

**CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.**

**Subchapter J. COSTS, RATES AND TARIFFS.**

**§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.

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- (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 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 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.

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- (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 and business lines served by the ILEC in Texas. Second, multiply the number of business lines by two. Third, add the doubled business 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. Round ELCS surcharges up or down to the nearest penny.

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- (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.