

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

§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;

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- (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

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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.

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- (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

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- (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.

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- (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. Add the doubled business 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. 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.