

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

§26.227. Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.

- (a) **Application.** This section applies to any electing company as the term is defined in the Public Utility Regulatory Act (PURA) §58.002 who chooses to offer nonbasic services and/or exercise pricing flexibility for basic and nonbasic services through informational notice filings. Other sections applicable to an electing company include, but are not limited to, §26.224 of this title (relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies), §26.225 of this title (relating to Requirements Applicable to Nonbasic Services for Chapter 58-Electing Companies) and §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies). Notwithstanding other provisions of this section, PURA §55.003 and §55.004 do not apply to the retail services offered by an electing company, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.
- (b) **Purpose.** The purpose of this section is to establish procedures for an electing company that chooses to provide an informational notice to introduce nonbasic services, including new services, and/or to exercise pricing flexibility for basic and nonbasic services, and for complaints regarding service offerings introduced through informational notice filings.
- (c) **Informational notice filing and notice requirements related to pricing flexibility and nonbasic services, including new services.**
- (1) **Notice requirements.**
- (A) General notice requirements. An electing company shall provide the informational notice in compliance with this section to the commission, to the Office of Public Utility Counsel (OPC), and to any person who holds a certificate of operating authority in the electing company's certificated area or areas, or who has an effective interconnection agreement with the electing company.
- (B) Unless an interconnection agreement contract specifies otherwise, an incumbent local exchange carrier shall continue to provide to affected resellers of retail services the same notice of rate changes or withdrawal of detariffed services that it was required to provide prior to detariffing.
- (2) **Filing requirements:**
- (A) Filing of informational notice and confidential information. At the time the informational notice is filed in Central Records, a copy of the informational notice, including confidential information, shall be delivered to OPC. In addition to the record copy, an additional copy of any confidential information shall be filed in Central Records for use by the commission staff.
- (i) The commission shall assign each informational notice a unique control number and shall stamp the tariff sheets "received".
- (ii) The commission staff shall file any notice of deficiencies for incomplete filings not in compliance with this section or pleading alleging that the service offering is inappropriately filed as an informational notice filing within three working days after the date of the filing of the informational notice.
- (iii) Within two working days after the date of the commission staff's filing, the applicant shall file an explanation of the actions it has taken or intends to take in response to a notice or pleading filed under clause (ii) of this subparagraph.
- (B) Effective date. A service offering shall be effective no earlier than ten days after the electing company files a complete informational notice with the commission.

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- (C) Access to confidential information. Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff and OPC, upon execution of a commission approved protective agreement, at the time the informational notice is filed.
- (D) Format of filing. An informational notice under this section must include the following elements:
 - (i) name of company;
 - (ii) PURA chapter under which company operates;
 - (iii) date of submission;
 - (iv) effective date;
 - (v) new and/or revised tariff pages, written in plain language and conforming with §26.207 of this title (relating to Form and Filing of Tariffs); except that an informational notice filing that cross-references the rates, terms, and/or conditions of the utility's interstate switched-access tariff for an equivalent service may be considered sufficient. To implement concurrence of a utility's federal interstate switched-access tariff and its Texas intrastate switched-access tariff, the utility in the informational notice portion of its initial filing shall reference the uniform resource locator (URL or worldwide web address) on the Federal Communications Commission (FCC) website specific to the interstate switched-access tariff. Additionally, the utility shall reference the URL on the utility's commercial website specific to the intrastate switched-access tariff either in the informational notice portion of the filing or in the page(s) attached to the informational notice portion of the filing. Thereafter, the utility must notify the commission, in an informational notice filing, within 10 business days of any changes to the referenced concurring interstate rates. In any such filing, the utility shall provide in the informational notice portion of its filing the corresponding FCC Transmittal Number, reference the URL on the FCC website specific to the transmittal, specify which rate elements changed, and reference the URL on the utility's commercial website specific to the intrastate switched-access tariff. The utility must also file an update to any URL(s) referenced in its intrastate tariff within 10 business days of any changes to such URL(s). If switched-access rates are no longer required to concur with federal rates, a new tariff must be filed;
 - (vi) proposed implementation date (if different from effective date);
 - (vii) affidavit of notice to OPC, COA holders, and parties to interconnection agreements;
 - (viii) type of filing (new service; pricing flexibility involving basic service; non-basic only pricing flexibility; packaging, term and volume discount or promotional offering regulated by PURA §58.004; customer specific contract; customer specific contract regulated by PURA §58.003; promotional offering);
 - (ix) relevant Long Run Incremental Cost (LRIC) study or LRIC study reference, and relevant support materials (confidential/proprietary/protected materials provided to commission only). When LRIC studies for which commission approval has not been obtained are provided with an informational notice filing, an application for approval of that LRIC study must be filed pursuant to the standards in §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs)) or §26.215 of this title (relating to Long Run

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- Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services), as applicable, to establish a LRIC floor and shall be filed before or simultaneously with the informational filing. The electing company shall file a notice of intent to file LRIC studies pursuant to §26.214 or §26.215 of this title no later than ten days prior to the filing of the LRIC study;
- (x) a response of “yes,” “no,” or “not applicable,” with explanatory language to the following question: “Is the sum of the Total Element Long Run Incremental Cost (TELRIC)-based wholesale prices of components needed for provision of the retail service at or below the retail price set forth in this filing?” If the response is “yes” or “no,” the filing must identify the components needed for the provision of the retail service, along with a list of relevant wholesale and retail prices;
 - (xi) a response of “yes” or “no” to the following question: “Is the service available for resale by a competitor? If the answer is “no,” does the proposed price meet the standards set forth in §26.274(f) - (h) of this title (relating to Imputation)?” For purposes of this question, “available for resale” means:
 - (I) the service is not subject to tariffed resale restrictions; and
 - (II) the electing company is not aware of any constraints that would prevent a competitor from functionally provisioning the service to the competitor’s customers in parity with the electing company’s provisioning of the service to the electing company’s customers;
 - (xii) for package offerings that combine regulated products or services with unregulated products or services and/or with the products or services of an electing company’s affiliate, an affidavit indicating that the price of the package, in addition to the requirements of §26.226(d)(1) of this title, also recovers the cost to the electing company of acquiring and providing the unregulated products or services or the affiliate’s products or services. The affidavit shall also indicate that the cost to the electing company of acquiring and providing an affiliate’s products or services is greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to an electing company of acquiring or providing the affiliate’s products or services shall be valued in a manner consistent with FCC requirements and with §26.226(d)(5) of this title. For a joint marketing effort that includes regulated products or services and the products or services of an affiliate, an affidavit shall be provided by each affected affiliate attesting that the affiliate’s costs are recovered in a manner consistent with §26.226(d)(5) of this title and FCC requirements, if any;
 - (xiii) description of the offering’s terms and conditions, including location of service or a statement that it is to be provided state-wide; and
 - (xiv) a privacy concerns statement.
- (d) **Disputes as to sufficiency or appropriateness of informational notice filing.**
- (1) If the electing company advises the commission by written filing that a dispute exists with respect to a notice of deficiency or the inappropriateness of an informational notice, and requests the assignment of an administrative law judge to resolve the dispute, the commission will consider the dispute to be a contested case.

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- (2) A contested case will also exist if the commission files a complaint addressing sufficiency or appropriateness of an informational notice filing.
 - (3) Parties other than the commission staff may not challenge the sufficiency of an informational notice filing.
- (e) **Complaints regarding service offerings introduced by informational notice filings.** An affected person, OPC, or the commission may file a complaint at the commission on or after the date the informational notice has been filed. The filing of a complaint will initiate a contested case.
- (1) A complaint addressing an informational notice filing may challenge whether the filing is in compliance with PURA and/or commission substantive rules.
 - (2) If a complaint challenging the price of a new service is resolved in a final order issued by this commission in favor of the complainant, the electing company shall either:
 - (A) not later than the tenth day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or
 - (B) discontinue the service.
 - (3) The commission shall dismiss a complaint filed prior to the filing of an informational notice on the grounds that the commission lacks jurisdiction to hear the complaint.
 - (4) All complaints shall be docketed and governed by the commission's procedural rules and shall be filed and reviewed pursuant to the following requirements:
 - (A) Complaints shall be captioned: COMPLAINT BY {NAME OF COMPLAINANT} REGARDING TARIFF CONTROL NUMBER(S) {NUMBER(S)} {STYLE OF TARIFF CONTROL NUMBER}.
 - (B) Processing. The commission shall assign each complaint filed with respect to an informational notice a unique control number. The presiding officer shall cause a copy of each complaint, bearing the assigned control number, to be filed in the relevant tariff control number(s) for the related informational notice filings.
 - (5) The commission staff shall have standing in all proceedings related to informational notice filings before the commission, and may intervene by filing a notice of intervention, at any time prior to determination on the merits. No motion is necessary for such intervention.
 - (6) A complaint filed pursuant to this section shall be considered to be an exception to the informal resolution requirements of §22.242(c) of this title (relating to Complaints).
- (f) **Interim relief.** A tariff for a new service introduced by an informational notice may not be suspended during the pendency of any complaint. All other tariffs introduced by informational notice filings will remain in effect during the pendency of any complaint unless interim relief suspending the tariff is granted pursuant to this subsection.
- (1) Any request that a tariff be suspended during the pendency of a complaint must meet the following requirements:
 - (A) the pleading must state an appropriate and bona fide cause of action;
 - (B) the pleading must be verified or supported with affidavits based on personal knowledge; and
 - (C) the pleading must set forth the following elements: probable right of recovery, probable and irreparable injury in the interim, and no adequate alternative remedy.
 - (2) The presiding officer shall schedule a hearing on interim relief in the form of suspension of a tariff on an expedited basis.
 - (3) The burden of proof shall be upon the complainant with respect to each element of proof necessary to obtain any interim relief requested by the complainant.

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- (g) A telecommunications provider that is not subject to rate-of-return regulation under PURA, Chapter 53:
 - (1) may, but is not required to, maintain on file with the commission tariffs, price lists, or customer service agreements governing the terms of providing service;
 - (2) may make changes in its tariffs, price lists, and customer service agreements in relation to services that are not subject to regulation without commission approval; and
 - (3) may cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rates.

- (h) A telecommunications provider may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if the provider:
 - (1) files written notice of the withdrawal with the commission; and
 - (2) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website.