

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter G. ADVANCED SERVICES.

§26.143. Provision of Advanced Services in Rural Areas.

- (a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §55.014 regarding the provision of advanced services to facilitate connection of end users to the Internet. This section is also intended to promote the policy, pursuant to PURA §51.001(g), that customers in all regions of this state have access to advanced telecommunications and information services.
- (b) **Application.** This section applies to a company electing under PURA Chapter 58 or a company that holds a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA). This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.
- (c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) **Advanced services provider** -- Any entity that offers or deploys advanced services, such as a holder of a certificate of convenience and necessity, a COA, a SPCOA, a cable company, a fixed wireless company, a satellite company, or any other provider of an advanced service.
 - (2) **Advanced telecommunications services** — Any retail telecommunications services that, regardless of transmission medium or technology, are capable of originating and receiving data transmissions for the purpose of accessing the Internet with a speed of at least 200 kilobits per second in the last mile in one direction and with a speed of at least 128 kilobits a second in the last mile in the opposite direction.
 - (3) **Advanced services** — Any retail services that, regardless of transmission medium or technology, are capable of originating and receiving data transmissions for the purpose of accessing the Internet with a speed of at least 200 kilobits per second in the last mile in one direction and with a speed of at least 128 kilobits a second in the last mile in the opposite direction. An advanced service includes any advanced telecommunications service.
 - (4) **Company** — A telecommunications utility electing under PURA Chapter 58 or an entity that holds a COA or a SPCOA that provides advanced telecommunications services in urban areas of this state and provides local exchange telephone services in a rural area seeking provision of advanced services.
 - (5) **Reasonably comparable or similar services** — Any services that meet the definition of an advanced service. Each advanced service is substitutable for any other advanced service.
 - (6) **Rural area or rural service area** — Any community located in a county not included within any Metropolitan Statistical Area (MSA) boundary, as defined by the United States Office of Management and Budget, and any community within an MSA with a population of 20,000 or fewer not adjacent to the primary MSA city.
 - (7) **Urban area or urban service area** — A municipality in this state with a population of more than 190,000.
- (d) **Provision of advanced services.**
- (1) **Requirement to provide an advanced service.**
 - (A) A company that provides advanced telecommunications services within the company's urban service areas shall, on a Bona Fide Retail Request for service, provide in rural areas served by the company advanced services that are reasonably comparable to the advanced telecommunications services provided in urban areas. The company shall provide such advanced services to the retail customer(s) seeking service through a Bona Fide Retail Request determined by the commission under this section:

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- (i) at reasonably comparable prices, terms, and conditions to the prices, terms, and conditions for similar advanced telecommunications services provided by the company in proximate urban areas; and
 - (ii) within 15 months after notice of the Bona Fide Retail Request for those services is published in the *Texas Register*.
- (B) A company that provides advanced services in a rural area pursuant to a Bona Fide Retail Request shall provide advanced services to any subsequent retail customer(s) located within 14,000 26-gauge cable feet or its equivalent of the same central office as determined for the original Bona Fide Retail Request under this section:
 - (i) at reasonably comparable prices, terms, and conditions to the prices, terms and conditions for similar advanced services provided by the company in proximate urban areas; and
 - (ii) within a reasonably comparable period of time as the period of time a company provides advanced telecommunications services to the company's subsequent retail advanced services customers located in proximate urban areas.
- (C) A company meets the requirement of providing a reasonably comparable advanced service if the company has provided the requested or a reasonably comparable advanced service in accordance with this section either:
 - (i) directly; or
 - (ii) through a business arrangement with an advanced services provider.
- (D) A company shall not be required to provide advanced services in a rural area when an advanced services provider is already providing advanced services in the rural area seeking an advanced service at the time of the Bona Fide Retail Request or within 15 months after notice of the Bona Fide Retail Request is published in the *Texas Register*. When determining if another provider is already providing an advanced service in a rural area, the commission shall, with information available to the public, consider:
 - (i) whether an advanced services provider is actively marketing an advanced service in the rural area;
 - (ii) whether an advanced services provider is offering, directly or indirectly, installation and repair services for facilities and equipment necessary for the provision of the advanced service;
 - (iii) whether customers in the rural area are able to receive installation and repair services necessary for facilities and equipment;
 - (iv) whether the price of installation and repair services are reasonably comparable to prices in proximate urban areas; and
 - (v) whether an advanced services provider or distributor is located within or near the rural area.
- (E) The absence of an Internet service provider is a factor to be considered, but necessarily an exception, when requiring a company to provide advanced services in a rural area.
- (F) This section may not be construed to require a company to:
 - (i) begin providing services in a rural area in which the company does not provide local exchange telephone service;
 - (ii) provide advanced services in a rural area of this state unless the company provides advanced telecommunications services in urban areas of this state; or
 - (iii) provide a specific advanced service or technology in a rural area.

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- (2) **Reasonably comparable price, terms, and conditions.** Advanced services provided by a company to a rural area pursuant to paragraph (1) of this subsection must be provided at prices, terms, and conditions that are reasonably comparable to the prices, terms, and conditions for similar advanced telecommunications services provided by the company in proximate urban areas.
- (A) Reasonably comparable prices.
- (i) If a monthly retail price for an advanced service is within 140% of the monthly retail price of the advanced telecommunications service offered in the same company's proximate urban service area, there shall be a rebuttable presumption that the price is reasonably comparable. A promotional rate for an advanced telecommunications service shall not be considered a monthly retail price if it is offered for less than four months.
- (ii) When considering whether a price is reasonably comparable, the commission shall consider the distance, terrain, and features of the rural area seeking the advanced service.
- (iii) A company may rebut the 140% presumption by showing that a higher price is necessary to recover its reasonable costs in providing the advanced service.
- (iv) Any interested person may rebut the 140% presumption by showing that a lower price will allow a company to recover its reasonable costs in providing the advanced service.
- (v) Any company or interested person seeking to rebut the 140% presumption by showing that a higher or lower price is warranted must do so during the Commission Selection Proceeding under subsection (f)(4) of this section. Any dispute regarding a company's reasonably comparable price must be resolved during the Commission Selection Proceeding under subsection (f)(4) of this section.
- (B) Reasonably comparable terms and conditions.
- (i) Reasonably comparable terms and conditions are those terms and conditions applicable to the provision of advanced services in a rural area that are similar to the terms and conditions for advanced telecommunications services provided by the same company in proximate urban areas.
- (ii) A company may require a term commitment for all persons seeking advanced services under a Bona Fide Retail Request. When considering whether a term commitment is reasonably comparable, the commission shall consider the distance, terrain, and features of the rural area seeking the advanced service.
- (e) **Requesting competitive response for provision of advanced services.** A person(s) in a rural area seeking provision of an advanced service shall first submit a request for a competitive response for provision of those services. The request need not conform to the requirements of a Bona Fide Retail Request unless the requesting person(s) intends to seek provision of an advanced service under the Bona Fide Retail Request process in subsection (f) of this section.
- (1) **Requesting advanced services.**
- (A) Any person(s) in a rural area seeking the provision of advanced services shall submit a written request to the commission for posting on the commission website.
- (B) The written request must include the name, address, and telephone number of a contact person.
- (C) Within five working days after receipt, the commission shall post the request for advanced services on the commission's website.

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- (D) The commission shall post on the commission website:
 - (i) the name, address, and telephone number of the contact person;
 - (ii) the number of lines requested;
 - (iii) the number of customers requesting service;
 - (iv) the location of the rural area seeking the advanced service; and
 - (v) any other information the commission deems relevant.
- (2) **Competitive response.**
 - (A) After posting on the website, any company or advanced service provider may submit to the contact person a proposal to provide advanced services to the person(s) seeking advanced services.
 - (B) Proposals must be submitted to the contact person within 50 days after the request was posted and provide for deployment of the advanced service within 15 months after the request was posted by the commission.
 - (C) The person(s) seeking advanced services may negotiate with and select a provider based upon all of the proposals received.
 - (D) If no advanced services provider has committed to provide advanced services to the person(s) submitting a request within 60 days after the request was posted by the commission, the contact person shall notify the commission. Upon notification, the contact person may ask that the commission establish a proceeding to determine that the request is a Bona Fide Retail Request.
- (f) **Bona Fide Retail Request process.**
 - (1) **Commission proceeding to determine a Bona Fide Retail Request.**
 - (A) Upon request under subsection (e)(2)(D) of this section, the commission shall determine whether a request is a Bona Fide Retail Request. This request may be processed administratively.
 - (B) Any interested person may present written comments or objections, setting forth the basis of any facts in dispute, regarding whether the request is a Bona Fide Retail Request under this section.
 - (2) **Bona Fide Retail Request.** A Bona Fide Retail Request must:
 - (A) include a written request for at least 150 lines for service within 14,000 26-gauge cable feet or its equivalent of the same central office in a rural area;
 - (B) contain the name, address, telephone number, and signature of the retail customer(s) seeking service, the advanced service(s) requested, and the date of the request;
 - (C) contain the name, address, and telephone number of a contact person;
 - (D) state whether an advanced services provider is already providing, is contracted to provide, or is willing to provide advanced services in the rural area seeking the advanced service; and
 - (E) state whether an Internet service provider is providing or commits to provide functional Internet connectivity in the rural area seeking the advanced service.
 - (3) **Notice of Bona Fide Retail Request.** After determination that a request is a Bona Fide Retail Request, the commission shall:
 - (A) notify electronically or by mail all companies electing under PURA Chapter 58 and all COA and SPCOA holders of the Bona Fide Retail Request;
 - (B) post notice of the Bona Fide Retail Request on the commission website; and
 - (C) publish notice of the Bona Fide Retail Request in the Texas Register.
 - (D) The commission shall include in the notification, post on the commission website, and publish in the Texas Register:
 - (i) the name, address, and telephone number of the contact person;
 - (ii) the number of lines requested;
 - (iii) the number of customers requesting service;

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- (iv) the location of the rural area; and
 - (v) any other information the commission deems relevant.
- (4) **Commission selection proceeding.** After notification of the Bona Fide Retail Request, the commission shall establish a proceeding to select the company or companies obligated to provide an advanced service.
 - (A) **Company response.** Each company subject to this section for the rural area seeking advanced services shall submit a proposal for the provision of one or more advanced services to the retail customer(s) seeking service through the Bona Fide Retail Request determined by the commission under this section.
 - (i) Each company shall submit its proposal within 30 days after publication of the Bona Fide Retail Request notice in the Texas Register.
 - (ii) All proposals shall comply with the requirements of subsection (d) of this section.
 - (iii) A company required to submit a proposal may contest the obligation to serve by setting forth the basis of its challenge. The company must, however, file its proposal as required by this subsection.
 - (B) **Company response exemption.** A company subject to this section for the rural area seeking advanced services is presumed to be exempt from the requirements of this subsection and is not required to submit a proposal for the provision of advanced services if, at the time the Bona Fide Retail Request is published in the *Texas Register*, the company served fewer than 150 local exchange telephone service lines within 14,000 26-gauge cable feet or its equivalent of the same central office as determined for the Bona Fide Retail Request under this section in the last month of the most recent quarterly reporting period submitted to the commission pursuant to Local Government Code, Chapter 283.
 - (C) **Commission determination.** Within 150 days after notice of the Bona Fide Retail Request is published in the *Texas Register*, the commission shall determine the selected company or companies obligated to serve the retail customer(s) seeking service through the Bona Fide Retail Request determined by the commission under this section.
 - (D) **Selection criteria.** When selecting the company or companies obligated to serve, among other factors the commission may deem relevant, the commission shall consider:
 - (i) the overall quality of telecommunications service in the rural area;
 - (ii) the characteristics and attributes of network facilities in the rural area;
 - (iii) the terrain and geographic features of the rural area;
 - (iv) the number of local exchange telephone service providers in the rural area;
 - (v) the population and population density of the rural area;
 - (vi) the number of local exchange telephone service customers the company serves in the rural area;
 - (vii) the manner or method by which the company provides local exchange telephone service in the rural area;
 - (viii) whether a company that provides local exchange service through resale or unbundled network element platform can purchase advanced services through resale or unbundled network element platform in the rural area;
 - (ix) the extent to which the selection may prohibit or have the practical effect of prohibiting the ability of any company to provide local exchange telephone service in rural areas;
 - (x) a company's planned response for subsequent requests for service within 14,000 26-gauge cable feet or its equivalent of the same central office as determined for the original Bona Fide Retail Request under this section;

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- (xi) the method by which the company would provide an advanced service in the rural area; and
- (xii) whether a company provides service in proximate urban areas to the rural area seeking advanced services.