businesses because of enforcing these sections. There is no significant change in the anticipated economic cost to persons who are required to comply with the sections as proposed.

Mr. Johnson has also determined that for each year of the first five years the proposed sections are in effect there should be no affect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The Office of Regulatory Affairs will conduct a public hearing on this rulemaking to obtain input from interested persons, under Government Code §2001.029, at the commission's offices in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The public hearing will be held

on Tuesday, November 9, 1999 at 1:30 p.m. in the Commissioner's Hearing Room on the 7th floor of the William B. Travis Building.

Comments on the proposed new rules (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326 within 30 days after publication in the *Texas Register*. Reply comments may be submitted within 45 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider costs and benefits in deciding whether to adopt the proposed sections. The commission also invites specific comments regarding the Section 167 requirement as to whether the reason for adopting the rules continues to exist. All comments should refer to Project Number 20788.

These new sections are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, Chapter 55 of PURA §§55.021 – 55.023 which grant the commission authority to require local exchange companies to provide either optional or mandatory extended area service, and §55.042 which grants the commission authority to expand toll-free local calling areas.

Cross Reference to Statutes: Public Utility Regulatory Act: §§14.002, 55.021 - 22.023, 58.061 and 59.024(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 extended area service 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 extended area service 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 extended area service 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 extended area service 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 extended area service 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 extended area service 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 file the results of such studies with the commission staff and with 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 filed 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 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 extended area service. The data to be filed 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 file, no later than 120 days after the prehearing conference, with the commission staff and other parties to the proceeding 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 extended area service. 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 extended area service 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 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) **Extended area service 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 submit 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) Extended area service 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 extended area service 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).

(C) **Standards for joint filings.** 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.** A request for ELCS may be initiated with the commission by filing information listed in paragraph (2) of this section. 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.

- (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)(B) 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)(C) 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% 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.** ILECs serving either a petitioning or petitioned exchange shall arrange for publication of notice in their respective exchange(s) and shall bear the cost of notice as a regulatory case expense. Notice of the filing of a request for ELCS shall be provided to all petitioning and petitioned telephone service subscribers. 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 and petitioned exchange(s). The information contained in subsection (f)(2)(A)-(D) and (F) shall be published. Published notice shall identify the assigned project number, shall include the language in Procedural Rule § 22.51(a)(1)(F) (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.** 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 any 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 between a petitioning and petitioned exchange are more than 22 miles apart and the most distant central offices between 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) a petitioning exchange has more than 10,000 access lines in service; or
  - (G) the request for ELCS proposes to split a petitioning or petitioned exchange.
- (3) **Determination.** If one of or more of the conditions described in paragraph (2)(A)-(D) or (2)(F)-(G) 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 a map 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; 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 30 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, the fees shall be considered permanent unless modified, 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 losses of revenue and costs incurred due to implementation of expanded local calling service (ELCS).
- (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 actual 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 subparagraph (8) of this paragraph.
  - (7) **Lost revenue** – The actual 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 an 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 actual lost revenue and actual costs incurred,
    - (B) recovers costs necessary only for implementation of ELCS and
    - (C) is just and reasonable.
  - (3) If an ILEC departs from the commission's standard for review of actual losses of revenue and actual costs incurred, 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.

- (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. The commission may restructure ELCS surcharges.
  - (7) 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.
  - (9) If an ILEC files an application to increase an existing ELCS surcharge or if the commission initiates an investigation of an existing ELCS surcharge, the total ELCS surcharge (not merely the amount of the increase) shall be recalculated to consider the most current count of local exchange access lines and may be recalculated to consider new information relevant to development of the residual.
- (d) **Confidentiality.** Before filing an application to establish 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 docket 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 100% of 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 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 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.

- (2) **Intervention.** 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 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 either grant or deny a filed request for establishment of interim

ELCS surcharges 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 ten 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 20 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.

- (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 twelve 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) **Calculation of increases or decreases to initial ELCS surcharges.** Initial ELCS surcharges shall be subsequently increased or decreased using the formula described in subsection (g) of this section, except that:
- (1) the numerators(s) established in one or more previous applications may be modified to consider new information relevant to development of the residual; and
  - (2) the denominator(s) established in one or more previous applications shall be modified to reflect the most current count of local exchange access lines.
- (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 ELCS surcharges may propose a phase-out of its ELCS surcharges for a duration not to exceed two years. At the end of the phase-out period, the ELCS surcharges 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.
- (j) **ELCS surcharges billed before the effective date of this section.** An ILEC that billed interim-approved or final-approved ELCS surcharges to its subscribers before the effective date of this section shall file one or more tariff sheets with the commission's Filing Clerk, not later than February 1, 2000, phasing down its ELCS surcharges in accordance with subsection (i)(2) of this section. This subsection does not apply to ELCS surcharges that will be phased down to zero or phased out to zero pursuant to a commission order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 3rd DAY OF SEPTEMBER 1999 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**