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TELEPHONE

MEMORANDUM DECISIONS

Public Utility Commission of Texas

7800 Shoal Creek Boulevard · Suite 400N
Austin, Texas 78757 · 512/458-0100

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REQUEST OF THE CITY OF ALLEN FOR EXTENDED AREA SERVICE TO THE DALLAS METRO CALLING AREA	§ § §	DOCKET NO. 6568

July 22, 1988

The City of Allen applied to have the telephone exchange encompassing its environs included in the Dallas Metro Calling area. The parties reached an agreement on all issues except the issue of whether the EAS rate additive should include a component to recover revenue losses due to reclassification of toll traffic. The Commission rejected the Examiner's Report and held that the evidence presented with respect to lost toll revenue was not sufficient to warrant inclusion of lost toll revenues.

[1] RATE DESIGN--TELEPHONE--EXTENDED AREA SERVICE

Pursuant to P.U.C. SUBST. R. 23.49(e)(2) lost toll revenue may be recovered in the EAS rate additive if the Commission finds it appropriate upon presentation of sufficient evidence by the company. (p. 2317)

[2] SWB and GTSW were able to quantify the impact of the loss of toll revenue; and the percentage of change in return for SWB was measured by the City of Allen's witness. The evidence presented was not sufficient to warrant recovery of lost toll in this docket. (pp. 2315, 2317)

Public Utility Commission of Texas

7800 Shoal Creek Boulevard · Suite 400N
Austin, Texas 78757 · 512/458-0100

Dennis L. Thomas
Chairman

Jo Campbell
Commissioner

Marta Greytok
Commissioner

March 31, 1988

Chairman Thomas
Commissioner Campbell
Commissioner Greytok
General Counsel
All Parties of Record

Re: Docket No. 6568 - Request of the City of Allen for Extended Area Service to the Dallas Metro Calling Area

Dear Mesdames and Sirs:

Enclosed is a copy of the Examiner's Report and proposed final Order in the referenced docket. The Commission will consider this case at an open meeting scheduled to begin at 9:00 a.m., Wednesday, May 4, 1988, at the Commission offices, 7800 Shoal Creek Boulevard, Austin, Texas. Exceptions to the Examiner's Report must be filed by 5:00 p.m., Monday, April 18, 1988. Replies to the exceptions must be filed by 5:00 p.m., Wednesday, April 27, 1988. An original and 15 copies of exceptions and replies must be filed with the Commission filing clerk and a copy served on each party of record.

Pursuant to Commission Procedural Rule 21.143, requests for oral argument must be filed with the Commission and served on all parties by 5:00 p.m., Thursday, April 28, 1988, the fourth scheduled working day preceding the final order meeting date. If a request for oral argument is made, parties may call Ms. Lisa Ruedas at 512/458-0266 after 9:00 a.m. the day before the final order meeting to learn whether oral argument will be allowed by the Commission. Even if requests for oral argument are not granted, the Commission may still have questions for the parties.

Parties are welcome to attend the final order meeting but are not required to do so. A copy of the signed final order will be mailed to each party of record shortly after the adjournment of the final order meeting.

Summary of the Examiner's Report

The City of Allen requested that non-optional Extended Area Service (EAS) be provided between the Allen Exchange and the Dallas Metro Calling Area. The

Allen Exchange is served by Southwestern Bell Telephone Company (SWB), and the Dallas Metro Calling Area is served by both SWB and General Telephone Company of the Southwest (GTSW). Based on traffic studies, the Commission staff determined that the request should be docketed. The Cities of Dallas and Grand Prairie were permitted to intervene in this proceeding.

The City of Allen complied with the filing requirements of the Commission's Substantive Rule 23.49, which governs the processing of requests for EAS, and the telephone companies performed the requisite cost studies. At the hearing on the merits, the parties announced that they had reached agreement on the incremental EAS rate additive, but had not resolved the question of whether the EAS rate additive should include a component to recover the companies' revenue losses due to the reclassification of toll traffic, referred to as the "lost toll" issue. By agreement of the parties, cross-examination of the witnesses at the hearing on the merits was limited to the lost toll issue.

Based on the examiner's reading of the Commission's discussion and interpretation of language in the EAS rule, the report finds that the Commission intended to determine on a case-by-case basis whether an EAS rate additive should include a lost toll component. The report further articulates a standard by which the determination can be made. The proposed standard is whether the requested EAS (whether optional or mandatory) can be provided at a rate which is both compensatory to the company/ies and is attractive to the benefitted customers, in accord with the provisions of the EAS rule. The second portion of the standard is already provided in subsections 23.49(g) and (h) of the EAS rule; the determination of what constitutes a compensatory rate is a question of fact to be answered in each docketed EAS request.

The report finds that the preponderance of the evidence in this record supports a conclusion that a compensatory rate for the requested EAS must include a lost toll component. The evidence also demonstrates that at rate levels which include the lost toll component, less than a majority of the Allen Exchange subscribers would benefit from EAS as requested. The report recommends that the City of Allen's request be denied. The report further recommends that any request for optional EAS from the Allen Exchange to the Dallas Metro area be processed as a new request.

Sincerely,

Mary Ross McDonald

Mary Ross McDonald
Administrative Law Judge

DOCKET NO. 6568

REQUEST OF THE CITY OF ALLEN FOR EXTENDED AREA SERVICE TO THE DALLAS METRO CALLING AREA	§ § §	PUBLIC UTILITY COMMISSION OF TEXAS

EXAMINER'S REPORT

I. Procedural History

This request by the City of Allen for Extended Area Service (EAS) into the Dallas Metro calling area was docketed on October 28, 1985, based on the advice of then-staff engineer Don Price, who found that the community of interest standards set forth in paragraph (c)(2) of P.U.C. SUBST. R. 23.49 had been met on a unilateral basis.

The City Council of the City of Allen passed Resolution No. 645-10-85 (R) on October 3, 1985, which expressed the City's readiness to bear the entire cost of providing the requested EAS, pursuant to subparagraph 23.49(c)(3)(B). The docket was assigned to Administrative Law Judge Phillip Holder.

On November 26, 1985, the City of Allen filed a certified copy of Resolution No. 660-11-85(R), passed November 7, 1985, in which the City Council of the City of Allen determined that the proposed EAS should be nonoptional (mandatory). This filing satisfied the requirements of paragraph 23.49(c)(4).

The first prehearing conference was convened as scheduled on January 3, 1986, with Judge Holder presiding. Appearances were entered by Angela Demerle for GTSW; Galen Sparks for the City of Dallas; Andrew Kever for the City of Allen; Jose Varela for SWB; and then-staff attorney Dineen Majcher for the Commission staff. Because there were numerous substantive issues to be resolved, Judge Holder set a second prehearing conference for January 17, 1986, for the purpose of establishing a procedural schedule; it was cancelled because the parties reached an agreement on the schedule. He also set a January 31, 1986, deadline for the parties to file statements of position on various issues which he identified.

The desire of the City of Dallas to intervene in this proceeding was opposed by the City of Allen; this dispute was to be resolved on the basis of written pleadings. The City of Dallas filed a written motion to intervene on January 7, 1986; the City of Allen's objection to this request was included with its statement of position and its motion to strike the request to intervene of the City of Dallas, both filed on January 31, 1986. The request to intervene of the City of Dallas was granted by oral ruling at the prehearing conference held on October 28, 1986.

In accord with Judge Holder's order, statements of position on various threshold issues in this docket were timely filed by general counsel, the City of Dallas, GTSW, the City of Allen, and SWB. Reply comments were filed by the City of Allen, GTSW, and SWB.

This docket was reassigned to Administrative Law Judge K. Crandal McDougall on April 4, 1986. A September 1986 request by the City of Allen to establish a procedural schedule was set for consideration at a prehearing conference convened on October 28, 1986. At that prehearing conference, Judge McDougall determined that the City of Allen properly represents the Allen exchange; granted the request of the City of Dallas to intervene; and established a schedule for prefiling direct testimony, conducting discovery, and giving notice.

The City of Allen gave notice of the pendency of this docket to subscribers in the 727 (Allen) Exchange and to city and county governments within the Dallas Call Area in conformance with the directives of Judge McDougall. The Commission received approximately five letters indicating opposition to the proposed non-optional EAS, and three letters supporting it, including one from the City of Lucas, which is located within the Allen exchange.

The procedural schedule set at the October 28 prehearing conference called for the hearing on the merits in this case to convene on March 3, 1987, and the City of Allen had included this date in its notice. General counsel filed a

motion for continuance on February 2, 1987. Thereafter the parties agreed to move the hearing date to April 6, 1987, but to leave the already-noticed March 3, 1987, hearing date in place for the purpose of taking public comment on the requested EAS. Judge McDougall convened the hearing on March 3, 1987, but no persons appeared for the purpose of making public comment on the request. The parties instead used the forum for establishing procedures for the hearing on the merits. In the written order issued following this hearing, Judge McDougall granted the motion of the City of Grand Prairie to intervene.

General counsel filed a motion for a one-day continuance of the hearing on the merits; all parties assented. On April 1, 1987, this docket was reassigned to the undersigned examiner, who convened the hearing on the merits as scheduled on April 7, 1987.

At the hearing on the merits, appearances were entered by Andrew Kever and Susan Gentz for the City of Allen; Charla Edwards for GTSW; L. Kirk Kridner and Robert D. Steiger for SWB; Galen Sparks for the City of Dallas and the City of Grand Prairie; and Dineen Majcher for the Commission staff and the public interest. In addition, twenty persons from the Allen Exchange appeared and made statements in support of the request for EAS.

At the beginning of the hearing, the parties informed the examiner that they had reached an agreement regarding all issues in the docket except the question of whether lost toll should be included in the rate additive for EAS. The testimony of the witnesses was admitted into the record without objection and, by agreement of the parties, the sole subject of cross-examination was the lost toll issue. The hearing concluded on April 9, 1987. Initial briefs were filed on April 23, 1987, and reply briefs on May 7, 1987.

The undersigned examiner has read the record of the proceedings and is the lawful replacement for the previously presiding examiners under P.U.C. PROC. R. 21.141(a) and section 15 of the Administrative Procedure and Texas Register Act, Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1988) (APTRA).

II. Jurisdiction

SWB and GTSW are dominant carriers as defined in section 3(c)(2)(B)(ii) of the Public Utility Regulatory Act, Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1988) (PURA), and are therefore telecommunications utilities subject to the jurisdiction of this Commission. The Commission's jurisdiction over the subject matter of this docket arises under sections 16(a), 18 and 61(3) of PURA and P.U.C. SUBST. R. 23.49.

In pertinent part, PURA provides:

> Sec. 61. After notice and hearing, the commission may:
>
> . . .
>
> (3) order a telephone company or telephone companies to provide extended area toll-free service within a specified metropolitan area where there is a sufficient community of interest and such service can reasonably be provided.

The paucity of EAS cases decided by the Commission means that there is little precedent on which to rely in interpreting this section of the Act; however, the Commission has interpreted this language as conferring upon the Commission the authority to order telephone companies to provide extended area toll-free service (EAS) within a specified metropolitan area, provided that two conditions are met. It must be demonstrated first that there is "a sufficient community of interest within the area" and second that "such service can reasonably be provided." In *Inquiry of the Commission into the Propriety of Establishing Extended Area Service by Southwestern Bell Telephone Company Between Part of Its Frisco Exchange and the Dallas Metropolitan Calling Area of Southwestern Bell and General Telephone Company of the Southwest*, Docket No. 2169, 6 P.U.C. BULL. 465 (February 22, 1980) (hereinafter referred to as the Colony case), the Commission adopted the reasoning in the Examiner's Report that *both* parts of this standard must be met before the Commission could order telephone companies to provide EAS. This test seems eminently reasonable, and

was implicitly affirmed in *Petition of the Woodlands Development Corporation and Eckerd Drugs, Inc. for Amendments of the Certificates of Convenience and Necessity of Conroe Telephone Company and Southwestern Bell Telephone Company, for Extended Area Service Between Conroe Telephone Company's Riverbrook Exchange and Portions of Southwestern Bell Telephone Company's Houston Metropolitan Calling Area, and Other Relief*, Docket Nos. 2782 and 4061, 10 P.U.C. BULL. 1 (May 15, 1984) (hereinafter referred to as the Woodlands case).

The request in this docket is governed by the Commission's EAS rule, P.U.C. SUBST. R. 23.49, which became effective August 6, 1985. The stated purpose of the rule is to establish consistent procedures for the processing of requests for EAS which were pending on or were applied for after the effective date of this rule; new EAS can be established only through the procedures set forth in this rule.

III. Discussion

A. Description of the Request and the Stipulation of the Parties

A request for EAS may be initiated by one or both of two methods described in paragraph 23.49(b)(1). In this docket, the City of Allen chose the second alternative: it filed with the Commission a resolution adopted on October 3, 1985, in which it requested non-optional, or mandatory, EAS and, in conformance with subparagraph 23.49(c)(3)(B), stated its readiness to bear the entire cost of providing the EAS. Its position was reiterated at the first prehearing conference in this docket, in accord with paragraph 23.49(c)(5). Although there was some skirmishing early in this docket about the standards for determining whether the governing body of a political subdivision properly represents an entire exchange (as required by subparagraph 23.49(b)(1)(B)), the facts of this case clearly establish that the City Council of the City of Allen properly represents the Allen exchange: the City Council of the City of Allen represents the residents of the City of Allen, and the City of Allen contains at least 80 percent of the population of the exchange. In addition, Judge McDougall ruled at the October 28, 1986, prehearing conference that the City of Allen properly

represents the Allen Exchange; no party appealed that ruling. Further definition of the standard by which the determination is made whether a governing body of a political subdivision within an exchange properly represents the exchange was thus rendered moot in this docket.

The EAS rule also reduces to a formula the manner in which the existence of a community of interest is to be determined. Prior to the effective date of this rule, this determination proceeded on a case by case basis (*see*, the Colony case and the Woodlands case, *supra*) without a specific identification of any particular factors necessary to the finding. Paragraph 23.49(c)(1) now requires the utilities to gather and file data based upon a minimum 60-day study of representative calling patterns. A "reasonable degree of community of interest between exchanges" is considered to exist when the criteria in paragraph 23.49(c)(2) have been met. That paragraph requires an average (arithmetic mean) of no less than ten calls per subscriber account per month from one exchange to the other, and no less than two-thirds of the subscribers' accounts place at least five calls per month from one exchange to the other. Once the Commission staff finds that a reasonable community of interest exists, either bilaterally between the exchanges or unilaterally if the petitioning exchange has expressed in writing to the Commission its readiness to bear the entire cost of providing the requested EAS, the request is docketed.

In this case, then-staff engineer Don Price reviewed the traffic studies filed by SWB on September 23, 1985. These studies were for the months of April and May 1985; they surveyed the toll traffic from SWB's Dallas Metropolitan Exchange to the Allen Exchange and from the Allen Exchange to all of the exchanges in the Dallas Metropolitan Exchange calling scope, including those exchanges serviced by GTSW. Mr. Price found, based on the traffic studies, that the community of interest standard had been met on a unilateral basis, and on the determination that the criteria of paragraph 23.49 (c)(2) and subparagraph 23.49(c)(3)(B) had been met, this EAS request was docketed.

The Stipulation of the Parties (Joint Exhibit No. 1) is attached to this report. The parties agree that the traffic studies filed in this docket demonstrate that the requirements set forth in paragraph 23.49(c)(2) and subpara-

graph 23.49(c)(3)(B) have been met; thus a "reasonable degree of community of interest between exchanges" as defined in the EAS rule exists unilaterally from the Allen Exchange to the Dallas Metropolitan Local Calling Area to which EAS is desired. (This report does not reach the question of whether the existence of a community of interest is a rebuttable presumption. Under the EAS rule, the determination of community of interest is a mathematical calculation based on traffic studies; it is made by the staff and is reported to the Hearings Division as the basis for the decision whether or not to docket the filing. Thus, it may or may not be an issue to be litigated in the hearing on the merits. The question is moot in this docket, since the parties agreed that there is a community of interest as defined in the EAS rule, and the examiner agrees that the evidence in this docket supports such a conclusion; however, the examiner's acceptance of that element of the stipulation should not be construed as a decision on the question of whether this is an issue appropriate for litigation in other EAS dockets once a reasonable degree of community of interest has been determined to exist based solely on the traffic studies.)

Since the City of Allen elected non-optional EAS, SWB and GTSW moved to implement the costing analyses outlined in subsection 23.49(e). Following completion of the costing analyses and coincident with their filing, pursuant to subsection 23.49(f) the utilities were to submit recommendations for proposed incremental rate additives, by class of service, necessary to support the cost of EAS. The Commission staff is charged with the task of reviewing the utilities' recommendations for compliance with guidelines set forth in subparagraphs 23.49(f)(2)(A)-(F). Since the City of Allen had met the requirements of subparagraph 23.49(c)(3)(B) by agreeing to bear the entire cost of the EAS, incremental flat rate additives which placed the entire cost on the Allen Exchange were developed.

The testimony of SWB witnesses Douglas Clark (SWB Exhibit Nos. 3 and 3A), William Deere (SWB Exhibit Nos. 5 and 6), and Teri Rohr (SWB Exhibit No. 4); GTSW witness Robert Black (GTSW Exhibit No. 1); City of Allen witness Charles Land (City of Allen Exhibit No. 10); and Commission staff witness Don Laub (Staff Exhibit Nos. 1 and 1A) support the stipulated recurring rate additives set forth in Attachment 1 to Joint Exhibit No. 1 (Stipulation of the Parties).

These were based upon incremental cost studies as required by subsection 23.49(e); they do not include a component designed to recover possible revenue shortfalls stemming from traffic reclassification (that is, lost toll). While the stipulation states that the parties do not adopt the specific cost study methodology advanced by any particular party, the stipulated rate additives are based upon a Long Run Incremental Cost (LRIC) study approach which was generally endorsed by the parties.

If implemented, the parties agree, these additives would apply to each customer line in the Allen Exchange only, and would be in addition to the monthly local exchange rates for each line in the Allen Exchange. For example, the stipulated EAS additive for a single residential line is $9.60 per month; for a single business line, the EAS additive is $24.00 per month. (A complete schedule of the stipulated EAS rate additives appears on Attachment 1 to the stipulation.) The stipulation also calls for a non-recurring charge of $6.85 to be applied to each line at the time service is implemented to recover the non-recurring costs set out in Attachment 2 to the stipulation. The non-recurring charge may be paid over a period of two months at no interest.

The non-optional arrangement sought here would provide two-way flat rate calling between the Allen Exchange and the Dallas Metropolitan Local Calling Area and the Fort Worth Extended Metropolitan Service (EMS) customers. Because of the existence of a unilateral community of interest and the willingness of the Allen Exchange susbscribers to bear the entire cost of the service, only the Allen Exchange subscribers will pay the EAS additive rate, even though subscribers in the Dallas Metropolitan Local Calling Area and to the Fort Worth Extended Metropolitan Service will be able to call the Allen Exchange without an additional charge.

Since the City of Allen's EAS request is for non-optional service, paragraph 23.49(g)(1) requires a showing that a majority of the subscribers in the Allen Exchange would benefit from the plan, based on the rates developed in subsection 23.49(f), compared with toll usage ascertained according to paragraph 23.49(c)(1). The parties agreed in the stipulation that, at rate levels which include only the stipulated additives, a majority of the subscribers in

the Allen Exchange would benefit from the implementation of EAS between the Allen Exchange and the Dallas Metro Calling Area. (Mr. Land's evaluation of the impact on residential customers shows that at a $10.00 rate additive, 76.71 percent of those Allen Exchange subscribers would benefit.) The parties also agreed that if the Commission requires the EAS rate additive to include a component for the recovery of lost toll revenues, the City of Allen may not meet the requirement of paragraph 23.49(g)(1) of the rule.

The more difficult showing, required by paragraph 23.49(g)(2), is that a majority of the subscribers in the Allen exchange are willing to subscribe to the non-optional service at the rates developed in subsection 23.49(f). The stipulation sets forth a plan by which the City of Allen would proceed to determine how many Allen exchange subscribers favor the imposition of mandatory EAS at the rates set by the Commission in its final order. The process is described in some detail on pages 4 through 7 of the stipulation, and the proposed letters and ballot are included as Attachments 3 and 4 to the stipulation.

The one issue in this docket on which the parties were unable to agree is whether the rate additive for mandatory EAS between the Allen Exchange and the Dallas Metro calling area should include a component which would compensate SWB and GTSW for the revenues they claim they will lose when the toll traffic between the Allen Exchange and the Dallas Metro calling area is reclassified as EAS traffic. This issue is discussed in detail in the section below.

B. Lost Toll

1. Separations, Pooling and Settlements, and Reclassification

Analysis of the lost toll controversy logically begins with a description and a discussion of this phenomenon. SWB and GTSW contend that because implementing non-optional EAS between Allen and Dallas would cause all existing toll traffic between the two cities to be reclassified as EAS traffic, the result would be an earnings shortfall to the telephone companies which presently carry

that toll traffic, SWB and GTSW. This effect was studied separately by these companies and the results were given to the Texas intraLATA toll pool to estimate how the loss of this toll traffic (through reclassification) would affect SWB and GTSW.

SWB witness John Millice testified that SWB will incur an annual revenue loss of $1,995,888 because of reclassification of intraLATA toll traffic as EAS traffic. This occurs because of the separations and pooling mechanisms used by SWB and the other local exchange carriers. When the traffic between Allen and Dallas is converted (reclassified) to EAS, SWB's Texas traffic usage factors will be adjusted to reflect decreases in intrastate intraLATA toll usage on the Allen route. These new traffic usage factors will shift the jurisdictional assignment of intrastate expenses, taxes, and investment from intraLATA toll to other service categories. According to Mr. Millice there will be no reduction of total SWB expenses or investment resulting from the conversion to EAS, but instead there will be a redistribution of existing expense and investment levels from intraLATA toll to other service categories. This change in separations will result in SWB reporting lower expenses, taxes and investment to the Texas Exchange Carriers Association (TECA) for recovery from the two relevant Texas pools, the MTS/WATS pool and the Private Line pool. (The third Texas pool, for ICAC [Interexchange Carrier Access Charge] revenues, is not affected by implementation of EAS.)

Under the existing pooling arrangements, each company's revenue is determined by the separated expenses and taxes it reports to the pool, plus its proportionate share of the pool's profit based upon its separated investment; revenue to be distributed from the pool to each company is not determined based on the amounts each company bills its customers. Mr. Millice explained that the effect of the reclassification will be a revenue shortfall: unless the EAS rates recover the costs which shift out of the intraLATA toll reporting category, SWB will not have a revenue source to cover those costs which it will continue to incur even if EAS is approved.

SWB personnel calculated the separations impact of the estimated changes in investment and usage caused by decreases in intraLATA toll usage resulting from

the proposed Allen conversion to EAS, and then calculated revised intraLATA toll expenses, taxes, and investment for the state as if the EAS requested here had been in effect. The conversion to EAS will cause billed toll revenues to decrease as well, because calls between Allen and Dallas would no longer be billed as toll calls; revenues for toll pool distribution would decrease accordingly. These changes in expenses, taxes, investment, and billed revenues were all provided to TECA for the calculation of the settlement impact on SWB and GTSW.

SWB witness Deanna Milton, the Administrator-Revenue Distribution for TECA, testified about the history and operation of TECA in general, and in detail about the calculations she performed for SWB and GTSW for the purpose of evaluating the impact of the reclassification and resultant settlement changes on these companies. GTSW witness Clay Shurtleff presented testimony regarding the settlements impact of the toll reclassification on GTSW. He identified an annual revenue loss of $232,432 for MTS/WATS and $29,508 for Private Line, based on the calculations performed by Ms. Milton.

Mr. Millice explained that about half the costs which shift out of intraLATA toll because of EAS are reassigned by separations to interLATA access, and most of the remaining affected costs are shifted to local. The costs shifted to local are directly related to the provision of EAS. The shift to interLATA access is caused primarily by the use of the Subscriber Plant Factor (SPF) to separate investment. The intrastate SPF is applied in separations to identify that piece of loop plant used to provied intrastate toll services (including both intraLATA toll and interLATA access). In Texas, the intrastate SPF is frozen at approximately 20 percent; however, the allocation of that frozen factor between intraLATA toll and interLATA access varies each month according to relative usage. Thus, the decrease in intraLATA toll minutes resulting from implementation of EAS causes the intraLATA toll SPF to decrease, and conversely increases the interLATA access SPF. This EAS change, which does not in any way increase interLATA access usage, causes a separations change which increases the costs allocated to interLATA access.

Normally, interLATA access costs are charged to interexchange carriers (IXCs) in the form of access charges paid to SWB and GTSW (and other local exchange companies). InterLATA access charges are billed primarily on a per minute of use basis for interLATA calls; reclassification of a call from intraLATA toll to local usage does not affect the number of interLATA call minutes. Thus, there are no additional revenues from the IXCs to replace toll pool revenues lost by SWB. Furthermore, the IXCs are not the cost causers in this situation; the examiner agrees with SWB's position that the IXCs should not be financially penalized; in any event, interLATA access rates are not at issue in this docket and cannot be changed here.

Mr. Millice was able to calculate the net revenue loss to SWB in two ways. By the first method, SWB identified a revenue loss of $2 million (from reclassification of existing toll traffic as EAS traffic), with an additional $400,000 in expense requirements for providing EAS. To that is applied the EAS revenue of $1.1 million, leaving a net annual revenue loss for SWB of $1.3 million. In the second method, it is assumed that the EAS rate additive is to be compensatory. Thus, if the $400,000 of additional expense for equipment necessary for handling the stimulated traffic is subtracted from the $1.1 million in EAS revenues, there is revenue of $700,000 from EAS "replacing" the current $2 million in toll revenue. Again, the net annual revenue loss to SWB is $1.3 million.

City of Allen witness Charles Land calculated the impact on SWB of the $1.3 million in lost toll revenue on SWB's rate of return. Mr. Land used the rate base, rate of return, and total return dollars found by the Commission in Docket No. 6200, SWB's last general rate case. From the $1.3 million he subtracted 46 percent, which is the federal income tax component. The remainder, which he found to be about $700,000, was divided by the $5.5 billion rate base to derive the change in rate of return of .0125 percent.

In its brief, the City of Allen presented lengthy arguments about the intraLATA pooling and settlements procedures, taking the position that these contractual arrangements are the real cause of the companies' revenue loss. In the City's view, the settlements process is not established by the Commission, but

rather by the TECA Board of Directors. The Commission's only involvement with that process was the limited acknowledgement and endorsement granted in its orders in *Petition of the Public Utility Commission of Texas for an Inquiry Concerning the Effects of the Modified Final Judgment and the Access Charge Order upon Southwestern Bell Telephone Company and the Independent Telephone Companies of Texas*, Docket No. 5113, _____ P.U.C. BULL. _____ (August 6, 1984 and November 19, 1986), made necessary by divestiture. The inquiry envisioned by the Commission has never taken place; there has been no investigation of settlements agreements and separations procedures which govern the reporting and disbursement of revenues by the pool. The City of Allen argues that the self-implementation of these procedures, without Commission scrutiny and approval, is contrary to the spirit, if not the letter of Article VI of PURA, and is fraught with pitfalls, including the possibilities of recovery of investment and expenses not appropriately includable in rate base, and errors and inconsistencies in company reports to the pool with consequent distortion of the pooling process. Finally, the City of Allen concludes that there is the possibility that the separations procedures and settlement agreements may be changed by the member companies, again without the necessary Commission oversight.

This examiner, having presided over both phases of Docket No. 5113, *supra*, and having recommended in the Examiner's Report in Phase I of that docket that the Commission undertake an investigation of intraLATA toll pooling and possible alternatives to that arrangement (a recommendation which was adopted by the Commission in the Phase I Order), does not denigrate the importance of the questions raised by the City of Allen in its briefs. However, the pooling and settlements agreements and TECA procedures simply are not at issue here. The Commission's Order in Phase II of Docket No. 5113 recognized the existence and operation of the intraLATA toll pools and extended at least tacit approval of their continued operation until an alternative is ordered. For purposes of this docket, then, the existence of the pools and the settlements procedures used by TECA must be taken as givens; those procedures and their effects on the revenues of the companies cannot, in fairness, be ignored by the parties or the Commission.

It is merely a semantic quibble whether one says that implementing the requested EAS will be the cause of the revenue loss or that revenue loss will be merely a consequence of implementing the requested EAS. The conclusion is inescapable that, upon implementation of the requested EAS, SWB and GTSW will experience a loss of settled toll revenues. That revenue loss is admittedly calculated from the changes in statewide expenses, taxes, and investments for SWB and GTSW which are not route-specific, but are instead identified via separations; nevertheless, the change in billed revenue *is* calculated upon the changes in traffic volumes over the Allen-Dallas toll routes.

However, quantifying the revenue loss and identifying its source does not inform us of its status, that is, whether it is a cost of EAS and thus recoverable in the rate additives to be charged to the Allen Exchange subscribers; if it is not a cost of EAS, whether it is still recoverable in the EAS rate; and, if it is not recoverable regardless of its status, what use is the evidence on overall revenue impact. These problems are discussed further below.

2. Cost of EAS; Inclusion of Lost Toll in EAS Rate Additive

The City of Allen posits that the Commission decided against toll revenue replacement at the time the EAS rule was adopted. As this party reads the EAS rule, the companies are required to develop proposed rate additives based solely on the cost of modifying and expanding the network to provide the requested EAS. This is reflected in subparagraph 23.49(f)(2)(B), which states:

> New EAS will be priced using those flat rate increments designed to recover the added costs for each route, and the total increment chargeable to subscribers within an exchange will be the sum of the increments of all new extended area service routes established for that exchange after the effective date of this section.

The costs for new EAS are determined in accord with subsection 23.49(e); the City of Allen refers to subparagraphs 23.49(e)(1)(A) and (B) as defining the relevant costs, which are, in the City's view, *only* the route-specific

costs of the necessary network changes. The City of Allen urges that it is inconsistent with the route-specific incremental cost methodology prescribed by subparagraphs 23.49(e)(1)(A) and (B) to claim the revenue effect of reclassifying toll traffic as a cost of EAS, and points to Mr. Clark's admission on cross-examination that lost toll revenues are not an incremental cost of the EAS requested here. The City of Allen emphasizes that the language of the rule makes it clear that cost, not revenue replacement, is the basis on which EAS rate additives are to be developed.

The City of Allen contends that the Commission inserted the language in paragraph 23.49(e)(2) in the EAS rule because the companies adamantly insisted upon the right to present evidence regarding the revenue impact of lost toll, thus apparently taking the position that since lost toll is not a cost of EAS and thus cannot be the basis for an EAS rate additive, there is no purpose for its inclusion in the rule other than as a sop to the telephone utilities. Since the EAS rule evidences a clear intent that the EAS rate additives cover the direct incremental costs, and only those costs, of providing that service, the City of Allen argues, the rule precludes imposition of a rate additive based on the loss of toll revenues, a loss which occurs because of "circumstances only tangentially related to the provision of EAS."

GTSW agrees that EAS additives should cover the direct incremental cost of providing the service, but counters that nowhere does the EAS rule state that the EAS rate additives should cover *only* those costs. Since the rule allows consideration of the effects of lost toll revenues, the Commission must have contemplated allowing EAS rates to be set sufficiently above direct costs to allow a contribution. In GTSW's view, this means that the route-specific incremental costs establish a floor for the EAS rates, which insures that no cross-subsidies will flow to EAS subscribers from non-benefitting subscribers as is expressly prohibited by the rule; but the rule does not dictate that incremental cost is the ceiling for EAS rate additives.

Not surprisingly, GTSW and SWB urge that loss of revenue resulting from traffic reclassification is just as much a cost of EAS as the route-specific costs developed in the cost studies required by paragraph 23.49(e)(1). In sup-

port of this argument, the companies point to the title of subsection 23.49(e): "Determination of costs." Paragraph (2) of that subsection of the rule reads:

> The utility(ies) may analyze the effect on toll revenues in order to present, at the time of the hearing, evidence on the overall revenue effects of providing the requested EAS service [sic].

GTSW interprets this paragraph and its placement under the heading "Determination of costs" as meaning that the Commission has taken into account the substitute nature of EAS (that is, the repricing at a flat rate of an existing service which is currently priced on a measured basis), because the rule permits utilities to present toll revenue effects as a cost of providing EAS which is calculated *outside* the guidelines of the incremental cost study contemplated in paragraph 23.49(e)(1). From that, GTSW concludes that it is reasonable to interpret the rule as permitting treatment of lost toll revenues as a cost of providing EAS. Otherwise, GTSW argues, subparagraph 23.49(f)(2)(A), which prohibits rate increases for subscribers of non-benefitting exchanges, is necessarily violated. But this argument assumes that because a local exchange company loses settlement revenue due to implementation of EAS, rates for other services would necessarily increase to cover the loss. This assumption is erroneous, however, because no rates for any other service could be changed without the local exchange company filing a rate case at this Commission, and new rates would be set taking into account *all* the relevant changes.

SWB points out that since subparagraph 23.49(f)(1)(B) dictates only that "[n]ew EAS will be priced using those flat rate increments designed to recover the added costs for each route, . . . " we must look to section 23.49(e) for the definition of the costs of the requested EAS.

The Commission staff took a slightly different approach. Staff witness Don Laub testified that it is not likely that the rates he recommends, which are based generally on a Long Run Incremental Cost (LRIC) approach, are compensatory given his accompanying recommendation that lost toll revenues should be excluded from the rate. The general counsel asserted in brief (contradicting

the staff witness) that a compensatory EAS rate would be derived from the LRIC study and would recover the cost to provide the service. General counsel also suggested that a compensatory EAS rate (which general counsel defined as being based solely on incremental costs) might not be revenue neutral to the companies, and agreed with Mr. Land that toll settlement losses are a consequence of implementing EAS but not a true cost. General counsel further asserted that in the discussions prior to the adoption of the EAS rule, the Commission was adamant that the additive should cover cost, but that lost toll should not be included because it was not a direct cost of providing EAS.

At this point it may be useful to examine the EAS rule itself and the comments of the Commission at one of the open meetings at which the provisions and the operation of the EAS rule were considered. At the open meeting of April 26, 1985, the Commission discussed inclusion of language permitting the utilities to present evidence on the overall revenue effects of providing the requested EAS:

> [COMMISSIONER THOMAS:] . . .
>
> The last point is, I still feel that the cost studies and all of that should be done on a direct incremental basis, incremental cost basis, but feel that overall revenue effects are a reasonable piece of information to capture in the hearing on the merits.
>
> So I might add the wording, you know, at the end of the first sentence in No. 6, so that the current sentence says, "A hearing on the merits to prove up community of interest, cost study, traffic survey, and demand survey," and then add the words, "and to consider overall revenue effects."
>
> I guess just merely clarifying that this was not intending to limit overall revenue effects so that they could not be considered in a hearing on the merits. That may be an important factor in those rare cases of [sic] which the community of interest is different from a public interest.
>
> CHAIRMAN RICKETTS: Are those your changes?

COMMISSIONER THOMAS: That's it.

CHAIRMAN RICKETTS: Let me ask you a question on the last suggested change. *Are you talking about toll replacement there?*

COMMISSIONER THOMAS: *Yes.*

COMMISSIONER RICKETTS: *Would the rule leave open as an option to the Commission the consideration of some portion of toll replacement as the rate additive under this proposal, under your last suggestion?*

COMMISSIONER THOMAS: *Yes, I believe it would.*

COMMISSIONER ROSSON: *I think it has to. I don't think it could be interpreted any other way.*

CHAIRMAN RICKETTS: *Well, that's what I just wanted to make clear.*

In other words, the basic change you're proposing here, instead of determining by rule that we will use incremental costs for purposes of determining the EAS rate, *we would leave it open to a case-by-case analysis of whether we would use that or that plus a portion of toll revenue or some combination of the two or whatever?*

COMMISSIONER THOMAS: *I think that's correct.* I think the clear bias in this proposal is towards using direct incremental costs, but that once again we have so little experience that *we need to know if there are additional revenue effects and we need to have the flexibility to use those in setting a price.*

. . .

[CHAIRMAN RICKETTS] . . .

Were you proposing any change to Commissioner Thomas' recommendation on considering the overall revenue effects?

COMMISSIONER ROSSON: Well, I guess the problem I have in that is, if we want to consider the overall revenue effects but we really have a preference for incremental

pricing -- how much are we adding to the process, how much are we adding to the hearing time, how much are we adding to data collection? -- that it's there but for what purpose? It just depends on if you want to make a commitment to incremental pricing or if you want to keep the options open. But I have a hesitancy to do a lot of duplication and information gathering, to just say, "Well, yes, that's how much it is, but that's not how we do this."

CHAIRMAN RICKETTS: Well, I guess I have a tendency to agree with Commissioner Thomas, that it's certainly not going to hurt us to be able to see those numbers and see that revenue effect. And I assume the additional work would be done by the company. And it would seem to me that that would not add that much additional effort to the process in terms of preparing for the case.

Clearly, there would be -- or preparing the cost studies and what not. Clearly, there will be an additional issue that may have to be taken up in the case, no doubt about that.

In terms of the Commission's feelings on that, I think it clearly can be expressed as they come up in the cases. *I'm just a little reluctant at this point to make a firm commitment that -- pursuant to a rule -- that we will never consider the overall revenue effects, even though I haven't --*

COMMISSIONER ROSSON: *Toll replacement.*

CHAIRMAN RICKETTS: *Toll replacement, yes.* I would be reluctant to write that into the rule at this point. I think that's a --

COMMISSIONER THOMAS: That's my same feeling.

CHAIRMAN RICKETTS: -- what you were saying.

COMMISSIONER THOMAS: I share Commissioner Rosson's bias that I think we need to go with direct incremental costs, but *I think I could probably conjure up an example of a situation in which overall revenue effects or toll*

> *replacement might need to be considered. And so just to preserve our flexibility was why I put that in.*
>
> CHAIRMAN RICKETTS: Are you in general agreement with that?
>
> COMMISSIONER ROSSON: Well, yes. It's just, we get the word out one way or another.

(Open Meeting of April 26, 1985; Tr. at 234-241.) (Emphasis added.)

General counsel asserts in brief that the Commission has decided that a component designed to recover lost toll revenues should not be included in EAS rate additives, stating in brief that "the Commission has demonstrated a definite proclivity to disallow lost toll dollars from the calculation of compensatory EAS rates." This conclusion, however, appears to have been based on two EAS cases the decisions in which were not governed by P.U.C. SUBST. R. 23.49: *Inquiry of the Public Utility Commission into Offering Extended Area Service in the City of Rockwall*, Docket No. 5954, 12 P.U.C. BULL. 541 (September 25, 1986) and *Application of General Telephone Company of the Southwest for a Rate/Tariff Revision*, Docket No. 4992, _____ P.U.C. BULL. _____ (August 19, 1986). The City of Allen urges that lost toll revenues are not costs of providing EAS and therefore, under the rule, cannot be included in determining the EAS rate additive. Nevertheless, it seems clear from the exchange of comments quoted above that even though the Commission has not explicitly stated that lost toll is a cost of EAS, the Commission has confirmed that in some circumstances, lost toll may indeed be included in the EAS rate additive. The Commission clearly intended to preserve the option of including a component for lost toll revenues in any price it sets for new EAS. Chairman Ricketts asked if that was the meaning of the language permitting consideration of evidence on the overall revenue effects of providing the requested EAS, and both Commissioner Thomas, who had suggested the change, and Commissioner Rosson agreed that it was.

Thus, despite the literal words of subparagraph 23.49(f)(2)(B), it cannot accurately be said that the Commission never intended to include lost toll in

EAS rates. Under the Commission's own interpretation of the EAS rule, the Commission may or may not elect to include lost toll in the EAS rate additive, depending on the facts of the case. The first two questions posed above, then, have been answered, and the third has become irrelevant. However, since the Commission did not articulate a test or standard for deciding under what circumstances inclusion of a lost toll component is appropriate, we must move beyond the rule and the comments accompanying its adoption, and attempt to formulate that standard based on the facts and the arguments presented here.

3. Appropriateness of Including a Lost Toll Component

SWB and GTSW take the position that failure to compensate them for loss of toll revenues resulting from reclassification of Allen-Dallas toll traffic amounts to a deprivation of the opportunity to earn their authorized rates of return and thus is confiscation. The City of Allen asserts that SWB and GTSW have failed to demonstrate any significant adverse financial impact from the implementation of EAS for the Allen Exchange; that, as to SWB, the impact of the failure to recover the $1.3 million is "virtually undetectable" in the overall scope of SWB's revenue; and that the evidence does not support a conclusion that EAS will have a "demonstrable impact" on SWB's authorized rate of return.

As the general counsel and the City of Allen point out, PURA section 39(a) does not guarantee any utility the return set by the Commission; rather, rates are established to recover revenues fixed at a level which permits the utility a "reasonable opportunity to earn a reasonable return on its invested capital . . . ." Further, while it may be intuitive that the revenue associated with various services changes over time, as do expenses, taxes and investment, SWB correctly notes that there is nothing in the record quantifying any of those changes for other services. SWB's conclusion that loss of $1.3 million in revenue necessarily results in the loss of even the opportunity for SWB to earn the return authorized by the Commission in Docket No. 6200 is highly questionable, however, for the very reason SWB notes: there is nothing in this record demonstrating SWB's and GTSW's *overall* revenues and rate of return.

However, it is equally erroneous to conclude that because $1.3 million is "virtually undetectable" in the overall scope of SWB's revenues, the claims of financial harm are rendered incredible, and a .0125 percent change in return is not a measurable and demonstrable one. Clearly, both SWB and GTSW *were* able to quantify the impact of the loss of settlement revenue; the percentage change in return for SWB was in fact measured by the City of Allen's own witness. As noted by SWB and GTSW, there is no authority which approves the confiscation of a utility's assets so long as it is only a little bit (assuming, of course, that this revenue loss, if uncompensated, is confiscation). In addition, the EAS rule does not prescribe a "dire financial consequences" or "catastrophic revenue impact" test for including lost toll revenues in the EAS rate additive; the rule is simply silent on the standard to be used.

The fact is that there is not enough evidence in this record to conclude that a revenue loss of this magnitude has the effect of preventing SWB and GTSW from having a reasonable opportunity to earn their authorized rates of return. Neither can we fairly say that just because a revenue impact on the companies is small, we may disregard it in setting an EAS rate.

In part, the parties approach their analyses of whether or not a lost toll component should be included in the EAS rate additive by pointing out which customers would be required to pay for the service in either event, and demonstrating the fairness or unfairness of the various possible results. The City of Allen asserts that there is no justification for imposing exclusively on Allen Exchange subscribers the financial responsibility for replacing revenues lost to other telephone companies or lost because toll charges are no longer paid by Dallas area customers. However, these revenues are not shifted to other telephone companies. These revenues are lost because they are no longer reported to TECA as billed toll revenues. They are simply not available to the pool for distribution.

The City of Allen points out a more troubling problem. SWB and GTSW believe that Allen Exchange subscribers should pay the lost toll revenues because those subscribers would benefit from the new EAS. But as the City of Allen reminds us, the toll revenues which will be lost are not just those paid by

Allen Exchange subscribers. The lost toll revenue includes revenues currently paid by those approximately 14,000 Dallas area customers who call the Allen Exchange. If this EAS request is approved, these Dallas area customers will receive toll-free calling to Allen without paying even the direct incremental cost of implementing EAS. Nevertheless, the Allen Exchange has agreed to pay the *entire* cost of implementing EAS; it had to do so in order for this request to move forward because of the unilateral community of interest. There is a higher percentage (although not a higher number) of subscribers in the Allen Exchange who want to call into the Dallas Metro Calling Area than subscribers in the Dallas Metro Calling Area who want to call into the Allen Exchange. But Allen does not believe that subparagraph 23.49(f)(2)(A) mandates that Allen Exchange subscribers should pay all the incremental costs *plus* all the lost toll revenues. Somewhat ironically, the revenue loss which the City of Allen in brief characterized as "miniscule" and "virtually undetectable" to SWB would have a "stark" impact on the Allen Exchange, and if placed in the rate additive, the application here would be "effectively killed."

GTSW responds by suggesting that since Allen Exchange subscribers perceive the proposed EAS to be more desirable and valuable than the current toll arrangement, it is reasonable to expect them to provide some contribution for that additional value they will receive. If the Allen Exchange subscribers do not pay these toll revenue losses, some other class or classes of customers will be required to subsidize these EAS rates without receiving any benefit, in violation of subparagraph 23.49(f)(2)(A). Requiring Allen Exchange subscribers to replace the lost toll revenues, however, has the anomalous result of destroying the value the Allen Exchange customers perceive in EAS, since less than half of them would benefit from EAS rates which include a lost toll additive. (According to Mr. Land, an EAS rate additive of $21.00 would benefit only 47.50 percent of the customers in the Allen Exchange.) If other telephone customers must make up some of the toll revenue lost in providing this service, there is a violation of subparagraph 23.49(f)(2)(A); if the revenue loss is uncompensated to the companies, there may very well be confiscation.

The City of Allen argues also that Allen Exchange subscribers should not have to pay (by virtue of a lost toll EAS rate additive) for a service they no

longer use, just as PBX customers should not have to pay PBX rates when they switch to another local exchange service. This analogy is inapposite. If the requested EAS is implemented, Allen Exchange subscribers would not stop calling the Dallas Metro area, and Dallas Metro area subscribers would not stop calling Allen. The usage over those facilities will be repriced from usage rates to flat rates, and as a result, calling volumes are likely to increase by nearly 60 percent, requiring the installation of additional equipment and facilities to accommodate the increased traffic over this route. Under EAS pricing, Allen Exchange subscribers (and Dallas Metro area subscribers) would not only continue using the same facilities they used to make toll calls, they will very likely increase their usage dramatically. Unlike the PBX example in which the customer changes from one local exchange service to another (with all revenue remaining classified as local), in implementing EAS, the classification changes from toll to EAS, and it is this change underlying the companies' contentions that the net revenue loss will not be compensated unless it is included in the EAS rate.

The City of Allen offers two alternatives to the imposition of a lost toll rate additive in the EAS rates for the Allen Exchange. One is for the Commission to address lost toll generically, although the City of Allen does not believe this is necessary because the evidence indicates to this party that lost toll is not a serious problem. The second alternative is for the intraLATA pooling and settlements procedures to be changed, most notably for intraLATA SPF to be frozen. Neither of these alternatives assists the Commission in resolving the question squarely before it in this docket.

First, a generic proceeding on lost toll will not quantify the impact on overall companies' revenues of implementing specific EAS requests. Neither will such a proceeding identify sources of recovery of the lost toll revenues other than the three possibilities we can recognize here: the subscribers in the benefitting exchanges; the general body of nonbenefitting ratepayers; or the shareholders of the telephone companies.

Second, there is no basis in the evidence in this record for ordering the changes in pooling and settlements which the City of Allen suggests, and there

are clearly due process obstacles to such a resolution. The other local exchange company toll pool members are not parties to this docket, and there was no systematic examination of the effect such changes would have in other pending EAS cases. While it may be true, as the City of Allen states, that other pool members would be concerned with the impact of EAS on toll revenues, there is nothing in this record to indicate that other pool members would be in favor of freezing intraLATA SPF. Indeed, there is nothing in the record to indicate that SWB and GTSW would support such a change, since this record contains no evidence of either the impact of EAS on toll revenues in every EAS case now pending at the Commission or what impact freezing the intraLATA SPF would have in these cases.

SWB offered two alternatives for recovery of the shortfall: One, the mandatory EAS rate additive to be paid by the subscribers in the Allen Exchange would include compensation for lost toll from the time Allen EAS is established until the time rates from the next general SWB rate case are established, at which time all the rates for SWB would be at issue, and the Commission would have the option of reducing the Allen EAS rates by the amount of interLATA access costs which were included in the initial rates and increasing rates in other service categories. In the alternative, the Commission could approve Allen EAS and establish the tariffs, but defer implementation of the service until rates for the next general rate case are put in place, at which time higher rates for intraLATA toll could be established to recover the toll revenues lost as a result of implementing this EAS request. The problem with SWB's second suggestion and part of its first suggestion is that other customers of SWB end up paying for the revenue shortfall created by implementation of the EAS, a result which clearly violates subparagraph 23.49(f)(2)(A).

While the issues presented in this case are not unique to the bigger issue of EAS, the quantification of the factors which go into decisions about particular requests for EAS is unique to each case. Furthermore, the Commission's own rule now sets the boundaries for the decision of whether a particular request for EAS should be granted. The Commission has recognized that implementing EAS over a particular route or routes could have an impact on toll revenues and, through the rule, permits the companies to develop and present

evidence on that issue. Additionally, the Commission's own interpretation of the language now appearing in paragraph 23.49(e)(2) is that lost toll revenue may be recovered in the EAS rate additive if the Commission finds it appropriate.

4. Calculation of the Lost Toll Revenue

Assuming just for the sake of argument at this point that toll revenues are properly recoverable in an EAS rate additive, we must then determine the appropriate measure of the lost toll. The City of Allen challenges use of the intraLATA toll pool settlements agreements for establishing the lost toll component of the EAS rate additive. The first basis for this challenge is the assertion that although separations may be an appropriate procedure for determining a jurisdictional rate base for calculating an intrastate revenue requirement (even though Part 67 of the Federal Communications Commission's rules contains no provisions for its use on an intrastate basis), its use as a costing methodology for rate design is another matter entirely.

In response, SWB states that it has never advocated that the separations procedures should be used as a costing methodology; they are used here only to identify the financial impact on the companies resulting from the reclassification of its billed toll revenues, expenses, and investments upon the implementation of the requested EAS. Separations procedures merely quantify a revenue requirement shortfall, given the present pooling procedures. Still, although Mr. Millice testified that separations procedures are not used for rate design, Mr. Clark admitted that those procedures are the only basis for the lost toll rate additive SWB seeks here.

The City of Allen recognizes that the contractual division of toll revenues among the telephone companies was given approval by the Commission in the final order in Phase I of Docket No. 5113, but implies that the failure of the Commission to specify the procedures under which the intraLATA toll pool should operate renders them suspect. The inquiry into intraLATA toll pooling arrangements mandated by the Phase I Order has never been initiated and thus, according to the City of Allen, the agreements under which the toll pool operates have never

been approved by the Commission. Reliance on the revenue loss data prepared by Ms. Milton as a basis for setting rates therefore requires a "major leap of faith," and is contrary to the spirit if not the letter of Article VI of PURA. It is the position of the City of Allen that, absent Commission review and approval, there is no basis for believing that the terms of the settlement agreements and the methods used by the companies should be sanctioned as a basis for setting rates. Finally, there is the possibility that the settlement agreements or separations procedures could be changed by the companies, without Commission knowledge or approval, thus obviating the basis on which the Commission would have taken action in this docket.

Acknowledging the contractual basis of the pooling and settlements agreements, SWB pointed out that it has no authority to implement unilaterally any changes to the procedures, and that there is nothing in this record to indicate that the other pool members would even agree to such changes, much less initiate such changes themselves. SWB's interpretation of the Commission's orders in Docket No. 5113 is that the Commission not only has recognized the existence of the toll pool and the effect pooling and settlements procedures have on companies' net revenues, it implicitly approved the use of separations for establishing rates and thereby approved TECA's procedures. As stated above, the examiner agrees generally with the position taken by SWB and GTSW. The intra-LATA toll pooling and settlements arrangements are not at issue in this docket; no order affecting the pooling and settlements contracts and their operation may properly be entered in this docket; and, pursuant to the Commission's orders in Docket No. 5113, the arrangements must be viewed as having at least tacit Commission approval until a different arrangement is approved by the Commission.

Even conceding that the toll pool members may use separations as the basis for allocating revenues and return among themselves, the City of Allen urges that it is inappropriate to use separations as a basis for setting EAS rate additives because it is neither a recognized rate design tool nor a procedure for determining cost in a manner consistent with the EAS rule. To use separations as a rate design tool, the City of Allen argues, assumes that all of SWB's rates are designed to recover revenues on a separated basis. The City of

Allen asserts that neither SWB's access rates nor its local rates were set by the Commission with the goal of recovering separated revenue requirements.

Further, since the EAS rule focuses on route-specific incremental costs as the basis for EAS rate additives, use of separations, which deals only with gross adjustments to the companies' statewide toll investment and expenses, does not identify the specific investment and expenses required to implement a particular service in a particular location. The City of Allen concludes that basing rates (that is, an EAS lost toll rate additive) on the embedded costs used in separations would result in EAS subscribers paying for equipment at its historical value and paying costs not directly related to the provision of the service. Here, the examiner agrees in part with the City of Allen: the Commission's use of separations and settlements procedures for setting the ICAC rate in Docket No. 5113 was based on the urgent need to address and provide a remedy for the unprecedented financial upheaval in the telecommunications industry following AT&T's divestiture of its local exchange facilities. The examiner does not read Docket No. 5113 as blanket approval of TECA procedures and methodologies for setting rates in circumstances other than those surrounding Docket No. 5113.

Even though the EAS rule does not provide much guidance in deciding whether lost toll revenue, identified on the basis of separations procedures, may be the basis of the EAS rate additive, there is at least a signal that the Commission intended exactly that, because Chairman Ricketts specifically asked if one option would be to use "some portion of toll replacement as the rate additive," under the proposal of Commissioner Thomas to include paragraph 23.49(e)(2) in the EAS rule, and the answer was "yes." (Open Meeting of April 26, 1985, Tr. at 235.) Thus, while the Commission may not have voiced a preference for using separations procedures in determining the lost toll component of an EAS rate additive, it appears that the Commission has expressed a willingness to calculate a lost toll rate additive on the basis of lost toll revenue quantified using separations formulas and procedures.

Finally, the City of Allen challenges the separations methodologies used by SWB and GTSW to calculate the lost toll rate component as being inconsistent.

In brief, the City of Allen asserts that this difference in methodologies stems from differing interpretations of SWB witness Millice and GTSW witness Shurtleff on the use of the composite station ratio, a factor in calculation of SPF. The City of Allen, however, simply asserts that this difference is a significant and meaningful flaw in the accuracy of the companies' computations, without citing record evidence of how the alleged discrepancies taint the final numbers.

Further, the City of Allen contends in brief that GTSW's data for investment and expenses associated with private line service appear not to have been used by Ms. Milton, and that Mr. Shurtleff was unable to state the reason the data used by Ms. Milton differed from the data supplied to her by GTSW. The transcript of the hearing on the merits reveals, however, that Mr. Shurtleff was able to confirm the numbers he reported to TECA for Ms. Milton's use but could not say why she had used other numbers. Counsel for the City of Allen cross-examined Ms. Milton - but not on that topic. The discrepancies in the numbers were evident in the prefiled testimony. The City of Allen had ample opportunity on cross-examination to explore with Ms. Milton the reasons for the differences, but failed to do so. The City of Allen asserts that it does not know the extent to which these (alleged) differences in separations methodologies or inaccuracies in reporting affect the revenue losses calculated by Ms. Milton, that the toll pool does not audit the data submitted by the member companies, and that it is therefore improper to base rates on these calculations. This argument is simply unpersuasive in light of two facts: first, the City of Allen did not avail itself of the opportunity to develop, in cross-examination, record evidence supporting this position, and second, the testimony of Ms. Milton that TECA *does* review the traffic studies and the cost studies submitted by the member companies.

This report finds, on the basis of suggestions made by the Commission in discussions of this issue in open meeting and the specific evidence in this record, that the change in toll revenues reported to the toll pool which results from implementation of EAS is properly calculated on the basis of TECA separations and settlements procedures and that, in appropriate circumstances, lost toll calculated on that basis may be included in the EAS rate additive.

IV. Analysis and Recommendation

In analyzing the various issues in this docket, the Commission must from the outset recognize that Extended Area Service is essentially the antithesis of assigning costs to *users* based on *usage*. Repricing telecommunications service between Allen and Dallas from a usage rate (MTS/WATS toll rates) to a flat rate (EAS additive) results in low users subsidizing high users, a phenomenon also referred to as "income transfer." This latter factor becomes particularly important with regard to requests for mandatory EAS, since *all* customers in the Allen Exchange - whether they make hundreds of calls to the Dallas Metro area or none at all - will pay the EAS additive every month.

SWB's study, conducted in April and May of 1985, indicated that in each of those months, over 1600 customer accounts in the Allen Exchange had less than $5.00 of toll usage to Dallas. These comprise only 35 percent of the total Allen Exchange accounts. The examiner agrees with SWB witness Clark that it is difficult to see how these customers would be benefitted by having EAS available. Even at the stipulated EAS rate additive of $9.60 per month, these customers will pay for more service than they use. Any flat rate designed to cover usage-related costs benefits high volume users to the detriment of low volume users. In an optional EAS plan, customers at least have the choice of purchasing the service and incurring the additional cost, but not under the mandatory EAS requested here. The Commission should exercise extreme caution in approving even the stipulated EAS rate additives in this case, precisely because the additives would be mandatory. Even though at those stipulated rates a majority of the subscribers in the petitioning exchange would benefit from the plan, consideration of that alternative presents some fundamental questions of equity.

Additionally, even though the decision in each EAS request will be made based on the specific facts of each case, there are undeniably statewide effects flowing from these decisions. The revenue shifts away from the toll pools may be compounded with each EAS request. In making the determination of whether the EAS additive should include a component for lost toll there must clearly be a balancing of the interests of both the petitioning exchange and

the telephone company/ies - a balance which may not be achieved easily, but one which is essential to the integrity of the process.

This report posits that the test to be applied in deciding whether to grant a request for EAS (whether optional or mandatory) is this: whether the requested EAS can be provided at a rate which is compensatory to the company/ies and is an attractive offering to the affected customers (whether only those in the petitioning exchange or those in the benefitting exchanges), in accord with the provisions of the EAS rule. In other words, the Commission must find, at a minimum, that the rate charged by the telephone companies for the provision of EAS meets *both* requirements of the test. The second portion of the test is already prescribed by subsections 23.49(g) and (h) of the EAS rule; the real difficulty, of course, is determining what is a compensatory rate, which would be a fact question in each docketed request for EAS. Again, it is suggested that the EAS rule has prescribed the calculation and scope of imposition of a minimum additive in subsection 23.49(f) and, by the Commission's own interpretation of the language which now appears in paragraph 23.49(e)(2), has left open the possibility of including a lost toll component in EAS rate additives. The report submits that the goal of the Commission in leaving that option available to it was to insure that EAS rates are compensatory; in some circumstances, lost toll must be included to achieve that goal.

The examiner has reviewed the evidence in this record thoroughly, and concurs with the parties that the record evidence supports the stipulated EAS rate additives as adequately recovering the incremental cost of implementing the requested EAS. As stated elsewhere in this report, the only remaining determination to be made is whether the EAS rate additive should include the lost toll component, and the balance of this discussion will focus on that issue. It is clear that the pooling and settlement of toll revenues is a factor which complicates already difficult issues. Nevertheless, as explained above, the Commission has given at least its tacit imprimatur to those procedures and mechanisms, and they may not here be changed or ignored. In addition, the examiner has given a great deal of weight to the testimony of staff witness Laub. The independence of this witness and his duty to represent the public interest imbues his testimony with considerable credibility. Significantly,

Mr. Laub testified that it is not likely that the [staff's originally proposed] rates are compensatory *given the exclusion of lost toll revenues.* This raises the immediate concern that the general body of ratepayers will pay the costs of providing EAS to the Allen Exchange, which generates economically inefficient rates and inequitable rates for all ratepayers and, incidentally, violates subparagraph 23.49(f)(2)(A), in that subscribers in non-benefitting exchanges would - at some point - pay higher rates as a result of implementing the EAS requested here.

Mr. Laub's recommendation, however, was that the lost toll component not be included in the EAS rate additive here because the mandatory nature of this request could have a severe impact on universal service. Specifically, the SWB development model indicated that at a monthly rate of $30.00, there would be a three percent reduction in subscribership. He also pointed out the equity considerations of income transfer, which was a problem even under the staff's originally proposed rates, which did not include a component for lost toll revenue.

The preponderance of the evidence in this record shows that it is not likely that an EAS rate additive which excludes a lost toll component is compensatory and that, since the EAS rate additive here would be mandatory, there would likely be some reduction in subscribership, given the level of a compensatory rate. However, the solution offered by Mr. Laub, which is to exclude the lost toll component from the EAS rate in order to achieve the dual goals of granting the requested EAS *and* protecting the universality of service, puts the cost burden of the requested EAS squarely on the companies, at least until the next general rate case for each of them. In its brief, the City of Dallas urges the Commission to take a broader view of universal service, and to recognize that high local exchange rates in large metropolitan areas (which could result from spreading the revenue loss from EAS to other customers) pose a more realistic threat to universal service on a system-wide basis than rate additives for enhanced services in affluent bedroom suburbs. The examiner respectfully suggests that while Mr. Laub has offered all the right elements in making a recommendation regarding the requested EAS, they should be considered and evaluated in a different sequence.

Using the examiner's proffered standard, the first matter to be determined must be the compensatory rate, and it is at this point that we face the question of whether to include a lost toll component and, if so, how it should be calculated. The evidence in this record supports the conclusion presented in Mr. Laub's testimony: without the lost toll component, the stipulated EAS rate additives (which cover incremental costs only) are likely not compensatory. Further, rates for other services cannot be adjusted in this docket; even if other rates are eventually adjusted in some docket to compensate for the loss, such a rate structure is economically inefficient, inequitable, and probably violative of EAS rule subparagraph 23.49(f)(2)(A). Since rates for other services cannot be changed in this docket, imposition of an EAS rate which does not include a component for lost toll means that SWB's and GTSW's shareholders absorb those revenue losses at least until the next rate case for each company, when rates for all services could be changed. The magnitude of the lost toll revenue demonstrated in this record points up the need for some method of recovery of that revenue in the rate set for the requested EAS, and the interpretation of the EAS rule suggested above in this report permits the inclusion in the EAS rate additive of a lost toll component calculated using separations and settlements formulas and methodologies. It is therefore recommended that in this case, the EAS rate additive include a component for the recovery of lost toll revenues, subject to that EAS rate being changed in SWB's next rate case. The stipulated EAS rate additive for recovery of the incremental cost of the requested EAS should be adopted; in addition to the stipulated rates, the EAS rate additive should include a component for lost toll. The lost toll components recommended here are supported by a preponderance of the evidence in this record, and are shown on Examiner's Exhibit II attached to this report.

That brings the analysis to the second part of the suggested standard, that is, whether a majority of the subscribers in the Allen Exchange would benefit from EAS at the compensatory rate additive levels. According to Mr. Land, at a rate additive of $21.00, only 47.50 percent of the subscribers in the Allen Exchange would benefit from EAS. That percentage does not meet the requirement of paragraph 23.49(g)(1). (In the stipulation, the parties recognized that if a component for lost toll is included in the EAS rate additive, the City of Allen may not meet the benefit requirement of the rule.) Accordingly, this

report recommends denial of the City of Allen's request for mandatory EAS from the Allen Exchange to the Dallas Metro area. Because the City of Allen has not met the second part of the standard, there is no need to proceed to the determination required in paragraph 23.49(g)(2) and prescribe procedures for balloting the Allen Exchange subscribers to determine if a majority of them are willing to subscribe to the EAS at the stated rate additive.

There is only one part of the parties' stipulation which the examiner believes the Commission should consider carefully. The last sentence of paragraph 8 states that in the event lost toll is to be included in the EAS rate additive, and if requested by the Commission, SWB and GTSW will immediately commence the necessary studies for the provision of optional EAS from the Allen Exchange to the Dallas Metro area. As the Commission is no doubt aware, there are many requests for EAS currently pending. To permit the City of Allen to remain ahead of all other pending requests after having failed to meet the requirements of the EAS rule for the implementation of mandatory EAS seems unfair. The City of Allen had the choice of requesting optional or non-optional EAS, and decided to proceed on the basis of mandatory EAS. Any request by the City of Allen for optional EAS should be processed as a new request.

In the event that the Commission disagrees with either the standard suggested in this report or the application of that standard to the facts of this case, the examiner offers an alternative proposal for resolution of this docket. The examiner has reviewed the stipulation, and finds that the preponderance of the evidence in this record supports the stipulated rates as adequate for recovery of the incremental cost of providing the requested EAS. Further, the proposed scheme for making the determination required by paragraph 23.49(g)(2) of the EAS rule is reasonable, because the City of Allen will assume the responsibility and the cost for the balloting process, the balloting process must be completed within 90 days, and the other parties may review and audit all ballots and calculations. Paragraph 16 of the stipulation provides that SWB will file certain specific information with the Commission.

The examiner therefore makes the alternate recommendation that the Commission adopt the Stipulation of the Parties.

V. Findings of Fact and Conclusions of Law

The examiner recommends that the Commission adopt the following Findings of Fact and Conclusions of Law.

A. Findings of Fact

1. This request by the City of Allen for Extended Area Service (EAS) into the Dallas Metro calling area was docketed on October 28, 1985, following the filing by the City of Allen of a resolution adopted October 3, 1985, conforming to the requirements of subparagraph 23.49(b)(1)(B), and based on the advice of then-staff engineer Don Price, who found that the community of interest standards set forth in paragraph 23.49(c)(2) had been met on a unilateral basis.

2. The City Council of the City of Allen passed Resolution No. 645-10-85 (R) on October 3, 1985, which expressed the City's readiness to bear the entire cost of providing the requested EAS.

3. On November 26, 1985, the City of Allen filed a certified copy of Resolution No. 660-11-85(R), passed November 7, 1985, in which the City Council of the City of Allen determined that the proposed EAS should be nonoptional (mandatory).

4. Prehearing conferences were convened on January 3 and October 28, 1986, and March 3, 1987.

5. The City of Allen gave notice of the pendency of this docket to subscribers in the 727 (Allen) Exchange and to city and county governments within the Dallas Call Area in conformance with the directives of Judge McDougall.

6. The Commission received approximately five letters indicating opposition to the proposed non-optional EAS, and three letters supporting it, including one from the City of Lucas, which is located within the Allen exchange.

7. The City of Dallas and the City of Grand Prairie were granted intervenor status in this docket.

8. The hearing on the merits convened as scheduled on April 7, 1987, with appearances entered by Andrew Kever and Susan Gentz for the City of Allen; Charla Edwards for General Telephone Company of the Southwest; L. Kirk Kridner and Robert D. Steiger for Southwwestern Bell Telephone Company; Galen Sparks for the City of Dallas and the City of Grand Prairie; and Dineen Majcher for the Commission staff and the public interest. In addition, twenty persons from the Allen Exchange appeared and made statements in support of the request for EAS.

9. At the beginning of the hearing, the parties stated on the record that they had reached an agreement regarding all issues in the docket except the question of whether lost toll should be included in the rate additive for EAS. The testimony of the witnesses was admitted into the record without objection and, by agreement of the parties, the sole subject of cross-examination was the lost toll issue.

10. The hearing concluded on April 9, 1987.

11. Initial briefs were filed on April 23, 1987, and reply briefs on May 7, 1987.

12. The facts of this case clearly establish that the City Council of the City of Allen properly represents the Allen exchange: the City Council of the City of Allen represents the residents of the City of Allen, and the City of Allen contains at least 80 percent of the population of the exchange.

13. The traffic studies filed by SWB on September 23, 1985, were for the months of April and May 1985; they surveyed the toll traffic from SWB's Dallas Metropolitan Exchange to the Allen Exchange and from the Allen Exchange to all of the exchanges in the Dallas Metropolitan Exchange calling scope, including

those exchanges serviced by GTSW. The traffic studies demonstrate that there is a unilateral community of interest between the Allen Exchange and the Dallas Metro area.

14. Since the City of Allen requested non-optional EAS, SWB and GTSW implemented the costing analyses outlined in subsection 23.49(e).

15. Following completion of the costing analyses and coincident with their filing, pursuant to subsection 23.49(f) the utilities submitted recommendations for proposed incremental rate additives, by class of service, necessary to support the cost of EAS.

16. Since the City of Allen agreed to bear the entire cost of the EAS, incremental flat rate additives which placed the entire cost on the Allen Exchange were developed.

17. The testimony of SWB witnesses Douglas Clark (SWB Exhibit Nos. 3 and 3A), William Deere (SWB Exhibit Nos. 5 and 6), and Teri Rohr (SWB Exhibit No. 4); GTSW witness Robert Black (GTSW Exhibit No. 1); City of Allen witness Charles Land (City of Allen Exhibit No. 10); and Commission staff witness Don Laub (Staff Exhibit Nos. 1 and 1A) support the stipulated recurring rate additives set forth in Attachment 1 to Joint Exhibit No. 1 (Stipulation of the Parties).

18. The rates set forth in Attachment 1 to Joint Exhibit No. 1 were based upon incremental cost studies; they do not include a component designed to recover possible revenue shortfalls stemming from traffic reclassification (that is, lost toll).

19. While the stipulation states that the parties do not adopt the specific cost study methodology advanced by any particular party, the stipulated rate additives are based upon a Long Run Incremental Cost (LRIC) study approach which was generally endorsed by the parties.

20. The stipulated EAS rate additives would apply to each customer line in the

Allen Exchange only, and would be in addition to the monthly local exchange rates for each line in the Allen Exchange.

21. The stipulation also calls for a non-recurring charge of $6.85 to be applied to each line at the time service is implemented to recover the non-recurring costs set out in Attachment 2 to the stipulation. The non-recurring charge may be paid over a period of two months at no interest.

22. The non-optional arrangement sought here would provide two-way flat rate calling between the Allen Exchange and the Dallas Metropolitan Local Calling Area and the Fort Worth Extended Metropolitan Service (EMS) customers.

23. Because of the existence of a unilateral community of interest and the willingness of the Allen Exchange susbscribers to bear the entire cost of the service, only the Allen Exchange subscribers will pay the EAS additive rate, even though subscribers in the Dallas Metropolitan Local Calling Area and to the Fort Worth Extended Metropolitan Service will be able to call the Allen Exchange without an additional charge.

24. At rate levels which include only the stipulated incremental EAS rate additives, a majority of the subscribers in the Allen Exchange would benefit from the implementation of EAS between the Allen Exchange and the Dallas Metro Calling Area.

25. At a $10.00 rate additive, 76.71 percent of those Allen Exchange subscribers would benefit.

26. The one issue in this docket on which the parties were unable to agree is whether the rate additive for mandatory EAS between the Allen Exchange and the Dallas Metro calling area should include a component which would compensate SWB and GTSW for the revenues they claim they will lose when the toll traffic between the Allen Exchange and the Dallas Metro calling area is reclassified as EAS traffic.

27. SWB will incur a total annual revenue loss of $1,995,888 because of reclassification of intraLATA toll traffic as EAS traffic.

28. The settlements impact of the toll reclassification on GTSW is an annual revenue loss of $232,432 for MTS/WATS and $29,508 for Private Line.

29. The revenue loss occurs because of the separations and pooling mechanisms used by the local exchange carriers.

30. When the traffic between Allen and Dallas is converted (reclassified) to EAS, SWB's and GTSW's Texas traffic usage factors will be adjusted to reflect decreases in intrastate intraLATA toll usage on the Allen route.

31. These new traffic usage factors will shift the jurisdictional assignment of intrastate expenses, taxes, and investment from intraLATA toll to other service categories.

32. There will be no reduction of total expenses or investment resulting from the conversion to EAS, but instead there will be a redistribution of existing expense and investment levels from intraLATA toll to other service categories.

33. This change in separations will result in the companies reporting lower expenses, taxes and investment to the Texas Exchange Carriers Association (TECA) for recovery from the two relevant Texas pools, the MTS/WATS pool and the Private Line pool.

34. Under the existing pooling arrangements, each company's revenue is determined by the separated expenses and taxes it reports to the pool, plus its proportionate share of the pool's profit based upon its separated investment; revenue to be distributed from the pool to each company is not determined based on the amounts each company bills its customers.

35. The effect on SWB and GTSW of the reclassification will be a revenue shortfall: unless the EAS rates recover the costs which shift out of the intraLATA

toll reporting category, the companies will not have a revenue source to cover those costs which they will continue to incur even if EAS is approved.

36. SWB personnel calculated the separations impact of the estimated changes in investment and usage caused by decreases in intraLATA toll usage resulting from the proposed Allen conversion to EAS, and then calculated revised intraLATA toll expenses, taxes, and investment for the state as if the EAS requested here had been in effect.

37. The conversion to EAS will cause billed toll revenues for SWB and GTSW to decrease as well, because calls between Allen and Dallas would no longer be billed as toll calls; revenues for toll pool distribution would decrease accordingly.

38. These changes in expenses, taxes, investment, and billed revenues were all provided to TECA for the calculation of the settlement impact on SWB and GTSW.

39. For SWB, about half the costs which shift out of intraLATA toll because of EAS are reassigned by separations to interLATA access, and most of the remaining affected costs are shifted to local.

40. The costs shifted to local are directly related to the provision of EAS.

41. The shift to interLATA access is caused primarily by the use of the Subscriber Plant Factor (SPF) to separate investment.

42. The intrastate SPF is applied in separations to identify that piece of loop plant used to provied intrastate toll services (including both intraLATA toll and interLATA access).

43. In Texas, the intrastate SPF is frozen at approximately 20 percent; however, the allocation of that frozen factor between intraLATA toll and interLATA access varies each month according to relative usage.

44. The decrease in intraLATA toll minutes resulting from implementation of

EAS causes the intraLATA toll SPF to decrease, and conversely increases the interLATA access SPF.

45. This EAS change, which does not in any way increase interLATA access usage, causes a separations change which increases the costs allocated to interLATA access.

46. Normally, interLATA access costs are charged to interexchange carriers (IXCs) in the form of access charges paid to SWB and GTSW (and other local exchange companies).

47. InterLATA access charges are billed primarily on a per minute of use basis for interLATA calls; reclassification of a call from intraLATA toll to local usage does not affect the number of interLATA call minutes.

48. There are no aditional revenues from the IXCs to replace toll pool revenues lost by SWB and GTSW.

49. The IXCs are not the cost causers in this situation; they should not be financially penalized.

50. InterLATA access rates are not at issue in this docket and cannot be changed here.

51. There are two methods for calculating the net revenue loss to SWB. By the first method, reclassification of existing toll traffic as EAS traffic will result in a revenue loss of $2 million; there will be an additional $400,000 in expense requirements for providing EAS. To that is applied the EAS revenue of $1.1 million, leaving a net annual revenue loss for SWB of $1.3 million. In the second method, it is assumed that the EAS rate additive is to be compensatory. Thus, if the $400,000 of additional expense for equipment necessary for handling the stimulated traffic is subtracted from the $1.1 million in EAS revenues, there is revenue of $700,000 from EAS "replacing" the current $2 million in toll revenue. Again, the net annual revenue loss to SWB is $1.3 million.

52. The impact on SWB of the $1.3 million in lost toll revenue on SWB's rate of return can be calculated using the rate base, rate of return, and total return dollars found by the Commission in Docket No. 6200, SWB's last general rate case. From the $1.3 million is subtracted 46 percent, the federal income tax component. The remainder, about $700,000, is divided by the $5.5 billion rate base to derive the change in rate of return of .0125 percent.

53. The pooling and settlements agreements and TECA procedures simply are not at issue here.

54. The Commission's Order in Phase II of Docket No. 5113 recognized the existence and operation of the intraLATA toll pools and extended at least tacit approval of their continued operation until an alternative is ordered.

55. For purposes of this docket, then, the existence of the pools and the settlements procedures used by TECA must be taken as givens; those procedures and their effects on the revenues of the companies cannot, in fairness, be ignored by the parties or the Commission.

56. Upon implementation of the requested EAS, SWB and GTSW will experience a loss of settled toll revenues.

57. That revenue loss is admittedly calculated from the changes in statewide expenses, taxes, and investments for SWB and GTSW which are not route-specific, but are instead identified via separations; nevertheless, the change in billed revenue *is* calculated upon the changes in traffic volumes over the Allen-Dallas toll routes.

58. Even though the Commission has not explicitly stated that lost toll is a cost of EAS, the Commission has confirmed that in some circumstances, lost toll may indeed be included in the EAS rate additive.

59. The Commission clearly intended to preserve the option of including a component for lost toll revenues in any price it sets for new EAS.

60. While it may be intuitive that the revenue associated with various services changes over time, as do expenses, taxes and investment, there is nothing in the record quantifying any of those changes for other services.

61. SWB's conclusion that loss of $1.3 million in revenue necessarily results in the loss of even the opportunity for SWB to earn the return authorized by the Commission in Docket No. 6200 is highly questionable, however, for the very reason SWB notes: there is nothing in this record demonstrating SWB's and GTSW's *overall* revenues and rate of return.

62. It is equally erroneous to conclude that because $1.3 million is "virtually undetectable" in the overall scope of SWB's revenues, the claims of financial harm are rendered incredible, and a .0125 percent change in return is not a measurable and demonstrable one.

63. Both SWB and GTSW were able to quantify the impact of the loss of settlement revenue; the percentage change in return for SWB was in fact measured by the City of Allen's own witness.

64. There is not enough evidence in this record to conclude that a revenue loss of the magnitude demonstrated here has the effect of preventing SWB and GTSW from having a reasonable opportunity to earn their authorized rates of return.

65. Neither can we fairly say that just because a revenue impact on the companies is small, we may disregard it in setting an EAS rate.

66. The City of Allen's assertion that there is no justification for imposing exclusively on Allen Exchange subscribers the financial responsibility for replacing revenues lost to other telephone companies or lost because toll charges are no longer paid by Dallas area customers is based on an inaccurate premise.

67. These revenues are not shifted to other telephone companies; they are lost because they are no longer reported to TECA as billed toll revenues, and are simply not available to the pool for distribution.

68. The toll revenues which will be lost are not just those paid by Allen Exchange subscribers.

69. The lost toll revenue includes revenues currently paid by those approximately 14,000 Dallas area customers who call the Allen Exchange.

70. If this EAS request is approved, these Dallas area customers will receive toll-free calling to Allen without paying even the direct incremental cost of implementing EAS.

71. Nevertheless, the Allen Exchange has agreed to pay the entire cost of implementing EAS.

72. There is a higher percentage (although not a higher number) of subscribers in the Allen Exchange who want to call into the Dallas Metro Calling Area than subscribers in the Dallas Metro Calling Area who want to call into the Allen Exchange.

73. Somewhat ironically, the revenue loss which the City of Allen in brief characterized as "miniscule" and "virtually undetectable" to SWB would have a "stark" impact on the Allen Exchange, and if placed in the rate additive, the application here would be "effectively killed."

74. Under GTSW's theory that because Allen Exchange subscribers perceive the requested EAS to be more desirable and valuable than the current toll arrangement it is reasonable to expect them to provide some contribution for the addition value they will receive, Allen Exchange subscribers would be required to replace the lost toll revenues

75. GTSW's proposal, however, has the anomalous result of destroying the value the Allen Exchange customers perceive in EAS, since less than half of them would benefit from EAS rates which include a lost toll additive.

76. An EAS rate additive of $21.00 would benefit only 47.50 percent of the customers in the Allen Exchange.

77. If other telephone customers must make up some of the toll revenue lost in providing this service, there is a violation of subparagraph 23.49(f)(2)(A); if the revenue loss is uncompensated to the companies, there may very well be confiscation.

78. The argument of the City of Allen that Allen Exchange subscribers should not have to pay (by virtue of a lost toll EAS rate additive) for a service they no longer use, just as PBX customers should not have to pay PBX rates when they switch to another local exchange service, is based on an inapposite analogy.

79. If the requested EAS is implemented, Allen Exchange subscribers would not stop calling the Dallas Metro area, and Dallas Metro area subscribers would not stop calling Allen.

80. If the requested EAS is implemented, the usage over those facilities will be repriced from usage rates to flat rates, and as a result, calling volumes are likely to increase by nearly 60 percent, requiring the installation of additional equipment and facilities to accommodate the increased traffic over this route.

81. Under EAS pricing, Allen Exchange subscribers (and Dallas Metro area subscribers) would not only continue using the same facilities they used to make toll calls, they will very likely increase their usage dramatically.

82. Unlike the PBX example in which the customer changes from one local exchange service to another (with all revenue remaining classified as local), in implementing EAS, the classification changes from toll to EAS, and it is this change underlying the companies' contentions that the net revenue loss will not be compensated unless it is included in the EAS rate.

83. Neither of the two alternatives offered by the City of Allen to the imposition of a lost toll rate additive in the EAS rates for the Allen Exchange assists the Commission in resolving the question squarely before it in this docket.

84. The first is that the Commission could address lost toll generically; however, a generic proceeding on lost toll will not quantify the impact on overall companies' revenues of implementing specific EAS requests.

85. A generic proceeding will not identify sources of recovery of the lost toll revenues other than the three possibilities we can recognize here: the subscribers in the benefitting exchanges; the general body of nonbenefitting ratepayers; or the shareholders of the telephone companies.

86. The second alternative is for the intraLATA pooling and settlements procedures to be changed, most notably for intraLATA SPF to be frozen.

87. There is no basis in the evidence in this record for ordering the changes in pooling and settlements which the City of Allen suggests, and there are clearly due process obstacles to such a resolution.

88. The other local exchange company toll pool members are not parties to this docket, and there was no systematic examination of the effect such changes would have in other pending EAS cases.

89. Even if it is true that other pool members would be concerned with the impact of EAS on toll revenues, there is nothing in this record to indicate that other pool members would be in favor of freezing intraLATA SPF.

90. There is nothing in the record to indicate that SWB and GTSW would support freezing intraLATA SPF, since this record contains no evidence of either the impact of EAS on toll revenues in every EAS case now pending at the Commission or what impact freezing the intraLATA SPF would have in these cases.

91. SWB offered two alternatives for recovery of the shortfall in toll settlements resulting from implementation of the requested EAS.

92. Under SWB's first alternative, the mandatory EAS rate additive to be paid by the subscribers in the Allen Exchange would include compensation for lost toll from the time Allen EAS is established until the time rates from the next

general SWB rate case are established, at which time all the rates for SWB would be at issue, and the Commission would have the option of reducing the Allen EAS rates by the amount of interLATA access costs which were included in the initial rates and increasing rates in other service categories.

93. Under SWB's second alternative, the Commission could approve Allen EAS and establish the tariffs, but defer implementation of the service until rates for the next general rate case are put in place, at which time higher rates for intraLATA toll could be established to recover the toll revenues lost as a result of implementing this EAS request.

94. Both alternatives suggested by SWB would result in other customers of SWB paying for the revenue shortfall created by implementation of the EAS.

95. The quantification of the factors which go into decisions about particular requests for EAS is unique to each case.

96. The Commission has recognized that implementing EAS over a particular route or routes could have an impact on toll revenues.

97. Separations procedures are used here to identify the financial impact on the companies resulting from the reclassification of its billed toll revenues, expenses, and investments upon the implementation of the requested EAS.

98. Separations procedures merely quantify a revenue requirement shortfall, given the present pooling procedures.

99. Separations procedures are the only basis for the lost toll rate additive SWB and GTSW seek to have included in the EAS rate additive here.

100. The contractual division of toll revenues among the telephone companies was given approval by the Commission in the final order in Phase I of Docket No. 5113.

101. No member of the toll pool has authority to implement unilaterally any changes to the pooling and settlement procedures.

102. There is nothing in this record to indicate that the other pool members would even agree to any changes which one member might wish to implement.

103. The Commission not only has recognized the existence of the toll pool and the effect pooling and settlements procedures have on companies' net revenues, it implicitly approved the use of separations for establishing rates and thereby approved TECA's procedures.

104. The intraLATA toll pooling and settlements arrangements are not at issue in this docket; no order affecting the pooling and settlements contracts and their operation may properly be entered in this docket; and, pursuant to the Commission's orders in Docket No. 5113, the arrangements must be viewed as having at least tacit Commission approval until a different arrangement is approved by the Commission.

105. The Commission's use of separations and settlements procedures for setting the ICAC rate in Docket No. 5113 was based on the urgent need to address and provide a remedy for the unprecedented financial upheaval in the telecommunications industry following AT&T's divestiture of its local exchange facilities.

106. The final order in Docket No. 5113 is not necessarily blanket approval of TECA procedures and methodologies for setting rates in circumstances other than those surrounding Docket No. 5113.

107. There is insufficient evidence of record to support the contention of the City of Allen that the apparent difference in methodologies used by SWB and GTSW is a significant and meaningful flaw in the accuracy of the companies computations and that the alleged discrepancies taint the final numbers.

108. On cross-examination by counsel for the City of Allen, GTSW witness

Shurtleff confirmed the accuracy of the numbers he reported to TECA for Ms. Milton's use.

109. The discrepancies in the numbers reported by GTSW to TECA and the numbers used by Ms. Milton were evident in the prefiled testimony.

110. The City of Allen had ample opportunity on cross-examination to explore with Ms. Milton the reasons for the differences, but failed to do so.

111. The evidence of record demonstrates that Ms. Milton reviews the traffic studies and the cost studies submitted by the member companies.

112. The evidence in this record demonstrates that the change in toll revenues reported to the toll pool which results from implementation of EAS is properly calculated on the basis of TECA separations and settlements procedures and that, in appropriate circumstances, lost toll calculated on that basis may be included in the EAS rate additive.

113. Extended Area Service is essentially the antithesis of assigning costs to users based on usage.

114. Repricing telecommunications service between Allen and Dallas from a usage rate (MTS/WATS toll rates) to a flat rate (EAS additive) results in low users subsidizing high users, a phenomenon also referred to as "income transfer."

115. Income transfer becomes particularly important with regard to requests for mandatory EAS; all customers in the Allen Exchange - whether they make hundreds of calls to the Dallas Metro area or none at all - will pay the EAS additive every month.

116. In April 1985 and in May 1985, over 1600 customer accounts in the Allen Exchange had less than $5.00 of toll usage to Dallas.

117. These 1600 customer accounts comprise only 35 percent of the total Allen Exchange accounts.

118. Even at the stipulated EAS rate additive of $9.60 per month, these customers will pay for more service than they use; it is difficult to see how these customers would be benefitted by having EAS available.

119. Any flat rate designed to cover usage-related costs benefits high volume users to the detriment of low volume users.

120. In an optional EAS plan, customers at least have the choice of purchasing the service and incurring the additional cost, but not under the mandatory EAS requested here.

121. Even though at those stipulated rates a majority of the subscribers in the petitioning exchange would benefit from the plan, consideration of that alternative presents some fundamental questions of equity.

122. Even though the decision in each EAS request will be made based on the specific facts of each case, there are undeniably statewide effects flowing from these decisions.

123. The revenue shifts away from the toll pools may be compounded with each EAS request.

124. In making the determination of whether the EAS additive should include a component for lost toll there must clearly be a balancing of the interests of both the petitioning exchange and the telephone company/ies - a balance which may not be achieved easily, but one which is essential to the integrity of the process.

125. The test to be applied in deciding whether to grant a request for EAS (whether optional or mandatory) is whether the requested EAS can be provided at a rate which is compensatory to the company/ies and is an attractive offering to the affected customers (whether only those in the petitioning exchange or

those in the benefitting exchanges), in accord with the provisions of the EAS rule.

126. The Commission must find, at a minimum, that the rate charged by the telephone companies for the provision of EAS meets both requirements of the test.

127. The second portion of the test is already prescribed by subsections 23.49(g) and (h) of the EAS rule.

128. The real difficulty, of course, is determining what is a compensatory rate, which would be a fact question in each docketed request for EAS.

129. The EAS rule has prescribed the calculation and scope of imposition of a minimum additive in subsection 23.49(f) and, by the Commission's own interpretation of the language which now appears in paragraph 23.49(e)(2), has left open the possibility of including a lost toll component in EAS rate additives.

130. The goal of the Commission in leaving that option available to it was to insure that EAS rates are compensatory; in some circumstances, lost toll must be included to achieve that goal.

131. The record evidence supports the stipulated EAS rate additives as adequately recovering the incremental cost of implementing the requested EAS.

132. If the general body of ratepayers pays that cost of providing EAS to the Allen Exchange which is unrecovered in the EAS additive based on incremental cost, the result is economically inefficient and inequitable rates for all ratepayers and causes subscribers in non-benefitting exchanges to pay higher rates as a result of implementing the EAS requested here.

133. The mandatory nature of this request could have a severe impact on universal service.

134. At a monthly rate of $30.00, there would be a three percent reduction in subscribership.

135. Income transfer was a problem even under the staff's originally proposed rates, which did not include a component for lost toll revenue.

136. The preponderance of the evidence in this record shows that it is not likely that an EAS rate additive which excludes a lost toll component is compensatory and that, since the EAS rate additive here would be mandatory, there would likely be some reduction in subscribership, given the level of a compensatory rate.

137. Excluding the lost toll component from the EAS rate in order to achieve the dual goals of granting the requested EAS and protecting the universality of service, puts the cost burden of the requested EAS squarely on the companies, at least until the next general rate case for each of them.

138. Using the examiner's proffered standard, the first matter to be determined must be the compensatory rate, that is, whether a compensatory rate must include a lost toll component and, if so, how it should be calculated.

139. The evidence in this record supports the conclusion that without the lost toll component, the stipulated EAS rate additives (which cover incremental costs only) are likely not compensatory.

140. Since rates for other services cannot be changed in this docket, imposition of an EAS rate which does not include a component for lost toll means that SWB's and GTSW's shareholders absorb those revenue losses at least until the next rate case for each company, when rates for all services could be changed.

141. The magnitude of the lost toll revenue demonstrated in this record points up the need for some method of recovery of that revenue in the rate set for the requested EAS, and the interpretation of the EAS rule suggested above in this report permits the inclusion in the EAS rate additive of a lost toll component calculated using separations and settlements formulas and methodologies.

142. In this case, the EAS rate additive should include a component for the

recovery of lost toll revenues, subject to that EAS rate being changed in SWB's next rate case.

143. The EAS rate additives which include a component for lost toll are supported by a preponderance of the evidence of record in this docket, and are shown on Examiner's Exhibit II attached to this report.

144. At a rate additive of $21.00, only 47.50 percent of the subscribers in the Allen Exchange would benefit from EAS.

145. That percentage does not meet the requirement of paragraph 23.49(g)(1).

146. Under the second part of the suggested standard, that is, whether a majority of the subscribers in the Allen Exchange would benefit from EAS at the compensatory rate additive levels, the application fails.

147. The City of Allen's request for mandatory EAS from the Allen Exchange to the Dallas Metro area should be denied.

B. Conclusions of Law

1. The undersigned examiner has read the record of the proceedings and is the lawful replacement for the previously presiding examiners under P.U.C. PROC. R. 21.141(a) and section 15 of the Administrative Procedure and Texas Register Act, Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1988) (APTRA).

2. SWB and GTSW are dominant carriers as defined in section 3(c)(2)(B)(ii) of the Public Utility Regulatory Act, Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1988) (PURA), and are therefore telecommunications utilities subject to the jurisdiction of this Commission.

3. The Commission's jurisdiction over the subject matter of this docket arises under sections 16(a), 18 and 61(3) of PURA and P.U.C. SUBST. R. 23.49.

4. The Commission has interpreted the language in section 61(3) of PURA as conferring upon the Commission the authority to order telephone companies to provide extended area toll-free service (EAS) within a specified metropolitan area, provided that two conditions are met. It must be demonstrated first that there is "a sufficient community of interest within the area" and second that "such service can reasonably be provided." In *Inquiry of the Commission into the Propriety of Establishing Extended Area Service by Southwestern Bell Telephone Company Between Part of Its Frisco Exchange and the Dallas Metropolitan Calling Area of Southwestern Bell and General Telephone Company of the Southwest*, Docket No. 2169, 6 P.U.C. BULL. 465 (February 22, 1980), the Commission adopted the reasoning in the Examiner's Report that *both* parts of this standard must be met before the Commission could order telephone companies to provide EAS. This test was implicitly affirmed in *Petition of the Woodlands Development Corporation and Eckerd Drugs, Inc. for Amendments of the Certificates of Convenience and Necessity of Conroe Telephone Company and Southwestern Bell Telephone Company, for Extended Area Service Between Conroe Telephone Company's Riverbrook Exchange and Portions of Southwestern Bell Telephone Company's Houston Metropolitan Calling Area, and Other Relief*, Docket Nos. 2782 and 4061, 10 P.U.C. BULL. 1 (May 15, 1984).

5. The request in this docket is governed by the Commission's EAS rule, P.U.C. SUBST. R. 23.49, which became effective August 6, 1985. The purpose of the rule is to establish consistent procedures for the processing of requests for EAS which were pending on or were applied for after the effective date of this rule; new EAS can be established only through the procedures set forth in this rule.

6. This request by the City of Allen for Extended Area Service (EAS) into the Dallas Metro calling area conformed to the filing requirements of subparagraph 23.49(b)(1)(B).

7. The community of interest standards set forth in paragraph 23.49(c)(2) were been met on a unilateral basis.

8. The City Council of the City of Allen passed Resolution No. 645-10-85 (R) on October 3, 1985, which expressed the City's readiness to bear the entire cost of providing the requested EAS and met the requirements of subparagraph 23.49(c)(3)(B).

9. On November 26, 1985, the City of Allen filed a certified copy of Resolution No. 660-11-85(R), passed November 7, 1985, in which the City Council of the City of Allen determined that the proposed EAS should be non-optional (mandatory); this filing satisfied the requirements of paragraph 23.49(c)(4).

10. The facts set forth in Finding of Fact No. 12 establish that the City of Allen properly represents the Allen Exchange, within the meaning and intent of subparagraph 23.49(b)(1)(B).

11. The traffic studies establish that the criteria of paragraph 23.49 (c)(2) and subparagraph 23.49(c)(3)(B) have been met; thus a "reasonable degree of community of interest between exchanges" as defined in the EAS rule exists unilaterally from the Allen Exchange to the Dallas Metropolitan Local Calling Area to which EAS is desired.

12. The costing analyses performed by SWB and GTSW complied with the requirements of subsection 23.49(e).

13. The utilities' recommendations for proposed incremental rate additives met the requirements of subsection 23.49(f).

14. Despite the literal words of subparagraph 23.49(f)(2)(B), it cannot accurately be said that the Commission never intended to include lost toll in EAS rates.

15. Under the Commission's own interpretation of the EAS rule, the Commission may or may not elect to include lost toll in the EAS rate additive, depending on the facts of the case.

16. PURA section 39(a) does not guarantee any utility the return set by the Commission; rather, rates are established to recover revenues fixed at a level which permits the utility a "reasonable opportunity to earn a reasonable return on its invested capital . . . ."

17. There is no authority which approves the confiscation of a utility's assets so long as it is only a little bit.

18. The EAS rule does not prescribe a "dire financial consequences" or "catastrophic revenue impact" test for including lost toll revenues in the EAS rate additive; the rule is simply silent on the standard to be used.

19. SWB's two alternatives, set forth in Findings of Fact Nos. 92 and 93, contemplate results which clearly violate subparagraph 23.49(f)(2)(A), in that customers in non-benefitting exchanges would bear the cost of providing the requested EAS.

20. The Commission's own rule now sets the boundaries for the decision of whether a particular request for EAS should be granted.

21. In consequence of the Commission's recognition that implementing EAS over a particular route or routes could have an impact on toll revenues, the Commission, through the rule, permits the companies to develop and present evidence on the issue of the overall revenue effects of implementing a particular request for EAS.

22. The Commission's own interpretation of the language now appearing in paragraph 23.49(e)(2) is that lost toll revenue may be recovered in the EAS rate additive if the Commission finds it appropriate.

23. The Commission intended that lost toll revenue, identified on the basis of separations procedures, would be the basis of the EAS rate additive because Chairman Ricketts specifically asked if one option would be to use "some portion of toll replacement as the rate additive," under the proposal of Commissioner Thomas to include paragraph 23.49(e)(2) in the EAS rule, and the answer was "yes." (Open Meeting of April 26, 1985, Tr. at 235.)

24. While the Commission may not have voiced a preference for using separations procedures in determining the lost toll component of an EAS rate additive, the Commission's interpretation of the rule expresses a willingness to calculate a lost toll rate additive on the basis of lost toll revenue quantified using separations formulas and procedures.

25. The test to be applied in deciding whether to grant a request for EAS (whether optional or mandatory) is whether the requested EAS can be provided at a rate which is compensatory to the company/ies and is an attractive offering to the affected customers (whether only those in the petitioning exchange or those in the benefitting exchanges), in accord with the provisions of the EAS rule.

26. The Commission must find, at a minimum, that the rate charged by the telephone companies for the provision of EAS meets both requirements of the test.

27. The second portion of the test is already prescribed by subsections 23.49(g) and (h) of the EAS rule.

28. The EAS rule has prescribed the calculation and scope of imposition of a minimum additive in subsection 23.49(f) and, by the Commission's own interpretation of the language which now appears in paragraph 23.49(e)(2), has left open the possibility of including a lost toll component in EAS rate additives.

29. The goal of the Commission in leaving that option available to it was to insure that EAS rates are compensatory; in some circumstances, lost toll must be included to achieve that goal.

30. Rates for other services cannot be adjusted in this docket; even if other rates are eventually adjusted in some docket to compensate for the loss, such a rate structure is economically inefficient, inequitable, and probably violative of EAS rule subparagraph 23.49(f)(2)(A).

31. The petition of the City of Allen for non-optional EAS between the Allen Exchange and the Dallas Metro Calling Area should be denied.

32. All motions, applications, and requests for entry of specific Findings of Fact and Conclusions of Law, and any other requests for relief, general or specific, if not expressly granted herein, should be denied for want of merit.

Respectfully submitted,

Mary Ross McDonald
Administrative Law Judge

APPROVED on this the 31st day of March 1988.

Phillip A. Holder
Director of Hearings

DOCKET NO. 6568

REQUEST OF CITY OF ALLEN	§	PUBLIC UTILITY COMMISSION
FOR EXTENDED AREA SERVICE	§	
TO DALLAS METRO CALLING AREA	§	OF TEXAS

STIPULATION OF THE PARTIES

WHEREAS, the parties hereto, to wit, the Staff of the Public Utility Commission (Staff), Southwestern Bell Telephone Company (SWB), the City of Allen, General Telephone Company of the Southwest, Inc. (GTSW), and the City of Dallas, in the above styled proceeding are desirous of avoiding needless time and expense in hearing with regard to facts and issues that can be agreed to, and

WHEREAS, the parties hereto are desirous of focusing on issues which are disputed, and

WHEREAS, the parties hereto are desirous of assisting the ALJ and Commission in reaching a decision in the public interest with regard to the request by the City of Allen for Extended Area Service to the Dallas Metropolitan Local Calling Area.

NOW THEREFORE, the parties hereto hereby stipulate and agree to the following:

1. Based on the traffic studies filed in this Docket, the requirements of Section 23.49(c)(2) and Section 23.49(c)(3)(B) of the Commission's Substantive Rules

have been met in this case, so that a "community of interest," as defined by those Rules, exists unilaterally from the Allen Exchange to the Dallas Metropolitan Local Calling Area to which EAS is desired.

2. Mandatory EAS, if ordered, will provide two-way flat rate calling between the Allen Exchange and the Dallas Metropolitan Local Calling Area and the Fort Worth Extended Metropolitan Service (EMS) customers.

3. The dialing arrangements for this service will be consistent with that provided to subscribers in other zones or exchanges which presently have flat rate two-way calling with the Dallas Metropolitan Local Calling Area.

4. Mandatory EAS will be described in Section 38 of SWB's General Exchange Tariff, currently titled "Optional Extended Area Calling Service." All titles and references to "Optional Extended Area Calling Service" in SWB's tariffs will be replaced with "Extended Area Calling Service" and a notation that the service may be optional or non-optional. A designation of the optional/non-optional nature of each specific route, along with a service description and the applicable rates for each route will be included within Section 38.

5. The rate additives for mandatory EAS, exclusive of recovery of possible revenue shortfalls resulting from traffic reclassification, agreed to by the parties are contained in Attachment 1. If implemented, these additives would apply to each customer line, in addition to the local exchange rates for each line. The parties do not adopt or endorse the specific cost study methodology of any particular party.

6. All issues related to the question of proper treatment of revenue loss as a result of traffic reclassification are disputed. These issues include, but are not limited to: (1) whether a lost toll rate additive should be included in the Allen EAS flat rate increment; (2) if so, in what amount; and (3) whether a majority of the subscribers would benefit from the plan if the EAS flat rate increment includes a rate additive for traffic reclassification revenue loss. All such issues are to be submitted to the Administrative Law Judge and Commission through prefiled direct and rebuttal testimony and cross-examination of witnesses Millice, Milton, Clark, Shurtleff, Laub, and Land, plus any additional rebuttal witnesses to address any issues arising during the hearing.

7. In addition to the monthly rate additives in Attachment 1, a nonrecurring charge of $6.85 shall be applied to each line at the time service is implemented to recover

the nonrecurring costs set out in Attachment 2. This nonrecurring charge may be paid over a period of 2 months at no interest.

8. At the rates specified in Attachment 1, a majority of subscribers in the Allen Exchange would benefit, as described in Section 23.49(g)(1) of the Commission's Substantive Rules, from the implementation of EAS to the Dallas Metropolitan Local Calling Area. All parties recognize that if SWB and GTSW are allowed to recover the revenue lost from traffic reclassification, then the City of Allen may not meet the benefit requirement of the rule. In such event and if requested by the Commission, SWB and GTSW agree to immediately commence the necessary studies for the provision of optional EAS to Allen.

9. Following a final order of this proceeding, the City of Allen may proceed to determine whether a majority of subscribers in the Allen Exchange favor the imposition of mandatory EAS at the rates specified by the Commission in its Final Orders as required by Section 23.49 (g)(2) of the Commission's Substantive Rules. For the purpose of making this determination, each SWB customer account which results in a separate bill will be considered to constitute a subscriber. The following process shall be used to make this determination:

a. SWB shall supply to the City of Allen, at the City's expense, three sets of mailing labels separated by class of service reflecting SWB's most current customer account records. Allen shall use these labels to send each subscriber the letters and ballot(s) described below, asking whether EAS is desired at the Commission-approved rates.

b. The City of Allen shall provide notice, at the City's expense, of the upcoming balloting process to subscribers in the Allen Exchange. Such notice shall consist of at least two advertisements one week apart in local newspapers.

c. One week prior to mailing out the ballots, the City of Allen shall send a letter to each Allen subscriber, at the City's expense, notifying the subscriber of the upcoming balloting process. A copy of the letter is attached as Attachment 3.

d. One week after the letter described in Paragraph (c) is mailed, the City of Allen shall mail a ballot to each subscriber at the City's expense, which will ask that a box on the ballot be checked either approving or disapproving the implementation of EAS on a mandatory basis. Each subscriber will be asked to mark and sign the ballot and return it (a postage paid envelope will

be provided at the City's expense) to the City of Allen within two weeks. A copy of the letter which will accompany the ballot and a sample ballot are attached hereto as Attachment 4.

e. If, after thirty days of the mailing of the initial ballot, less than 60 percent of the mailed ballots are returned, or less than 75 percent are returned and the affirmative vote is between 45 and 55 percent of the returned ballots, the City of Allen shall mail a second ballot, printed distinctively different from the first ballot, to all subscribers who did not respond to the initial ballot.

f. A majority of subscribers shall be deemed to desire EAS at the Commission-approved rates if more than 50 percent of the subscribers identified by Southwestern Bell at the time the mailing labels are printed respond favorably. The entire balloting process shall be concluded within 90 days of the commencement of the mailing of the initial ballot, as a condition precedent for EAS in Allen.

g. To insure that all subscribers, including new connects, have an opportunity to respond, subscribers will be permitted to execute ballots which are copies of the official ballots. Such

ballots will be verified to be certain that each subscriber votes only once. In the event two ballots are found to have been submitted by the same subscriber, only the most recent ballot shall be the ballot counted.

h. All ballots shall be returned to the City of Allen and all calculations relating to a determination of whether a majority of subscribers desire EAS shall be performed by City employees under the direction of the City Manager's office. All ballots and all calculations shall be available for audit and review by the other parties to this Stipulation.

i. Commencing two weeks after the initial mailing date, and continuing until the termination of the balloting procedure, either because the affirmative majority vote is attained or the expiration of the 90 day period, the City of Allen shall provide all parties to this proceeding with a weekly report on the number of affirmative and negative ballots received to date.

10. If the Final Order of the Commission determines that a rate additive increment for the revenue loss resulting from traffic reclassification should be included in the flat rate increment to be charged for EAS, the City of Allen may elect to withdraw its request for EAS and

forego the balloting process described in Paragraph 9. Further, should the Final Order of the Commission make any substantive modification in the rates stipulated by the parties, then any party may appeal the Commission's Final Order in this proceeding.

11. Upon the entry of a final order by the Commission, SWB and GTSW will commence the engineering studies necessary for the provision of mandatory EAS for Allen. In the event the final order does not provide for the recovery of the revenue loss resulting from traffic reclassification, then SWB and/or GTSW can seek a stay of the implementation of all aspects of the final order and this Stipulation from the District Court pending the outcome of any appeals filed by SWB and/or GTSW of the Commission's denial of the recovery of the revenue loss due to traffic reclassification. All parties reserve the right to participate in any proceeding seeking a stay of the final order and either support or oppose such stay. It is expressly agreed by all parties that SWB and GTSW shall not order any equipment or expend any funds, other than the engineering studies, until after the Commission's Order in this proceeding becomes final pursuant to Section 21.152 of the Commission's Rules of Practice and Procedure, and the District Court has ruled upon SWB and GTSW's Application for Stay pending Appeal.

12. SWB and GTSW will provide mandatory EAS to subscribers in the Allen Exchange no later than sixteen months from the time it is positively determined that a majority of subscribers favor the implementation of mandatory EAS at the Commission determined rates as described in paragraph 9.

13. SWB and GTSW commit to seek the shortest interval available for provision of the aforementioned equipment and materials; however, all manufacturing, shipping and installation intervals shall be predicated upon prices which do not include a premium overtime price for manufacture, delivery or installation.

14. SWB and GTSW will begin installation of the equipment and materials necessary to provide mandatory EAS when such equipment and materials are in the companies' possession. In the event such equipment and materials are in the companies' possession at such time as to allow the service to be operative prior to the time frame outlined in paragraph 12, both companies commit to install the equipment and materials so as to provide the service at the earliest possible date.

15. If at any point during the construction and provisioning process, either SWB or GTSW determines the service date is in jeopardy, they will promptly advise all parties to the proceeding of such problem.

16. Unless otherwise ordered by the Commission, commencing with the inception of service and thirty days after the end of each calendar quarter thereafter and continuing for a period of one year, SWB shall file with the Commission:

a. A report showing the number of local exchange service subscribers, by class of service, in the Allen Exchange;

b. The previous quarter's revenues, by class of service, that SWB received from Allen non-optional EAS; and

c. A usage study showing the CCS and peg count of EAS usage. (Peg count is the number of calls attempted; one CCS is equal to 100 call carrying seconds.)

17. In the event mandatory EAS is not implemented to Allen subscribers, the report set out in the foregoing paragraphs 15 and 16 shall not be required.

18. Recovery of GTSW's portion of the rate SWB will charge its Allen customers will be settled on a contractual basis between GTSW and SWB based upon the additives approved by the Commission in its Final Order.

19. This Stipulation is for the purpose of settlement only and shall apply only to this proceeding and any direct review thereof. By agreeing to this Stipulation the parties do not intend to waive their respective

positions in any other proceeding on those issues addressed in this Stipulation. Further, this agreement between the parties is nonprecedential and nonbinding as to future EAS cases and cannot be cited or referred to in any administrative, judicial or legislative proceeding. All parties expressly understand that SWB and GTSW do not favor the implementation of flat rate non-optional EAS for the City of Allen and do not feel that it is in the public interest. However, it is agreed that no party will raise the issue of whether non-optional EAS, in principle, is in the public interest at the hearing or in briefs unless invited to do so by the ALJ or the Commission. All parties expressly understand that the City of Dallas and the City of Grand Prairie do not favor the implementation of EAS, whether optional or non-optional, for the City of Allen at less than fully compensatory rates, including compensation for revenue losses related to traffic reclassification. The Cities reserve the right to raise the issue of whether non-compensatory EAS is in the public interest at the hearing and in briefs.

20. All parties stipulate to the admissibility of the prefiled testimony filed by SWB, GTSW, City of Allen and Staff in this docket, and, subject to the provisions of paragraph 6, waive cross-examination thereon and objections thereto. While SWB and GTSW are

Dallas Grand Prairie

agreeing to the admissibility of the testimony of the "citizen witnesses" prefiled by the City of Allen (Ken Browning, Jerry W. Wilson, Homer M. Gilliland, Jim Wolfe, Dr. Anthony E. Vita, Gene Davenport, and Barbara May) solely for purposes of this Stipulation, it is expressly understood by all parties that both SWB ~~and~~ GTSW do not believe that this testimony is in any way relevant to any issue set forth in Section 23.49 of the Commission's Substantive Rules nor that it is admissible testimony pursuant to the Texas Rules of Evidence.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By: _____
L. Kirk Kridner
Attorney

CITY OF ALLEN

By: _____
Andrew Kever
Bickerstaff Heath Smiley

GENERAL TELEPHONE COMPANY OF THE SOUTHWEST, INC.

By: _____
Charla Edwards
Attorney

CITY OF DALLAS

By: _____
Galen Sparks
Assistant City Attorney

PUBLIC UTILITY COMMISSION STAFF

By: _____
Dineen Majcher
Attorney

CITY OF GRAND PRAIRIE

By: _____
Galen Sparks *

* The City Attorney of the City of Grand Prairie has authorized the Assistant City Attorney of the City of Dallas to represent Grand Prairie in the hearing on this matter. Further, the Assistant City Attorney for the City of Dallas has been authorized to execute these Stipulations on behalf of the City of Grand Prairie.

ATTACHMENT 1

EAS RATE ADDITIVES

	SWB	GTSW	REGROUP	TOTAL
1FB	$13.40	$ 4.95	$ 5.65	$24.00
1FH	$16.00	$ 5.90	$ 6.90	$28.80
1SP	$ 9.05	$ 3.35	$ 6.75	$19.15
TFB	$22.15	$ 8.20	$10.75	$41.10
8FN	$ 7.20	$ 2.70	$ 3.05	$12.95
1MB	$ 8.75	$ 3.25	$ 3.90	$15.90
1FR	$ 5.50	$ 2.05	$ 2.05	$ 9.60
2FR	$ 3.60	$ 1.35	$ 1.30	$ 6.25
4FR	$ 3.05	$ 1.10	$ 1.10	$ 5.25
1MR	$ 2.75	$ 1.00	$ 1.00	$ 4.75

Attachment 2

The one-time charge shall reflect the following non-recurring costs:

$ 19,016	-	Public Relations Expense
$ 34,350	-	One Time Network Rearrangement Costs
$ 7,101	-	One Time Comptrollers Expense for Updating the Billing System
$ 196	-	Warehousing Expenses for New Equipment Required to Provide EAS
$60,663		Total

The one-time charge of $ 6.85 per line shall apply at the time EAS is implemented and can be paid in 2 monthly installments at no interest.

Attachment 3
Initial Letter

Dear Telephone Subscriber:

The City of Allen has requested that Extended Area Service (EAS) be provided between Allen and the Dallas Metro Area to all subscribers whose telephone numbers begin with 727. EAS service will allow you to make unlimited calls to the Dallas Metro Area and to receive unlimited calls from the Dallas Metro Area for a fixed monthly rate.

Because the service would be mandatory, that is, all subscribers would receive and would be billed for EAS, the service will not be implemented unless a majority--more than 50%--of the subscribers in the Allen Exchange desire the service at the rates which have been approved by the Texas Public Utility Commission by returning a ballot voting for EAS. Those rates are as follows:

	EAS Monthly Rate Additive
RESIDENCE:	
1 Party	
2 Party	
4 Party	
1 Party measured	
BUSINESS:	
1 Party	
Multi-line hunting	
PBX Trunk	
Semi-Public	
1 Party measured	
4 Party	

In addition, a one-time charge of $_____ will apply, which may be paid in 2 monthly installments at no interest.

The rates shown in the table will be charged in addition to existing local service charges, charges for any special services, such as Touch Tone, which subscribers may have, taxes and the Federal access line charge.

In approximately one week you should receive a ballot asking you to voice your opinion on whether EAS should be implemented in Allen. The City of Allen urges you to participate in the balloting process. If you do not receive a ballot within the

next two weeks, please come to City Hall and fill out a ballot in person.

Yours truly,

Mayor of the City of Allen

Attachment 4

Dear Telephone Subscriber:

You recently received a letter from the City of Allen notifying you that you would be asked to fill out a ballot indicating whether or not you approved implementation of Extended Area Service (EAS) between the City of Allen and the Dallas Metro Area for all telephone subscribers whose numbers begin with 727.

EAS between Allen and the Dallas Metro Area will allow you to make unlimited calls to the Dallas Metro Area and to receive unlimited calls from the Dallas Metro Area for a fixed monthly rate. If this service is approved by over 50% of the telephone subscribers in Allen, the Public Utility Commission of Texas has determined that the rate additive to be charged for EAS will be $_____ per month for residence customers subscribing to 1-Party service. This rate will be in addition to the existing rate for local telephone service. In addition, there will be a one time administrative charge of $_____ to establish the new EAS service, which may be paid in 2 monthly installments at no interest.

Because the service would be mandatory, that is, all subscribers in the 727 Exchange will receive and be billed for EAS if it is implemented, the Public Utility Commission has required that subscribers indicate whether they want EAS service at the Commission-approved rates. Your ballot is enclosed.

EAS will not be implemented unless a majority of subscribers are willing to take the service at the Commission-approved rates. Only if more than 50% of all subscribers vote "yes" to the service will EAS be provided. If you do not return your ballot, your non-response will be treated as a "no" vote.

Please take a few moments to fill out the enclosed ballot to inform the City of Allen and the Public Utility Commission of your choice. Due to the technical rearrangements that must be made to install EAS in Allen, the service will not be available until _____.

Yours truly,

Mayor of the City of Allen

ALLEN EAS BALLOT

_____ YES I want Extended Area Service (EAS) for my telephone number(s)

_____ NO I do not want Extended Area Service (EAS) for my telephone number(s)

NAME: _____

ADDRESS: _____

_____

_____
Signature

_____
Telephone Number

_____
Today's Date

Allen Exchange Services and Rates*		Stipulated EAS Rates					Traffic Reclassification Rate			Total Recurring EAS Rate Additive
		Non-Recurring	Recurring				Recurring			
			Regroup	GTSW	SWB	Total	GTSW	SWB	Total	
1FB	$19.60	$6.85	$5.65	$4.95	$13.40	$24.00	$2.20	$25.35	$27.55	$51.55
1FH	$23.20	$6.85	$6.90	$5.90	$16.00	$28.80	$2.60	$30.20	$32.80	$61.60
1SP	$10.30	$6.85	$6.75	$3.35	$9.05	$19.15	$1.50	$17.10	$18.60	$37.75
1MB	$12.60	$6.85	$3.90	$3.25	$8.75	$15.90	$1.45	$16.55	$18.00	$33.90
TFB	$31.00	$6.85	$10.75	$8.20	$22.15	$41.10	$3.65	$41.90	$45.55	$86.65
8FN	$10.55	$6.85	$3.05	$2.70	$7.20	$12.95	$1.20	$13.65	$14.85	$27.80
1FR	$8.35	$6.85	$2.05	$2.05	$5.50	$9.60	$0.90	$10.45	$11.35	$20.95
2FR	$5.45	$6.85	$1.30	$1.35	$3.60	$6.25	$0.60	$6.75	$7.35	$13.60
4FR	$4.60	$6.85	$1.10	$1.10	$3.05	$5.25	$0.50	$5.70	$6.20	$11.45
1MR	$4.20	$6.85	$1.00	$1.00	$2.75	$4.75	$0.45	$5.20	$5.65	$10.40

2311

Abbreviations:
1FB . . . . . One-party business flat rate
1FH . . . . . One-party business multi line
1SP . . . . . Semi-public coin
1MB . . . . . One-party business one-element measured rate
TFB . . . . . Trunk flat rate
8FN . . . . . Four-party business suburban

1FR . . . . . Individual residential flat rate
2FR . . . . . Two-party residential flat rate
4FR . . . . . Four-party residential flat rate
1MR . . . . . Individual residential one-element measured rate

*Rates taken from Southwestern Bell Telephone Company, Local Exchange Tariff, Section 1, Sheets 1 through 4 and 17.

DOCKET NO. 6568

REQUEST OF CITY OF ALLEN	§	PUBLIC UTILITY COMMISSION
FOR EXTENDED AREA SERVICE	§	
TO DALLAS METRO CALLING AREA	§	OF TEXAS

ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas ("Commission") finds that notice of the above-styled request of the City of Allen for non-optional Extended Area Service ("EAS") from the Allen Exchange of Southwestern Bell Telephone Company ("SWB") to the Dallas Metro Calling Area was provided to the city and county governments within the Dallas Metro Calling Area and to the subscribers in the 727 (Allen) Exchange of Southwestern Bell Telephone Company. GTE of the Southwest, Inc. ("GTSW") serves a portion of the affected exchanges. Notice was also properly posted for consideration of the above-referenced document pursuant to Tex. Rev. Civ. Stat. Ann. art. 6252-17 (Vernon Supp. 1988). This request was processed in accordance with applicable statutes and Commission rules by an examiner who prepared and filed a report containing findings of fact and conclusions of law. Exceptions and replies to the report were filed by the parties. Oral argument was heard on May 4, 1988. Upon consideration of the evidence in the record, the Commission rejects the initial recommendation and the Findings of Fact and Conclusions of Law in the Examiner's Report, and adopts the alternative recommendation in the Examiner's Report. The Commission adopts the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The request by the City of Allen for Extended Area Service ("EAS") into the Dallas Metro calling area was docketed on October 28, 1985, following the filing by the City of Allen of a resolution adopted October 3, 1985, conforming to the requirements of P.U.C. SUBST. R. 23.49(b)(1)(B), and based on the advice of then-staff engineer Don Price, who found that the community of interest standards set forth in P.U.C. SUBST. R. 23.49(c)(2) had been met on a unilateral basis.

2. The City Council of the City of Allen passed Resolution No. 645-10-85(R) on October 3, 1985, which expressed the City's readiness to bear the entire cost of providing the requested EAS.

3. On November 26, 1985, the City of Allen filed a certified copy of Resolution No. 660-11-85(R), passed November 7, 1985, in which the City Council of the City of Allen determined that the proposed EAS should be nonoptional (mandatory).

4. Prehearing conferences were convened on January 3 and October 28, 1986, and March 3, 1987.

5. The City of Allen gave notice of the pendency of this docket to subscribers in the 727 (Allen) Exchange and to city and county governments within the Dallas Call Area in conformance with the directives of Judge McDougall.

6. The Commission received approximately five letters indicating opposition to the proposed non-optional EAS, and three letters supporting it, including one from the City of Lucas, which is located within the Allen exchange.

7. The City of Dallas and the City of Grand Prairie were granted intervenor status in this docket.

8. The hearing on the merits convened as scheduled on April 7, 1987, with appearances entered by Andrew Kever and Susan Gentz for the City of Allen; Charla Edwards for General Telephone Company of the Southwest; L. Kirk Kridner and Robert D. Steiger for Southwestern Bell Telephone Company; Galen Sparks for the City of Dallas and the City of Grand Prairie; and Dineen Majcher for the public interest and the Commission Staff. In addition, twenty persons from the Allen Exchange appeared and made statements in support of the request for EAS.

9. At the beginning of the hearing, the parties stated on the record that they had reached an agreement and had entered into a written stipulation regarding all issues in the docket except the question of whether lost toll should be included in the rate additive for EAS. The testimony of the witnesses was admitted into the record without objection and, by agreement of the parties, the sole subject of cross-examination was the lost toll issue.

10. The hearing concluded on April 9, 1987.

11. Initial briefs were filed on April 23, 1987, and reply briefs on May 7, 1987.

12. The City Council of the City of Allen represents the residents of the City of Allen, and the City of Allen contains at least 80 percent of the population of the exchange.

13. The traffic studies filed by SWB on September 23, 1985, were for the months of April and May 1985. The studies surveyed the toll traffic from SWB's Dallas Metropolitan Exchange to the Allen Exchange and from the Allen Exchange to all of the exchanges in the Dallas Metropolitan Exchange calling scope, including those exchanges serviced by GTSW. The traffic studies demonstrate that there is a unilateral community of interest between the Allen Exchange and the Dallas Metro area.

14. Since the City of Allen requested non-optional EAS, SWB and GTSW implemented the costing analyses outlined in P.U.C. SUBST. R. 23.49(e).

15. Following completion of the costing analyses and coincident with their filing, pursuant to P.U.C. SUBST. R. 23.49(f), SWB and GTSW submitted recommendations for proposed incremental rate additives, by class of service, necessary to support the cost of EAS.

16. Since the City of Allen agreed to bear the entire cost of the EAS, incremental flat rate additives which placed the entire cost on the Allen Exchange were developed.

17. The testimony of SWB witnesses Douglas Clark (SWB Exhibit Nos. 3 and 3A), William Deere (SWB Exhibit Nos. 5 and 6), and Teri Rohr (SWB Exhibit No. 4); GTSW witness Robert Black (GTSW Exhibit No. 1); City of Allen witness Charles Land (City of Allen Exhibit No. 10); and Commission staff witness Don Laub (Staff Exhibit Nos. 1 and 1A) support the stipulated recurring rate additives set forth in Attachment 1 to the Stipulation of the Parties (Joint Exhibit No. 1).

18. The rates set forth in Attachment 1 to Joint Exhibit No. 1 were based upon incremental cost studies. The rates do not include a component designed to recover possible revenue shortfalls stemming from traffic reclassification referred to as "lost toll."

19. While the stipulation states that the parties do not adopt the specific cost study methodology advanced by any particular party, the stipulated rate additives are based upon a Long Run Incremental Cost ("LRIC") study approach which was generally endorsed by the parties.

20. The stipulated EAS rate additives would apply to each customer line in the Allen Exchange only and would be in addition to the monthly local exchange rates for each line in the Allen Exchange.

21. The stipulation also calls for a non-recurring charge of $6.85 to be applied to each line at the time service is implemented to recover the non-recurring costs set out in Attachment 2 to the stipulation. The non-recurring charge may be paid over a period of two months at no interest.

22. The non-optional arrangement sought by the City of Allen would provide two-way flat rate calling between the Allen Exchange and the Dallas Metropolitan Local Calling Area and the Fort Worth Extended Metropolitan Service ("EMS") customers.

23. Because of the existence of a unilateral community of interest and the willingness of the Allen Exchange subscribers to bear the entire cost of the service, only the Allen Exchange subscribers will pay the EAS additive rate, even though subscribers in the Dallas Metropolitan Local Calling Area and the Fort Worth Extended Metropolian Service will be able to call the Allen Exchange without an additional charge.

24. A majority of the subscribers in the Allen Exchange would benefit from the implementation of EAS between the Allen Exchange and the Dallas Metro Calling Area at the stipulated EAS rate additives.

25. At a $10.00 rate additive, 76.71 percent of those Allen Exchange subscribers would benefit.

26. A majority of the Allen Exchange subscribers would not benefit at rate levels which recover lost toll; at a $21.00 rate additive, only 47.50% of the Allen Exchange subscribers would benefit.

27. The one issue in this docket on which the parties were unable to agree is whether the rate additive for mandatory EAS between the Allen Exchange and the Dallas Metro calling area should include a component which would compensate SWB and GTSW for the revenues they will lose when the toll traffic between the Allen Exchange and the Dallas Metro calling area is reclassified as EAS traffic.

28. Upon implementation of the requested EAS, SWB and GTSW will experience a loss of toll revenues.

[2] 29. Both SWB and GTSW were able to quantify the impact of the loss of toll revenue; the percentage change in return for SWB was measured by the City of Allen's witness.

[2] 30. The evidence presented by SWB and GTSW with respect to lost toll revenues resulting from the reclassification of traffic was not sufficient to warrant recovery of lost toll in this Docket.

31. The record evidence supports the stipulated EAS rate additives as adequately recovering the incremental cost of implementing the requested EAS. These rates are shown on Attachment 1 of this Order and are incorporated herein for all purposes.

32. EAS, like any flat-rated service, results in low volume users subsidizing high volume users, a phenomenon also referred to as "income transfer."

33. Income transfer becomes a particularly important consideration where EAS is requested on a non-optional basis, as all customers within the requesting exchange will pay the EAS additive every month.

34. At the stipulated rate levels, the phenomenon of income transfer is not as severe as if the lost toll component is included in the EAS rate additive.

35. The parties stipulated to a method for determining whether a majority of subscribers in the Allen Exchange desire EAS at the Commission-approved rates.

CONCLUSIONS OF LAW

1. SWB and GTSW are dominant carriers as defined in Tex. Rev. Civ. Stat. Ann. art. 1446c, § 3(c)(2)(B)(ii) (Vernon Supp. 1988) ("PURA"), and are, therefore, telecommunications utilities subject to the jurisdiction of this Commission.

2. The Commission has jurisdiction over the subject matter of this docket pursuant to sections 16(a), 18 and 61(3) of PURA.

3. The Commission has the authority to order telephone companies to provide extended area toll-free service (EAS) within a specified metropolitan area, provided that two conditions are met. It must be demonstrated first that there is "a sufficient community of interest within the area" and second that "such service can reasonably be provided."

4. The request in this docket is governed by the Commission's EAS rule, P.U.C. SUBST. R. 23.49, which became effective August 6, 1985.

5. This request by the City of Allen for EAS into the Dallas Metro calling area conformed to the filing requirements of P.U.C. SUBST. R. 23.49(b)(1)(B).

6. The community of interest standards set forth in P.U.C. SUBST. R. 23.49(c)(2) were met on a unilateral basis.

7. Resolution No. 645-10-85(R), passed by the City Council of the City of Allen on October 3, 1985, which expressed the City's readiness to bear the

entire cost of providing the requested EAS, met the requirements of P.U.C. SUBST. R. 23.49(c)(3)(B).

8. Resolution No. 660-11-85(R), passed by the City of Council of the City of Allen, which determined that the proposed EAS should be non-optional (mandatory), satisfied the requirements of P.U.C. SUBST. R. 23.49(c)(4).

9. The City of Allen properly represents the Allen Exchange within the meaning and intent of P.U.C. SUBST. R. 23.49(b)(1)(B).

10. The traffic studies submitted by SWB and GTSW establish that the criteria of P.U.C. SUBST. R. 23.49(c)(2) and 23.49(c)(3)(B) have been met; thus a "reasonable degree of community of interest between exchanges" as defined in the EAS rule exists unilaterally from the Allen Exchange to the Dallas Metropolitan Local Calling Area.

11. The costing analyses performed by SWB and GTSW complied with the requirements of P.U.C. SUBST. R. 23.49(e).

12. SWB and GTSW's recommendations for proposed incremental rate additives met the requirements of P.U.C. SUBST. R. 23.49(f).

13. Section 39(a) of PURA does not guarantee any utility the return set by the Commission; rather, rates are established to recover revenues fixed at a level which permits the utility a reasonable opportunity to earn a reasonable return on its invested capital.

[1] 14. The Commission's interpretation of P.U.C. SUBST. R. 23.49(e)(2) is that lost toll revenue may be recovered in the EAS rate additive if the Commission finds it appropriate upon presentation of sufficient evidence by the company.

[2] 15. SWB and GTSW failed to meet their burden of proof to establish the overall revenue effects of providing EAS pursuant to P.U.C. SUBST. R. 23.49(e)(2).

16. The stipulated rates for EAS to the Allen Exchange, as shown on Attachment 1 of the Order, are just and reasonable.

17. The Joint Stipulation entered into by the parties is a reasonable basis for resolutions of the issues in this docket and that adoption of the Stipulation is the basis of the Commission's order in this proceeding is in the public interest.

18. The process set out in Joint Exhibit No. 1 (Stipulation of the Parties) for determining whether a majority of subscribers in the Allen Exchange are willing to subscribe to EAS at the Commission-approved rates is reasonable and complies with P.U.C. SUBST. R. 23.49(g)(2).

The Commission, therefore, orders the following:

1. The request of the City of Allen for non-optional Extended Area Service from the Allen Exchange of Southwestern Bell Telephone Company to the Dallas Metro Calling Area is hereby approved.

2. The Stipulation of the Parties is hereby adopted, a copy of which is attached as Attachment 2, and is incorporated herein for all purposes, and the rates to be charged for the non-optional EAS service for the Allen Exchange shall be those rates contained in Stipulation.

3. SWB and GTSW shall begin the engineering studies as provided in paragraph 11 of the Stipulation and the City of Allen shall begin the balloting process, as provided in P.U.C. SUBST. R. 23.49(g)(2) and as stipulated between the parties. All parties shall abide by the terms of the Stipulation for all further action necessary to effectuate the approval of the EAS application.

4. All motions, applications, and requests for entry of specific Findings of Fact and Conclusions of Law and any other requests for relief, general or specific, if not expressly granted herein, are denied for want of merit.

5. This Order is deemed effective on the date of signing.

SIGNED AT AUSTIN, TEXAS on this the 22nd day of July, 1988.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: Jo Campbell
JO CAMPBELL

SIGNED: Marta Greytok
MARTA GREYTOK

ATTEST:

Phillip A. Holder
PHILLIP A. HOLDER
SECRETARY OF THE COMMISSION

EAS RATE ADDITIVES

	SWB	GTSW	REGROUP	TOTAL
1FB	$13.40	$ 4.95	$ 5.65	$24.00
1FH	$16.00	$ 5.90	$ 6.90	$28.80
1SP	$ 9.05	$ 3.35	$ 6.75	$19.15
TFB	$22.15	$ 8.20	$10.75	$41.10
8FN	$ 7.20	$ 2.70	$ 3.05	$12.95
1MB	$ 8.75	$ 3.25	$ 3.90	$15.90
1FR	$ 5.50	$ 2.05	$ 2.05	$ 9.60
2FR	$ 3.60	$ 1.35	$ 1.30	$ 6.25
4FR	$ 3.05	$ 1.10	$ 1.10	$ 5.25
1MR	$ 2.75	$ 1.00	$ 1.00	$ 4.75

MEMORANDUM DECISIONS

TELEPHONE

Fort Bend Telephone Company, Project No. 8827. Proposed order adopted June 26, 1990. Applicant's request for approval of extended metropolitan exchange service within the Brookshire/Pattison exchange near Houston granted.

GTE Southwest Incorporated, Docket No. 9011. Examiner's Report adopted February 8, 1990. Commission approved parties' stipulation which provided that GTE will include certain information with future applications for approval of CentraNet service contracts. Commission approved second stipulation of the parties that approved GTE's application to provide CentraNet service to the University of North Texas.

Texas Midland Telephone Company, Docket No. 9151. Examiner's Report adopted June 27, 1990. Applicant's request to offer private pay telephone service granted.

Southwestern Bell Telephone Company, Docket No. 9252. Examiner's Report adopted June 26, 1990. Commission approved proposed central office boundary realignment within the San Antonio Metropolitan Exchange.

La Ward Telephone Exchange, Inc., Docket No. 9365. Examiner's Report adopted June 26, 1990. Applicant's request for approval of depreciation rates for general purpose computers granted as modified by the staff recommendations.

Ganado Telephone Company, Inc., Docket No. 9375. Examiner's Report adopted June 26, 1990. Applicant's request for approval of depreciation rates for general purpose computers granted as modified by the staff recommendations.

AT&T Communications of the Southwest, Inc., Docket No. 9404. Proposed Order adopted June 26, 1990. AT&T's application to reduce its rates for Reach Out Texas, to institute a day/evening option, and to waive the $6.00 connection charge for orders received within ninety days after the implementation date of the day/evening option was granted.

ELECTRIC

Central Texas Electric Cooperative, Inc., Docket No. 9310. Examiner's Report adopted on June 7, 1990. Commission approved revised tariff that incorporated both compliance audit recommendations and new line extension provisions.