

**PROJECT NO. 31957**

<b>RULEMAKING TO MODIFY</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>PAYPHONE RULES AND TO</b>	<b>§</b>	
<b>ADDRESS ACCESS LINE CHARGES</b>	<b>§</b>	<b>OF TEXAS</b>
<b>TO COMPLY WITH PURA SEC.</b>	<b>§</b>	
<b>55.1735</b>	<b>§</b>	

**ORDER ADOPTING AMENDMENTS TO §26.345 AND §26.346  
AS APPROVED AT THE JANUARY 25, 2007 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §26.345, relating to Posting Requirements for Pay Telephone Service Providers, and §26.346, relating to Rates and Charges for Pay Telephone Service, with changes to the proposed text as published in the August 4, 2006 issue of the *Texas Register* (31 TexReg 6162). The amendments: (1) change the notice requirements for payphone placards by adding text to §26.345(a)(3); (2) add a clause to §26.346(a) to comply with the Public Utility Regulatory Act (PURA) §55.1735, regarding charges for pay phone access lines; (3) replace the term “pay telephone services” with the abbreviation “PTS” in §26.346(b)(1); and (4) add new subparagraph (3) to §26.346(b) to make the rule consistent with PURA §§58.051, 58.151 and 58.152, regarding Chapter 58 electing companies. These amendments are adopted under Project Number 31957.

The commission received comments on the proposed amendments from the Texas Payphone Association (TPA), Southwestern Bell Telephone Company, L.P. d/b/a AT&T Texas (AT&T Texas), and the Office of Public Utility Counsel (OPC). No reply comments were received and no party requested a public hearing on the proposed amendments. All comments were fully considered by the commission. Parties’ comments addressed specific subsections of the amendment and are summarized in order below.

*Comments on §26.345(a)(3)*

Proposed §26.345(a)(3) requires that a placard be attached to each pay phone that provides the name, address, and telephone number for the telephone owner or agent providing the set, and the name and toll-free telephone number of the owner or agent responsible for refunds and repairs, and that such placard must be kept current at all times and the commission must be notified in writing within 30 days of any change to the owner's telephone number or physical address. The commission has experienced a number of inquiries from pay phone customers indicating he or she was unable to contact the pay telephone service (PTS) provider either because the information on the placard contained outdated information or because the placard did not exist.

TPA agreed that the 30-day notification requirement of any changes in the telephone number and address of the PTS provider was adequate and TPA did not object to this part of the amendment. TPA suggested that the language that requires PTS providers to "maintain current information at all times" was not necessary. TPA opined that the rule already requires that information be kept on the placard attached to pay phones, and implicit in that requirement is that the information be correct and current. AT&T Texas provided no specific comments on this proposed change.

OPC recommended that the commission instead grant a reasonable grace period of seven calendar days rather than the excessive allowance of 30 days. OPC opined that the PTS provider planned such changes long before the actual change date and the commission would be acting reasonably if it required notice by the change date, especially for larger providers with multiple

pay telephones. OPC recommended that notice be “due” by the date of the change, with a seven-day grace period intended to assist providers less familiar with commission rules.

*Commission response*

The commission agrees with TPA that the 30-day notification requirement for PTS providers to notify the commission of any changes in the telephone number and address is both adequate and provides sufficient time for PTS providers to comply with this provision. The commission recognizes this requirement imposes a burden on PTS providers. The thirty-day notification *requirement* should ease that burden so that any PTS provider can timely submit the change of information to the commission in accordance with the rule.

Further, the commission believes the recommendation proposed by OPC attempts to ease the burden on those PTS providers less familiar with the commission’s rules. The commission believes that, because the notice requirement as proposed is easily understood and fairly applied, there is no need to accommodate one particular type of PTS provider. The commission believes that the rule as proposed is sufficient to enable PTS providers to provide the commission and consumers with the required information in a reasonably timely manner. For these reasons, the commission declines to make any changes to this portion of the rule and adopts §26.345(a)(3) as proposed.

*Comments on §26.346(a)*

The proposed amendment to §26.346(a) was intended to make the rule consistent with the provisions of PURA §55.1735, which provides that the charge or surcharge a local exchange company charges for an access line used to provide PTS may not exceed the amount of the charge or surcharge for an access line used for regular business purposes in the exchange where the pay phone is located. TPA stated that it supported the change as it accurately implements PURA §55.1735, “Charge for Pay Phone Access Line.” OPC supported the amendment as proposed.

*Commission response*

**The commission agrees with TPA and OPC that the proposed change accurately implements PURA §55.1735. The commission believes that the proposed change is consistent with PURA §55.1735 and adopts the change as proposed.**

*Comments on §26.346(b)(1)*

The proposed change merely removes the words “pay telephone service” as the acronym “PTS” is already included in the subsection. The acronym “PTS” is previously defined as standing for “pay telephone service” in §26.345(a). TPA stated that it does not object to this minor, “house-keeping” edit.

*Commission response*

**Consistent with the comments, the commission adopts the change as proposed.**

*Comments on §26.346(b)(1)(F)*

The proposed rule would have replaced the distance-sensitive rate schedule in §26.346(b)(1)(F) with a single capped rate for intrastate long distance and operator-assisted calls at Texas pay phones. TPA commented that there is no basis for the proposed rate change in Senate Bill 5 (SB5) and it is doubtful the commission can show that the proposed changes comply with PURA §55.177, "Charge for Credit Card, Calling Card, or Operator-Assisted Calls." TPA pointed to PURA §55.177 that requires that (a) a provider may not impose for a credit card, calling card, or live or automated operator-assisted call a rate or charge that is greater than the authorized rates and charges published on March 18, 1995, in the eight newspapers having the largest circulation in this state, and (b) the published rates may not be changed.

TPA argued that the proposed changes result in an arbitrary increase in charges of up to 32% for consumers on long distance rates for calls within 0-55 miles, as well as an arbitrary decrease in revenue by as much as 14% for pay phone providers on calls from 56 miles and over. TPA argued that the commission failed to identify any justification for such a change and argued that the commission should consider the potential negative impact it will have on the pay phone industry and consumers and reject the proposed change.

Further, TPA stated that the proposed flat rate, determined by averaging all of the rates in the table, is inaccurate and unsatisfactory. TPA posited that a more prudent way to establish a rate change would be to open a proceeding, collect relevant data from the industry, and establish a flat rate that will harm neither the consumer nor the PTS provider.

OPC stated that it generally supported the goal of simplifying the PTS rates but that this rulemaking does not appear to be the appropriate place for such a significant ratemaking change. OPC suggested that an appropriate ratemaking proceeding would at least involve a collection of data regarding costs and rates, along with an opportunity for interested parties to contest the data and proposed new rates.

*Commission response*

**The commission is persuaded by the comments of TPA. Specifically, the commission relies upon PURA §55.177(a) that establishes that a PTS provider may not impose a rate or charge that is greater than the authorized rates and charges published on March 18, 1995, in the eight newspapers having the largest circulation in this state. Moreover, PURA §55.177(b) expressly states that the published rates may not be changed. Therefore, the commission declines to adopt the proposed amendment to §26.346(b)(1)(F).**

*Comments on §26.346(b)(3)*

The proposed language is intended to make clear that certain requirements of §26.346(b) do not apply to PURA Chapter 58 electing local exchange companies. TPA objected to this proposed amendment. TPA argued that the provision of PURA that essentially deregulated electing local exchange companies (LECs) was implemented long before SB5. TPA argued that there has been no need for an express exemption for electing LECs to date as electing LECs know whether or not they are subject to commission-mandated rate caps. Further, TPA stated that the electing LECs have practically ceased to provide pay phone service at all and that adding the proposed language would confuse the pay phone service providers that do continue to provide service.

OPC proposed that the words “do not apply” be changed to “may not apply” given that it is not clear whether all electing local exchange companies are entirely exempt from §26.346(b)(1)(B) and (D) through (F).

*Commission response*

The commission believes the addition to this subsection makes the rule consistent with PURA §58.051, Services Included (Nonbasic Services), §58.151, Services Included (Basic Services), and §58.152, Prices. Section 58.051(a)(6) lists private pay telephone access service as a basic network service and §58.151(18) lists services from public pay telephones as nonbasic services. Section 58.152(a) permits an electing company the option to set the price for any nonbasic service at any level above the lesser of the service’s long run incremental cost or the price for the service in effect on September 1, 1999. Thus, electing companies are not subject to certain provisions of §26.346(b), namely those that pertain to rate caps for certain types of calls. The commission does not agree with TPA’s statement that electing LECs have practically ceased to provide pay phone service at all. Electing LECs do continue to provide PTS and the commission believes that the addition is necessary and in no way confusing to PTS providers. The commission does not agree with OPC that changing “do not apply” to “may not apply” in the final sentence of the proposed change would clarify the intent of the rule or that clarification is necessary. The commission adopts the changes as proposed.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, 55.1735, 55.1759, 58.051, 58.151, and 58.152.

**§26.345. Posting Requirements for Pay Telephone Service Providers.**

- (a) The pay telephone service (PTS) provider must attach to each instrument a card that provides:
- (1) instructions in English and Spanish for accessing emergency service subject to the conditions contained in subparagraphs (A) and (B) of this paragraph:
    - (A) where E-911 or 911 emergency service is available, the caller must be instructed to dial 911 and the PTS provider must allow E-911 or 911 calls to be outpulsed directly to the Public Service Answering Point at no charge and without requiring a coin or credit card; or
    - (B) where E-911 or 911 is not available, the caller must be instructed to dial "0" and dialing "0" must, at no charge and without requiring a coin or credit card, directly connect the caller with an operator service provider (OSP) that is in compliance with the technical standards set forth in §26.321(b) of this title (relating to 9-1-1 calls, "0-" calls, and End User Choice);
  - (2) instructions for use, including specifically instructions for completion of local and toll calls, access to operator services, access to directory assistance, obtaining refunds, obtaining repair service, registering complaints at a designated toll-free telephone number, reporting out-of-service conditions, and using one-way calling (if the instrument is so equipped); and
  - (3) notice stating the name, address, and ten digit telephone number for the pay telephone owner or agent providing the set, and providing the name and toll-free telephone number of the owner or agent responsible for refunds and repairs; the

PTS provider shall maintain current information on the placard at all times and shall notify the commission in writing of any changes to the business telephone number of the pay telephone owner, or changes of the physical address from which the pay telephone owner operates, within thirty calendar days of such change; and

- (4) if an extension has been attached, a notice that legibly and conspicuously states in capital letters: "YOUR CONVERSATION MAY BE OVERHEARD BECAUSE AN EXTENSION TELEPHONE IS ATTACHED TO THIS PHONE LINE."; and
  - (5) a placard that clearly states the fee for completing a local call from that telephone.
- (b) PTS providers must also attach to each instrument a card that says: "The long distance carrier serving this phone is {insert name of the pre-subscribed long distance telecommunications service provider}. You can learn what its rates are by calling {insert long distance telecommunications service providers' toll-free rate information phone number} at any hour at no cost to you. If you would rather use another long distance carrier, you can either use {insert name of incumbent local exchange provider}'s operator by calling {insert dialing directions here}, or use your own long distance carrier by following its dialing instructions or asking the operator for assistance."
- (c) If the PTS provider subscribes to the services of an operator service provider (OSP) that is required to comply with Subchapter M of this chapter (relating to Operator Services), the PTS provider remains liable for compliance with this section, but may coordinate with the OSP so that information to be provided at the pay telephone set is not duplicated. If the PTS provider uses automated call completion technology to complete

some operator service calls and subscribes to the services of an OSP that is required to comply with Subchapter M of this chapter, the PTS provider must ensure that the information provided at the pay telephone set clearly informs the caller about which information applies to which operator service calls.

- (d) If a pay telephone cannot receive incoming calls, the PTS provider shall place in a conspicuous location on the pay telephone a notice, in letters one-quarter inch high, stating, "THIS TELEPHONE CANNOT RECEIVE TELEPHONE CALLS." Furthermore, the PTS provider shall not display the number of the pay telephone on any such telephone that does not receive incoming calls.
- (e) The requirements of this subsection do not apply to pay telephones accessible to inmates of confinement facilities.
- (f) **Applications for modification of information to be provided at the pay telephone set.**  
The commission may approve applications for modification of the requirements contained in subsection (b) and (c) of this section upon showing of good cause by the PTS provider. The commission shall process applications for modification using the criteria and procedures set forth in §26.317(c) of this title (relating to Information to be Provided at the Telephone Set).

**§26.346. Rates and Charges for Pay Telephone Service Providers.**

- (a) **Rate structure.** Certificated telecommunications utility (CTU) rates for wholesale service must be designed on a flat access line and/or a local message usage rate basis. Multi-element measured rates are prohibited. In areas without measuring capabilities, the CTU may use a flat rate usage surrogate instead of a per call message rate. Measurement capabilities are defined as the capability in place to measure and bill pay telephone usage without incurring unreasonable expense. The charge or surcharge a CTU imposes for an access line used to provide pay telephone service (PTS) in an exchange may not exceed the amount of the charge or surcharge the CTU imposes for an access line used for regular business purposes in that exchange.
- (b) **Charges.**
- (1) A PTS provider must:
    - (A) not impose on pay phone end users any charge for calls made under Chapter 771 or 772 of the Texas Health and Safety Code;
    - (B) not impose a charge for "950-XXXX" calls, "1010XXX+0", or "1-800" or "1-888"-type calls to nonpresubscribed interexchange carriers (for example "1-800-COLLECT", "1-800-CALLATT", or "1-800-877-8000");
    - (C) not impose a charge for local calls from pay telephones to the Telecommunications Relay Service (TRS);
    - (D) for local calls which are collect, operator-assisted or paid by credit card or calling card, not impose a charge which exceeds the highest applicable

rate for such calls of any of the four largest interexchange carriers operating in this state; and

(E) for credit card, calling card, or live or automated operator-handled toll calls, not charge a rate or total charge that exceeds the authorized rates and charges listed in subparagraph (F) of this paragraph.

(F) charge no more than these rate caps for intrastate long distance and operator- assisted calls at Texas pay phones:

Mileage	1st Min.	Add'l Min.
0 - 10	.2975	.2625
11 - 22	.3150	.2975
23 - 55	.3325	.3150
56 - 124	.3675	.3500
125 - 292	.4025	.3850
293 - Over	.4200	.4025
<b>Operator Service Charges:</b>		
Customer-Dialed Calling Card Station		\$2.50
Operator-Dialed Station		\$3.75
Person To Person		\$4.50
Long Distance Access Fee		\$1.00

(2) The requirements of paragraph (1)(A) through (C) of this subsection do not apply to pay telephones accessible to inmates of confinement facilities.

(3) The requirements of paragraph (1)(B) and (D) through (F) of this subsection do not apply to electing local exchange companies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.345, relating to Posting Requirements for Pay Telephone Service Providers, and §26.346, relating to Rates and Charges for Pay Telephone Service Providers, are hereby adopted with changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2007.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PAUL HUDSON, CHAIRMAN**

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**JULIE PARSLEY, COMMISSIONER**

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**BARRY T. SMITHERMAN, COMMISSIONER**