

RULEMAKING PROCEEDING § **PUBLIC UTILITY COMMISSION**
TO AMEND SUBSTANTIVE RULES §
RELATING TO § **OF TEXAS**
TELECOMMUNICATIONS SERVICE §
TO CONFORM TO 2011 LEGISLATION §

**ORDER ADOPTING AMENDMENTS TO §§26.5, 26.22, 26.23, 26.27, 26.29,
26.54, 26.73, 26.89, 26.124, 26.128, 26.134, 26.141, 26.171, 26.205, 26.208,
26.211, 26.217, 26.219, 26.226, 26.227, 26.229, 26.230, AND 26.401
AS APPROVED AT THE MARCH 7, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §§26.29, 26.73, 26.124, 26.128, 26.134, 26.205, 26.208, 26.211, 26.226, 26.229, and 26.401 with no changes to the proposed text as published in the December 23, 2011, issue of the *Texas Register* (36 TexReg 8697 and §§26.5, 26.22, 26.23, 26.27, 26.54, 26.89, 26.141, 26.171, 26.217, 26.219, 26.227 and 26.230 with changes to the proposed text as published in the December 23, 2011, issue of the *Texas Register* (36 TexReg 8697. The amendments amend commission substantive rules relating to telecommunications service to conform to 2011 legislation, which includes Senate Bills (S.B.) 773, 980, and 983, and House Bills (H.B) 2295 and 2680 of the 82nd Legislature, Regular Session (Telecom Legislation). These amendments are adopted under Project Number 39585.

The commission received comments on the proposed amendments from Sprint Communications Company, L.P., Texas Cable Association and TW Telecom of Texas, L.L.C. (Joint Commenters).Office of Public Utility Counsel (OPUC), Verizon (GTE Southwest Inc. d/b/a Verizon Southwest, Verizon Enterprise Solutions LLC, Verizon Long distance LLC, MCImetro Access Transmission Services LLC d/b/a Verizon Business Services and Cellco Partnership and

its commercial mobile radio service provider subsidiaries operating in the state of Texas d/b/a Verizon Wireless), Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T), Texas Telephone Association (TTA), TEXALTEL, and Texas Statewide Telephone Cooperative, Inc. (TSTCI).

ISSUES APPLICABLE TO MULTIPLE RULE SECTIONS

(1) Cites to Public Utility Regulatory Act (PURA)

AT&T stated that the most streamlined way to update commission rules would be to cross-reference the new statutory language rather than incorporate it into the rules. By using such an approach, future statutory changes would not require a project of the magnitude of the instant project. AT&T also suggested that the commission eliminate unnecessary rules and allow PURA to speak for itself. As justification for its proposal, AT&T stated that PURA §14.001 provides that the "commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction." AT&T argued that where the plain language of PURA requires no rules for implementation, no commission rules are reasonably required. A simplified approach that would require rules only where necessary for proper implementation of a statutory revision would facilitate rapid, efficient implementation of future changes to PURA and thereby accommodate resource issues.

AT&T offered up some language that would be added at the end of the current preface to §26.5 (relating to Definitions), to reduce any possible confusion where PURA and Chapter 26 contain similar or identical language. AT&T specifically identified the following rules as ones that should either be completely eliminated or should cite to PURA instead of the proposed

language: §§26.5(67), 26.5(103), 26.5(120), 26.5(142), 26.5(252), 26.5(263), 26.5(266), 26.22, 26.23, 26.54, 26.73, 23.128, 26.134, 26.217, 26.219, and 26.401.

Verizon agreed with AT&T that the commission should rely on the plain language of PURA where the statutes are clear rather than making detailed revisions to commission substantive rules relating to telecommunications service.

TEXALTEL disagreed with AT&T's argument that the commission rules should be brief and just refer to statutory provisions rather than repeating them. TEXALTEL argued that many providers are "casual" users of the commission's rules operating in multiple states and may not have a lot of regulatory expertise. For these companies to go back and forth between PURA and the rules to determine what is required, would in many cases require more expertise, patience, and persistence than many smaller providers are likely to have. TEXALTEL posits that even where PURA is clear and complete, the commission should repeat important provisions in rules because it provides greater assurance that all providers will understand and comply with such requirements.

The Joint Commenters replied that AT&T's proposed language to insert the phrase "except as provided by PURA" in place of the commission's proposed language is seriously flawed and should be rejected for at least four reasons. Those reasons are:

- (1) Statutory language is rarely so clear and straightforward that affected parties uniformly agree on its proper interpretation or application.

- (2) Adopting AT&T's approach would directly and adversely impact the notice and comment rulemaking process that is fundamental to administrative law. The substantive rules would remain static and there would be no public notice of and forum for commenting on the implications of legislative changes.
- (3) Even small changes to PURA have broad ramifications for competition.
- (4) Commission rules are the primary source of information on the nature and extent of regulatory obligations applicable to providers of telecommunications services. Having to go back and forth between PURA and the substantive rules in order to determine regulatory requirements is inefficient at best and likely to cause errors at worst. From a compliance perspective, continuing the current practice of embodying all of PURA's requirements, and its definitions, in the commission's rules is the better course of action.

Commission Response

The commission agrees with the Joint Commenters that the commission should reject AT&T's proposed language to insert the phrase "except as provided by PURA" in place of the commission's proposed language. The commission finds that its proposed language adds clarity to the requirements in PURA. Moreover, the commission is cognizant of the fact that there are many telecommunications providers that operate in numerous states and embodying PURA's requirements and definitions in the commission's substantive rules provides a more efficient way for these providers to keep abreast of these regulatory requirements.

(2) Price Lists

Verizon stated that it revised certain rules to include references to "price list" where the legislation makes clear that filing or relying upon a price list or product guide, rather than a tariff, is an option for telecommunications providers. Verizon claimed that S.B. 980 "allows telecommunications providers that are not subject to rate of return regulation under Chapter 53 to have tariffs or price lists governing the terms of providing service." Specifically, Verizon submitted that if the final rules do not include necessary references to "price list," the rules could cause confusion. Sections that Verizon claimed should be revised to include "price list" are: §§26.23(a)(1)(B), 26.27, 26.28, 26.29, 26.207, 26.224, 26.412, and 26.413. Verizon proposed to add a definition for "price list," consistent with S.B. 980.

Commission Response

The commission disagrees with Verizon that S.B. 980 gave telecommunications providers the right to operate under price lists or product guides rather than its tariffs. There is no language in S.B. 980 that permits a telecommunications provider to substitute a price list or product guide for a tariff. Further, the commission does not find that ILECs can file "price lists" or product guides in lieu of tariffs, or that this was the intention of the new legislation. PURA §52.007, which was enacted by S.B. 980 §4, lists what a telecommunications provider that is not subject to rate of return regulation under Chapter 53 may do with its tariffs, price lists, and customer service agreements (CSAs). Such a telecommunications provider: (1) may, but is not required to, maintain on file with the commission tariffs, price lists, or CSAs governing the terms of providing service; (2) may make changes in its tariffs, price lists, and CSAs in relation to services that are not subject

to regulation without commission approval; (3) may cross-reference its federal tariff in its state tariff if the provider's intrastate switched access rates are the same as the provider's interstate switched access rates; and (4) may withdraw a tariff, price list, or CSA not required to be filed or maintained with the commission. In summary, the commission finds that PURA §52.007 describes what these providers are allowed to do with tariffs, price lists, and CSAs with regard to (1) maintaining them on file with the commission, (2) making changes to them, and (3) withdrawing them. Additionally, PURA §52.007 allows these providers to simply cross reference federal tariffs in their state tariffs under certain conditions. The commission finds that the language of PURA §52.007 does not provide a means for these providers to replace tariffs with price lists or product guides. Therefore, the commission declines to add "price list" in the above referenced sections. Although Verizon requested that a definition of price list be added to the commission's rules, it did not propose a specific definition and the commission concludes that adding a definition is unnecessary.

ISSUES APPLICABLE TO INDIVIDUAL RULE SECTIONS

Section 26.5 - Definitions -

Section 26.5(111) Informational Notice -

AT&T asserted that because of the changes in PURA §65.152, which eliminate the obligation for transitioning companies to file informational notices, and the proposed changes to P.U.C. SUBST. R. §26.227 and §26.230, the definition of "Informational Service" should be revised. AT&T provided proposed revisions to this definition.

TTA commented that the language should be revised to say "may" instead of "required to."

In its reply comments, the Joint Commenters contend that the language proposed by AT&T and TTA is unnecessary and would cause confusion since it would suggest that ILECs may choose to comply with an informational notice that in some instances is required by PURA.

Commission Response

The commission has changed the definition to refer to a notice that is filed if required by PURA Chapters 52, 58, or 59.

Section 26.5(120) Internet Protocol Enabled Service -

AT&T asserted that S.B. 980 was intended to make it clear that internet protocol enabled services are not subject to the jurisdiction of the commission, therefore the definition should not be added to the substantive rules.

The Joint Commenters replied that the commission should reject AT&T's argument. The Joint Commenters rely on their argument to include PURA regulatory requirements and definitions in commission substantive rules as outlined in *Issues Applicable to Multiple Rule Sections - Cites to PURA*.

Commission Response

The commission agrees with the Joint Commenters that the definition of Internet Protocol Enabled Service should be included in commission substantive rules for clarity.

Section 26.5(166) Packaged Service -

OPUC filed comments in support of the proposed definition for packaged service. OPUC explained that after having some discussions with Mr. Daniel Gibson, the attorney representing TSTCI, OPUC and TSTCI reached a common understanding that: (1) PURA §54.251 requires that certificate of convenience and necessity (CCN) or certificate of operating authority (COA) holders must offer basic local telecommunications service (BLTS) to each customer in the certificated area; (2) customers are never required to take an optional service in order to receive BLTS; and (3) there may be other obligations imposed on carriers under PURA §56.023(b) and §54.301 to provide BLTS.

Verizon asserted that a definition for packaged service should not be added to the substantive rules because these have been offered for many years and the terms are commonly understood. Verizon added that, because there are many different types of packaged services, to try and define this term would only cause confusion and could result in restrictions on what can be offered. Consistent with its position on citing to PURA rather than inserting unnecessary language in the substantive rules, Verizon stated that to add this definition would add to the regulatory burden.

The Joint Commenters opined that commission rules have addressed incumbent local exchange carrier (ILEC) packages and promotional services for many years without the need for a definition for "packaged service" or "promotional service." They went on to say that if it is now necessary to define "packaged service," then the commission should not inadvertently or

unnecessarily limit the commission's jurisdiction regarding the possible types of packages or promotions. Therefore, the Joint Commenters recommended that the commission modify the definition to add "*or rates*" at the end of the sentence.

Commission Response

The commission agrees with the Joint Commenters' proposed revision to add "or rates" to the definition for clarity purposes.

Section 26.5(188) Promotional Service -

OPUC filed comments in support of the commission's proposed definition.

Verizon asserted that a definition for promotional service should not be added to the substantive rules. The company's arguments for not adding this definition were the same as those for "packaged service."

The Joint Commenters expressed the same opinion about "promotional service" as they did for "packaged service." The Joint Commenters recommended that if the commission finds it is necessary to define "promotional service," then it should modify the definition of "promotional service" to be "a service offered to customers at promotional rate *or rates*."

Commission Response

The commission agrees with the Joint Commenters' proposed revision to add "or rates" to the definition to provide clarity.

Section 26.5(267) Voice over Internet Protocol Service -

TTA commented that the language should be revised to say "and/or" rather than "and."

In its reply comments, the Joint Commenters stated that the commission's proposed definition accurately tracks the language of PURA §51.002(13), which state that "Voice over Internet Protocol Service" "permits a user generally to receive a call that originates on the public switched network and to terminate a call..." The Joint Commenters stated that the statutory wording requiring that service be two-way has substantive meaning. The Joint Commenters went on to say that absent any showing of legislative intent to change this to one-way services, they are opposed to making the changes recommended by TTA.

Commission Response

The commission agrees with the Joint Commenters that no revision should be made to this definition in order to track PURA language.

Section 26.5(270) Wireless Provider -

OPUC stated that it supports the proposed definition of wireless provider. OPUC explained that in the strawman rule, it had proposed moving the definition of wireless provider to §26.134 instead of §26.5 to limit the applicability of the definition. However, OPUC stated that because the commission modified the definition in the Proposal for Publication to reflect the comments filed by various parties, it supports the definition and does not see that the definition needs to be moved to §26.134.

AT&T argued that the term requires no definition because PURA §65.052 uses the term interchangeably with "commercial radio service provider" as that term is defined in §64.201.

In its reply comments, the Joint Commenters recommended that the commission reject AT&T's proposal to delete the commission's proposed definition of wireless provider. The Joint Commenters stated that the commission has proposed to add the definition of a "wireless provider," so in addition to a "commercial radio service provider," the wireless provider may be counted as a competitor operating in the same market that an ILEC seeks to deregulate pursuant to PURA §65.052.

Commission Response

The commission agrees with the Joint Commenters that the definition of "wireless provider" should be included in commission substantive rules to provide clarity.

Section 26.22 - Request for Service

Section 26.22(a)(1) - The Joint Commenters suggested clarifying §26.22(a)(1) by adding "a" to "A deregulated company that holds a certificate of operating authority is not obligated to be a provider of last resort. A transitioning company is not obligated to be a provider of last resort in a deregulated market."

Commission Response

The commission agrees with the Joint Commenters and adopts its proposed revision to provide clarity.

Section 26.23 - Refusal of Service

Verizon stated that §26.23 should be modified to reflect the changes made in S.B. 980 §16 and §17 that relieve deregulated companies of the provider of last resort (POLR) obligations and transitioning companies of the POLR obligations in deregulated markets. Additionally, Verizon commented that subsection (b)(3)(B) should be changed to refer to an "NCTU's" tariffs instead of a "DCTU's" tariffs.

Commission Response

The commission agrees with Verizon that §26.23 should be modified to reflect the changes in S.B. 980 that relieve deregulated companies of the POLR and transitioning companies of the POLR in deregulated markets. The commission also agrees that the reference to DCTUs in subsection (b)(3)(B) should be changed to NCTUs.

Section 26.27- Bill Payment and Adjustments

The Joint Commenters suggested modifying subparagraph (A) in §26.27(b)(3) by adding "price" before "list, terms and conditions of service," and adding "price" before "list" in subparagraph (B) to clarify that a "list" is a "price list."

Commission Response

The commission agrees with the Joint Commenters and adopts its proposed revision to provide clarity.

Section 26.54 - Service Objectives and Performance Benchmarks

The Joint Commenters suggested non-substantive changes to §26.54(a) by inserting the phrase "in a market that is deregulated" and striking "that indicates a need."

Commission Response

The commission agrees with the Joint Commenters and adopts its proposed revision to provide clarity.

Section 26.73 - Annual Earnings Report

AT&T proposed that it would be more efficient to add as a preface to the existing language of §26.73, "except as otherwise provided in Chapter 65 of PURA."

Joint Commenters stated that the rule should require recipients to make public their financial reports, to be consistent with S.B. 980's directive in PURA §56.023(d) that the commission make the Texas Universal Service Fund (TUSF) more transparent. Joint Commenters also stated that in recent years, even publicly-held companies required by the Securities and Exchange Commission (SEC) to publicly file the same or similar information on a company-wide basis have filed their Texas earnings reports confidentially. The Proposal for Publication currently requires a deregulated or transitioning company to file an earnings report only if the company is receiving support from the Texas High Cost Universal Service Plan (THCUSP). Joint Commenters suggested modifying the language to require a deregulated or transitioning company to file an earnings report for the immediately preceding year in which support was received, to ensure that there is a publicly available earnings report for any calendar year that a

company received a subsidy. AT&T replied that Joint Commenters' proposal violates the language of newly enacted PURA §65.102(a)(2)(C) and 65.152(b)(2), which both state that deregulated and transitioning companies are not required to file an earnings report with the commission "unless the Company is receiving support from the [THCUSP]." Additionally, AT&T said that it would be unlawful for the commission to adopt a rule that would require a company to publicly divulge information otherwise excepted from required disclosure under Texas Government Code §552.101 of the Open Records Act. AT&T noted that the public may request to view confidential earnings through the Open Records Act.

Joint Commenters also proposed language prohibiting publicly-held companies from filing earnings reports confidentially pursuant to this section. AT&T replied that this conflicts with §22.71(d), which states that a "party providing material designated as confidential shall deliver them to Central Records in an enclosed, sealed, and labeled envelope." Verizon asserted that earnings reports are filed confidentially because they contain competitively sensitive financial and commercial information. AT&T also stated that there is no merit to the Joint Commenters' argument that public disclosure of confidential earnings reports would be relevant to a company's "need" for financial assistance from THCUSP or a company's solvency without such assistance. Verizon replied that the administration of the TUSF is sufficiently and reasonably "transparent" without the requirement that earnings reports be filed publicly. AT&T replied that, by law, recipients of TUSF support are not required to establish an independent financial need for such support to avoid insolvency. AT&T noted that PURA §56.026(a) expressly states that a revenue requirement showing is not required for a disbursement from the universal service fund under that chapter. In addition, Verizon stated that TUSF recipients must file quarterly

reports with the commission showing the amount of TUSF receipts received, which complies with PURA §56.023(d). AT&T and Verizon recommended that Joint Commenters proposal be rejected.

Commission Response

PURA §56.023(d) requires commission rules that ensure reasonable transparency and accountability in the administration of the TUSF. This requirement is outside the scope of this rulemaking and will instead be addressed in *Rulemaking to Consider Amending Substantive Rule §26.420, Relating to Administration of the Texas Universal Service Fund Pursuant to PURA §56.023(d), Project Number 39939.*

Section 26.89 - Information Regarding Rates and Services of Nondominant Carriers

AT&T supported the proposed resolution of the concerns it raised about the strawman rule. Joint Commenters opined that the proposed amendment to Subsection (a) would make optional, after a filing of a letter to the commission, the submission of the information on services and rates currently required of nondominant carriers. Joint Commenters also claimed that this letter filing would have no relevance once a nondominant carrier ceases to file service and rate information and instead posts that information on its website. Joint Commenters suggested that either the updating requirement be eliminated and subsection (a) be deleted from the rule, or that it be changed to a notice filing that states that the carrier has posted on its website its services and rates, and sets forth the carrier's URL. Joint Commenters also recommended that the proposed rule language explicitly require that service offering and rate information be prominently displayed as a menu item on the home page of company websites so that the

information can be easily found. Joint Commenters also urged that the rule require that the information posted on company websites be updated continually to reflect changes in service offerings, rates, and terms. AT&T replied that such requirements do not appear in PURA §52.007(c), and that the Legislature did not direct the commission to adopt rules establishing additional detariffing requirements. AT&T further asserted that if the Legislature had intended the Internet posting to be "prominently displayed" as a menu item on the company's homepage, it would have imposed such a requirement in the law itself, but did not. AT&T recommended the commission not adopt Joint Commenters' proposal to impose customer notice and Internet posting requirements beyond those set forth in the statute. In its reply comments, Verizon stated that Joint Commenters' proposed comments involve regulation of an ILEC's website configuration, which is not authorized by the statute and would micromanage how the web posting is made.

TEXALTEL opined that the commission should adopt tariff withdrawal procedures for competitive local exchange carriers (CLECs) similar to the procedures for ILECs outlined in PURA §52.007, as PURA §52.002(c) prohibits requirements more burdensome on CLECs than those for ILECs. TEXALTEL proposed adding new Subsection (d) to state that 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 files written notice of the withdrawal with the commission, and notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website. Verizon replied that PURA §52.007 applies to "a telecommunications provider that is not subject to rate of return regulation under Chapter 53," which means it applies to

CLECs as well as ILECs. Therefore, Verizon stated, TEXALTEL's proposed rule revision to Section 26.89 is unnecessary.

Commission Response

PURA §52.007(c) provides for the withdrawal of a tariff, price list, or customer service agreement if the telecommunications provider "files written notice of the withdrawal with the commission" and "notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on the telecommunications provider's Internet website." This provision does not require that the notice to the commission or customers provide details on the posting of the information on the provider's website. The provider is free to determine the location of the information on its website and may choose to change the location of the information, without any obligation to the commission or any non-contractual obligation to customers to provide notice of the specific location of the information on the website. The commission adds new subsection (d) to the rule to conform to PURA 52.007(c). Lastly, the commission agrees with Verizon that TEXALTEL's proposed rule revision is unnecessary, because PURA §52.007 and §26.89 apply to CLECs.

Section 26.128 - Directory Distribution

The Joint Commenters argued that there is a competitive impact to allowing a dominant telecommunications utility to distribute directories electronically. The Joint Commenters explained that ILECs are obligated to provide directories to CLECs pursuant to existing interconnection agreements that require the ILECs to make directories available to CLEC

customers in the same manner as the ILECs provide directories to their own customers - upon request and free of charge. The Joint Commenters expressed concern that the ILECs would charge CLEC customers for directories, and the directories should not make any attempt to market or otherwise promote the ILEC's telecommunications services. The Joint Commenters provided some suggested revisions to the commission's proposed language.

Verizon replied that the commission should reject the Joint Commenters' proposal to revise §26.128 concerning the distribution of directories. Verizon explained that it relies on a third-party publisher that deals with requests for directories. This publisher does not compete with the CLEC and it provides a contact number for the purpose of taking requests for phone directories. Verizon went on to say that §26.133, which establishes a code of conduct for the business and marketing activities of certificated telecommunications providers should address any concerns that the Joint Commenters have regarding Verizon's marketing practices. Verizon also added that the Joint Commenters' proposal requiring an ILEC to accept periodic submissions of an electronic file from the CLEC that identifies CLEC customers requesting a directory would be burdensome and unworkable.

AT&T's reply comments mirrored those made by Verizon regarding the Joint Commenters' proposed revisions to §26.128. In addition to those comments, AT&T argued that how ILECs provide wholesale services to CLECs are governed by detailed interconnection agreements (ICAs), including dispute resolution processes and prohibitions against improper contact with CLEC end-users.

Commission Response

The commission rejects the Joint Commenters' proposed revisions. S.B. 980 allowed a dominant telecommunications utility to distribute directories electronically. It did not place any additional requirements on the dominant telecommunications' utility such as those proposed in the Joint Commenters' proposed revisions.

Section 26.134(e) - Rural Exemption

The Joint Commenters argued that because the commission may no longer prevent deregulation of a market based on its population, then it no longer is good public policy for the commission's rules to condition the mandatory removal of the 47 U.S.C. §251(f)(1) exemption on the population of a deregulated market. The Joint Commenters also suggested that the commission delete "with a population of less than 30,000" from the current rule and that no reference to a population of less than 100,000 be added.

In its reply comments, the Joint Commenters argued that, given the expanded opportunities conferred by S.B. 980 for ILECs to seek deregulation, it is appropriate at the same time to remove barriers to competitive entry. They added that it no longer makes sense as a matter of public policy for the commission's rules to condition mandatory removal of the 47 U.S.C. §251(f)(1) rural exemption on the population of a deregulated market. Therefore, the Joint Commenters recommended the deletion of "with a population of less than 30,000" from the current rule and that no reference to a population of less than 100,000 be added.

Commission Response

The commission rejects the Joint Commenters' recommendation that the mandatory removal of the 47 U.S.C. §251(f)(1) rural exemption not be based on the population of a deregulated market. The commission notes that the criteria established to determine whether a company is eligible for a rural exemption waiver is dictated by the Federal Communication Commission (FCC) and not this commission. Furthermore, rural exemption issues are beyond the scope of this rulemaking project, which is to conform commission substantive rules relating to telecommunications to 2011 legislation. S.B. 980 §15 speaks only to markets that may be deregulated; it does not address any rural exemption issues.

Section 26.141 - Distance Learning, Information Sharing Programs, and Interactive Multimedia Communications

AT&T requested clarity on the new definition of "health center" in subsection (a)(3), commenting that the change attempts to address S.B. 773, which added "health centers" as eligible entities to the discount program mandated under H.B. 2128 in 1995. AT&T stated that it has not been made clear that §26.141 actually relates to the school, library, and hospital discounts in H.B. 2128 and extended by S.B. 773, opining that the rule appears to relate to distance learning, informational sharing programs, and interactive multimedia communications addressed in PURA Chapter 57. AT&T proposed a rewrite of this rule to address both Chapter 57 distance learning and information sharing discounts as well as discount program authorized in 1995 by Chapter 58 (Subchapter G) and Chapter 59 (Subchapter D), amended by S.B. 773, and either revise this section to refer to PURA or reformat and add new Subsection (c) to

incorporate the applicable PURA language. AT&T stated that, in regards to Subsection (f) on customer-specific contracts, the rule does not appear to relate to discounts or pricing of telecommunications infrastructure that interconnects eligible public entities under H.B. 2128.

Commission Response

The commission is persuaded by the comments of AT&T to rewrite the rule and adopts changes consistent with its comments.

Section 26.171 - Small Company Regulatory Flexibility

TSTCI identified subsections (b) and (c)(1)(L) as using the term "statement of intent" and noted that it needed to be changed to "notice." TSTCI also noted that language in subsection (c) should be changed to read "how notice was or will be provided" to enable companies to provide notice to customers prior to, or simultaneously with, the filing of the commission notice. TSTCI and TTA commented that the ten-day time period for the presiding officer to notify the ILEC of deficiencies is not practical. TTA stated notice from the presiding officer of a deficiency would not allow time to delay the implementation of changes to a billing system and/or switch translations. TSTCI suggested that the commission be given no more than 7 days from the filing of the commission notice to identify a deficiency. TTA suggested changing the time period for the presiding officer to notify the company of deficiencies to 7 days. TSTCI also noted that the commission uses the term "proposed" notice when, in fact, the notice would already have been issued and suggested that the language be worded differently. TSTCI commented that subsection (d) includes reference to paragraph (5), which was eliminated in staff's proposed rule. In reply comments, TSTCI noted that TTA made comments similar to those of TSTCI regarding

the timeline for a notice of deficiency from the presiding officer and suspensions due to customer complaints. TSTCI re-urged the seven-day time line suggested by both parties in their initial comments.

TSTCI emphasized that the purpose of H.B. 2680 was to enable minor changes to address policy concerns and provide an ability to respond quickly to the needs of a competitive market, and expressed concerns that staff's proposal requires a few changes to align the rule with the intent of the legislation. TSTCI noted that subsection (d) provides affected persons with 30 days following completion of notice to petition for a review of the proposed change. TSTCI commented that a petition could potentially be successful 20 days after the effective date of the change and should be changed to conform to the ten-day timeline established in H.B. 2680. TSTCI also raised concerns about the timing of the filing of the affidavit of notice under subsection (d)(4), recommending that the commission allow a company to file an affidavit of notice to customers simultaneously with the filing of the commission notice. TSTCI noted that it would not make sense to have the affidavit filed prior to the filing of the commission notice. TSTCI and TTA raised concerns about subsection (g)(2), which provides a 150-day suspension period, noting that statutory intent for flexibility and quick response is defeated with a lengthy suspension of the tariff. TSTCI and TTA noted that the draft rule establishes a process whereby customers have 30 days to complain about a minor change. TTA stated that this is a problem, because the legislature clearly intended for a ten-day period for customers to complain. TSTCI commented that under the proposed suspension timeline a company facing suspension prior to the effective date of a tariff would be better served by withdrawing its commission notice, correcting issues, and re-filing under the ten-day notice timeline. TSTCI noted that the

suspension timeline was appropriate under the old law but believes a more appropriate suspension period, when necessary, could prevent this unnecessary process. In addition, TSTCI and TTA commented that with the 30- day petition for review window, a tariff may be suspended after the effective date. TSTCI noted that this could result in a suspension of the tariff after a billing cycle and stated that it does not believe a suspension of the tariff is efficient or meets the intent of the legislation and should be changed to reflect the ten-day timeline established in H.B. 2680. If the commission does not agree to make changes to subsections (d)(3)(D) and (g)(2), TSTCI requested that the commission clarify how the process of suspension would apply after the effective date of the change.

TTA commented that no small rural ILEC minor change filed under PURA §53.306 has ever received the required number of complaints to suspend a tariff, and noted that that may change with the increase in the cap on rate increases. TTA also raised concerns about the ability of small rural ILECs to increase local rates quickly in order to meet the new federal local rate benchmarks. TTA questioned the legality of suspending a tariff that has already become effective stating that once it is effective it is the controlling document and has the effect of law under the filed rate doctrine.

In reply comments, TSTCI reiterated TTA's comment that small rural ILECs may be required to increase local rates quickly in order to meet new federal benchmarks, and noted that a lengthy suspension delaying implementation, or a suspension after implementation, would clash with legislative intent of Texas law and the federal regulatory compliance of the companies. TSTCI noted that it concurred with TTA that, to be consistent with the abbreviated notice process

created by the legislature, the timeline in subsection (g)(2) for suspension and the complaint period in subsection (d)(3)(D) should be amended. TSTCI noted that the complaint period should be less than ten days for the same reasons that a notice of deficiency should be given prior to implementation. TTA stated that any suspension or delay in implementation should happen prior to the new tariff going into effect. TSTCI also reemphasized that a 150-day suspension period does not meet with the legislative intent of the abbreviated time frames.

Commission Response

The commission agrees that the term "statement of intent" should be changed to "notice," the term "proposed notice" in (c)(2) is no longer appropriate, and that references in subsection (d) should not include reference to paragraph (5). The commission has adopted those recommendations. The commission also believes that it is important to make clear to ILECs that customer notices can be filed prior to the filing of a commission notice; therefore, the commission has changed (c)(1)(B) to read "how notice was or will be provided." The commission agrees that subsection (d)(4) should be modified to allow an ILEC to file an affidavit simultaneously with the commission notice, and has therefore modified the language to state that an ILEC shall file the notice "no later than" seven calendar days following the completion of notice.

The commission declines to shorten the ten-day time period for the presiding officer to notify the ILEC of deficiencies. The ten-day period is needed so that commission staff can review the application for deficiencies and file a pleading reflecting its findings, and the presiding officer can review staff's pleading and issue an order on the issue.

PURA §53.305 requires the ILEC to provide notice of the proposed change to affected customers before the effective date of the proposed change. H.B. 2680 amended subsection (b) to reduce from 61 to ten the minimum number of days between when notice is provided and the effective date of the proposed change. However, H.B. 2680 made no other changes to subsection (b), and therefore the notice still must include an explanation of the customer's right to petition the commission for review of the proposed change. In addition, no changes were made to PURA 53.306, which requires the commission to review a proposed change if a sufficient number of customers complain or if certain affected intrastate access customers complain. Before the enactment of H.B. 2680, PURA did not contain a deadline for customers to complain, and H.B. 2680 did not add a deadline. As a result, PURA gives the commission the discretion to set a deadline. Existing §26.171(g)(2) sets a deadline of 30 days after the completion of customer notice for customers to complain. The commission did not propose to change that deadline in this rulemaking because it continues to believe that it is reasonable. By comparison, §22.104 of this title (relating to Motions to Intervene) generally provides for an intervention deadline of 45 days. In addition, under PURA §33.101(a), the lesser of 10,000 or five percent of the ratepayers of a municipally owned utility who are outside of the municipality may appeal to the commission a rate change. In that case, under PURA §33.103 the petition must be filed with the commission no later than 45 days after the date the municipality issues a written report on the rate change, which is required to occur no later than the 14th day after the municipality's final decision to change rates. Thus, the deadline set by the

commission to complain pursuant to PURA §53.306 about a proposed change is relatively short, and is a reasonable period for such complaints.

A ten-day or less deadline for customers to complain about a proposed change would be unreasonably short. If an ILEC chooses to file a proposed change with the commission the minimum ten days before the effective date, then the proposed change will go into effect ten days after it is filed, but the change may subsequently be suspended. Under H.B. 2680, an ILEC has the discretion to provide only ten days' notice before the effective date, and may choose to exercise that discretion if it believes that the change will not be suspended or that the billing problems that would be caused by suspension are outweighed by early implementation of the change. However, the ILEC has the discretion to provide sufficient notice of the effective date of the proposed change to avoid the risk that the change will go into effect and be subsequently suspended.

PURA §53.306 requires the commission to review a proposed change if one of five criteria are met, and permits the commission to suspend the proposed change during the review. The 150-day suspension period in the rule provides an appropriate period of time for the commission to review a proposed change, and it is consistent with the 150-day suspension period in PURA §53.108 for a rate change filed pursuant to PURA Chapter 53, Subchapter C. If the commission does not need the entire suspension period to complete its review, it can terminate the suspension period in a final order with an effective date prior to the end of the suspension period.

Section 26.207 - Form and Filing of Tariffs

AT&T and TTA pointed out that as a result of the newly enacted PURA §52.007, telecommunications providers are no longer required to maintain tariffs, price lists, or CSAs on file with the commission. AT&T explained that §26.207(c) states that "no utility shall charge any rate or impose any terms or conditions different from those prescribed in its effective tariff filed with the commission." Because of the newly enacted §52.007, AT&T recommended that the commission delete the phrase "filed with the commission" in subsection (c). In its reply comments, the Joint Commenters urged the commission to reject all proposed changes to rules that are not part of this proceeding because the parties were not properly notified that changes to these rules could result from this proceeding and therefore were not provided an opportunity to file comments regarding these rules.

Commission Response

The commission declines to make changes to §26.207, because such changes are outside the scope of this rulemaking.

Section 26.208 - General Tariff Procedures

Verizon and AT&T Texas proposed to add language to subsection (a) indicating that DCTUs electing to list products and services in a price list are exempt from this section, pursuant to PURA §52.007. AT&T Texas also suggested that in lieu of including this language, subsection (a) be modified to incorporate PURA §52.007 by reference. In addition, Verizon proposed to add language to subsection (i) that DCTUs not subject to rate of return regulation may make changes to tariffs, price lists, and customer service agreements for services not subject to rate of

return regulation without commission approval, also pursuant to PURA §52.007. In its reply comments, Joint Commenters recommended that Verizon's modification be further amended to more closely comport with PURA §52.007.

Commission Response

The commission rejects the proposal of AT&T to incorporate PURA by reference. See *Issues to Applicable to Multiple Sections - (1) Cites to PURA*. PURA §52.007 makes it clear that telecommunications providers not subject to rate of return regulation are allowed to make changes without commission approval. The commission notes that the purpose of this section as defined in subsection (b) is to establish a process for review of DCTU tariff applications. The commission finds it unnecessary to add language to the rule that is beyond the stated purpose of that rule.

Section 26.209 - New and Experimental Services

Verizon recommended that a sentence be added to subsection (a) stating that a transitioning company is exempt from this section. Verizon further stated that amended PURA §65.152(a) allows transitioning companies to exercise pricing flexibility and introduce new services subject only to price/rate standards in PURA §65.153 and §65.154. Joint Commenters replied that, absent publication in the Texas Register, interested parties were not properly notified that changes to these rules could result from this proceeding and were thus afforded no opportunity to file comments concerning this rule or any other rule not set forth in the published notice. Further, Joint Commenters argued that the proposed changes to these rules would penalize

parties that would urge changes to other rules not part of this rulemaking. Joint Commenters therefore urged the rejection of all proposed changes to rules not part of this proceeding.

Commission Response

The commission declines to make changes to §26.209, because such changes are outside the scope of this rulemaking.

Section 26.211 - Rate-Setting Flexibility for Services Subject to Significant Competitive Challenge

Verizon recommended that a sentence be added to subsection (a) stating that a transitioning company is exempt from this rule, citing amended PURA §65.152, that provides for a transitioning company's ability to exercise pricing flexibility and introduce new services subject only to the price and rate standards in PURA §65.153 and §65.154. AT&T supported the proposed changes in subsections (b), (c)(1)(B), and (c)(7)(B), and the resolution of concerns raised in the draft rule version on subsection (d)(2).

Commission Response

The commission disagrees with Verizon's suggestion to add language to Subsection (a) exempting transitioning companies from the rule. Transitioning companies are not bound to P.U.C. SUBST. R. §26.211; rather §26.230 would apply for rate-setting flexibility for services subject to competition. Therefore, language exempting transitioning companies from the rule is unnecessary. Therefore, Verizon's recommended additional sentence exempting transitioning companies from this rule is unnecessary.

Section 26.217 - Administration of Extended Area Service (EAS) Requests

AT&T noted that the Proposal for Publication incorporated the statutory language of PURA §55.026. AT&T recommended two options: that subsection (a) either be modified to read "except as provided by Section 55.026" or that, because a telecommunications provider can no longer be required to provide new extended area service (EAS) plans, §26.217 be repealed in its entirety.

TSTCI requested more clarification, stating it understood that S.B.980 created PURA §55.026 to allow, but not require, future EAS applications. It stated that further changes are required to allow small ILECs to offer EAS under regulatory flexibility provisions of §26.171 and many requirements of this section could be eliminated if joint applications were allowed.

Commission Response

The commission rejects AT&T's proposals. While legislative changes no longer allow the commission to mandate EAS, companies are still permitted to apply for EAS, and therefore the section is still relevant and should not be repealed. TSTCI's proposals consider further changes to be made to the EAS application process, which the commission believes to be outside the scope of the rulemaking, which is to conform the commission's rules to the legislative changes. All changes related to EAS applications made pursuant to the legislative changes have been appropriately done here.

Section 26.219 - Administration of Expanded Local Calling Service Requests

AT&T recommended that subsection (a) be modified to read "Except as provided in PURA Section 55.026" or that, because a telecommunications provider can no longer be required to provide Expanded Local Calling Service, §26.219 be repealed in its entirety. TSTCI requested additional clarification on this section. TSTCI stated that, if the rule is determined to still be necessary, the reference to extended area service in the amended text should be changed to expanded local calling services. While TSTCI understands that future expanded local calling services applications would not be permitted and much of §26.219 would be removed, Staff has indicated that future expanded local calling services applications are still permitted. In this case, TSTCI believes changes should also be made to allow small ILECs to offer expanded local calling under the regulatory flexibility provisions of §26.171.

Commission Response

The commission rejects AT&T's proposals. While legislative changes no longer allow the commission to mandate expanded local calling service, companies are still permitted to apply for expanded local calling service, and therefore the section is still relevant and should not be repealed. TSTCI's proposals consider further changes to be made to the EAS application process, which the commission believes to be outside the scope of the rulemaking, which is to conform the commission's rules to the legislative changes. The commission asserts that all changes related to EAS applications made pursuant to the legislative changes have been appropriately done here. The commission accepts TSTCI's suggestion to correct the typographical error in Subsection (a) and therefore changes "extended area service" to "expanded local calling services."

Section 26.224 - Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies

Verizon proposed to modify subsection (e) to reflect new PURA §65.154, which states that a transitioning company is not required to file long-run incremental cost (LRIC) studies for residential and business services or to establish a price for residential service at, above, or according to LRIC. Joint Commenters replied that, absent publication in the Texas Register, interested parties were not properly notified that changes to these rules could result from this proceeding and were thus afforded no opportunity to file comments concerning this rule or any other rule not set forth in the published notice. Further, Joint Commenters argued that the proposed changes to these rules would penalize parties that would urge changes to other rules not part of this rulemaking. Joint Commenters therefore urged the rejection of all proposed changes to rules not part of this proceeding.

Commission Response

The commission declines to make changes to §26.209, because such changes are outside the scope of this rulemaking.

Section 26.225 - Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies

Verizon proposed to add new subsection (d)(1)(C) to reflect new PURA §65.154 and §65.155, which state that transitioning companies are not required to file LRIC studies for residential and business services or to establish a price for a residential service at, above, or according to LRIC.

Joint Commenters replied that, absent publication in the Texas Register, interested parties were not properly notified that changes to these rules could result from this proceeding and were thus afforded no opportunity to file comments concerning this rule or any other rule not set forth in the published notice. Further, Joint Commenters argued that the proposed changes to these rules would penalize parties that would urge changes to other rules not part of this rulemaking. Joint Commenters therefore urged the rejection of all proposed changes to rules not part of this proceeding.

Commission Response

The commission declines to make changes to §26.209, because such changes are outside the scope of this rulemaking.

Section 26.226 - Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies

Verizon proposed a sentence be added to subsection (a) to reflect new PURA §65.152(a), which states that a transitioning company may exercise pricing flexibility in a market subject only to the price and rate standards prescribed in PURA §65.153 and §65.154. Verizon stated further that, at a minimum, if such a sentence was not adopted, the commission should add new subsection (d)(6) to reflect the legislative changes made to PURA §65.154 providing that a transitioning company is not required to file LRIC studies for residential and business services or to establish a price for a residential service at, above, or according to LRIC.

Commission Response

Section 26.226 applies to pricing flexibility for Chapter 58 electing companies and does not specifically mandate in the rule that a transitioning company must file LRIC studies for a residence or business service. Further, the commission notes that PURA §§65.152, 65.153, and 65.154 relate specifically to transitioning companies, while §26.226 applies to Chapter 58 companies. Therefore, the commission does not believe that an amendment to this rule to reflect the legislative changes codified in new PURA §§65.152, 65.153, and 65.154 is necessary.

Section 26.227 - Procedures Applicable to Pricing Flexibility for Basic Services for Chapter 58 Electing Companies

Verizon proposed a sentence be added to Subsection (a) stating that a transitioning company is exempt from this section, to be consistent with new PURA §65.152(a), which states that a transitioning company may exercise pricing flexibility in a market subject only to the price and rate standards prescribed by PURA §65.153 and §65.154. Verizon further commented that if its proposed change was not adopted, that subsection (c)(2)(D)(ix) should be modified to reflect amended PURA §65.154, which provides that a transitioning company is not required to file LRIC studies for residential and business services or to establish a price for a residential service at, above, or according to LRIC. Verizon also stated that new subsection (g)(1) should be modified to clarify that telecommunications providers not subject to rate of return regulation may elect not to file tariffs, price lists, or customer service agreements for all services. AT&T stated it supported the resolution of concerns from the draft version of the rule.

Commission Response

Section 26.227 is only applicable to Chap 58 companies, whereas transitioning companies are governed by Chapter 65. Therefore, §26.227 is not applicable to transitioning companies.

Section 26.229 - Requirements Applicable to Chapter 59 Electing Companies

Joint Commenters stated that the purpose of this section is not limited to electing ILECs that "choose to provide an information notice" and recommended that the phrase be deleted. Joint Commenters also recommended that subsection (i) be amended to apply to a telecommunications provider "not subject to rate of return regulation under PURA Chapter 53." Joint Commenters stated that the legislative changes limit the right to withdraw a tariff, price list, or agreement to providers not subject to rate of return regulation.

Commission Response

Section 26.227 is only applicable to Chap 58 companies, whereas transitioning companies are governed by Chapter 65. Therefore §26.227 is not applicable to transitioning companies.

Section 26.230 - Requirements Applicable to Chapter 65 One-day Informational Notice Filings

Verizon proposed a sentence in subsection (a) stating that a transitioning company is exempt from this section pursuant to PURA §65.152(a), which states that transitioning companies may exercise pricing flexibility and introduce new services subject only to the price and rate

standards prescribed in PURA §65.153 and §65.154. Verizon also requested that new subsection (g)(1) clarify that providers not subject to rate of return regulation may elect not to file tariffs, price lists, or customer service agreements with the commission for all services.

Verizon and AT&T stated that the changes to subsection (c)(2)(A) and (B) in the Proposal for Publication reference the same service (non-residential service) and are inconsistent with the new language in PURA §65.153(b) that addresses all service other than basic local telecommunications service in PURA §65.153(b)(1) and basic local telecommunications service in PURA §65.153(b)(2). Verizon noted that the changes are inconsistent with the definition of "basic local telecommunications service," which is defined by PURA §51.002(1)(A) to include "flat rate residential and business local exchange telephone service."

Verizon also proposed adding language to §26.230(c)(3) to conform the commission's rule with PURA §65.154(a)(1). Verizon stated that the Proposal for Publication ignores the language in PURA §65.154(a)(1) that provides that, upon filing written notice, a transitioning company is not required to price residential service at, above, or according to LIRC or to otherwise use LRIC in establishing residential pricing, and that §26.230(c)(3) must be revised to make the commission's rule consistent with PURA.

TEXALTEL proposed language rephrasing subsection (c)(2)(A) to apply to "non-residential, nonbasic local telecommunications" service. Verizon responded that TEXALTEL's proposed revisions concerning LRIC requirements do not accurately reflect the regime implemented in PURA §65.153 and §65.154. Verizon stated that TEXALTEL's proposed revisions do not fully

account for the distinction between basic and nonbasic services in §65.153(b), which establishes LRIC pricing requirements for a transitioning company's basic and nonbasic services in deregulated markets, or the notice process in §65.154(a), which authorizes a transitioning company, upon notice, not to comply with LRIC pricing requirements for residential services or LRIC reporting requirements for residential or business services. Verizon stated that TEXALTEL's proposed revisions incorrectly retain the Proposal for Publication's exclusion of "residential service" from subsection (c)(2). Verizon asserted that the commission should retain the existing language in §26.230(c)(2) and adopt Verizon's proposed revisions to subsection (c)(3). Joint Commenters also noted the internal inconsistency in paragraphs (2)(A) and (2)(B), stating that paragraph (2)(A) correctly required a "non-residential" service to price above LRIC, while (2)(B) incorrectly required a "non-residential service" below LRIC. Verizon replied that Joint Commenters' proposed revisions to subsections (c)(2)(A) and (c)(2)(B) do not meet the statutory requirements for the same reasons as TEXALTEL's revisions, and recommended instead that the commission adopt Verizon's proposed language. TTA stated that subsection (c)(2)(A) refers to all services "other than residential" while (c)(2)(B) refers to "non-residential service" in what appeared to be a typographical error. Joint Commenters, AT&T, and TTA stated that pursuant to PURA §65.154(a)(1), ILECs can price retail residential service below LRIC upon submission of written notice to the commission, and that language from PURA needed to be incorporated into the rule. The proposed rule, as asserted by Joint Commenters, only requires written notice when a transitioning company wishes to cease filing LRIC cost studies for a service. To remedy the inconsistency, Joint Commenters suggested that the rule should be revised to also require a transitioning company to submit written notice to the commission that it plans to price a residential service below its long-run incremental cost.

Both Verizon and AT&T disagreed with the additions of "equal to or" in subsections (c)(2)(A) and (c)(2)(B), stating that the phrase is not included in PURA §65.153(b)(1) or (2) and should be deleted. Additionally, AT&T stated that §26.230 should be repealed in its entirety, as it discussed in comments on the draft version of the rule.

Commission Response

In light of the comments from parties, the commission amends §26.230(c)(2) and (c)(3) such that the rule language is consistent with PURA. Specifically, the commission will leave subsection (c)(2)(A) as it was prior to the Proposal for Publication, and will eliminate the addition of "non-residential" and "equal to or" in subsection (c)(2)(B). Additionally, the commission will also use the language offered by Verizon for subsection (c)(3).

All comments, including any not specifically referenced herein, were fully considered by the commission.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2011) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and the amendments to PURA made by Senate Bills 773, 980, and 983, and House Bills 2295 and 2680 of the 82nd Legislature, Regular Session.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and the amendments to PURA made by Senate Bills 773, 980, and 983, and House Bills 2295 and 2680 of the 82nd Legislature, Regular Session.

§26.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context indicates otherwise:

- (1) **Access customer** -- Any user of access services which are obtained from a certificated telecommunications utility (CTU).
- (2) **Access services** -- CTU services which provide connections for or are related to the origination or termination of intrastate telecommunications services that are generally, but not limited to, interexchange services.
- (3) **Administrative review** -- A process under which an application may be approved without a formal hearing.
- (4) **Affected person** -- means:
 - (A) a public utility affected by an action of a regulatory authority;
 - (B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or
 - (C) a person who:
 - (i) is a competitor of a public utility with respect to a service performed by the utility; or
 - (ii) wants to enter into competition with a public utility.
- (5) **Affiliate** -- means:
 - (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;

- (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
 - (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;
 - (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
 - (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or
 - (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
 - (E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or
 - (F) a person determined to be an affiliate under Public Utility Regulatory Act §11.006.
- (6) **Aggregate customer proprietary network information (CPNI)** -- A configuration of customer proprietary network information that has been collected by a telecommunications utility and organized such that none of the information will identify an individual customer.
- (7) **Alternate 9-1-1 routing** -- The routing of 9-1-1 calls to a designated alternate location if all dedicated 9-1-1 trunks to a primary public safety answering point are busy or out of service.

- (8) **Assumed name** -- Has the meaning assigned by Texas Business and Commerce Code, §36.10.
- (9) **Automatic dial announcing device (ADAD)** -- Any automated equipment used for telephone solicitation or collection that:
- (A) is capable of storing numbers to be called, or has a random or sequential number generator capable of producing numbers to be called; and
 - (B) alone or in conjunction with other equipment, can convey a prerecorded or synthesized voice message to the number called without the use of a live operator.
- (10) **Automatic location identification (ALI)** -- The automatic display at a public safety answering point of a caller's telephone number, the address/location of the telephone number, and supplementary emergency services information for the location from which a call originates.'
- (11) **Automatic number identification (ANI)** -- The telephone number associated with an access line, connection, or station from which a call originates that is automatically transmitted by the local switching system to an interexchange or other communications carrier or to the operator of a 9-1-1 system.
- (12) **Base rate area** -- A specific area within an exchange area, as set forth in the dominant certificated telecommunications utilities' tariffs, maps or descriptions, wherein local exchange service is furnished at uniform rates without extra mileage charges.
- (13) **Basic local telecommunications service** -- Flat rate residential and business local exchange telephone service, including primary directory listings; tone dialing service; access to operator services; access to directory assistance services; access to 911 service

where provided by a local authority or dual party relay service; the ability to report service problems seven days a week; lifeline services; and any other service the commission, after a hearing, determines should be included in basic local telecommunications service.

- (14) **Basic network services (BNS)** -- Those services identified in Public Utility Regulatory Act §58.051.
- (15) **Baud** -- Unit of signaling speed reflecting the number of discrete conditions or signal elements transmitted per second.
- (16) **Bellcore** -- Bell Communications Research, Inc.
- (17) **Billing agent** -- Any entity that submits charges to a billing telecommunications utility on behalf of itself or any service provider.
- (18) **Billing telecommunications utility** -- Any telecommunications provider, as defined in the Public Utility Regulatory Act §51.002 that issues a bill directly to a customer for any telecommunications product or service.
- (19) **Bit Error Ratio (BER)** -- The ratio of the number of bits received in error to the total number of bits transmitted in a given time interval.
- (20) **Bit Rate** -- The rate at which data bits are transmitted over a communications path, normally expressed in bits per second.
- (21) **Bona fide request** -- A written request to an incumbent local exchange company (ILEC) from a CTU or an enhanced service provider, requesting that the ILEC unbundle its network/services to the extent ordered by the Federal Communications Commission. A bona fide request indicates an intent to purchase the service subject to the purchaser being able to obtain acceptable rates, terms, and conditions.

- (22) **Business service** -- A telecommunications service provided a customer where the use is primarily of a business, professional, institutional or otherwise occupational nature.
- (23) **Busy hour** -- The clock hour each day during which the greatest usage occurs.
- (24) **Busy season** -- That period of the year during which the greatest volume of traffic is handled in a switching office.
- (25) **Call aggregator** -- Any person or entity that owns or otherwise controls telephones intended to be utilized by the public, which control is evidenced by the authority to post notices on and/or unblock access at the telephone.
- (26) **Call splashing** -- Call transferring (whether caller-requested or operator service provider-initiated) that results in a call being rated and/or billed from a point different from that where the call originated.
- (27) **Call transferring** -- Handing off a call from one operator service provider (OSP) to another OSP.
- (28) **Caller identification materials (caller ID materials)** -- Any advertisements, educational materials, training materials, audio and video marketing devices, and any information disseminated about caller ID services.
- (29) **Caller identification service (caller ID service)** -- A service offered by a telecommunications provider that provides calling party information to a device capable of displaying the information.
- (30) **Calling area** -- The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A "local" calling area may include more than one exchange area.
- (31) **Calling party information** --

- (A) the telephone listing number and/or name of the customer from whose telephone instrument a telephone number is dialed; or
 - (B) other information that may be used to identify the specific originating number or originating location of a wire or electronic communication transmitted by a telephone instrument.
- (32) **Capitalization** -- Long-term debt plus total equity.
- (33) **Carrier of choice** -- An option that allows an individual to choose an interexchange carrier for long distance calls made through Telecommunications Relay Service.
- (34) **Carrier-initiated change** -- A change in the telecommunications utility serving a customer that was initiated by the telecommunications utility to which the customer is changed, whether the switch is made because a customer did or did not respond to direct mail solicitation, telemarketing, or other actions initiated by the carrier.
- (35) **Central office** -- A switching unit in a telecommunications system which provides service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting customer lines and trunks or trunks only.
- (36) **Census block group (CBG)** -- A United States Census Bureau geographic designation that generally contains between 250 and 550 housing units.
- (37) **Certificated service area** -- The geographic area within which a company has been authorized to provide basic local telecommunications services pursuant to a certificate of convenience and necessity (CCN), a certificate of operating authority (COA), or a service provider certificate of operating authority (SPCOA) issued by the commission.

- (38) **Certificated telecommunications utility** -- A telecommunications utility that has been granted either a CCN, a COA, or a SPCOA.
- (39) **Class of service or customer class** -- A description of utility service provided to a customer which denotes such characteristics as nature of use (business or residential) or type of rate (flat rate or message rate). Classes may be further subdivided into grades, denoting individual or multiparty line or denoting quality of service.
- (40) **Commercial mobile radio service (CMRS)** --
- (A) As defined in 47 C.F.R. §20.3, a mobile service that is:
- (i) provided for profit with, i.e., the intent of receiving compensation or monetary gain;
 - (ii) an interconnected service; and
 - (iii) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or
- (B) the functional equivalent of such a mobile service described in subparagraph (A) of this paragraph.
- (41) **Commission** -- The Public Utility Commission of Texas.
- (42) **Commission on State Emergency Communications (CSEC)** -- The state commission with the responsibilities and authority as specified in Texas Health and Safety Code, Chapter 771.
- (43) **Competitive exchange service** -- Any of the following services, when provided on an inter- or intrastate basis within an exchange area: central office based PBX-type services for systems of 75 stations or more; billing and collection services; high speed private line services of 1.544 megabits or greater; customized services; private line and virtual

private line services; resold or shared local exchange telephone services if permitted by tariff; dark fiber services; non-voice data transmission service when offered as a separate service and not as a component of basic local telecommunications service; dedicated or virtually dedicated access services; services for which a local exchange company has been granted authority to engage in pricing flexibility pursuant to §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges); any service initially provided within an exchange after October 26, 1992, if first provided by an entity other than the incumbent local exchange company (companies) certificated to provide service within that exchange; and any other service the commission declares is not local exchange telephone service.

- (44) **Competitive services (CS)** -- Those services as defined in Public Utility Regulatory Act §58.151, and any other service the commission subsequently categorizes as a competitive service.
- (45) **Completed call** -- A call that is answered by the called party.
- (46) **Complex service** -- The provision of a circuit requiring special treatment, special equipment, or special engineering design, including but not limited to private lines, WATS, PBX trunks, rotary lines, and special assemblies.
- (47) **Consumer good or service** --
- (A) Real property or tangible or intangible personal property that is normally used for personal, family, or household purposes, including personal property intended to be attached to or installed in any real property;
 - (B) A cemetery lot;
 - (C) A time-share estate; or

- (D) A service related to real or personal property.
- (48) **Consumer telephone call** -- An unsolicited call made to a residential telephone number to:
- (A) solicit a sale of a consumer good or service;
 - (B) solicit an extension of credit for a consumer good or service; or
 - (C) obtain information that will or may be used to directly solicit a sale of a consumer good or service or to extend credit for the sale.
- (49) **Cooperative** -- An incumbent local exchange company that is a cooperative corporation.
- (50) **Cooperative corporation** --
- (A) An electric cooperative corporation organized and operating under the Electric Cooperative Corporation Act, Texas Utilities Code Annotated, Chapter 161, or a predecessor statute to Chapter 161 and operating under that chapter; or
 - (B) A telephone cooperative corporation organized under the Telephone Cooperative Act, Texas Utilities Code, Chapter 162, or a predecessor statute to Chapter 162 and operating under that chapter.
- (51) **Corporate name** -- Has the meaning assigned by Texas Business Corporation Act, Article §2.05.
- (52) **Corporation** -- A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation, except as expressly provided by the Public Utility Regulatory Act.

- (53) **Custom calling-type services** -- Call management services available from a central office switching system including, but not limited to, call forwarding, call waiting, caller ID, or automatic recall.
- (54) **Customer access line** -- A unit of measurement representing a telecommunications circuit or, in the case of ISDN, a telecommunications channel designated for a particular customer. One customer access line shall be counted for each circuit which is capable of generating usage on the line side of the switched network or a private line circuit, regardless of the quantity or ownership of customer premises equipment connected to each circuit. In the case of multiparty lines, each party shall be counted as a separate customer access line.
- (55) **Customer-initiated change** -- A change in the telecommunications utility serving a customer that is initiated by the customer and is not the result of direct mail solicitation, telemarketing, or other actions initiated by the carrier.
- (56) **Customer premises equipment (CPE)** -- Telephone terminal equipment located at a customer's premises. This does not include overvoltage protection equipment, inside wiring, coin-operated (or pay) telephones, "company-official" equipment, mobile telephone equipment, "911" equipment, equipment necessary for provision of communications for national defense, or multiplexing equipment used to deliver multiple channels to the customer.
- (57) **Customer proprietary network information (CPNI), customer-specific** -- Any information compiled about a customer by a telecommunications utility in the normal course of providing telephone service that identifies the customer by matching such information with the customer's name, address, or billing telephone number. This

information includes, but is not limited to: line type(s), technical characteristics (*e.g.*, rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns.

- (58) **Customer trouble report** -- Any oral or written report from a customer or user of telecommunications service received by any telecommunications utility relating to a physical defect, difficulty, or dissatisfaction with the service provided by the telecommunications utility's facilities. Each telephone or PBX switchboard position reported in trouble shall be counted as a separate report when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause.
- (59) **dBm** -- A unit used to express noise power relative to one Pico watt (-90 dBm).
- (60) **dBmC** -- Noise power in dBm, measured with C-message weighting.
- (61) **dBmCO** -- Noise power in dBmC referred to or measured at a zero transmission level point.
- (62) **D-Channel** -- The integrated-services-digital-network out-of-band signaling channel.
- (63) **Dedicated signaling transport** -- Transmission of out-of-band signaling information between an access customer's common channel signaling network and a CTU's signaling transport point on facilities dedicated to the use of a single customer.
- (64) **Dedicated 9-1-1 trunk** -- Refers to either:
- (A) a single purpose telephone circuit, or Internet Protocol (IP) equivalent, that originates at a CTU's (CTU's) switching office or point of presence and connects to a port of termination at an E9-1-1 selective router, 9-1-1 tandem, IP-based 9-1-1 system, or next generation 9-1-1 system, as described to the CTU by the

appropriate 9-1-1 administrative entity or entities in its 9-1-1 service arrangement requirements for each applicable rate center (direct dedicated 9-1-1 trunk); or

- (B) any other single purpose telephone circuit, or IP equivalent, that is used by a CTU to provide 9-1-1 service consistent with the 9-1-1 administrative entity's or entities' 9-1-1 service arrangement requirements that does not connect directly to a port of termination as described in subparagraph (A) of this paragraph (indirect dedicated 9-1-1 trunk). A direct dedicated 9-1-1 trunk includes transport, port usage, and termination.
- (65) **Default routing** -- The capability to route a 9-1-1 call to a designated public safety answering point when the incoming 9-1-1 call cannot be selectively routed due to an automatic number identification failure or other cause.
- (66) **Depreciation expenses** -- The charges based on the depreciation accrual rates designed to spread the cost recovery of the property over its economic life.
- (67) **Deregulated company** -- An incumbent local exchange company (ILEC) for which all of the company's markets have been deregulated.
- (68) **Direct-trunked transport** -- Transmission of traffic between the serving wire center and another CTU's office, without intermediate switching. It is charged on a flat-rate basis.
- (69) **Disconnection of telephone service** -- The event after which a customer's telephone number is deleted from the central office switch and databases.
- (70) **Discretionary services (DS)** -- Those services as defined in the Public Utility Regulatory Act §58.101, and any other service the commission subsequently categorizes as a discretionary service.

- (71) Distance learning -- Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by an educational institution predominantly for such instruction, learning, or training--including: video, data, voice, and electronic information.
- (72) Distribution lines -- Those lines from which the end user may be provided direct service.
- (73) Dominant carrier -- A provider of a communication service provided wholly or partly over a telephone system who the commission determines has sufficient market power in a telecommunications market to control prices for that service in that market in a manner adverse to the public interest. The term includes a provider who provided local exchange telephone service within certificated exchange areas on September 1, 1995, as to that service and as to any other service for which a competitive alternative is not available in a particular geographic market. In addition with respect to:
- (A) intraLATA long distance message telecommunications service originated by dialing the access code "1-plus," the term includes a provider of local exchange telephone service in a certificated exchange area for whom the use of that access code for the origination of "1-plus" intraLATA calls in the exchange area is exclusive; and
- (B) interexchange services, the term does not include an interexchange carrier that is not a certificated local exchange company.
- (74) Dominant certificated telecommunications utility (DCTU) -- A CTU that is also a dominant carrier. Unless clearly indicated otherwise, the rules applicable to a DCTU apply specifically to only those services for which the DCTU is dominant.

- (75) Dual-party relay service -- A service using oral and printed translations, by either a person or an automated device, between hearing- or speech-impaired individuals who use telecommunications devices for the deaf, computers, or similar automated devices, and others who do not have such equipment.
- (76) Educational institution -- Accredited primary or secondary schools owned or operated by state and local government entities or by private entities; institutions of higher education as defined by the Texas Education Code, §61.003(13); the Texas Education Agency, its successors and assigns; regional education service centers established and operated pursuant to the Texas Education Code, Chapter 8; and the Texas Higher Education Coordinating Board, its successors and assigns.
- (77) Electing local exchange company (LEC) -- A CTU electing to be regulated under the terms of the Public Utility Regulatory Act, Chapter 58.
- (78) Electric utility -- Except as provided in Chapter 25, Subchapter I, Division 1 of this title (relating to Open- Access Comparable Transmission Service for Electrical Utilities in the Electric Reliability Council of Texas), an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, Chapter 184, Subchapter C, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:
- (A) a municipal corporation;
 - (B) a qualifying facility;
 - (C) a power generation company;

- (D) an exempt wholesale generator;
 - (E) a power marketer;
 - (F) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;
 - (G) an electric cooperative;
 - (H) a retail electric provider;
 - (I) the state of Texas or an agency of the state; or
 - (J) a person not otherwise an electric utility who:
 - (i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;
 - (ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or
 - (iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Chapter 184, Subchapter C.
- (79) Element -- Unbundled network elements, including: interconnection, physical-collocation, and virtual-collocation elements.
- (80) Eligible telecommunications provider (ETP) service area -- The geographic area, determined by the commission, containing high cost rural areas which are eligible for

Texas Universal Service Funds support under §26.403 or §26.404 of this title (relating to Texas High Cost Universal Service Plan (THCUSP) and Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

- (81) Embedded customer premises equipment -- All customer premises equipment owned by a telecommunications utility, including inventory, which was tariffed or subject to the separations process of January 1, 1983.
- (82) Emergency service number (ESN) -- A three to five digit number representing a unique combination of emergency service agencies designated to serve a specific range of addresses within a particular geographic area. The ESN facilitates any required selective routing and selective transfer to the appropriate public safety answering point and the dispatching of the proper service agencies.
- (83) Emergency service zone (ESZ) -- A geographic area that has common law enforcement, fire, and emergency medical services personnel that respond to 9-1-1 calls.
- (84) End user choice -- A system that allows the automatic routing of interexchange, operator-assisted calls to the billed party's chosen carrier without the use of access codes.
- (85) Enhanced service provider -- A company that offers computer-based services over transmission facilities to provide the customer with value-added telephone services.
- (86) Entrance facilities -- The transmission path between the access customer's (such as an interexchange carrier) point of demarcation and the serving wire center.
- (87) Equal access -- Access which is equal in type, quality and price to Feature Group C, and which has unbundled rates. From an end user's perspective, equal access is characterized by the availability of "1-plus" dialing with the end user's carrier of choice.

- (88) Exchange area -- The geographic territory delineated as an exchange area by official commission boundary maps. An exchange area usually embraces a city or town and its environs. There is usually a uniform set of charges for telecommunications service within the exchange area. An exchange area may be served by more than one central office and/or one certificated telephone utility. An exchange area may also be referred to as an exchange.
- (89) Expenses -- Costs incurred in the provision of services that are expensed, rather than capitalized, in accordance with the Uniform System of Accounts applicable to the carrier.
- (90) Experimental service -- A new service that is proposed to be offered on a temporary basis for a specified period not to exceed one year from the date the service is first provided to any customer.
- (91) Extended area service (EAS) -- A telephone switching and trunking arrangement which provides for optional calling service by DCTUs within a local access and transport area and between two contiguous exchanges or between an exchange and a contiguous metropolitan exchange local calling area. For purposes of this definition, a metropolitan exchange local calling area shall include all exchanges having local or mandatory EAS calling throughout all portions of any of the following exchanges: Austin metropolitan exchange, Corpus Christi metropolitan exchange, Dallas metropolitan exchange, Fort Worth metropolitan exchange, Houston metropolitan exchange, San Antonio metropolitan exchange, or Waco metropolitan exchange. EAS is provided at rate increments in addition to local exchange rates, rather than at toll message charges.

- (92) Extended local calling service (ELCS) -- Service provided pursuant to §26.219 and §26.221 of this title (relating to Administration of Expanded Local Calling Requests; and Applications to Establish or Increase Expanded Local Calling Service Surcharges).
- (93) E911 or E9-1-1 -- 9-1-1 service that is capable of providing automatic number identification, automatic location identification, selective routing, and selective transfer.
- (94) Facilities -- All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any public utility, including any construction work in progress allowed by the commission.
- (95) Facilities-based provider -- A telecommunications provider that provides telecommunications services using facilities that it owns or leases or a combination of facilities that it owns and leases, including unbundled network elements.
- (96) Foreign exchange (FX) -- Exchange service furnished by means of a circuit connecting a customer's station to a primary serving office of another exchange.
- (97) Foreign serving office (FSO) -- Exchange service furnished by means of a circuit connecting a customer's station to a serving office of the same exchange but outside of the serving office area in which the station is located.
- (98) Forward-looking common costs -- Economic costs efficiently incurred in providing a group of elements or services that cannot be attributed directly to individual elements or services.
- (99) Forward-looking economic cost -- The sum of the total element long-run incremental cost of an element and a reasonable allocation of its forward-looking common costs.

- (100) Forward-looking economic cost per unit -- The forward-looking economic cost of the element as defined in this section, divided by a reasonable projection of the sum of the total number of units of the element that the DCTU is likely to provide to requesting telecommunications carriers and the total number of units of the element that the DCTU is likely to use in offering its own services, during a reasonable time period.
- (101) Geographic scope -- The geographic area in which the holder of a COA or of a SPCOA is authorized to provide service.
- (102) Grade of service -- The number of customers a line is designated to serve.
- (103) Health Center -- A federally qualified health center service delivery site.
- (104) Hearing -- Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.
- (105) Hearing carryover -- A technology that allows an individual who is speech-impaired to hear the other party in a telephone conversation and to use specialized telecommunications devices to send communications through the telecommunications relay service operator.
- (106) High cost area -- A geographic area for which the costs established using a forward-looking economic cost methodology exceed the benchmark levels established by the commission.
- (107) High cost assistance (HCA) -- A program administered by the commission in accordance with the provisions of §26.403 of this title.
- (108) Identity -- The name, address, telephone number, and/or facsimile number of a person, whether natural, partnership, municipal corporation, cooperative corporation,

corporation, association, governmental subdivision, or state agency and the relationship of the person to the entity being represented.

- (109) Impulse noise -- Any momentary occurrence of the noise on a channel significantly exceeding the normal noise peaks. It is evaluated by counting the number of occurrences that exceed a threshold. This noise degrades voice and data transmission.
- (110) Incumbent local exchange company (ILEC) -- A local exchange company that had a CCN on September 1, 1995.
- (111) Informational notice - Notice that is filed in connection with nonbasic services, new service offerings, and pricing and packaging flexibility if required by Public Utility Regulatory Act Chapters 52, 58, or 59.
- (112) Information sharing program -- Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by a library predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.
- (113) Integrated services digital network (ISDN) -- A digital network architecture that provides a wide variety of communications services, a standard set of user-network messages, and integrated access to the network. Access methods to the ISDN are the Basic Rate Interface (BRI) and the Primary Rate Interface (PRI).
- (114) Interactive multimedia communications -- Real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations. This definition includes interactive communications within or between buildings on the same campus or library site.

- (115) Intercept service -- A service arrangement provided by the local exchange carrier whereby calls placed to a disconnected or discontinued telephone number are intercepted and the calling party is informed by an operator or by a recording that the called telephone number has been disconnected, discontinued, changed to another number, or otherwise is not in service.
- (116) Interconnection -- Generally means: The point in a network where a customer's transmission facilities interface with the dominant carrier's network under the provisions of this section. More particularly it means: The termination of local traffic including basic telecommunications service as delineated in §26.403 of this title or integrated services digital network (ISDN) as defined in this section and/or EAS/ELCS traffic of a CTU using the local access lines of another CTU, as described in §26.272(d)(4)(A) of this title (relating to Interconnection). Interconnection shall include non-discriminatory access to signaling systems, databases, facilities and information as required to ensure interoperability of networks and efficient, timely provision of services to customers without permitting access to network proprietary information or customer proprietary network information, as defined in this section, unless otherwise permitted in §26.272 of this title.
- (117) Interconnector -- A customer that interfaces with the dominant carrier's network under the provisions of §26.271 of this title (relating to Expanded Interconnection).
- (118) Interexchange carrier (IXC) -- A carrier providing any means of transporting intrastate telecommunications messages between local exchanges, but not solely within local exchanges, in the State of Texas. The term may include a CTU or CTU affiliate to the extent that it is providing such service. An entity is not an IXC solely because of:

- (A) the furnishing, or furnishing and maintenance of a private system;
 - (B) the manufacture, distribution, installation, or maintenance of customer premises equipment;
 - (C) the provision of services authorized under the FCC's Public Mobile Radio Service and Rural Radio Service rules; or
 - (D) the provision of shared tenant service.
- (119) Internet Protocol (IP) -- A data communication protocol used in communicating data from one computer to another on the Internet or other networks.
- (120) Internet Protocol enabled service -- a service, capability, functionality, or application that uses Internet Protocol or a successor protocol to allow an end user to send or receive a data, video, or voice communication in Internet Protocol or a successor protocol.
- (121) Interoffice trunks -- Those communications circuits which connect central offices.
- (122) IntraLATA equal access -- The ability of a caller to complete a toll call in a local access and transport area (LATA) using his or her provider of choice by dialing "1" or "0" plus an area code and telephone number.
- (123) Intrastate -- Refers to communications which both originate and terminate within Texas state boundaries.
- (124) Least cost technology -- The technology or mix of technologies that would be chosen in the long run as the most economically efficient choice. The choice of least cost technologies, however, shall:
- (A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

- (B) be consistent with the level of output necessary to satisfy current demand levels for all services using the basic network function in question; and
 - (C) be consistent with overall network design and topology requirements.
- (125) License -- The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.
- (126) Licensing -- The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.
- (127) Lifeline Service -- A program certified by the Federal Communications Commission to provide for the reduction or waiver of the federal subscriber line charge for residential consumers.
- (128) Line -- A circuit or channel extending from a central office to the customer's location to provide telecommunications service. One line may serve one customer, or all customers served by a multiparty line.
- (129) Local access and transport area (LATA) -- A geographic area established for the provision and administration of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes. For purposes of these rules, market areas, as used and defined in the Modified Final Judgment and the GTE Final Judgment, are encompassed in the term local access and transport area.
- (130) Local call -- A call within the certificated telephone utility's toll-free calling area including calls which are made toll-free through a mandatory EAS or expanded local calling (ELC) proceeding.

- (131) Local calling area -- The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A local calling area may include more than one exchange area.
- (132) Local exchange carrier (LEC) -- A telecommunications utility that has been granted either a certificate of convenience and necessity or a COA to provide local exchange telephone service, basic local telecommunications service, or switched access service within the state. A local exchange company is also referred to as a local exchange carrier.
- (133) Local exchange telephone service or local exchange service -- A telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premises and a long distance provider serving the exchange. The term includes tone dialing service, service connection charges, and directory assistance services offered in connection with basic local telecommunications service and interconnection with other service providers. The term does not include the following services, whether offered on an intra-exchange or inter-exchange basis:
- (A) central office based PBX-type services for systems of 75 stations or more;
 - (B) billing and collection services;
 - (C) high-speed private line services of 1.544 megabits or greater;
 - (D) customized services;
 - (E) private line or virtual private line services;
 - (F) resold or shared local exchange telephone services if permitted by tariff;
 - (G) dark fiber services;

- (H) non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service;
 - (I) dedicated or virtually dedicated access services;
 - (J) a competitive exchange service; or
 - (K) any other service the commission determines is not a "local exchange telephone service."
- (134) Local message -- A completed call between customer access lines located within the same local calling area.
- (135) Local message charge -- The charge that applies for a completed telephone call that is made when the calling customer access line and the customer access line to which the connection is established are both within the same local calling area, and a local message charge is applicable.
- (136) Local service charge -- The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local calling area. This local calling area may include more than one exchange area.
- (137) Local telecommunications traffic --
- (A) Telecommunications traffic between a DCTU and a telecommunications carrier other than a commercial mobile radio service (CMRS) provider that originates and terminates within the mandatory single or multi-exchange local calling area of a DCTU including the mandatory EAS areas served by the DCTU; or
 - (B) Telecommunications traffic between a DCTU and a CMRS provider that, at the beginning of the call, originates and terminates within the same major trading area.

- (138) Long distance telecommunications service -- That part of the total communication service rendered by a telecommunications utility which is furnished between customers in different local calling areas in accordance with the rates and regulations specified in the utility's tariff.
- (139) Long run -- A time period long enough to be consistent with the assumption that the company is in the planning stage and all of its inputs are variable and avoidable.
- (140) Long run incremental cost (LRIC) -- The change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology. The LRIC should exclude any costs that, in the long run, are not brought into existence as a direct result of the increment of output.
- (141) Mandatory minimum standards -- The standards established by the Federal Communications Commission, outlining basic mandatory telecommunication relay services.
- (142) Market -- An exchange in which an incumbent local exchange company provides residential local exchange telephone service.
- (143) Master street address guide (MSAG) -- A database maintained by each 9-1-1 administrative entity of street names and house number ranges within their associated communities defining emergency service zones and their associated emergency service numbers to enable proper routing of 9-1-1 calls.
- (144) Meet point billing -- An access billing arrangement for services to access customers when local transport is jointly provided by more than one CTU.
- (145) Message -- A completed customer telephone call.

- (146) Message rate service -- A form of local exchange service under which all originated local messages are measured and charged for in accordance with the utility's tariff.
- (147) Minor change -- A change, including the restructuring of rates of existing services, that decreases the rates or revenues of the small local exchange company (SLEC) or that, together with any other rate or proposed or approved tariff changes in the 12 months preceding the date on which the proposed change will take effect, results in an increase of the SLEC's total regulated intrastate gross annual revenues by not more than 5.0%. Further, with regard to a change to a basic local access line rate, a minor change may not, together with any other change to that rate that went into effect during the 12 months preceding the proposed effective date of the proposed change, result in an increase of more than 50%
- (148) Municipality -- A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.
- (149) National integrated services digital network (ISDN) -- The standards and services promulgated for integrated services digital network by Bellcore.
- (150) Negotiating party -- A CTU or other entity with which a requesting CTU seeks to interconnect in order to complete all telephone calls made by or placed to a customer of the requesting CTU.
- (151) Next generation 9-1-1 system (NG9-1-1 system) -- A system of securely managed IP-based 9-1-1 networks and elements that augment and are capable of interoperating with present-day E9-1-1 features and functions and add new capabilities. NG9-1-1 may replace or complement the present E9-1-1 system. NG9-1-1 is designed to provide access to emergency services from all sources, and to provide multimedia data

capabilities for public safety answering positions and other emergency service organizations.

- (152) New service -- Any service not offered on a tariffed basis prior to the date of the application relating to such service and specifically excludes basic local telecommunications service including local measured service. If a proposed service could serve as an alternative or replacement for a service offered prior to the date of the new-service application and does not provide significant improvements (other than price) over, or significant additional services not available under, a service offered prior to the date of such application, it shall not be considered a new service.
- (153) Nonbasic services -- Those services identified in Public Utility Regulatory Act §58.151, including any service reclassified by the commission pursuant to Public Utility Regulatory Act §58.024.
- (154) Non-discriminatory -- Type of treatment that is not less favorable than that an interconnecting CTU provides to itself or its affiliates or other CTUs.
- (155) Non-dominant certificated telecommunications utility (NCTU) -- A CTU that is not a DCTU and has been granted a CCN (after September 1, 1995, in an area already certificated to a DCTU), a COA, or a SPCOA to provide local exchange service.
- (156) Nondominant carrier --
- (A) An interexchange telecommunications carrier (including a reseller of interexchange telecommunications services).
 - (B) Any of the following that is not a dominant carrier:
 - (i) a specialized communications common carrier;
 - (ii) any other reseller of communications;

- (iii) any other communications carrier that conveys, transmits, or receives communications in whole or in part over a telephone system; or
 - (iv) a provider of operator services that is not also a subscriber.
- (157) North American Numbering Plan (NANP) -- Use of 10-digit dialing in the format of a 3-digit "NPA" followed by a 3-digit "NXX" and a 4-digit line number, NPA-NXX-XXXX.
- (158) Numbering plan area (NPA) -- The first three digits of a ten-digit North American Numbering Plan (NANP) local telephone number uniquely identifying a Numbering Plan area. Generally referred to as the area code of a NANP telephone number.
- (159) NXX -- A 3-digit code in which N is any digit 2 through 9 and X is any digit 0 through 9. Typically used in describing the "Exchange Code" fields of a North American Numbering Plan telephone number.
- (160) Open network architecture -- The overall design of an ILEC's network facilities and services to permit all users of the network, including the enhanced services operations of an ILEC and its competitors, to interconnect to specific basic network functions on an unbundled and non-discriminatory basis.
- (161) Operator service -- Any service using live operator or automated operator functions for the handling of telephone service, such as local collect, toll calling via collect, third number billing, credit card, and calling card services. The transmission of "1-800" and "1-888" numbers, where the called party has arranged to be billed, is not operator service.
- (162) Operator service provider (OSP) -- Any person or entity that provides operator services by using either live or automated operator functions. When more than one entity is involved in processing an operator service call, the party setting the rates shall be

considered to be the OSP. However, subscribers to customer-owned pay telephone service shall not be deemed to be OSPs.

- (163) Originating line screening (OLS) -- A two digit code passed by the local switching system with the automatic number identification (ANI) at the beginning of a call that provides information about the originating line.
- (164) Out-of-service trouble report -- An initial customer trouble report in which there is complete interruption of incoming or outgoing local exchange service. On multiple line services a failure of one central office line or a failure in common equipment affecting all lines is considered out of service. If an extension line failure does not result in the complete inability to receive or initiate calls, the report is not considered to be out of service.
- (165) P.01 grade of service -- A standard of service quality intended to measure the probability (P), expressed as a decimal fraction, of a telephone call being blocked. P.01 is the grade of service reflecting the probability that one call out of one hundred during the average busy hour will be blocked.
- (166) Packaged Service - the combination of any regulated service with any other regulated or unregulated service or with any service of an affiliate, offered to customers at a packaged rate or rates.
- (167) Partial deregulation -- The ability of a cooperative to offer new services on an optional basis and/or change its rates and tariffs under the provisions of the Public Utility Regulatory Act, §§53.351 - 53.359.
- (168) Pay-per-call-information services -- Services that allow a caller to dial a specified 1-900-XXX-XXXX or 976-XXXX number. Such services routinely deliver, for a

predetermined (sometimes time-sensitive) fee, a pre-recorded or live message or interactive program. Usually a telecommunications utility will transport the call and bill the end-user on behalf of the information provider.

- (169) Pay telephone access service (PTAS) -- A service offered by a CTU which provides a two-way, or optionally, a one-way originating-only business access line composed of the serving central office line equipment, all outside plant facilities needed to connect the serving central office with the customer premises, and the network interface; this service is sold to pay telephone service providers.
- (170) Pay telephone service (PTS) -- A telecommunications service utilizing any coin, coinless, credit card reader, or cordless instrument that can be used by members of the general public, or business patrons, employees, and/or visitors of the premises' owner, provided that the end user pays for local or toll calls from such instrument on a per call basis. Pay per call telephone service provided to inmates of confinement facilities is PTS. For purposes of this section, coinless telephones provided in guest rooms by a hotel/motel are not pay telephones. A telephone that is primarily used by business patrons, employees, and/or visitors of the premises' owner is not a pay telephone if all local calls and "1-800" and "1-888" type calls from such telephone are free to the end user.
- (171) Per-call blocking -- A telecommunications service provided by a telecommunications provider that prevents the transmission of calling party information to a called party on a call-by-call basis.
- (172) Per-line blocking -- A telecommunications service provided by a telecommunications utility that prevents the transmission of calling party information to a called party on every call, unless the calling party acts affirmatively to release calling party information.

- (173) Percent interstate usage (PIU) -- An access customer-specific ratio or ratios determined by dividing interstate access minutes by total access minutes. The specific ratio shall be determined by the CTU unless the CTU's network is incapable of determining the jurisdiction of the access minutes. A PIU establishes the jurisdiction of switched access usage for determining rates charged to switched access customers and affects the allocation of switched access revenue and costs by CTUs between the interstate and intrastate jurisdictions.
- (174) Person -- Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.
- (175) Pleading -- A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.
- (176) Prepaid local telephone service (PLTS) -- Prepaid local telephone service means:
- (A) voice grade dial tone residential service consisting of flat rate service or local measured service, if chosen by the customer and offered by the DCTU;
 - (B) if applicable, mandatory services, including EAS, extended metropolitan service, or ELCS;
 - (C) tone dialing service;
 - (D) access to 911 service;
 - (E) access to dual party relay service;
 - (F) the ability to report service problems seven days a week;
 - (G) access to business office;

- (H) primary directory listing;
 - (I) toll blocking service; and
 - (J) non-published service and non-listed service at the customer's option.
- (177) Premises -- A tract of land or real estate including buildings and other appurtenances thereon.
- (178) Pricing flexibility -- Discounts and other forms of pricing flexibility may not be preferential, prejudicial, or discriminatory. Pricing flexibility includes:
- (A) customer specific contracts;
 - (B) volume, term, and discount pricing;
 - (C) zone density pricing;
 - (D) packaging of services; and
 - (E) other promotional pricing flexibility.
- (179) Primary interexchange carrier (PIC) -- The provider chosen by a customer to carry that customer's toll calls.
- (180) Primary interexchange carrier (PIC) freeze indicator -- An indicator that the end user has directed the CTU to make no changes in the end user's PIC.
- (181) Primary rate interface (PRI) integrated services digital network (ISDN) -- One of the access methods to ISDN, the 1.544-Mbps PRI comprises either twenty-three 64 Kbps B-channels and one 64 Kbps D-channel (23B+D) or twenty-four 64 Kbps B-channels (24B) when the associated call signaling is provided by another PRI in the group.
- (182) Primary service -- The initial provision of voice grade access between the customer's premises and the switched telecommunications network. This includes the initial

connection to a new customer or the move of an existing customer to a new premises but does not include complex services.

- (183) Print translations -- The temporary storage of a message in an operator's screen during the actual process of relaying a conversation.
- (184) Privacy issue -- An issue that arises when a telecommunications provider proposes to offer a new telecommunications service or feature that would result in a change in the outflow of information about a customer. The term privacy issue is to be construed broadly. It includes, but is not limited to, changes in the following:
- (A) the type of information about a customer that is released;
 - (B) the customers about whom information is released;
 - (C) the entity or entities to whom the information about a customer is released;
 - (D) the technology used to convey the information;
 - (E) the time at which the information is conveyed; and
 - (F) any other change in the collection, use, storage, or release of information.
- (185) Private line -- A transmission path that is dedicated to a customer and that is not connected to a switching facility of a telecommunications utility, except that a dedicated transmission path between switching facilities of interexchange carriers shall be considered a private line.
- (186) Proceeding -- A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or non-rulemaking; rate setting or non-rate setting.
- (187) Promotional rate -- A temporary tariff, fare, toll, rental or other compensation charged by a certificated telecommunications utility (CTU) to new or new and existing customers

and designed to induce customers to test a service. A promotional rate shall incorporate a reduction or a waiver of some rate element in the tariffed rates of the service, or a reduction or waiver of the service's installation charge and/or service connection charges, and shall not incorporate any charge for discontinuance of the service by the customer. Such rates may not be offered for basic local telecommunications service, including local measured service.

- (188) Promotional Service - a service offered to customers at a promotional rate or rates.
- (189) Provider of pay telephone service -- The entity that purchases PTAS from a CTU and registers with the Public Utility Commission as a provider of PTS to end users.
- (190) Public safety answering point (PSAP) -- A continuously operated communications facility established or authorized by local government authorities that answers 9-1-1 calls originating within a given service area, as further defined in Texas Health and Safety Code Chapters 771 and 772.
- (191) Public utility or utility -- A person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier. The term includes a lessee, trustee, or receiver of any of those entities, or a combination of those entities. The term does not include a municipal corporation. A person is not a public utility solely because the person:
- (A) furnishes or furnishes and maintains a private system;
 - (B) manufactures, distributes, installs, or maintains customer premises communications equipment and accessories; or

- (C) furnishes a telecommunications service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.
- (192) Public Utility Regulatory Act (PURA) -- The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 - 66.016, (Vernon 2007, Supplement 2010).
- (193) Qualifying low-income consumer -- A consumer that participates in one of the following programs: Medicaid, food stamps, Supplemental Security Income, federal public housing assistance, or Low-Income Home Energy Assistance Program.
- (194) Qualifying services --
- (A) residential flat rate basic local exchange service;
 - (B) residential local exchange access service; and
 - (C) residential local area calling usage.
- (195) Rate -- Includes:
- (A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public utility for a service, product, or commodity, described in the definition of utility in the Public Utility Regulatory Act §31.002 or §51.002; and
 - (B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.
- (196) Reciprocal compensation -- An arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and

termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.

- (197) Reclassification area -- The geographic area within the electing ILEC's territory, consisting of one or more exchange areas, for which it seeks reclassification of a service.
- (198) Redirect the call -- A procedure used by operator service providers (OSPs) that transmits a signal back to the originating telephone instrument that causes the instrument to disconnect the OSP's connection and to redial the digits originally dialed by the caller directly to the local exchange carrier's network.
- (199) Regional planning commission -- The meaning established in Texas Health and Safety Code §771.001(10).
- (200) Regulatory authority -- In accordance with the context where it is found, either the commission or the governing body of a municipality.
- (201) Relay Texas Advisory Committee (RTAC) -- The committee authorized by the Public Utility Regulatory Act, §56.110 and 1997 Texas General Laws Chapter 149.
- (202) Relay Texas -- The name by which telecommunications relay service in Texas is known.
- (203) Relay Texas administrator -- The individual employed by the commission to oversee the administration of statewide telecommunications relay service.
- (204) Repeated trouble report -- A customer trouble report regarding a specific line or circuit occurring within 30 days or one calendar month of a previously cleared trouble report on the same line or circuit.
- (205) Residual charge -- The per-minute charge designed to account for historical contribution to joint and common costs made by switched transport services.

- (206) Retail service -- A telecommunications service is considered a retail service when it is provided to residential or business end users and the use of the service is other than resale. Each tariffed or contract offering which a customer may purchase to the exclusion of other offerings shall be considered a service. For example: the various mileage bands for standard toll services are rate elements, not services; however, individual optional calling plans that can be purchased individually and which are offered as alternatives to each other are services, not rate elements.
- (207) Return-on-assets -- After-tax net operating income divided by total assets.
- (208) Reversal of partial deregulation -- The ability of a minimum of 10% of the members of a partially deregulated cooperative to request, in writing, that a vote be conducted to determine whether members prefer to reverse partial deregulation. Ten percent shall be calculated based upon the total number of members of record as of the calendar month preceding receipt of the request from members for reversal of partial deregulation.
- (209) Rule -- A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.
- (210) Rulemaking proceeding -- A proceeding conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, to adopt, amend, or repeal a commission rule.

- (211) Rural incumbent local exchange company (ILEC) -- An ILEC that qualifies as a "rural telephone company" as defined in 47 United States Code §3(37) and/or 47 United States Code §251(f)(2).
- (212) Selective routing -- The feature provided with 9-1-1 or 311 service by which 9-1-1 or 311 calls are automatically directed to the appropriate answering point for serving the location from which the call originates.
- (213) Selective transfer -- A public safety answering point initiating the routing of a 9-1-1 call to a response agency by operation of one of several buttons typically designated as police, fire, and emergency medical, based on the emergency service number of the caller.
- (214) Separation -- The division of plant, revenues, expenses, taxes, and reserves applicable to exchange or local service if these items are used in common to provide public utility service to both local exchange telephone service and other service, such as interstate or intrastate toll service.
- (215) Service -- Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility's duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities, and the public. The term also includes the interchange or facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory.
- (216) Service connection charge -- A charge designed to recover the costs of non-recurring activities associated with connection of local exchange telephone service.

- (217) Service order system -- The system used by a telecommunications provider that, among other functions, tracks customer service requests and billing data.
- (218) Service provider -- Any entity that offers a product or service to a customer and that directly or indirectly charges to or collects from a customer's bill an amount for the product or service on a customer's bill received from a billing telecommunications utility.
- (219) Service provider certificate of operating authority (SPCOA) reseller -- A holder of a service provider certificate of operating authority that uses only resold telecommunications services provided by an ILEC or by a COA holder or by a SPCOA holder.
- (220) Service restoral charge -- A charge applied by the DCTU to restore service to a customer's telephone line after it has been suspended by the DCTU.
- (221) Serving wire center (SWC) -- The CTU designated central office which serves the access customer's point of demarcation.
- (222) Signaling for tandem switching -- The carrier identification code (CIC) and the OZZ code or equivalent information needed to perform tandem switching functions. The CIC identifies the interexchange carrier and the OZZ digits identify the call type and thus the interexchange carrier trunk to which traffic should be routed.
- (223) Small certificated telecommunications utility (CTU) -- A CTU with fewer than 2.0% of the nation's subscriber lines installed in the aggregate nationwide.
- (224) Small local exchange company (SLEC) -- Any incumbent CTU as of September 1, 1995, that has fewer than 31,000 access lines in service in this state, including the access lines of all affiliated incumbent local exchange companies within the state, or a telephone

cooperative organized pursuant to the Telephone Cooperative Act, Texas Utilities Code Annotated, Chapter 162.

- (225) Small incumbent local exchange company (Small ILEC) -- An ILEC that is a cooperative corporation or has, together with all affiliated ILECs, fewer than 31,000 access lines in service in Texas.
- (226) Spanish speaking person -- A person who speaks any dialect of the Spanish language exclusively or as their primary language.
- (227) Special access -- A transmission path connecting customer designated premises to each other either directly or through a hub or hubs where bridging, multiplexing or network reconfiguration service functions are performed and includes all exchange access not requiring switching performed by the dominant carrier's end office switches.
- (228) Specialized Telecommunications Assistance Program (STAP) -- The program described in §26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP)).
- (229) Specialized Telecommunications Assistance Program (STAP) voucher -- A voucher issued by the Texas Department of Assistive and Rehabilitative Services under the equipment distribution program, in accordance with its rules, that an eligible individual may use to acquire eligible specialized telecommunications devices from a vendor of such equipment.
- (230) Stand-alone costs -- The stand-alone costs of an element or service are defined as the forward-looking costs that an efficient entrant would incur in providing only that element or service.
- (231) Station -- A telephone instrument or other terminal device.

- (232) Study area -- An incumbent local exchange company's (ILEC's) existing service area in a given state.
- (233) Supplemental services -- Telecommunications features or services offered by a CTU for which analogous services or products may be available to the customer from a source other than a DCTU. Supplemental services shall not be construed to include optional extended area calling plans that a DCTU may offer pursuant to §26.217 of this title (relating to Administration of Extended Area Service (EAS) Requests), or pursuant to a final order of the commission in a proceeding pursuant to the Public Utility Regulatory Act, Chapter 53.
- (234) Suspension of service -- That period during which the customer's telephone line does not have dial tone but the customer's telephone number is not deleted from the central office switch and databases.
- (235) Switched access -- Access service that is provided by CTUs to access customers and that requires the use of CTU network switching or common line facilities generally, but not necessarily, for the origination or termination of interexchange calls. Switched access includes all forms of transport provided by the CTU over which switched access traffic is delivered.
- (236) Switched access demand -- Switched access minutes of use, or other appropriate measure where not billed on a minute of use basis, for each switched access rate element, normalized for out of period billings. For the purposes of this section, switched access demand shall include minutes of use billed for the local switching rate element.

- (237) Switched access minutes -- The measured or assumed duration of time that a CTU's network facilities are used by access customers. Access minutes are measured for the purpose of calculating access charges applicable to access customers.
- (238) Switched transport -- Transmission between a CTU's central office (including tandem-switching offices) and an interexchange carrier's point of presence.
- (239) Tandem-switched transport -- Transmission of traffic between the serving wire center and another CTU office that is switched at a tandem switch and charged on a usage basis.
- (240) Tariff -- The schedule of a utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the utility stated separately by type or kind of service and the customer class.
- (241) Telecommunications provider -- As defined in the Public Utility Regulatory Act §51.002(10).
- (242) Telecommunications relay service (TRS) -- A service using oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices. Unless specified in the text, this term shall refer to intrastate telecommunications relay service only.
- (243) Telecommunications relay service (TRS) carrier -- The telecommunications carrier selected by the commission to provide statewide telecommunications relay service.
- (244) Telecommunications utility --
- (A) a public utility;
 - (B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;

- (C) a specialized communications common carrier;
 - (D) a reseller of communications;
 - (E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;
 - (F) a provider of operator services as defined by §55.081, unless the provider is a subscriber to customer-owned PTS; and
 - (G) a separated affiliate or an electronic publishing joint venture as defined in the Public Utility Regulatory Act, Chapter 63.
- (245) Telephones intended to be utilized by the public -- Telephones that are accessible to the public, including, but not limited to, pay telephones, telephones in guest rooms and common areas of hotels, motels, or other lodging locations, and telephones in hospital patient rooms.
- (246) Telephone solicitation -- An unsolicited telephone call.
- (247) Telephone solicitor -- A person who makes or causes to be made a consumer telephone call, including a call made by an automatic dialing/announcing device.
- (248) Test year -- The most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a public utility are available.
- (249) Texas Universal Service Fund (TUSF) -- The fund authorized by the Public Utility Regulatory Act, §56.021 and 1997 Texas General Laws Chapter 149.
- (250) Tier 1 local exchange company -- A local exchange company with annual regulated operating revenues exceeding \$100 million.
- (251) Title IV-D Agency -- The office of the attorney general for the state of Texas.

- (252) Toll blocking -- A service provided by telecommunications carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.
- (253) Toll control -- A service provided by telecommunications carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.
- (254) Toll limitation -- Denotes both toll blocking and toll control.
- (255) Total element long-run incremental cost (TELRIC) -- The forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the CTU's provision of other elements.
- (256) Transitioning company -- An incumbent local exchange company for which at least one, but not all, of the company's markets has been deregulated.
- (257) Transport -- The transmission and/or any necessary tandem and/or switching of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than a DCTU.
- (258) Trunk -- A circuit facility connecting two switching systems.
- (259) Two-primary interexchange carrier (Two-PIC) equal access -- A method that allows a telephone subscriber to select one carrier for all 1+ and 0+ interLATA calls and the same or a different carrier for all 1+ and 0+ intraLATA calls.

- (260) Unauthorized charge -- Any charge on a customer's telephone bill that was not consented to or verified in compliance with §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).
- (261) Unbundling -- The disaggregation of the ILEC's network/service to make available the individual network functions or features or rate elements used in providing an existing service.
- (262) Unit cost -- A cost per unit of output calculated by dividing the total long run incremental cost of production by the total number of units.
- (263) Usage sensitive blocking -- Blocking of a customer's access to services which are charged on a usage sensitive basis for completed calls. Such calls shall include, but not be limited to, call return, call trace, and auto redial.
- (264) Virtual private line -- Circuits or bandwidths, between fixed locations, that are available on demand and that can be dynamically allocated.
- (265) Voice carryover -- A technology that allows an individual who is hearing-impaired to speak directly to the other party in a telephone conversation and to use specialized telecommunications devices to receive communications through the telecommunications relay service operator.
- (266) Voice over Internet Protocol (VoIP) -- The technology used to transmit voice communications using Internet Protocol.
- (267) Voice over Internet Protocol service -- a service that:
- (A) uses Internet Protocol or a successor protocol to enable a real-time, two-way voice communication that originates from or terminates to the user's location in Internet Protocol or a successor protocol;

- (B) requires a broadband connection from the user's location; and
 - (C) permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.
- (268) Volume insensitive costs -- The costs of providing a basic network function (BNF) that do not vary with the volume of output of the services that use the BNF.
- (269) Volume sensitive costs -- The costs of providing a basic network function (BNF) that vary with the volume of output of the services that use the BNF.
- (270) Wireless provider -- A provider that:
- (A) provides commercial mobile radio service as defined in (40) of this section; or
 - (B) utilizes fixed wireless technology to provide local exchange service.
- (271) Wholesale service -- A telecommunications service is considered a wholesale service when it is provided to a telecommunications utility and the use of the service is to provide a retail service to residence or business end-user customers.
- (272) Working capital requirements -- The additional capital required to fund the increased level of accounts receivable necessary to provide telecommunications service.
- (273) "0-" call -- A call made by the caller dialing the digit "0" and no other digits within five seconds. A "0-" call may be made after a digit (or digits) to access the local network is (are) dialed.
- (274) "0+" call -- A call made by the caller dialing the digit "0" followed by the terminating telephone number. On some automated call equipment, a digit or digits may be dialed between the "0" and the terminating telephone number.
- (275) 311 answering point -- A communications facility that:

- (A) is operated, at a minimum, during normal business hours;
 - (B) is assigned the responsibility to receive 311 calls and, as appropriate, to dispatch the non-emergency police or other governmental services, or to transfer or relay 311 calls to the governmental entity;
 - (C) is the first point of reception by a governmental entity of a 311 call; and
 - (D) serves the jurisdictions in which it is located or other participating jurisdictions.
- (276) 311 service -- A telecommunications service provided by a certificated telecommunications provider through which the end user of a public telephone system has the ability to reach non-emergency police and other governmental services by dialing the digits 3-1-1. 311 service must contain the selective routing feature or other equivalent state-of-the-art feature.
- (277) 311 service request -- A written request from a governmental entity to a CTU requesting the provision of 311 service. A 311 service request must:
- (A) be in writing;
 - (B) contain an outline of the program the governmental entity will pursue to adequately educate the public on the 311 service;
 - (C) contain an outline from the governmental entity for implementation of 311 service;
 - (D) contain a description of the likely source of funding for the 311 service (i.e., from general revenues, special appropriations, etc.); and
 - (E) contain a listing of the specific departments or agencies of the governmental entity that will actually provide the non-emergency police and other governmental services.

- (278) 311 system -- A system of processing 311 calls.
- (279) 9-1-1 administrative entity -- A regional planning commission as defined in Texas Health and Safety Code §771.001(10) or an emergency communication district as defined in Texas Health and Safety Code §771.001(3).
- (280) 9-1-1 database management services provider -- An entity designated by a 9-1-1 administrative entity to provide 9-1-1 database management services that support the provision of 9-1-1 services.
- (281) 9-1-1 database services -- Services purchased by a 9-1-1 administrative entity that accepts, processes, and validates subscriber record information of telecommunications providers for purposes of selective routing and automatic location identification, and that may also provide statistical performance measures.
- (282) 9-1-1 network services -- Services purchased by a 9-1-1 administrative entity that route 9-1-1 calls from an E9-1-1 selective router, 9-1-1 tandem, next generation 9-1-1 system, Internet Protocol-based 9-1-1 system or its equivalent to public safety answering points or a public safety answering point network.
- (283) 9-1-1 network services provider -- A CTU designated by the appropriate 9-1-1 administrative entity to provide 9-1-1 network services in a designated area.
- (284) 911 system -- A system of processing emergency 911 calls, as defined in Texas Health and Safety Code §772.001, as may be subsequently amended.
- (285) 9-1-1 selective routing tandem switch -- A switch located in a telephone central office that is equipped to accept, process, and route 9-1-1 calls to a predetermined, specific location. Also known as E9-1-1 control office or E9-1-1 selective router.

- (286) 9-1-1 service -- As defined in Texas Health and Safety Code §771.001(6) and §772.001(6).
- (287) 9-1-1 service agreement -- A contract addressing the 9-1-1 service arrangements for a local area that the appropriate 9-1-1 administrative entity enters into.
- (288) 9-1-1 service arrangement -- Each particular arrangement for 9-1-1 emergency service specified by the appropriate 9-1-1 administrative entity for the relevant rate centers within its jurisdictional area and that is subject to a 9-1-1 service agreement.

§26.22. Request for Service.**(a) Dominant certificated telecommunications utility (DCTU).**

- (1) Every DCTU shall provide local telecommunications service to each qualified applicant for service and to each of its customers within its certificated area in accordance with §26.54(c)(1) of this title (relating to Service Objectives and Performance Benchmarks). A deregulated company that holds a certificate of operating authority is not obligated to be a provider of last resort. A transitioning company is not obligated to be a provider of last resort in a deregulated market.
- (2) If construction, such as line extensions or facilities, is required for installation of local telecommunications service:
 - (A) the DCTU shall complete the construction within 90 days or within a time period agreed to by the customer and the DCTU after the applicant has established satisfactory credit in accordance with §26.24 of this title (relating to Credit Requirements and Deposits), made satisfactory payment arrangements for construction charges, and complied with state and municipal regulations;
 - (B) the DCTU shall contact the applicant for service within ten work days of receipt of the application and give the applicant an estimated completion date and an estimated cost for all charges to be incurred by the applicant; and
 - (C) following the assessment of any necessary construction, the DCTU shall explain to the applicant any construction cost options such as rebates,

sharing of construction costs between the DCTU and the applicant, or
sharing of costs between the applicant and other applicants.

- (3) A DCTU may require an applicant for service to establish satisfactory credit or to pay a deposit in accordance with §26.24 of this title.

(b) **Non-dominant certificated telecommunications utility (NCTU).**

- (1) Every NCTU shall provide local telecommunications service to applicants within its certificated area who have accepted the NCTU's terms and conditions of service and in accordance with the customer safeguards in §26.272(i) of this title (relating to Interconnection).
- (2) If construction, such as line extensions or facilities, is required for installation of local telecommunications service:
 - (A) the NCTU shall contact the applicant for service within ten work days of receipt of the application and give the applicant an estimated completion date and an estimated cost for all charges to be incurred by the applicant;
and
 - (B) following the assessment of any necessary construction, the NCTU shall explain to the applicant any construction cost options such as rebates, sharing of construction costs between the NCTU and the applicant, or sharing of costs between the applicant and other applicants.

§26.23. Refusal of Service.**(a) Dominant certificated telecommunications utility (DCTU).**

(1) A DCTU is relieved of its provider of last resort (POLR) obligations in a market if the market has been deregulated pursuant to Public Utility Regulatory Act Chapter 65. A DCTU with POLR obligations may refuse to provide an applicant with basic local telecommunications service only for one or more of the following reasons:

- (A) Applicant's facilities inadequate. The applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given.
- (B) Use of prohibited equipment or attachments. The applicant fails to comply with the DCTU's tariffs pertaining to operation of nonstandard equipment or unauthorized attachments that interfere with the service of others.
- (C) Failure to pay guarantee. The applicant has acted as a guarantor for another customer of the DCTU and fails to pay the guaranteed amount, where such guarantee was made in writing to the DCTU and was a condition of service.
- (D) Intent to deceive. The applicant requests service at a location where another customer received or continues to receive service, the other customer's bill from the DCTU is unpaid at that location, and the DCTU can prove that the change of account holder and billing name is made to avoid or evade payment of an outstanding bill owed to the DCTU.

(E) For indebtedness.

(i) If a residential applicant owes a debt to any DCTU for:

(I) tariffed local telecommunications service, except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)); or

(II) long distance charges after toll blocking was imposed as provided in §26.28 of this title (relating to Suspension or Disconnection of Service).

(ii) If a non-residential applicant owes a debt to any DCTU for tariffed non-residential local telecommunications service, including long distance charges.

(iii) If an applicant's indebtedness is in dispute, basic local telecommunications service shall be provided upon the applicant's compliance with the deposit requirements in §26.24 of this title (relating to Credit Requirements and Deposits).

(F) Refusal to pay a deposit. The applicant refuses to pay a deposit if the applicant is required to do so under §26.24 of this title.

(G) Failure to comply with regulations. The applicant fails to comply with all applicable state and municipal regulations.

(2) **Applicant's recourse.**

(A) If a DCTU has refused to serve a residential applicant, the DCTU must send the applicant notice in writing within five work days of the determination to refuse service:

- (i) of the reason or reasons for its refusal;
 - (ii) that the applicant will be eligible for service if the applicant remedies the reason or reasons for refusal and complies with the DCTU's tariffs and terms and conditions of service;
 - (iii) that the applicant may request a supervisory review by the DCTU and may file a complaint with the commission as described in §26.30 of this title (relating to Complaints); and
 - (iv) that no telecommunications utility is permitted to:
 - (I) refuse service on the basis of race, color, sex, nationality, religion, marital status, income level, or source of income; nor
 - (II) unreasonably refuse service on the basis of geographic location.
- (B) Additionally, the DCTU must inform applicants eligible for prepaid local telephone service under §26.29 of this title that this service is available if they are not otherwise eligible for basic local telecommunications service.
- (3) **Insufficient grounds for refusal to serve.** The following are not sufficient grounds for refusal of basic local telecommunications service to an applicant by a DCTU:
- (A) delinquency in payment for service by a previous occupant of the premises to be served;
 - (B) failure to pay for any charges that are not provided in the DCTU's tariffs on file at the commission;

- (C) failure to pay a bill that includes more than six months of underbilling unless the underbilling is the result of theft of service by the applicant;
- (D) failure to pay the bill of another customer at the same address except where the change of account holder and billing name is made to avoid or evade payment of that bill; and
- (E) failure of a residential applicant to pay for any charges other than for local telecommunications service except for long distance charges incurred after toll blocking was imposed as provided in §26.28 of this title.

(b) **Non-dominant certificated telecommunications utility (NCTU).**

- (1) An NCTU may refuse to provide an applicant with basic local telecommunications service for:
 - (A) the applicant's failure to comply with all applicable federal, state, and municipal regulations; or
 - (B) any other reason that does not violate applicable federal, state, or municipal statutes, rules, or regulations.
- (2) **Applicant's recourse.**
 - (A) If an NCTU who offers residential service has refused to provide a residential applicant with basic local telecommunications service, the NCTU must inform the applicant of the determination to refuse service:
 - (i) of the reason or reasons for its refusal; and

- (ii) that the applicant will be eligible for service if the applicant remedies the reason or reasons for refusal and complies with the NCTU's terms and conditions of service.
- (B) The information required by subparagraph (A) of this paragraph shall be sent to the applicant in writing within five working days, if required by the federal Equal Credit Opportunity Act, 15 U.S.C. §1691 et seq., or if it is requested by the applicant. The NCTU shall inform the applicant that the applicant may request a supervisory review by the NCTU and may file a complaint with the commission as described in §26.30 of this title.
- (3) **Insufficient grounds for refusal to serve.** The following are not sufficient grounds for refusal of basic local telecommunications service to an applicant by an NCTU:
 - (A) delinquency in payment for service by a previous occupant of the premises to be served;
 - (B) failure to pay for any charges that are not provided in the NCTU's tariffs;
 - (C) failure to pay a bill that includes more than six months of underbilling unless the underbilling is the result of theft of service by the applicant;
 - (D) failure to pay the bill of another customer at the same address except where the change of account holder and billing name is made to avoid or evade payment of that bill; and
 - (E) failure of a residential applicant to pay for any charges other than for local telecommunications service except for long distance charges incurred after toll blocking was imposed as provided in §26.28 of this title.

§26.27. Bill Payment and Adjustments.**(a) Dominant certificated telecommunications utility (DCTU).**

- (1) **Bill due date.** The bill provided to the customer shall include the payment due date, which shall not be less than 16 days after issuance.
 - (A) The issuance date is the postmark date on the envelope containing the bill or the issuance date on the bill if there is no postmark or envelope.
 - (B) Payment for service is delinquent if not received at the DCTU or at the DCTU's authorized payment agency by close of business on the due date.
 - (C) If the sixteenth day falls on a holiday or weekend, then the due date shall be the next work day after the sixteenth day.
- (2) **Penalty on delinquent bills for retail service.** A DCTU providing any service to the state, including service to an agency in any branch of government, shall not assess a fee, penalty, interest, or other charge to the state for delinquent payment of a bill.
- (3) **Billing adjustments.**
 - (A) **Service interruptions.** In the event a customer's service is interrupted other than by the negligence or willful act of the customer, and it remains interrupted for 24 hours or longer after being reported and after access to the premises is made available, an appropriate refund shall be made to the customer.
 - (i) The amount of refund shall be:

- (I) determined on the basis of the known period of interruption, generally beginning from the time the service interruption is first reported; and
- (II) the refund to the customer shall be the proportionate part of the month's flat rate charges for the period of days and that portion of the service facilities rendered useless or inoperative.
 - (ii) The refund may be made by a credit on a subsequent bill.
- (B) Overbilling. If charges are found to be higher than authorized by the DCTU's tariffs or the terms and conditions of service, an appropriate refund shall be made to the customer.
 - (i) The refund shall be made for the entire period of the overbilling.
 - (ii) If the overbilling is corrected within three billing cycles of the initial bill in error, interest is not required to be paid on the overcharge.
 - (iii) If the overbilling is not corrected within three billing cycles of the initial bill in error, interest shall be paid on the amount of the overcharges. The minimum interest to be paid shall be based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the date of payment or the initial date of the bill in error.
 - (iv) The refund may be made by a credit on a subsequent bill, unless the customer requests otherwise.

- (C) Underbilling. If charges are found to be lower than authorized by the DCTU's tariffs or terms and conditions of service, or if the DCTU failed to bill the customer for service, then:
- (i) The customer may be backbilled for the amount that was underbilled for no more than six months from the date the error was discovered unless underbilling is a result of theft of service by the customer.
 - (ii) Service may be disconnected if the customer fails to pay charges arising from an underbilling.
 - (iii) If the underbilling is \$50 or more, the DCTU shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. A deferred payment plan need not be offered to a customer whose underpayment is due to theft of service.
 - (iv) Interest on underbilled amounts shall:
 - (I) not be charged unless such amounts are found to be the result of theft of service by the customer; and
 - (II) not exceed an amount based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the day the customer is found to have first tampered with, bypassed, or diverted service.

- (4) **Disputed bills.** If there is a dispute between a customer and a DCTU about any bill for DCTU service, the DCTU shall:
- (A) investigate and report the results to the customer; and
 - (B) inform the customer of the complaint procedures of the commission in accordance with §26.30 of this title (relating to Complaints), if the dispute is not resolved.
- (5) **Notice of alternative payment programs or payment assistance.** When a customer contacts a DCTU and indicates inability to pay a bill or need of assistance with payment, the DCTU shall inform the customer of all alternative payment options and payment assistance programs available from the DCTU, such as payment arrangements, deferred payment plans, and disconnection moratoriums for the ill, as applicable, and of the eligibility requirements and application procedure for each.
- (6) **Payment arrangement.** A payment arrangement is any agreement between the DCTU and a customer that allows the customer to pay the outstanding bill after its due date but before the due date of the next bill.
- (A) A payment arrangement may be established in person or by telephone.
 - (B) If the DCTU issued a suspension or disconnection notice before the payment arrangement was made, that suspension or disconnection shall be suspended until after the due date for the payment arrangement.
 - (C) If a customer does not fulfill the obligations of the payment arrangement, the DCTU may suspend or disconnect service after the later of the due date for the payment arrangement or the suspension or disconnection date

indicated in the notice in accordance with §26.28 of this title (relating to Suspension or Disconnection of Service), without issuing an additional notice.

- (7) **Deferred payment plan.** A deferred payment plan is any written agreement between the DCTU and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the next bill.
- (A) The terms of a deferred payment plan may be established in person or by telephone, but must be put in writing to be effective.
- (B) The DCTU shall offer a deferred payment plan to any residential customer, including a guarantor of any residential customer, who has expressed an inability to pay all of the bill, if that customer has not been issued more than two suspension or disconnection notices during the preceding 12 months.
- (C) Every deferred payment plan shall provide that the delinquent amount may be paid in equal installments over at least three billing cycles.
- (D) When a residential customer has received service from its current DCTU for less than three months, the DCTU is not required to offer a deferred payment plan if the residential customer lacks:
- (i) sufficient credit; or
 - (ii) a satisfactory history of payment for service from a previous DCTU.
- (E) Every deferred payment plan offered by a DCTU:

(i) shall state, immediately preceding the space provided for the customer's signature and in boldface type no smaller than 14 point size, the following: **"THIS IS A BINDING CONTRACT"** followed by **"If you are not satisfied with this contract, or if agreement was made by telephone and you feel this contract does not reflect your understanding of that agreement, contact the utility immediately and do not sign this contract. If you do not contact the utility, or if you sign this agreement, you may give up your right to dispute the amount due under the agreement except for the utility's failure or refusal to comply with the terms of this agreement."**

(I) In addition, if the customer and the DCTU representative or agent meet in person, the DCTU representative shall read the preceding statement to the customer.

(II) The DCTU shall provide information to the customer as necessary in accordance with §26.26 of this title (relating to Foreign Language Requirements) to make the preceding statement understandable to the customer;

(ii) may include a 5.0% penalty for late payment but shall not include a finance charge;

(iii) shall state the length of time covered by the plan;

(iv) shall state the total amount to be paid;

(v) shall state the specific amount of each installment;

- (vi) shall allow the DCTU to disconnect service if a customer does not fulfill the terms of the deferred payment plan;
 - (vii) shall not refuse a customer participation in such a program on the basis of race, nationality, religion, color, sex, marital status, income level, or source of income and shall not unreasonably refuse a customer participation in such a program on the basis of geographic location;
 - (viii) shall be signed by the customer and a copy of the signed plan shall be provided to the customer; and
 - (ix) shall allow either the customer or the DCTU to renegotiate the deferred payment plan, if the customer's economic or financial circumstances change substantially during the time of the plan.
- (F) A DCTU may disconnect a customer who does not meet the terms of a deferred payment plan.
- (i) The DCTU may not disconnect service until a disconnection notice in accordance with §26.28 of this title has been issued to the customer indicating that the customer has not met the terms of the plan.
 - (ii) The DCTU may renegotiate the deferred payment plan agreement before disconnection.
 - (iii) No additional notice is required if the customer:
 - (I) did not sign the deferred payment plan;
 - (II) is not otherwise fulfilling the terms of the plan; and

(III) was previously provided a disconnection notice for the outstanding amount.

(8) **Residential partial payments.** Residential service payment shall first be allocated to basic local telecommunications service.

(b) **Nondominant certificated telecommunications utility (NCTU).**

(1) **Bill due date.** The bill provided to the customer shall include the payment due date, which shall not be less than 16 days after issuance.

(A) The issuance date is the postmark date on the envelope containing the bill or the issuance date on the bill if there is no postmark or envelope.

(B) Payment for service is delinquent if not received at the NCTU or at the NCTU's authorized payment agency by close of business on the due date.

(C) If the sixteenth day falls on a holiday or weekend, then the due date shall be the next work day after the sixteenth day.

(D) If the due date shown on the bill falls on a holiday or weekend, an NCTU shall include a statement on the bill or in the terms and conditions of service that informs the customer that the due date is extended to the next work day.

(2) **Penalty on delinquent bills for retail service.** An NCTU providing any service to the state, including service to an agency in any branch of government, shall not assess a fee, penalty, interest, or other charge to the state for delinquent payment of a bill.

(3) **Billing adjustments.**

(A) **Overbilling.** If charges are higher than the NCTU's tariff, schedule, or price list terms and conditions of service, or a customer-specific contract, an appropriate refund shall be made to the customer:

(i) The refund shall be made for the entire period of the overbilling.

(ii) If the overbilling is corrected within three billing cycles of the initial bill in error, interest is not required to be paid on the overcharge.

(iii) If the overbilling is not corrected within three billing cycles of the initial bill in error, interest shall be paid on the amount of the overcharges. The minimum interest to be paid shall be based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the date of payment or the initial date of the bill in error.

(iv) The refund may be made by a credit on a subsequent bill, unless the customer requests otherwise.

(B) **Underbilling.** If charges are found to be lower than authorized by the NCTU's tariff, schedule, or price list, terms and conditions of service, or a customer-specific contract, or if the NCTU failed to bill the customer for service, then:

(i) The customer may be backbilled for the amount that was underbilled for no more than six months from the date the initial

error was discovered unless underbilling is a result of theft of service by the customer.

- (ii) Service may be disconnected if the customer fails to pay charges arising from an underbilling.
 - (iii) If the underbilling is \$50 or more, the NCTU shall offer the customer a payment plan option for the same length of time as that of the underbilling. A payment plan need not be offered to a customer whose underpayment is due to theft of service.
 - (iv) Interest on underbilled amounts shall:
 - (I) not be charged unless such amounts are found to be the result of theft of service by the customer; and
 - (II) not exceed an amount based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the day the customer is found to have first tampered with, bypassed, or diverted service.
- (4) **Disputed bills.** If there is a dispute between a customer and an NCTU about any bill for NCTU service, the NCTU shall:
- (A) investigate and report the results to the customer; and
 - (B) inform the customer of the complaint procedures of the commission in accordance with §26.30 of this title if the dispute is not resolved.
- (5) **Notice of alternative payment programs or payment assistance.** When a customer contacts an NCTU and indicates inability to pay a bill or need of

assistance with payment, the NCTU shall inform the customer of any alternative payment options and payment assistance programs available to the customer.

- (6) **Residential partial payments.** Residential service payment shall first be allocated to basic local telecommunications service.

- (c) **NCTU implementation.** NCTUs shall implement this section no later than March 1, 2001.

§26.29. Prepaid Local Telephone Service (PLTS).

- (a) **Applicability.** The provisions of this section shall apply to all dominant certificated telecommunications utilities (DCTUs) unless specifically indicated otherwise. A DCTU shall provide prepaid local telephone service (PLTS) as required by this section and shall not refuse to provide PLTS to an applicant for such service because the applicant is indebted to any DCTU or other telecommunications carrier for telecommunication services, including the carriage charges of interexchange carriers where the DCTU bills those charges under tariffs or contracts.
- (b) **Eligible customers.**
- (1) **Former customers.** In cases where a DCTU would refuse to provide service to an applicant for residential telephone service because of indebtedness to any DCTU or other telecommunications carrier, the applicant is eligible to receive PLTS as required by this section.
 - (2) **Current customers.** A current residential customer who has not been disconnected but who has received a notice following suspension of service for non-payment for services is eligible to receive PLTS as required by this section.
 - (3) **Applicant previously disconnected from PLTS by a DCTU.** Any applicant who was previously disconnected from PLTS by a DCTU, pursuant to subsection (e)(6) of this section, does not have the right to receive PLTS from that DCTU again.
 - (4) Business customers shall not be eligible for PLTS.

(c) **Requirements for notifying customers about PLTS.** A DCTU shall provide notice to its customers about PLTS as required by this subsection.

(1) **Timing of notice.**

(A) If the DCTU's standard practice is to suspend a customer's service for non-payment of charges before disconnecting service, it shall notify the customer of the availability of PLTS in the suspension notice.

(B) If the DCTU's standard practice is to disconnect a customer's service without suspension, the DCTU shall notify such customer of the availability of PLTS within three days after disconnection.

(2) **Content of notice.** The notice provided by a DCTU offering PLTS shall be reviewed in the DCTU's compliance filing and shall notify customers of the rates, terms, and conditions of PLTS, as described in subsection (e) of this section, including:

(A) a customer's eligibility to enter into the PLTS plan;

(B) a description of the PLTS plan including its features, charges, and options;

(C) a customer's responsibility to make an initial payment for PLTS and any applicable service connection charges, as defined in subsection (e)(2)(A) of this section;

(D) a customer's responsibility to make the initial deferred payment, if applicable, in the third billing cycle and every month thereafter, for up to 12 months;

- (E) a customer's responsibility not to incur additional charges for calls, including long distance or other usage-sensitive services that will be charged on the local telephone bill, nor to subscribe to any services other than those included in PLTS, as defined in §26.5 of this title (relating to Definitions);
- (F) a customer's violation of the terms and conditions of the PLTS plan may result in disconnection;
- (G) if a customer is disconnected for violation of the terms and conditions of the PLTS plan, a DCTU has the right to retain and apply any credit in the PLTS account to the customer's outstanding balances for telecommunications services;
- (H) If a customer is disconnected for violation of the terms and conditions of the PLTS plan, that customer does not have the right to receive PLTS from that DCTU again;
- (I) the customer's responsibility to subscribe to PLTS within a certain time period in order to defer service restoration or connection charges as described in subsection (e)(1)(B) of this section; and
- (J) the customer's right to receive basic local telephone service without entering PLTS if the customer does not owe for basic local telephone charges. (This right shall be prominently displayed on the notice and shall be communicated to a customer anytime the utility notifies a customer of the rates and conditions of PLTS).

(d) **Subscription to PLTS.**

- (1) **Customer request to subscribe to PLTS.** To subscribe to PLTS, an eligible customer must contact the DCTU during regular business hours to request PLTS.
- (2) **Confirmation letter.** Within 24 hours after a customer requests PLTS, the DCTU shall mail the customer a confirmation letter in English or Spanish as necessary, explaining the PLTS plan, including the customer's rights and responsibilities upon enrollment and information about the rates, terms, and conditions of service under the PLTS plan.

(e) **Rates, terms, and conditions of PLTS.** A DCTU shall offer PLTS under the following terms and conditions:

(1) **Rates for PLTS.**

- (A) The monthly rate for PLTS shall include only:
 - (i) the applicable residential tariffed rate (or lifeline rates, if applicable) for services included in the PLTS definition in §26.5 of this title;
 - (ii) tariffed charges for non-listed and non-published service, if requested by the customer; and
 - (iii) surcharges and fees authorized by a governmental entity that are billed by the DCTU, including 911, subscriber line charges, sales tax, and municipal fees.
- (B) Non-recurring rates.

- (i) If a DCTU does not suspend basic local service before disconnection, the DCTU must defer service connection charges until the customer returns to basic local telecommunications service. However, if a customer does not subscribe to PLTS within ten days from the date the DCTU mailed a termination notice containing notice of PLTS eligibility, the DCTU may charge service connection charges when subscribing to PLTS.
 - (ii) If a DCTU suspends basic local service prior to disconnection, the DCTU must defer service restoration charges until the subscribing customer returns to basic local telecommunications service.
- (C) Late charges. The DCTU shall not assess late charges on a PLTS customer.
- (2) **Payments under PLTS.**
 - (A) A DCTU may require the residential PLTS customer to make an initial payment for service, which shall not exceed:
 - (i) the rates as described in paragraph (1)(A) of this subsection for up to two months of service; and
 - (ii) applicable non-recurring service connection charges.
 - (B) A DCTU shall not require subsequent monthly payments that exceed the rates for one month of PLTS. The due date of monthly payments shall be based on the DCTU's regular monthly billing cycle.
 - (C) A customer may be required to make payments under the deferred payment plan according to paragraph (4) of this subsection.

- (3) **Toll blocking.** PLTS subscribers shall have mandatory toll blocking and usage sensitive blocking placed on the telephone lines.
- (A) Customer responsibility. A customer subscribing to PLTS shall not place or receive calls, including long distance or other usage-sensitive services, for which additional charges are billed to the customer's telephone number, nor subscribe to any services other than those included in PLTS.
- (B) DCTU responsibility. The DCTU shall notify the customers of their responsibilities under PLTS when the customer inquires about the service in the confirmation letter.
- (4) **Deferred payment plan under PLTS.** As a condition of subscribing to PLTS, the DCTU may require an applicant to enter into a deferred payment plan for any outstanding debt owed to the DCTU for basic local telephone service. The DCTU shall not require an applicant to enter into a deferred payment plan to pay any outstanding debt for any services that the customer cannot use under PLTS including long distance services. If the DCTU is unable to determine the amount of outstanding debt, the DCTU shall not require an applicant to enter into a deferred payment plan.
- (A) Determination of deferred payment plan amount. To determine the deferred payment plan amount, the DCTU shall:
- (i) determine the amount the customer owes for basic local telephone service;

- (ii) apply any undesignated partial payment made by the customer before subscribing to PLTS to past debt for local telecommunications service; and
 - (iii) not reallocate any undesignated partial payments assigned under clause (ii) of this subparagraph to amounts not yet incurred for basic local telecommunications service.
 - (B) Monthly payments under the deferred payment plan.
 - (i) A deferred payment plan for past due charges shall not require the applicant to make monthly payments which exceed \$10 per month or one-twelfth of the outstanding debt as determined in subparagraph (A) of this paragraph, whichever is greater.
 - (ii) If the DCTU and PLTS customer enter into a deferred payment, the initial deferred payment shall be billed beginning with the third billing cycle after initiation of service and on a monthly basis thereafter.
- (5) **Customer deposit.** No deposit shall be required from any residential applicant for PLTS.
- (6) **Disconnection of PLTS.**
 - (A) Disconnection with notice. A DCTU may disconnect PLTS after notice for any of the following reasons:
 - (i) failure to comply with the terms of a deferred payment plan for PLTS;

- (ii) upon conclusion of all periods for which an advance payment has been applied to the PLTS account and when the customer's PLTS account has a zero balance; or
 - (iii) violation of the DCTU's rules on using PLTS in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer has a reasonable opportunity to remedy the situation.
- (B) Disconnection without notice. A DCTU may immediately disconnect PLTS without notice:
 - (i) if the customer accrues new charges for toll or other services on the telephone bill as described in paragraph (3) of this subsection;
 - (ii) where a known dangerous condition exists for as long as the condition exists; or
 - (iii) where service is connected without authority by a person who has not applied for the service or who has reconnected service without authority after termination.
- (C) Notice after disconnection. If a PLTS customer is disconnected under subparagraph (A) or (B) of this paragraph, a DCTU shall send a final notice stating that the customer is permanently disconnected from PLTS and that the customer shall not be eligible for PLTS from that DCTU. That notice shall also state the terms and conditions that the customer

must satisfy before the customer can return to basic local telecommunications service.

(f) **Return to basic local telecommunications service.**

- (1) A customer subscribing to PLTS may return to basic local telecommunications service if the customer has paid:
 - (A) all outstanding debt to the DCTU, including the carriage charges of interexchange carriers where the DCTU bills those charges pursuant to tariffs or contracts; and
 - (B) bills for PLTS.
- (2) When a customer completes the obligations identified in paragraph (1) of this subsection, a DCTU shall notify the customer of the:
 - (A) eligibility requirements for returning to basic local telecommunications services;
 - (B) option of receiving basic local telecommunications service with toll blocking and/or usage sensitive blocking; and
 - (C) requirement to contact the DCTU if the customer wants to return to basic local telecommunications service.
- (3) If the customer is eligible to return to basic local telecommunications service, the customer shall:
 - (A) request basic local telecommunications service from the DCTU; and
 - (B) pay the service restoration fee, if applicable.

(g) **Customer education.**

- (1) The commission shall provide information about the PLTS plan to customers.
- (2) A DCTU subject to the requirements of this section shall provide information about the PLTS plan annually in customers' bills. This information shall be subject to review during the DCTU's compliance filing.
- (3) A DCTU or its affiliate publishing a white pages directory on behalf of the DCTU shall disclose in clear language the availability, terms, and conditions of the PLTS plan in the section of the directory stating the rights of a customer.

(h) **Toll and usage sensitive blocking capability.**

- (1) The DCTU shall provide toll blocking and usage sensitive blocking to its maximum technical capability.
 - (A) If the DCTU's tariffs reflect its maximum technical capability, it shall provide toll blocking and usage sensitive blocking as stated in those tariffs.
 - (B) If the DCTU's tariffs do not reflect its maximum technical blocking capability, it shall inform the commission of the maximum level of blocking it is required to provide under PLTS in its compliance filings.
 - (C) If the DCTU does not have a tariff for toll or usage sensitive blocking but has such technical capability, it shall inform the commission of the maximum level of blocking it is required to provide under PLTS in its compliance filings.

- (D) As the DCTU's blocking capability increases, it shall notify the commission and provide such enhanced blocking under PLTS.
- (2) Where technically capable, toll blocking shall not deny access to toll-free numbers.
- (3) When imposing a toll or usage sensitive services block, the DCTU shall do so in a manner that is not unreasonably preferential, prejudicial, or discriminatory.
- (i) **Waiver request.**
- (1) A DCTU may request exemption from the requirements of this section, on a wire-center by wire-center basis, if it cannot meet the toll blocking and/or usage sensitive requirements.
- (2) A DCTU requesting a waiver shall fully document in its compliance filings the technical reasons for its inability to toll and/or usage sensitive block and indicate when such technical capability will be available in the wire center.
- (3) A waiver shall expire when the DCTU acquires the capability to block toll and/or usage sensitive services or when the DCTU is required to acquire the capability to toll and/or usage sensitive block by federal or state law or regulations, whichever comes first. The DCTU shall notify the commission in writing within 30 days of acquiring or being required to acquire the capability.
- (j) **Interexchange carrier (IXC) notification.** A DCTU serving 31,000 or more access lines and that is not a cooperative corporation shall:

- (1) Within 24 hours after a customer subscribes to PLTS, include a notice in the Customer Access Record Exchange (CARE) or similar report if developed by the DCTU, and the Line Identification Database (LIDB) indicating that the customer is subscribed to PLTS and any number changes;
- (2) Make access to the information contained in LIDB available to all IXC's serving the customer's area; and
- (3) If CARE, or similar report if developed by the DCTU, and LIDB are not available, the DCTU shall specify in its tariffs a comparable method of providing such notice to IXC's serving the area indicating a customer's subscription to PLTS; and
- (4) This subsection should not be interpreted as expanding access to CARE, or similar report if developed by the DCTU, to IXC's other than the customers' presubscribed carriers.

§26.54. Service Objectives and Performance Benchmarks.

(a) This section establishes service objectives that should be provided by a dominant certificated telecommunications utility (DCTU), as applicable. A deregulated company that holds a certificate of operating authority or a transitioning company in a market that is deregulated is exempt from complying with the retail quality of service standards and reporting requirements in this section. The section outlines performance benchmark levels for each exchange. If service quality falls below the applicable performance benchmark for an exchange, that indicates a need for the utility to investigate, take appropriate corrective action, and provide a report of such activities to the commission. The objective service levels are based on monthly averages, except for dial service and transmission requirements, which are based on specific samples. DCTUs shall make measurements to determine the level of service quality for each item included in this section. Each DCTU shall provide the commission with the measurements and summaries for any of the items included herein on request of the commission. Records of these measurements and summaries shall be retained by the DCTU as specified by the commission.

(b) **One-party line service and voice band data.**

- (1) One-party line service will be made available to all subscribers of local exchange service upon request.
- (2) All open wire transmission media shall be replaced with more reliable and better quality transmission media by the end of 1998, unless otherwise exempted by the

commission. Any utility that obtained an exemption from this requirement shall file a report with the commission on the status of its open wire replacement program by June 1, 2000, and if all open wire replacement is not complete by that date, every three months thereafter until the replacement program is complete.

- (3) All switched voice circuits shall be adequately designed and maintained to allow transmission of at least 14,400 bits of data per second when connected through an industry standard modem (ITU-T V.32bis or equivalent) or a facsimile machine (ITU-T V.17 or equivalent).

- (c) The DCTU shall comply with the service quality objectives established below in providing the basic telecommunications service to its end-use customers. The DCTU shall file its service quality performance report on a quarterly basis. The report shall include its monthly performance for each category of performance objective and a summary of its corrective action plan for each exchange in which the performance falls below the benchmark. Additionally, the corrective action plan shall include, at a minimum, details outlining how the needed improvements will be implemented within three months and result in performance at or above the applicable benchmark.

- (1) **Installation of service.** Unless otherwise provided by the commission:

- (A) Ninety-five percent of the DCTU's service orders for installing primary service shall be completed within five working days, excluding those orders where a later date was specifically requested by the customer.
Performance Benchmark Applicable for Corrective Action: If the performance is below 95% in any exchange area for a period of three

consecutive months, the DCTU shall provide a detailed corrective action plan for such exchanges or wire centers.

- (B) Ninety percent of the DCTU's service orders for regular service installations shall be completed within five working days, excluding those orders where a later date was specifically requested by the customer. This includes orders for primary and other services, installations, moves, or changes, but not complex services. Performance Benchmark for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive months the DCTU shall provide a detailed corrective action plan for such exchanges or wire centers.
- (C) Ninety-nine percent of the DCTU's service orders for service installations shall be completed within 30 days. Performance Benchmark for Corrective Action: If the performance is below 99% in any exchange area for a period of three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchange or wire center.
- (D) One-hundred percent of the DCTU's service orders for service installations shall be completed within 90 days.
- (E) Each DCTU shall establish and maintain installation time commitment guidelines for the various complex services contained in its tariff. Those guidelines should be available for public review and should be applied in a nondiscriminatory manner.
- (F) The installation interval measurements outlined in subparagraphs (A) - (D) and (H) of this paragraph shall commence with either the date of

application or the date on which the applicant qualifies for service, whichever is later.

- (G) The DCTU shall provide to the customer a due date on which the requested installation or change shall be made. If a customer requests that the work be done on a regular working day later than that offered by the DCTU, then the customer's requested date shall be the commitment date. If a premises visit is required, the DCTU shall schedule an appointment period with the customer for morning or afternoon, not to exceed a four-hour time period, on the due date. If the DCTU is unable to keep the appointment, the DCTU shall attempt to notify the customer by a telephone call and schedule a new appointment. If unable to gain access to the customer's premises during the scheduled appointment period, the DCTU carrier representative shall leave a notice at the premises advising the customer how to reschedule the work.
- (H) Ninety percent of the DCTU's commitments to customers for the date of installation of service orders shall be met, excepting customer-caused delays. Performance Benchmark Applicable for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive months, the DCTU shall submit a list of missed commitments to the commission and provide a detailed corrective action plan for such exchange or wire center.
- (I) The installation interval and commitment requirements of subparagraphs (A) - (D) and (H) of this paragraph do not include service orders either to

disconnect service or to make only record changes on a customer's account.

- (J) A held regrade order is one not filled within 30 days after the customer has made application for a different grade of service except where the customer requests a later date. In the event of the DCTU's inability to so fill such an order, the customer should be advised and told when the DCTU can fulfill the order. The number of held regrade orders shall not exceed 1.0% of the total number of customer access lines served.
- (2) **Operator-handled calls.** DCTUs shall maintain adequate personnel to provide an average operator answering performance as follows for each exchange on a monthly basis:
- (A) Eighty-five percent of toll and assistance operator calls answered within ten seconds, or average answer time shall not exceed 3.3 seconds. Benchmark for Corrective Action: If the performance is either below 85% within ten seconds or if the average exceeds 3.3 seconds at any answering location in any given month, the DCTU shall provide a detailed corrective action plan for such exchange or wirecenter.
- (B) Ninety percent of repair service calls shall be answered within 20 seconds or average answer time shall not exceed 5.9 seconds. Benchmark for Corrective Action: If the performance is below 90% within 20 seconds or the average answer time exceeds 5.9 seconds at any answering location for a period of five days within any given month, the DCTU shall provide a detailed corrective action plan for such exchange or wire center.

- (C) Eighty-five percent of directory assistance calls shall be answered within ten seconds or the average answer time shall not exceed 5.9 seconds. Benchmark for Corrective Action: If the performance is either below 85% within ten seconds or if the average answer time exceeds 5.9 seconds at any answering location in any given month, the DCTU shall provide a detailed corrective action plan for such exchange or wire center.
 - (D) An "answer" shall mean that the operator, interactive voice system, or representative, is ready to render assistance and/or ready to accept information necessary to process the call. An acknowledgment that the customer is waiting on the line shall not constitute an "answer."
 - (E) DCTUs may measure answer time on a toll center or operating unit basis in lieu of measuring answer time in each exchange unless specifically requested by the commission.
- (3) **Local dial service.** Sufficient central office capacity and equipment shall be provided to meet the following requirements:
- (A) dial tone within three seconds on 98% of calls. For record-keeping and reporting purposes, 96% in three seconds during average busy season and/or busy hour shall be acceptable as complying with this requirement;
 - (B) completion of 98% of intraoffice calls (those calls originating and terminating within the same central office building) without encountering an equipment busy condition (blockage) or equipment failure;
 - (C) for every switch that serves customers, the availability factor for stored program controlled digital and analog switching facilities shall be

99.99%, or the total unscheduled outage for each switch shall not exceed 53 minutes per year.

(D) A report detailing the cause and proposed corrective action for the local dial service measures, for any exchange that falls below the established performance objective level, must be submitted to the commission.

(4) **Local interoffice dial service.**

(A) Each DCTU shall provide and maintain interoffice trunks on its portion of the local exchange service network so that 97% of the interoffice local calls excluding calls between central offices in the same building are completed without encountering equipment busy conditions or equipment failures. For DCTUs' testing, record-keeping, and reporting purposes, DCTUs are not required to separate local dial service results from local interoffice dial service results unless specifically requested by the commission.

(B) The availability factor for stored program controlled digital and analog switching and interoffice transmission facilities for end-to-end transmission shall be 99.93%, or the total unscheduled outage shall not exceed 365 minutes per year.

(C) A report detailing the cause and proposed corrective action for the local dial service measures, for any exchange that falls below the established performance objective level, must be submitted to the commission.

(5) **Direct distance dial service.** Engineering and maintenance of the trunk and related switching components in the toll network shall permit 97% completion on

properly dialed calls, without encountering failure because of blockages or equipment irregularities. A report detailing the cause and proposed corrective action for the direct distance dial service measure, for any exchange that falls below the established performance objective level, must be submitted to the commission.

(6) **Customer trouble reports.**

(A) The DCTU that serves more than 10,000 access lines shall maintain its network service in a manner that it receives no more than three customer trouble reports on a company-wide basis, excluding customer premises equipment (CPE) reports, per 100 customer access lines per month (on average). Performance Benchmark Applicable for Corrective Action: If the customer trouble report exceeds 3.0% (three per 100 access lines) for a large exchange or 6.0% (six per 100 access lines) for a smaller exchange for three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchange or wire center. For purposes of this section, a large exchange is defined as serving 10,000 or more access lines and a small exchange is defined as serving less than 10,000 access lines.

(B) The DCTU that serves 10,000 or less access lines shall maintain its network service in a manner that it receives no more than six customer trouble reports on a company-wide basis, excluding customer premises equipment (CPE) reports, per 100 customer access lines per month (on average). Performance Benchmark Applicable for Corrective Action. If

the customer trouble report exceeds 6.0% (six per 100 access lines) per exchange for three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchange or wire center.

- (C) The DCTU shall provide to the customer a commitment time by which the trouble will be cleared. If a premises visit is required, the DCTU shall schedule an appointment period with the customer for the morning or afternoon, not to exceed a four-hour time period. When the DCTU cannot keep an appointment, the DCTU shall attempt to notify the customer by a telephone call and schedule a new appointment. If unable to gain access to the customer's premises during the scheduled appointment period, the DCTU representative shall leave a notice at the premises advising the customer how to reschedule the work.
- (D) At least 90% of out-of-service trouble reports on service provided by a DCTU shall be cleared within eight working hours, except where access to the customer's premises is required but not available or where interruptions are caused by unavoidable casualties and acts of God affecting large groups of customers. Performance Benchmark Applicable for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchange or wire center.
- (E) Each DCTU shall establish procedures to insure the prompt investigation and correction of trouble reports so that the percentage of repeated trouble reports on residence and single line business lines does not exceed 22% of

the total customer trouble reports on those lines. Performance Benchmark Applicable for Corrective Action: If repeat reports exceed 22% of the total customer trouble report in any exchange for three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchange or wire center.

- (7) **Transmission requirements.** All voice-grade trunk facilities shall conform to accepted transmission design factors and shall be maintained to meet the following objectives when measured from line terminals of the originating central office to the line terminals of the terminating central office. A periodic report for central offices or exchanges as requested by the commission staff shall be provided by the DCTU, in order to demonstrate compliance with the following objectives.
- (A) Interoffice local exchange service calls. Excluding calls between central offices in the same building, 95% of the measurements on the network of a DCTU should have from two to ten decibels loss at 1000+20 hertz and no more than 30 decibels above reference noise level ("C" message weighting).
 - (B) Direct distance dialing. Ninety-five percent of the transmission measurements should have from three to 12 decibels loss at 1000+20 hertz and no more than 33 decibels above reference noise level ("C" message weighting).
 - (C) Subscriber lines. All newly constructed and rebuilt subscriber lines shall be designed for a transmission loss of no more than eight decibels from

the serving central office to the customer premises network interface. All subscriber lines shall be maintained so that transmission loss does not exceed ten decibels. Subscriber lines shall in addition be constructed and maintained so that metallic noise does not exceed 30 decibels above reference noise level ("C" message weighting) on 90% of the lines. Metallic noise shall not exceed 35 decibels above reference noise level ("C" message weighting) on any subscriber line.

- (D) PBX, key, and multiline trunk circuits. PBX, key, and multiline trunk circuits shall be designed and maintained so that transmission loss at the subscriber station does not exceed eight decibels. If the PBX or other terminating equipment is customer-owned and if transmission loss exceeds eight decibels the DCTU's responsibility shall be limited to providing a trunk circuit with no more than five decibels loss from the central office to the point of connection with customer facilities.
- (E) Impulse Noise Limits. The requirements for impulse noise limits shall be as follows:
 - (i) For switching offices, the noise level count shall not exceed five pulses above the threshold in any continuous five minute period on 50% of test calls. The reference noise level threshold shall be less than: 54 dBrnC for Crossbar switch, 59 dBrnC for step-by-step switch, and 47 dBrnC for electronic or digital switch.
 - (ii) For trunks, the noise level count shall not exceed five pulses above the threshold in any continuous five minute period on 50% of

trunks in a group. The reference noise level threshold shall be less than 54 dBrnCO for voice frequency trunks, and 62 dBrnCO for digital trunks.

- (iii) For loop facilities, the noise level count shall not exceed 15 pulses above the threshold in any continuous 15 minute period on any loop. The reference noise level threshold shall be less than 59 dBrnC when measured at central office (CO), or referred to CO through 1004 Hz loss.

§26.73. Annual Earnings Report.

Each utility shall file with the commission, on commission-prescribed forms available on the commission's website, an earnings report providing the information required to enable the commission to properly monitor public utilities within the state. A deregulated or transitioning company is not required to file an earnings report with the commission unless the company is receiving support from the Texas High Cost Universal Service Plan.

- (1) Each utility shall report information related to the most recent calendar year as specified in the instructions to the report.
- (2) Each utility shall file three copies of the commission-prescribed earnings report and shall electronically transmit one copy of the report no later than May 15th of each year.
- (3) A utility with a rate proceeding pending before the commission on the due date of the annual earnings report, pursuant to the Public Utility Regulatory Act, Chapter 53, in which a rate filing package is required, or who had a final order issued in such a proceeding within the previous 12 months, is exempt from filing the report.

§26.89. Information Regarding Rates and Services of Nondominant Carriers.

- (a) All nondominant carriers, including those holding a certificate of operating authority or a service provider certificate of operating authority, may, but are not required to file the information set forth in paragraphs (1) - (3) of this subsection. This information shall be updated and kept current at all times.
- (1) A description of the type(s) of communications service provided;
 - (2) For each service listed in response to paragraph (1) of this subsection, the locations in the state (by city) in which service is originated and/or terminated. If service is provided statewide, either origination or termination, the carrier shall so state; and
 - (3) A tariff, schedule or list showing all recurring and nonrecurring rates for each service provided.
- (b) By June 30 of each year, each nondominant carrier that during the previous 12 months has not filed changes to the information filed pursuant to subsection (a) of this section shall file with the commission a letter informing the commission that no changes have occurred. An uncertificated nondominant carrier failing to file either this letter or the updates pursuant to subsection (a) of this section during the 12-month period ending June 30 may no longer be considered to be registered with the commission.
- (c) All nondominant carriers shall comply with the registration requirements in §26.107 of

this title (relating to Registration of Nondominant Telecommunications Carriers).

(d) A nondominant carrier:

- (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 cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rate;
- (3) may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if it:
 - (A) files written notice of the withdrawal with the commission; and
 - (B) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website.

§26.124. Pay-Per-Call Information Services Call Blocking.

- (a) **Free blocking.** Within 90 days of being declared a dominant carrier, all dominant certificated telecommunications utilities (DCTUs) are required, upon request from the end user only, to block access to all pay-per-call information services when a call is placed to a 1-900-XXX-XXXX or 976-XXXX number. There will be no charge to the end user for the first blocking request when pay-per-call information service blocking is first installed on the end user's line. However, there may be a non-recurring charge applicable for subsequent blocking requests, if prior blocking has been removed and is being reinstated.
- (b) **Subscription to blocking.**
- (1) **End users not currently receiving blocking.** To restrict access to pay-per-call information services, end users must order blocking either orally or by using a written ballot. Within 60 days of being declared a DCTU, each DCTU must notify its end users of the free blocking opportunity and send a post-paid ballot to all existing end users (either through bill inserts or a separate mailing) allowing them to choose whether they want to restrict access to pay-per-call information services.
- (2) New end users must be offered free blocking of pay-per-call information service calls at the time of their service order. There will be no charge to the end user for the first blocking request, but there may be a non-recurring charge applicable for subsequent blocking requests.

- (3) End users electing not to restrict access to pay-per-call information services will have access to all 900 and 976 pay-per-call information services available in their service area.
- (c) **Mandatory blocking.** In areas where restricting access to pay-per-call information services on a selective, per-line basis is not technically possible, all access to the pay-per-call information services must be blocked.
- (1) End users whose access to pay-per-call information services is blocked pursuant to this provision shall be notified prior to the time of the blocking that such blocking will take place, the fact that such blocking is being done pursuant to this section, and that such blocking is required due to the fact that restriction of access to such services is not technically possible at that time.
 - (2) Once an area that has been mandatorily blocked attains the technological capability to provide per-line blocking, the DCTU shall provide the notice and balloting procedures set out in subsections (a) and (b) of this section. A blocking request from the end user received thereafter by the DCTU shall be treated as an initial blocking request and implemented without charge.
- (d) **Disconnection.** A DCTU may not disconnect an end user's local telephone service for nonpayment of charges for pay-per-call information service. A DCTU may implement involuntary blocking of pay-per-call information service for nonpayment of charges for pay-per-call information service.

- (e) **Compliance.** Each DCTU that is subject to rate of return regulation under Public Utility Regulatory Act, Chapter 53 shall file tariffs in compliance with this section. The compliance tariffs will be reviewed by staff. Within 35 days of the date of filing of the tariffs, the tariffs will either be approved or the effective date of the tariff will be suspended for further review.

§26.128. Telephone Directories.

- (a) **Applicability.** The provisions of this section shall apply to all telephone directory providers to the extent outlined in this section. For purposes of this section, the term "a private for-profit publisher" shall mean a publisher, other than a telecommunications utility or its affiliate, of a telephone directory that contains residential listings and that is distributed to the public at minimal or no cost.
- (b) **Telephone directory requirements for all providers.** Any private for-profit publisher and any telecommunications utility or its affiliate that publishes a residential telephone directory shall comply with the following requirements:
- (1) A telephone directory shall contain a listing of each toll-free and local telephone number for each of the following:
 - (A) state agencies;
 - (B) state public services; and
 - (C) elected state officials who represent all or part of the geographical area for which the directory contains listings.
 - (2) The directory shall include the information required in paragraph (1) of this subsection from the most current edition of the State of Texas Telephone Directory prepared and issued by the Department of Information Services and those modifications to the State of Texas Telephone Directory that are available upon request from the Department of Information Resources.

- (3) All publishers shall contact the Department of Information Resources in writing to determine which issue of the State of Texas Telephone Directory is most current and to obtain the modifications referred to in paragraph (2) of this subsection. The Department of Information Resources shall respond within 30 days of receiving the request.
- (4) The listings required by paragraph (1) of this subsection:
- (A) may be located at the front of the directory or, if not located at the front of the directory, shall be referenced clearly on the inside page of the cover or on the first page following the cover before the main listing of residential and business telephone numbers;
 - (B) shall be labeled "GOVERNMENT OFFICES - STATE" in 24 point type;
 - (C) shall be bordered or shaded in such a way (on the three unbound sides with a border) that will distinguish the state listings from the other listings;
 - (D) shall be included in the directory at no cost to the agency or official;
 - (E) shall be in compliance with the categorization developed by the Records Management Interagency Coordinating Council. The categorization shall be available upon request from the Department of Information Resources.

The listings shall be arranged in two ways:
 - (i) alphabetically by subject matter of state agencies; and
 - (ii) alphabetically by agency and public service name;
 - (F) shall include the telephone number for state government information:

(512) 463-4630.

- (c) **Private for-profit publisher.** Any private for-profit publisher that publishes a residential telephone directory shall include in the directory a prominently displayed toll-free number and Internet mail address, established by the commission, through which a person may order a form to request to be placed on the Texas no-call list in order to avoid unwanted telemarketing calls.
- (d) **Additional requirement for telecommunications utilities or affiliates that publish telephone directories.**
- (1) A telecommunications utility or an affiliate of that utility that publishes a business telephone directory that is distributed to the public shall publish a listing of each toll-free and local telephone number of each elected official who represents all or part of the geographical area for which the directory contains listings.
 - (2) A telecommunications utility or an affiliate of that utility that publishes and causes to be distributed to the public a residential or business telephone directory shall prominently list in the directory the following information: "The Specialized Telecommunications Assistance Program (STAP) provides financial assistance to help Texas residents with disabilities purchase basic specialized equipment or services needed to access the telephone network. For more information, contact the Texas Department of Assistive and Rehabilitative Services, the Office for Deaf and Hard of Hearing Services at 512-407-3250 (Voice) or 512-407-3251

(TTY) or www.dars.state.tx.us/dhhs/. This program is open to all individuals who are residents of Texas and have a disability."

(e) **Requirements for telecommunications utilities found to be dominant.** This subsection applies to any telecommunications utility found to be dominant as to local exchange telephone service or its affiliate that publishes a directory on behalf of such telecommunications utility.

(1) **Annual publication.** Telephone directories shall be published annually. Except for customers who request that information be unlisted, directories shall list the names, addresses, and telephone numbers of all customers receiving local phone service, including customers of other certificated telecommunications utilities (CTUs) in the geographic area covered by that directory. Numbers of pay telephones need not be listed.

(2) **Distribution.** Upon issuance, a copy of each directory shall be distributed at no charge for each customer access line served by the telecommunications utility in the geographic area covered by that directory and, if requested, one extra copy per customer access line shall be provided at no charge. Notwithstanding any other law, a telecommunications provider or telecommunications utility may publish on its website a telephone directory or directory listing instead of providing for general distribution to the public of printed directories or listings. A provider or utility that publishes a telephone directory or directory listing electronically shall provide a print or digital copy of the directory or listing to a customer on request. If a provider or utility chooses to publish its telephone directory or directory

listings electronically, it shall notify its customers that the first print or digital copy requested by a customer in each calendar year will be provided at no charge to the customer. A printed or digital copy of each directory shall be furnished to the commission. A telecommunications utility shall also distribute copies of directories pursuant to any agreement reached with another CTU.

- (3) Front cover requirements. The name of the telecommunications utility, an indication of the area included in the directory, and the month and the year of issue shall appear on the front cover. Information pertaining to emergency calls such as for the police and fire departments shall appear conspicuously in the front part of the directory pages.
- (4) Required instructions. The directory shall contain instructions concerning:
 - (A) placing local and long distance calls on the network of the telecommunications utility for which the directory is issued;
 - (B) calls to the telecommunications utility's repair and directory assistance services, and locations; and
 - (C) telephone numbers of the business offices of the telecommunications utility as may be appropriate to the area served by the directory.
- (5) Sample long distance rates. It shall also contain a section setting out sample long distance rates within the long distance service area, if any, on the network of the telecommunications utility for which the directory is issued, applicable at the time the directory is compiled for publication, with a clear statement that the published rates are effective as of the date of compilation.

- (6) Customer addresses. At the customer's option the directory shall list either the customer's street address, a post office box number, or no address. A charge can be imposed upon those customers who desire more than one address listing.
- (f) **References to other sections relating to directory notification.** The requirements of this section are in addition to the requirements referenced in paragraphs (1) - (4) of this subsection, or any other applicable section in this title. The applicability of each of the sections referenced in paragraphs (1) - (4) of this subsection is unaffected by the inclusion of the reference in this subsection.
- (1) Section 26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)) concerning consumer education;
- (2) Section 26.31 of this title (relating to Disclosures to Applicants and Customers) concerning information to customers;
- (3) Section 26.121 of this title (relating to Privacy Issues) concerning notice of number delivery over 800, 888, and other toll-free prefixes and 900 services;
- (4) Section 26.130 of this title (relating to Selection of Telecommunications Utilities) concerning notice of customer rights.
- (g) **Additional requirements.** The following requirements apply to telecommunications utilities found to be dominant as to local exchange telephone service or its affiliate that publishes a directory on behalf of such telecommunications utility.
- (1) **Directory assistance.** Each telecommunications utility shall list each customer with its directory assistance within 72 hours after service connection (except

those numbers excluded from listing in subsection (e)(1) of this section) in order that the directory assistance operators can provide the requested telephone numbers based on customer names and addresses.

- (2) **Non-assigned numbers.** All non-assigned telephone numbers in central offices serving more than 300 customer access lines shall be intercepted unless otherwise approved by the commission.
- (3) **Disconnected numbers.** Disconnected residence telephone numbers shall not be reassigned for 30 days and disconnected business numbers shall not be reassigned, unless requested by the customer, for 30 days or the life of the directory, whichever is longer, unless no other numbers are available to provide service to new customers.
- (4) **Incorrect listings.** If a customer's number is incorrectly listed in the directory and if the incorrect number is a working number and if the customer to whom the incorrect number is assigned requests, the number of the customer to whom the incorrect number is assigned shall be changed at no charge. If the incorrect number is not a working number and is a usable number, the customer's number shall be changed to the listed number at no charge if requested.
- (5) **Changing telephone numbers to a group of customers.** When additions or changes in plant or changes to any other CTU's operations necessitate changing telephone numbers to a group of customers, at least 30 days' written notice shall be given to all customers so affected even though the addition or changes may be coincident with a directory issue.

§26.134. Market Test to be Applied in Determining if Markets with Populations Less than 100,000 Should Remain Regulated.

- (a) **Purpose.** The purpose of this section is to establish the market tests to be applied in determining if markets with populations less than 100,000 should remain regulated.
- (b) **Application.** This section applies to all incumbent local exchange companies (ILECs), as defined in §26.5 of this title (relating to Definitions).
- (c) **Market Test.** Markets as defined in PURA §65.002 with a population of less than 100,000 shall be deregulated only if the ILEC providing services to such a market submits evidence demonstrating that the population in the market is less than 100,000 and in addition to the ILEC there are at least two competitors operating in all or part of the market that:
- (1) are unaffiliated with the ILEC; and
 - (2) provide voice communications service without regard to the delivery technology, including through:
 - (A) Internet Protocol or a successor protocol;
 - (B) satellite; or
 - (C) a technology used by a wireless provider or a commercial mobile service provider, as that term is defined by PURA §64.201.

(d) **Market Test Procedures**

- (1) An ILEC may petition the commission to deregulate a market of the ILEC that the commission previously determined should remain regulated.
- (2) Only the ILEC may initiate a proceeding to deregulate one of its markets. Not later than the 90th day after the date the commission receives the petition, the commission shall:
 - (A) determine whether the regulated market should remain regulated; and
 - (B) issue a final order classifying the market in accordance with this section.
- (3) If the commission deregulates a market that results in a regulated or transitioning company no longer meeting the definition of a regulated or transitioning company, the commission shall issue an order reclassifying the company as a transitioning company or deregulated company, as those terms are defined by PURA §65.002.

- (e) **Rural Exemption Waiver.** In the event that an ILEC seeking deregulation of a market area with a population of less than 100,000 has a rural exemption as provided for in 47 U.S.C §251(f)(1) "Exemption For Certain Rural Telephone Companies" of the Communications Act of 1934, a petition for the removal of that rural exemption for that market must be approved by the commission in order for the market in question not to remain regulated. In addition, any such market must meet the conditions of the market test set forth in subsection (c) of this section.

(f) **Timing.**

- (1) After September 1, 2011, an ILEC petitioning for deregulation of a market with a population of less than 100,000 shall submit with its petition the evidence in compliance with subsection (c) of this section and, if applicable, subsection (e) of this section.
- (2) A market deregulated as of September 1, 2011, shall remain deregulated.
- (3) The commission may not reregulate a market or company that has been deregulated.

§26.141. Distance Learning, Information Sharing Programs, and Interactive Multimedia Communications and Private Network Services to Certain Entities.

- (a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context indicates otherwise.
- (1) **Distance learning** -- Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by an educational institution predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.
 - (2) **Educational institution** -- Accredited primary or secondary schools owned or operated by state and local government entities or by private entities; institutions of higher education as defined by the Education Code, §61.003(13); the Texas Education Agency, its successors and assigns; regional education service centers established and operated pursuant to the Education Code, Chapter 8; and the Texas Higher Education Coordinating Board, its successors and assigns.
 - (3) **Health center** -- A federally qualified health center delivery site.
 - (4) **Information sharing program** -- Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by a library predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.
 - (5) **Interactive multimedia communications** -- Real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations. This definition includes interactive communications within or between buildings on the same campus or library site.

- (6) **Library** -- Public library or regional library system as defined by Government Code, §441.122, or a library operated by an institution of higher education or a school district.
- (b) **Distance Learning Information Sharing Programs and Interactive Multimedia Communications.**
- (1) **Telecommunications services eligible for reduced rates.**
- (A) Any tariffed service, if used predominantly for distance learning purposes by an educational institution or for information sharing program purposes by a library, is eligible for reduced rates, as set forth in this section.
- (B) A service is used predominantly for distance learning purposes by an educational institution or for information sharing program purposes by a library when over 50% of the traffic carried, whether in video, data, voice, and/or electronic information, is identified for such use pursuant to the requirements of paragraph (3) of this subsection.
- (2) **Coordination with federal discounts**
- (A) For any discount received pursuant to §26.216 of this title (relating to Educational Percentage Discount Rates (E-Rates)), an eligible school, library or consortia may apply such discount prior to any discount received under paragraph (3) or (4) of this subsection. Any subsequent discount received under this section shall apply to the discounted E-Rate and not the tariffed rate.

(B) Any discount received under §26.216 of this title will be applied subsequent to the rate obtained for services offered pursuant to paragraph (5) of this subsection. For purposes of determining the rate to which a discount pursuant to §26.216 of this title will apply, the rates offered under subsection (b)(5) of this section qualify as the lowest corresponding price.

(3) **Process by which an educational institution or library qualifies for reduced rates other than through a customer-specific contract.** To qualify for a discounted rate, an educational institution or library, as defined in subsection (a) of this section, must provide a sworn affidavit to the dominant certificated telecommunications utility account representative or, if no account representative is assigned, to the business office of the utility.

(A) The affidavit shall:

- (i) specify the requested service(s) to be discounted;
- (ii) quantify, if applicable, the requested service(s) to be discounted;
- (iii) state that the discounted service(s) will be used predominantly for distance learning purposes or information sharing program purposes; and
- (iv) specify the intended use(s) of the discounted service(s).

(B) The affidavit shall be signed by the administrative head of the institution (*e.g.*, principal, president, chancellor) or library, or a designee given the task and authority to execute the affidavit on behalf of the educational institution or library requesting the discounted rates.

- (C) No other special form needs to be provided as part of the application process.
- (D) The educational institution or library shall provide an affidavit each time it orders services that will be used predominantly for distance learning purposes or information sharing program purposes.
- (4) **Interactive multimedia communications services.** Any dominant certificated telecommunications utility that provides interactive multimedia communications services may file a tariff to establish rates at levels necessary, using sound rate-making principles, to recover costs associated with providing such services to educational institutions or libraries. Those interactive multimedia communications services used predominantly for distance learning or information sharing program purposes, however, shall qualify for a 25% discount pursuant to paragraph (3) of this subsection.
- (5) **Customer-specific contracts.** When a service is provided to an educational institution or library pursuant to §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), the dominant certificated telecommunications utility shall price those components of the service used predominantly for distance learning or an information sharing program no greater than 110%, including installation, of the customer-specific long-run incremental cost.
- (6) **Cost determination.** Notwithstanding paragraph (3) and (4) of this subsection, once the commission develops cost determination rules for telecommunications services generally, a reduced rate approved under this section shall recover the

service-specific long-run incremental costs. In the case of interactive multimedia communications services, however, the commission may allow a rate to be set lower than the long-run incremental cost of a specific service if such is determined to be in the public interest.

- (c) **Private Network Services for Certain Entities.** A PURA Chapter 58 or 59 electing company shall provide network services to an educational institution; a library, defined as a public library or regional library system as defined by Government Code §441.122, or a library operated by an institution of higher education or a school district; a nonprofit telemedicine center; a public or not-for-profit hospital; a legally constituted consortium or group of these entities listed herein; or a health center.
- (1) Priority shall be given to rural areas, areas designated as critically underserved either medically or educationally, and educational institutions with high percentages of economically disadvantaged students.
 - (2) An electing company shall provide private network services under a customer-specific contract.
 - (3) An electing company shall offer private network service contracts under PURA Chapter 58, Subchapter G at 110% of the long run incremental cost of providing the private network service, including installation.
 - (4) An electing company shall file a flat monthly tariff rate for point-to-point intraLATA 1.544 megabits a second service. The tariff rate shall not be distance sensitive or higher than 110 % of the service's statewide average long run incremental cost, including installation.

- (5) On request of an entity listed in this subsection, an electing company shall provide point-to-point 45 megabits a second intraLATA services. The rate for the service shall not be higher than 110% of the service's long run incremental cost, including installation, and must be provided under a customer-specific contract except that any interoffice portion of the service must be recovered on a statewide average basis that is not distance sensitive.
- (6) An electing company shall provide to an entity listed in this subsection, broadband digital special access service to interexchange carriers, and the rate for the service shall not be higher than 110% of the service's long run incremental cost, including installation.
- (7) On request of an entity listed in this subsection, an electing company shall provide expanded interconnection (virtual collocation).
- (8) On request of an educational institution or library in an exchange of an electing company serving more than five million access lines in which toll-free access to the Internet is not available, an electing company shall make available a toll-free connection or toll-free dialing arrangement that the institution or library may use to obtain access to the Internet in an exchange in which toll-free access to the Internet is available at no charge until Internet access becomes available in the exchange of the requesting institution or library. The electing company is not required to arrange for Internet access or to pay Internet charges for the requesting institution or library.

- (9) The private network services provided under PURA Chapter 58, Subchapter G may be interconnected with other similar networks for distance learning, telemedicine, and information-sharing purposes.

§26.171. Small Incumbent Local Exchange Company Regulatory Flexibility.**(a) Purpose and application.**

- (1) **Purpose.** The purpose of this section is to establish procedures and pricing guidelines that small incumbent local exchange companies (ILECs), because of their special characteristics, may use to expedite commission approval of services and rates in accordance with the Public Utility Regulatory Act (PURA), Chapter 53, Subchapter G. Through this section, the commission encourages the provision of adequate and efficient telecommunications service by facilitating the ability of small ILECs' to offer technologically advanced services that are generally available in metropolitan areas from large ILECs.
- (2) **Application.** This section applies to any small ILEC as that term is defined in §26.5 of this title (relating to Definitions), except that this section does not apply to a cooperative corporation partially deregulated under PURA, Chapter 53, Subchapter H. Nothing in this section precludes a small ILEC from offering a packaged service, new service, or promotional service_or proposing a change in rates under other applicable sections of the PURA. Nothing in this section prohibits the commission from conducting a review in accordance with PURA, Chapter 53, Subchapter D. Notwithstanding limitations contained within §26.121 of this title (relating to Privacy Issues), §26.121 of this title applies to notices to the commission (commission notices) filed under this section.

- (b) **Definition.** The term "affected customer" when used in this section means a customer

that is in the class of customers and in the exchange or exchanges affected by the notice filed in accordance with the provisions of this section.

(c) **Filing.** By following procedures outlined in this section, a small ILEC may offer extended local calling service, a packaged service, a promotional service, or a new service on an optional basis or make a minor change in its rates or tariffs.

(1) Notice. At least 10 calendar days before the effective date of the proposed change, the small ILEC shall file six copies of a commission notice with the commission's Filing Clerk and shall serve a copy upon the Office of Public Utility Counsel. Such notice shall include:

- (A) a copy of the customer notice required by subsection (d) of this section;
- (B) a sufficient description of how notice was or will be provided to the customers to allow the presiding officer to rule on the sufficiency of the notice;
- (C) any request for a good cause waiver to the requirements of this section, and sufficient justification for the good cause exception to allow the presiding officer to rule on the request;
- (D) a copy of the resolution adopted by the small ILEC's board of directors approving the proposed change;
- (E) the proposed effective date of the change;
- (F) a description of the affected services and the category of customers affected by the proposed change;
- (G) a copy of the proposed tariff;

- (H) the number of access lines the small ILEC and each of its affiliates has in service in the state;
 - (I) the amount by which the small ILEC's total regulated intrastate gross annual revenues will increase or decrease as a result of the proposed change, and, if the proposal is for a rate change, sufficient information to demonstrate that the proposed change is a minor change;
 - (J) a statement affirming that the rates are just and reasonable, are not unreasonably preferential, prejudicial, or discriminatory, and are sufficient, equitable, and consistent in application to each class of customers, in accordance with PURA §53.003;
 - (K) information required by §26.121 of this title; and
 - (L) any other information the small ILEC wants considered in connection with the notice.
- (2) **Response to the commission notice.** No later than ten calendar days after the small ILEC files the commission notice, the presiding officer assigned to the project shall notify the small ILEC of any deficiencies in the commission notice, whether the notice to the customers is approved, and whether a waiver request, if any, is granted.
- (d) **Notice.** A small ILEC satisfies the notice requirements in paragraphs (1)-(4) of this subsection by completing notice to the affected customers no later than 10 days before the proposed effective date of the tariff sheets. If notice is not completed as required, the proposed effective date shall be postponed for as many days as completion

of notice is delayed.

- (1) **Extended local calling service, packaged service, promotional service or new service.** For extended local calling service, a packaged service, promotional service or a new service, notice shall be provided to each affected customer .
- (2) **Good cause exceptions.** The presiding officer may require for good cause that notice be provided in addition to notice proposed by the small ILEC for a proposed new service or may waive for good cause the notice requirement prescribed by this section.
- (3) **Contents of notice.** Each notice must include:
 - (A) a description of the service(s) affected by the proposed change;
 - (B) a list of rates affected by the commission notice and how the rates affect each category of affected customers;
 - (C) the proposed effective date of the change;
 - (D) an explanation of the affected customer's right to petition the commission for review under subsection (g)(2) of this section, including the number of affected persons required to petition before commission review will occur and the date by which the petition must be received by the commission, which date must be 30 calendar days following the completion of notice;
 - (E) an explanation of the affected customer's right to obtain from the small ILEC a copy of the proposed tariff and instructions on how to do so; and
 - (F) the amount by which the small ILEC's total regulated intrastate gross annual revenues will increase as a result of the proposed change.

- (4) **Proof of customer notice.** No later than seven calendar days following completion of notice, the small ILEC or a representative of the small ILEC shall file one or more affidavits establishing proof of notice to customers as required by this subsection.
- (e) **New service availability.** If the commission notice concerns a new service, as defined in §26.5 of this title, that will not be offered system-wide, the small ILEC shall explain separately for each telephone exchange why the new service cannot be offered system-wide.
- (f) **Rates and revenues.** The following requirements apply to a commission notice filed under this section:
- (1) **Minor change.** A proposed rate change must be a minor change as defined in §26.5 of this title.
 - (2) **Limitation on rate increases.** Except for good cause shown, a rate shall not be increased more than once in any 12-month period.
 - (3) **Rate-setting principles.** A rate established under this section must be in accordance with the rate-setting principles of PURA, Chapter 53, except that a small ILEC may provide to its board members, officers, employees, or agents free or reduced rates for services.
- (g) **Review.**
- (1) **Effective date.** A proposed tariff filed under this section shall be

effective on the date proposed by the small ILEC, unless the effective date is suspended.

(2) **Suspension of tariff.** The proposed tariff may be suspended up to 150 calendar days to provide the commission an opportunity to review the commission notice. Additionally the presiding officer shall suspend the tariff if within 30 calendar days following the completion of the customer notice:

- (A) the commission receives a complaint relating to the proposed change signed by the lesser of 5.0% or 1,500 of the affected local service customers to which the proposed change applies. Five percent shall be calculated based upon the total number of affected customers of record as of the calendar month preceding receipt of the complaint; or
- (B) the commission receives a complaint relating to the proposed change from either an affected intrastate access customer or a group of affected intrastate access customers that, in the preceding 12 months, the small ILEC billed more than 10% of its total intrastate gross access revenues; or
- (C) the proposed change is not a minor change; or
- (D) the proposed change is not consistent with the commission's written substantive policies; or
- (E) the small ILEC has not complied with the procedural requirements of this section.

(h) **Docketing.** Following suspension of the effective date of the proposed tariff, the

presiding officer shall provide a small ILEC a reasonable opportunity to modify its commission notice to address conditions that exist, if any, under subsection (g)(2) of this section. If conditions under subsection (g)(2) of this section are not resolved during the suspension period, the presiding officer may docket the project. If the project is docketed, the effective date of the proposed tariff shall be automatically suspended and the commission shall review the commission notice in accordance with the commission's procedural rules applicable to docketed cases.

§26.205. Rates for Intrastate Access Services.

- (a) **General.** Dominant certificated telecommunications utility (DCTU) rates for intrastate access services shall be established in accordance with the provisions of this section. Nothing in this section precludes a DCTU from offering new, experimental, promotional, or competitive services in accordance with other provisions of this part authorizing such offerings.
- (b) **Access services.** Each DCTU's tariff must include the recurring and nonrecurring charges for all access services offered by the DCTU. A DCTU 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. A DCTU is not required to include in its access tariff any access service that its network is technologically incapable of providing. A DCTU must include in its access tariff any access service which is provided on a special assembly basis if the service is provided to more than three customers or if the service is provided at more than three locations. DCTUs are prohibited from charging intrastate end user common line charges, intrastate subscriber line charges, or similar intrastate end user charges.
- (c) **Access rates.** The structure and rates for all DCTUs' intrastate switched access services shall be established in accordance with the following requirements.
- (1) **Terminating common carrier line (CCL).** Each DCTU's terminating CCL rate shall not exceed \$.08 per premium terminating rated access minute of use.

- (2) **Premium rates.** The requirements of this paragraph apply to Southwestern Bell Telephone Company effective December 14, 1994 unless otherwise ordered by the commission. Premium access rates shall apply only to those switched access minutes that:
- (A) terminate via Feature Group B;
 - (B) originate or terminate via Feature Group C;
 - (C) originate from an equal access end office via any switched access feature group;
 - (D) terminate to an equal access end office via any switched access feature group; or
 - (E) originate from a non-equal access end office and are routed over Feature Group D tandem connections.
- (3) **Local switching.** There shall be one premium local switching rate element.
- (4) **Local transport rate structure and pricing.** Local transport rates shall not contain unreasonable distance sensitivity. Each DCTU shall comply with subparagraphs (A)-(I) of this paragraph, unless indicated otherwise.
- (A) **Transport services.** Each DCTU that is subject to this subparagraph shall offer transport services that consist of the following elements: entrance facilities, direct-trunked transport, tandem-switched transport, dedicated signaling transport, and a residual charge.
 - (B) **Entrance facilities.**
 - (i) All access customers that use the DCTU's facilities between the customer-designated point of demarcation and the serving wire

center (SWC) shall be assessed a flat-rated entrance facilities charge based upon the service level ordered. Dominant certificated telecommunications utilities shall offer entrance facilities at voicegrade, DS1 and DS3 service levels.

- (ii) Rates for entrance facilities shall be set no lower than 105% of the long run incremental cost (LRIC) for each service level stated in clause (i) of this subparagraph.
- (iii) The DCTU may charge distance-sensitive rates for entrance facilities as enumerated in subparagraph (H) of this paragraph. Mileage shall be measured as airline mileage between the point of demarcation and the SWC.

(C) Direct-trunked transport.

- (i) All access customers that use the DCTU's direct-trunked transport facilities shall be assessed a flat-rated direct-trunked transport charge based upon the service level ordered. Dominant certificated telecommunications utilities shall offer direct trunked transport at voice grade, DS1 and DS3 service levels.
- (ii) Rates for direct-trunked transport facilities shall be set no lower than 105% of the LRIC for each service level in clause (i) of this subparagraph. Additionally, these rates shall be set consistent with the requirement in subparagraph (G) of this paragraph.
- (iii) The DCTU may charge distance sensitive rates for direct-trunked transport, as enumerated in subparagraph (H) of this paragraph.

Mileage shall be measured as airline mileage between the SWC and end office or between customer-designated points.

(iv) Centralized equal access providers are not required to provide direct-trunked transport services. DCTUs that do not have measurement and billing capabilities at their end offices are not required to provide direct-trunked transport services at those end offices.

(D) Tandem-switched transport.

(i) All access customers that use the DCTU's tandem-switched transport facilities shall be assessed the following rates:

(I) a per access minute tandem switching charge; and

(II) a per access minute tandem-switched transmission charge.

(ii) The rates for tandem-switched transport facilities shall be set no lower than 105% of the LRIC. Additionally, these rates shall be set consistent with the requirements in subparagraph (G) of this paragraph.

(iii) The DCTU may charge distance-sensitive rates for tandem-switched transmission elements, as enumerated in subparagraph (H) of this paragraph. Mileage shall be measured as airline mileage between the SWC and the end office, unless the customer has ordered tandem-switched transport between the tandem office and the end office, in which case mileage shall be measured as airline mileage between the tandem office and the end office.

- (E) Dedicated Signaling Transport: Dedicated signaling transport shall be provided in accordance with the following requirements:
- (i) Dedicated signaling transport shall consist of two subelements, a signaling link charge and a signaling transfer point (STP) port termination charge.
 - (ii) A flat-rated signaling link charge per unit of capacity shall be assessed upon all access customers that use facilities between the access customer's common channel signaling network and the DCTU's signaling transfer point or equivalent facilities. If the DCTU charges distance-sensitive rates for the signaling link, mileage shall be measured as airline mileage between the access customer's common channel signaling network and the DCTU's signaling transfer point.
 - (iii) A flat-rated STP port termination charge per port shall be assessed upon all access customers that use dedicated signaling transport.
 - (iv) Rates for dedicated signaling transport facilities shall be set no lower than 105% of the LRIC.
- (F) Residual charge. The DCTU shall assess only one residual charge for each local switching access minute of use sold to those customers interconnecting with the DCTU's switched access network by ordering from the DCTU's access tariff.
- (G) Transport rate differences. The rate differences between tandem-switched transport, DS1 direct-trunked transport and DS3 direct-trunked transport,

shall be reasonable. The difference between the rate and 105% of the LRIC for DS1 direct-trunked transport shall not exceed 150% of the difference between the rate and 105% of the LRIC for DS3 direct-trunked transport, on an equivalent unit of capacity basis. The difference between the rate and 105% of the LRIC for DS0 direct-trunked transport shall not exceed 150% of the difference between the rate and 105% of the LRIC for DS3 direct-trunked transport, on an equivalent unit of capacity basis. The difference between the rate and 105% of the LRIC for tandem-switched transport shall not exceed 150% of the difference between the rate and 105% of the LRIC for DS3 direct-trunked transport, on an equivalent unit of capacity basis. To determine the rate and LRIC relationships between the transport options, the tandem switch LRIC must be included in the LRIC for the tandem-switched transport option.

- (H) Distance sensitive rates. If the DCTU employs distance-sensitive rates for entrance facilities, direct-trunked transport and/or tandem-switched transmission elements, they shall be assessed in the following manner:
 - (i) a distance-sensitive component shall be charged for the use of the transmission facilities, including intermediate transmission circuit equipment between the end points of the transmission link; and
 - (ii) a nondistance-sensitive component shall be charged for the use of the circuit equipment at the ends of the transmission link.
- (I) Tariff provisions.

- (i) Tariffs shall not contain resale or sharing restrictions for switched transport services.
 - (ii) Initial tariffs filed in compliance with this section may be filed pursuant to §26.209 of this title (relating to New and Experimental Services). Initial tariff amendments shall not be permitted to become effective before expanded interconnection for switched transport services becomes available from the DCTU for those DCTUs subject to substantive rule §26.271 of this title (relating to Expanded Interconnection).
 - (iii) DCTUs not subject to substantive rule §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services) may propose charges that are the same as the charges in effect for the carrier's interstate provision of the same service or adopt the switched transport rates of another DCTU that are developed pursuant to the requirements of this section.
 - (iv) Within 120 days after the completion of LRIC cost studies required by substantive rule §26.215 of this title, any DCTU subject to that rule shall file tariff amendments in order to revise its local transport rates in conformity with this section based upon the new LRIC cost studies.
- (5) **Lower rates.** Nothing in this subsection prevents a DCTU from charging a lower rate for any rate element than the amount specified herein; however, no DCTU

shall charge any rate for switched access that is not contained in its switched access tariff.

- (6) **Rounding.** The rates for all access services shall be assessed using conventional rounding of fractional units of applicable billing units, i.e., a fraction equal to or greater than 0.5 of one unit will be rounded up to the next higher whole unit, while fractions less than 0.5 of one unit will be rounded down to the next lower whole unit, except that local transport mileage may be rounded up to the next whole mile.
- (d) **Administrative provisions.** The intrastate access service tariff of all DCTUs must contain, at a minimum, the requirements stated in paragraph (1) - (3) of this subsection, relating to percent interstate usage (PIU).
- (1) **Jurisdictional determination capability.** If the DCTU possesses the network capability to determine the jurisdiction of an access service, a monthly PIU, based upon the actual jurisdictional determination of access services used by the access customer, must be calculated by the DCTU and applied to the monthly bill for each access customer.
- (2) **No jurisdictional determination capability.** If a DCTU's network facilities are incapable of making a determination of the jurisdiction of an access service, such DCTU shall establish guidelines in its access tariff that permit an access customer to self-report. PIUs may be self-reported by access customers to DCTUs if all of the requirements of subparagraphs (A) - (F) of this paragraph are met.
- (A) A DCTU must request and receive written representation from the self-reporting access customer that the access customer possesses a network

technology or has established other reasonable methods which it can accurately determine the jurisdiction of each access service used by the access customer.

- (B) The DCTU must request and receive a written representation from the access customer that the access customer calculates self-reported PIUs based upon the actual jurisdiction of each access service used by the access customer.
 - (C) The DCTU must request and receive from the access customer, at a minimum, an annual report supporting the self-reported PIUs.
 - (D) The DCTU's intrastate access tariff must establish a monitoring procedure for the annual monitoring of all self-reported PIUs and an auditing procedure for timely auditing of questionable self-reported PIUs.
 - (E) The DCTU's intrastate access service tariff must contain an adjustment procedure for the correction of up to 12 months of access service bills which were based upon an erroneous PIU as determined through a PIU audit.
 - (F) The DCTU's intrastate access tariff must specify that the DCTU is responsible for verifying the accuracy of the PIU report and the access customer is responsible for the accuracy of self-reported PIUs.
- (3) **Default PIU.** If the DCTU's network facilities are incapable of determining call jurisdiction and the access customer fails to exercise its self-reporting option under paragraph (2) of this subsection, the DCTU must provide written notice to the access customer by certified mail that, if the customer fails to exercise one of

its options within 30 days of receipt of such notice, a PIU will be established at 50%. Nothing in this paragraph prohibits the DCTU from auditing such access customer. If such an audit is conducted, the results of such audit will be used to determine that access customer's PIU.

§26.208. General Tariff Procedures.

- (a) **Application.** This section applies to dominant certificated telecommunications utilities (DCTUs) as defined by §26.5 of this title (relating to Definitions).
- (b) **Purpose.** The procedures outlined in this section establish a process for the review of DCTU tariff applications.
- (c) **Content of public notice.** The DCTU shall include public notice plans in its application to the commission. Notices shall be written in plain language and shall contain sufficient detail to give customers and affected parties adequate notice of the filing. The presiding officer may require notice to be provided to the public in addition to that proposed by the DCTU. Public notice of the application shall include at a minimum:
- (1) a description of the proposed service and rates;
 - (2) the proposed effective date of the service or, if the service is promotional or experimental, the time period during which the promotional rates are proposed to be in effect;
 - (3) the types of customers likely to be affected if the application is approved;
 - (4) the probable effect on the DCTU's revenues if the service is approved;
 - (5) and the following language: "Persons with questions or who want more information on this application may contact (DCTU name) at (DCTU address) or call (DCTU toll-free telephone number) during normal business hours. A complete copy of the application is available for inspection at the address listed

above. The commission has assigned Control Number (provided by DCTU) to this application. Persons who wish to formally participate in the commission's proceedings concerning this application, or who wish to express their comments concerning this application should contact the Public Utility Commission of Texas, Office of Customer Protection, PO Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or, toll free, at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or reach the commission's toll free number through Relay Texas at (800) 735-2988. Requests to participate in the proceedings and comments should reach the commission no later than (date, ten days before the effective date of the proposed filing)."

- (d) **Proof of notice.** Not less than ten days before the effective date of the application, the DCTU shall file a statement indicating the date on which all notice provided to the public was completed and proof of such notice.

- (e) **Administrative review.** An application filed pursuant to §26.207 of this title (relating to Form and Filing of Tariffs), §26.209 of this title (relating to New and Experimental Services), §26.210 of this title (relating to Promotional Rates for Local Exchange Company Services), or §26.211 of this title (relating to Rate Setting Flexibility for Services Subject to Significant Competitive Challenges) shall be reviewed administratively unless the presiding officer, for good cause, determines at any point

during the review that the application should be docketed. The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later. The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date. While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the DCTU. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the DCTU. No later than 20 days after the filing date of the application, interested persons may provide to the commission staff written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application. No later than 35 days after the effective date of the application, the presiding officer shall complete an administrative review to determine whether the DCTU's application meets the following requirements:

- (1) The proposed service meets all requirements pursuant to the applicable section under which it is filed;
 - (2) Notice was provided as required by the presiding officer;
 - (3) The proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and
 - (4) Provision of the service is consistent with the public interest in a technologically advanced telecommunications system, the preservation of universal service, and the prevention of anticompetitive practices and of subsidization of new and experimental services with revenues from regulated monopoly services.
- (f) **Approval or denial of applications.** For its application to be approved, the DCTU must meet all of the requirements in the applicable section pursuant to which the application is made, unless such requirements are modified or waived by the presiding officer as provided under provisions of that section. If, based on the administrative review, the presiding officer determines that all requirements not waived have been met, the DCTU shall be permitted to offer the service at the rates and terms approved by the presiding officer. If, based on the administrative review, the presiding officer determines that one or more of the requirements not waived have not been met, the presiding officer may dismiss or, upon prior request of the DCTU, shall docket the application.
- (g) **Review of the applications after docketing.** If the application is docketed, the operation of the proposed rate schedule shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after

the effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. The application shall be processed in accordance with the commission's rules applicable to docketed proceedings.

- (h) **Withdrawal of a service.** When a DCTU seeks to withdraw a tariffed service, the application shall be filed pursuant to this subsection and shall be docketed to allow adequate time for review, and completion of notice. The DCTU shall provide direct mail notice to all current customers of the service and shall issue such notice only after the commission has reviewed and approved the notice. The DCTU shall provide the following information in its application:
- (1) The number of current subscribers in each exchange;
 - (2) The reason for withdrawing the service;
 - (3) Provisions for grandfathering current customers or competitive alternatives available within the exchange locations, including DCTU provided alternatives;
 - (4) Annual revenues for the last three years for the service; and
 - (5) If the service has no current subscriber, the DCTU shall provide an affidavit to this effect.
- (i) A DCTU that is not subject to rate-of-return regulation under Public Utility Regulatory Act, 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 cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rate;
- (3) may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if it:
 - (A) files written notice of the withdrawal with the commission; and
 - (B) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website.

§26.211. Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges.

- (a) **Application.** The provisions of this section apply to incumbent local exchange companies (ILECs), as defined by §26.5 of this title (relating to Definitions).
- (b) **Purpose.** The purpose of this section is to establish procedures for pricing flexibility for services subject to competition and a process for the review of pricing flexibility applications.
- (c) **Pricing flexibility.**
- (1) The types of pricing flexibility that an incumbent local exchange company (ILEC) may request are set forth in subparagraphs (A)-(C) of this paragraph.
- (A) Banded rates. If an ILEC is granted the authority to charge banded rates, the minimum rates shall yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided. When an ILEC is granted the authority to charge banded rates, the ILEC shall file a tariff showing the minimum and maximum rates and specifying its current rate. The current rate, as specified in the ILEC's tariff, shall be applied uniformly to all customers of the service in each exchange for which the commission has approved banded rates. If the ILEC desires to charge a rate different from its current rate, but between the minimum and maximum rates, it shall file a revised tariff on or before the effective date of the rate change.

The minimum and maximum rates may only be changed as provided for in the Public Utility Regulatory Act, Chapter 53, Subchapters C and D, or G.

- (B) Detariffing. If an ILEC is granted the authority to detariff a service, the ILEC shall maintain at the commission a current price list for the service, and the commission shall retain authority to regulate the quality, terms and conditions of the detariffed service, other than rates. The commission may determine the appropriate ratemaking treatment of any revenues from or costs of providing a detariffed service in a proceeding under the Public Utility Regulatory Act, Chapter 53, Subchapters C and D, or G.
 - (C) Other types of pricing flexibility. If an ILEC is granted the authority to engage in a type of pricing flexibility that the commission finds to be in the public interest other than those specified in subparagraphs (A)-(C) of this paragraph, that pricing flexibility shall be offered under such terms and conditions as the commission orders.
- (2) ILECs have the authority to enter into customer-specific contracts for those services specified in subsection (d) of this section. For those services, ILECs may apply to the commission pursuant to this subsection to obtain a type of pricing flexibility specified in paragraph (1) of this subsection other than customer-specific contracts. For other services, ILECs may apply to the commission pursuant to this subsection to obtain any type of pricing flexibility specified in paragraph (1) of this subsection. However, nothing in this subsection shall permit an ILEC to obtain pricing flexibility for basic local

telecommunications service, including local measured service, or for any service that includes as a component a service not subject to significant competitive challenge. Additionally, nothing in this subsection shall permit an ILEC to enter into customer-specific contracts or to obtain detariffing with respect to message telecommunications services, switched access services, or wide area telecommunications service.

- (3) An application for pricing flexibility filed under this paragraph shall:
- (A) include a statement of the ILEC's intention to use the procedures established in this subsection;
 - (B) specify the type of pricing flexibility requested and, if the type of pricing flexibility requested is either banded rates or some other type of pricing flexibility pursuant to paragraph (1)(C) of this subsection that involves rate-setting;
 - (i) state the proposed rates, and if the type of pricing flexibility is banded rates, state the maximum and minimum rates;
 - (ii) include detailed documentation demonstrating that the minimum rates yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided;
 - (iii) demonstrate that the rates are not unreasonably preferential, prejudicial or discriminatory;
 - (iv) demonstrate that the rates are such that the service identified pursuant to subparagraph (C) of this paragraph will not be

subsidized directly or indirectly by regulated monopoly services;
and

- (v) demonstrate that the rates are not predatory or anticompetitive;
- (C) identify the service for which the ILEC is requesting pricing flexibility, including each component thereof, and provide functional and technical descriptions of the service, including:
- (i) the functions that the service is intended to perform for the customer;
 - (ii) the types of equipment used to provide the service (including, but not limited to, transmission facilities, switching facilities, customer equipment, software functions, and protocol);
 - (iii) the network configurations used to provide the service; and
 - (iv) schematics;
- (D) identify each service that is not subject to significant competitive challenge but that, at the time the ILEC files its application for pricing flexibility, the ILEC intends to provide as a tariffed adjunct to the service identified in subparagraph (C) of this paragraph and, for each such service, provide:
- (i) functional and technical descriptions; and
 - (ii) citations to the tariff provisions pursuant to which each such service will be provided;
- (E) designate the exchange(s) as to which the ILEC is seeking pricing flexibility;

- (F) include a map or maps of the exchange(s) designated pursuant to subparagraph (E) of this paragraph that can be coordinated with the official commission boundary maps;
- (G) describe the products or services known to the ILEC that are currently available in the exchange(s) designated pursuant to subparagraph (E) of this paragraph, and that are the same, equivalent, or substitutable for the service identified pursuant to subparagraph (C) of this paragraph, and identify the providers of those products or services;
- (H) with respect to the products or services described pursuant to subparagraph (G) of this paragraph, discuss:
 - (i) the number and size of telecommunications utilities or other persons providing such products or services;
 - (ii) the extent to which such products or services are available;
 - (iii) the ability of customers to obtain such products or services at rates, terms, and conditions comparable to those that the ILEC will offer;
 - (iv) the ability of telecommunications utilities or other persons to make such products or services readily available at rates, terms, and conditions comparable to those that the ILEC will offer; and
 - (v) the existence of any significant barrier to the entry or exit of a provider of such products or services;
- (I) demonstrate that the level of competition with respect to all components of the ILEC's service identified pursuant to subparagraph (C) of this

paragraph represents a significant competitive challenge within the exchange(s) designated pursuant to subparagraph (E) of this paragraph that warrants the pricing flexibility specified pursuant to subparagraph (B) of this paragraph;

- (J) demonstrate that the service identified pursuant to subparagraph (C) of this paragraph is not basic local telecommunications service, including local measured service;
- (K) if the type of pricing flexibility requested pursuant to subparagraph (B) of this paragraph is customer-specific pricing or detariffing, demonstrate that the service identified pursuant to subparagraph (C) of this paragraph is not message telecommunications service, switched access service, or wide area telecommunications service;
- (L) to prevent the subsidization of the service identified pursuant to subparagraph (C) of this paragraph with revenues from regulated monopoly services, propose mechanisms to recover costs that may not be identified and recovered in a long run incremental cost study, including but not limited to costs associated with advertising, unsuccessful bids, and all items of plant used in the provision of the service;
- (M) identify and address the impact that approval of the application for pricing flexibility may have on universal service;
- (N) for any type of pricing flexibility other than detariffing, include proposed tariffs and identify any tariff language that restricts the resale, sharing, or joint use of the service identified pursuant to subparagraph (C) of this

paragraph and any component thereof and demonstrate why such restrictive tariff language is consistent with the policy established in the Public Utility Regulatory Act §52.001; and

- (O) include any other information that the ILEC wants considered in connection with the review of its application.
- (4) The commission shall allow an incumbent LEC that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC.
- (5) An application for pricing flexibility shall be docketed and assigned to a presiding officer. No later than ten working days after the filing of an application for pricing flexibility, the presiding officer shall issue an order scheduling a prehearing conference for the purposes of determining notice requirements, establishing a procedural schedule, and addressing other matters as may be appropriate. The commission shall make a final decision no later than 180 days after the completion of notice, as ordered by the presiding officer. However, this 180-day period shall be extended two days for each one day of actual hearing on the merits of the case that exceeds 15 days. The presiding officer or commission, upon a showing of good cause relating to the applicant's failure or refusal to prosecute, including but not limited to the applicant's unreasonable resistance to discovery, may further extend the timeline, provided that the order shall specifically identify the facts found to constitute good cause. This deadline may be expressly waived by the applicant.

- (6) For ILECs with less than 31,000 access lines, the commission shall not be limited under paragraph (7)(D)(i)-(x) of this subsection to considering only competition within the exchange(s) where the ILEC will provide the service. Pursuant to paragraph (3)(O) of this subsection, an ILEC with less than 31,000 access lines may provide information that addresses the criteria of paragraph (3)(G)-(I) of this subsection with respect to products or services available outside the exchange(s) designated in paragraph (3)(E) of this subsection.
- (7) An application for pricing flexibility shall be approved if, after an evidentiary hearing, the commission finds, based on the evidence, that:
- (A) no service for which pricing flexibility is sought is basic local telecommunications service, including local measured service;
 - (B) no service for which the ILEC requests detariffing of rates is message telecommunications service, switched access service, or wide area telecommunications service
 - (C) no service for which pricing flexibility is sought includes a component that is not subject to significant competitive challenge;
 - (D) the grant of pricing flexibility for the service identified pursuant to paragraph (3)(C) of this subsection within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection is appropriate to allow the ILEC to respond to a significant competitive challenge, based upon consideration of the following:
 - (i) the number and size of telecommunications utilities or other persons providing the same, equivalent, or substitutable service

within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

- (ii) the extent to which the same, equivalent, or substitutable service is available within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;
- (iii) the ability of customers to obtain the same, equivalent, or substitutable services at comparable rates, terms, and conditions within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;
- (iv) the ability of telecommunications utilities or other persons to make the same, equivalent, or substitutable service readily available at comparable rates, terms, and conditions within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;
- (v) the existence of any significant barrier to the entry or exit of a provider of the same, equivalent or substitutable services within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;
- (vi) whether there are mechanisms to minimize potential anti-competitive practices, to the extent that any such practice has been identified in the record;
- (vii) whether there are mechanisms to prevent the subsidization of the service with revenues from regulated monopoly services;

- (viii) whether the ability of the ILEC to flexibly price the service within the designated exchange(s) would have any significant impact on universal service;
 - (ix) whether the type of pricing flexibility requested is appropriate in light of the level and nature of competition within the exchange(s) where the ILEC will provide the service; and
 - (x) any other relevant information contained in the record;
- (E) the rates, if the type of pricing flexibility granted is either banded rates or some other type of pricing flexibility pursuant to paragraph (1)(D) of this subsection that involves rate-setting, are just and reasonable and:
- (i) yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided;
 - (ii) are not unreasonably preferential, prejudicial or discriminatory;
 - (iii) are such that the service will not be subsidized directly or indirectly by regulated monopoly services; and
 - (iv) are not predatory or anticompetitive.
- (8) Nothing in this subsection is intended to prevent the presiding officer from recommending, or the commission from approving based on the record evidence, relief other than that requested in the application.
- (d) **Customer-specific contracts.**
- An ILEC shall have the authority to enter into customer-specific contracts for:

- (1) central office based PBX-type services for systems of 200 stations or more, as those services compete with customer premises equipment provided by PBX vendors;
 - (2) billing and collection services;
 - (3) high-speed private line services of 1.544 megabits or greater;
 - (4) customized services that are unique because of size or configuration, provided that such customized services shall not include basic local telecommunications service, including local measured service, or message telecommunications services, switched access services, or wide area telecommunications service; and
 - (5) any other service for which the commission has authorized the ILEC to enter into customer- specific contracts pursuant to this section.
- (e) **Subsequent review.** The commission may modify, or revoke, upon notice and hearing, the authorization of any type or types of pricing flexibility granted pursuant to this section.
- (f) **Severability.** If any provision of this section or the application thereof to any person or any circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application. It is the intent of the commission that the provisions of this section are severable.

§26.217. Administration of Extended Area Service (EAS) Requests.

- (a) **Purpose.** This section establishes procedures for processing requests for extended area service (EAS) pursuant to the Public Utility Regulatory Act (PURA), Chapter 55, Subchapter B. On or after September 1, 2011, the commission may not require a telecommunications provider to provide mandatory or optional extended area service to additional metropolitan areas or calling areas.
- (b) **Extended Area Service.** The term "utility(ies)" in this section refers to dominant certificated telecommunications utility(ies).
- (1) **Filing requirements.**
- (A) In order to be considered by the commission, a request for EAS shall be initiated by at least one of the following actions:
- (i) a petition signed by the greater of 5.0% or 100 of the subscribers in the exchange from which the petition originates;
 - (ii) a resolution adopted and filed with the commission by the governing body of a political subdivision provided that said governing body properly represents the exchange requesting EAS;
 - (iii) a resolution adopted and filed with the commission by the board of directors or trustees of a community association representing an unincorporated community; or
 - (iv) an application filed by one or more of the affected utility(ies).

- (B) A request for establishment of a particular EAS arrangement pursuant to subparagraph (A)(i), (ii), or (iii) of this paragraph shall not be considered sooner than three years after either a determination of the failure of a previous request to meet eligibility requirements, or final commission action on a previously docketed request. An exception to this requirement may be granted to any petitioning exchange which demonstrates that a change of circumstances may have materially affected traffic levels between the petitioning exchange and the exchange to which EAS is desired.
- (C) A request for EAS shall state the name of the exchange(s) to which EAS is sought.
- (D) The petition shall set forth the name and telephone number of each signatory and the name of the exchange from which the subscribers receive service.
- (E) Each signature page of a petition for EAS must contain information which clearly states that establishment of the requested EAS route may require that subscribers to the service change their telephone numbers and pay a monthly EAS rate in addition to their local exchange service rates, as well as applicable service connection charges.
- (F) Requests for EAS into metropolitan exchanges will be grouped by relevant metropolitan exchange. For each metropolitan exchange, the commission staff will file a motion to docket a proceeding for the determination of uniform EAS rate additives as directed by paragraphs

(3), (4), and (5) of this subsection for all pending EAS requests to that metropolitan exchange. Upon the docketing of such a proceeding, two weeks notice in a newspaper of general circulation in the metropolitan area shall be published. The notice shall contain such information as deemed reasonable by the presiding officer in the proceeding. No earlier than 60 days from the date of final publication of notice, the demand studies required by paragraph (3) of this subsection shall be initiated. New petitions for EAS into the metropolitan exchange may be accepted prior to the initiation of the demand studies.

(2) **Community of interest.**

- (A) Upon receipt of a proper filing under the provisions set out in paragraph (1) of this subsection, the utility(ies) involved will be directed by the commission staff to initiate appropriate calling usage studies. Within 90 days of receipt of such direction, the utility(ies) shall provide the results of such studies to the commission staff and to a representative of the petitioning exchange(s). The message distribution and revenue distribution detail from the studies shall be considered proprietary unless the parties agree otherwise and shall not be released for use outside the context of the commission's proceedings. The data to be provided shall be based upon a minimum 60 day study of representative calling patterns, shall be in such form, detail, and content as the commission staff may reasonably require and shall include at least the following information:

- (i) for business customers and residential customers and for the combined total, the number of messages and either minutes-of-use or billed toll revenues per customer account per month, in each direction over the route being studied;
 - (ii) a detailed analysis of the distribution of calling usage among subscribers, in each direction over the route being studied, showing the number of subscriber accounts placing zero calls, one call, etc., through ten calls, the number of subscriber accounts placing between 11 and 20 calls, the number placing between 21 and 50 calls, and the number of subscriber accounts placing more than 50 calls, per month;
 - (iii) data showing, by class of service, the number of subscriber accounts in service for each of the exchanges being studied;
 - (iv) the distance between rate centers, and the average revenue per message for the calls during the study period;
 - (v) the number of foreign exchange (FX) lines in service over each route and the estimated average calling volumes on these lines expressed as messages per month;
 - (vi) a listing of known interexchange carriers providing service between the petitioning exchange and the exchange(s) to which EAS is desired.
- (B) A community of interest between exchanges shall be considered to exist from one exchange to the other when:

- (i) there is an average (arithmetic mean) of no less than ten calls per subscriber account per month from one exchange to the other, and
 - (ii) no less than two thirds of the subscribers' accounts place at least five calls per month from one exchange to the other.
 - (C) A request for EAS shall be assigned a project number and notice shall be provided, pursuant to paragraph (7) of this subsection, when a community of interest is found to exist as described in subparagraph (B) of this paragraph:
 - (i) on a bilateral basis between exchanges, or
 - (ii) on a unilateral basis from the petitioning exchange to the other exchange.
 - (D) The project shall be established as a formal docket upon the motion of the commission staff.
 - (E) Following the docketing of a request, a prehearing conference shall be scheduled to establish the exchange(s) to which EAS is sought, and to report any agreements reached by the parties. The utility(ies) involved shall conduct appropriate demand and costing analyses according to paragraphs (3) and (4) of this subsection.
- (3) **Demand analysis.**
- (A) The utility(ies) involved shall conduct analyses of anticipated demand for the requested EAS. The data shall be in such form, detail, and content as the commission staff may reasonably require and shall include, at a minimum, the following information:

- (i) the number of subscribers who are expected to take the requested service at the estimated rates recommended pursuant to paragraph (5) of this subsection and the associated probability of that level of subscribership;
 - (ii) how call traffic within the requested extended area is expected to change given the rates and subscribership under clause (i) of this subparagraph; and
 - (iii) the total volume of traffic upon which to base the anticipated switching and trunking requirements resulting from clauses (i) and (ii) of this subparagraph.
 - (B) Unless the utility(ies) demonstrates good cause to expand the time schedule, the utility(ies) shall provide to the commission staff and to other parties to the proceeding, no later than 120 days after the prehearing conference, the results of these analyses, together with supporting schedules and detailed documentation needed to understand and verify the study results.
- (4) **Determination of costs.**
- (A) The utility(ies) involved shall conduct studies necessary to determine the changes in costs and revenues which may reasonably be expected to result from establishment of the requested EAS. These studies shall consider and develop the long run incremental costs as follows:
 - (i) switching and trunking costs associated with existing toll traffic which converts to EAS traffic plus the costs of switching and

trunking required to handle the additional traffic as determined in paragraph (3)(A)(ii) of this subsection;

- (ii) the increases and decreases in expenses resulting from the new service and the net effect on operating expenses; and
- (iii) direct costs incurred by the utility(ies) in conducting demand analyses in compliance with paragraph (3) of this subsection.

(B) The utility(ies) may analyze the effect on toll revenues in order to present evidence on the overall revenue effects of providing the requested EAS. Revenue effects supported by such evidence, if presented, may be included in the EAS rate additives specified in paragraph (5)(D) of this subsection.

(C) The utility(ies) shall file with the commission's Filing Clerk and serve copies on commission staff and other parties to the proceeding the results of these studies, together with supporting schedules and detailed documentation needed to understand and verify the study results according to the following schedule, unless the utility(ies) can demonstrate that good cause exists to expand the time schedule for a particular study:

- (i) incremental costs identified in this paragraph shall be filed no later than 90 days from the filing of the results of the demand analysis conducted pursuant to paragraph (3) of this subsection; and
- (ii) toll revenue effects, if analyzed pursuant to subparagraph (B) of this paragraph, shall be filed no later than 90 days from the filing

of the results of the incremental costs, pursuant to clause (i) of this subparagraph.

(5) EAS rate additives.

(A) Coincident with the filing of cost study results, or coincident with the toll revenue effect results, if filed, the utility(ies) shall file recommendations for proposed incremental rate additives, by class of service, necessary to support the cost of the added service, as well as to support the toll revenue effect, if such effect is filed.

(i) EAS rate additives to be assessed on EAS subscribers in the petitioning exchange(s) are to recover the incremental cost of providing the service according to paragraph (4)(A) of this subsection plus 10% of the incremental cost.

(ii) The rate additives to be assessed on subscribers in the metropolitan exchange for which EAS has been requested are to recover revenues determined by the following formula: net lost toll multiplied by percent outbound toll and multiplied by the estimated EAS take rate. The terms in the formula are defined as follows:

(I) net lost toll - lost toll revenue calculated according to paragraph (4)(B) of this subsection less the revenue recovered through the EAS rate additive identified in clause (i) of this subparagraph;

- (II) percent outbound toll - this factor is calculated by dividing toll minutes of use originating in the metropolitan exchange and terminating in the petitioning exchanges by the total number of toll minutes of use between the metropolitan exchange and the petitioning exchange(s); and
 - (III) estimated EAS take rate - the estimated number of EAS subscribers in the petitioning exchanges divided by the total number of subscribers in the petitioning exchange(s).
- (B) Service connection charges will be applicable.
- (C) A non-recurring charge to defray the direct incremental costs of the demand analyses identified in paragraph (4)(A)(iii) of this subsection shall be charged to subscribers who order the service within 12 months from the time it is first offered. The non-recurring charge shall not exceed \$5.00 per access line.
- (D) The EAS rate additive to be used in the affected exchange(s) must meet the following standards.
 - (i) No increase in rates shall be incurred by the subscribers of non-benefiting exchanges, that is, by subscribers whose calling scopes are not affected by the requested EAS service.
 - (ii) If the petitioning exchange demonstrated a unilateral but not a bilateral community of interest through the requirements of

paragraph (2)(C)(ii) of this subsection, the EAS arrangements shall be priced using those rate increments designed to recover the added costs for each route, plus the toll revenue effect, if reasonably substantiated. The total increment chargeable to subscribers within an exchange shall be the sum of the increments of all new EAS routes established for that exchange.

- (iii) If the petitioning exchange demonstrated a bilateral community of interest through the requirements of paragraph (2)(C)(i) of this subsection and requested that the costs be borne on a bilateral basis, the additional cost for the new EAS route shall be divided between the two participating exchanges according to the ratio of calling volumes between the two exchanges.
- (iv) In establishing a flat rate EAS increment, all classes of customer access line rates within each exchange shall be increased by equal percentages.

(6) **Subscription threshold.**

- (A) A threshold demand level shall be established by the commission's order in the docketed proceeding prior to the design or construction of facilities for the service. A reasonable pre-subscription process shall then be undertaken to determine the likely demand level. If the likely demand level equals or exceeds the threshold demand level, then EAS shall be provided in accordance with the commission's order. If the threshold

demand level is not met, the affected utility(ies) is not required to provide the EAS approved by the commission.

- (B) The cost of pre-subscription shall be divided between the utility and the petitioners. The petitioners shall pay for the printing of bill inserts and ballots and the utility shall insert them in bills free of charge. In the alternative, upon the agreement of the parties, the utility shall provide, free of charge, and under protective order, the mailing labels of the subscribers in the petitioning exchange, and the petitioners shall pay the cost of printing and mailing the bill inserts and ballots.

(7) **Notice.**

- (A) Notice of the filing of an EAS application must be provided to all subscribers within the petitioning exchange(s), by publication for two consecutive weeks in a newspaper of general circulation in the area. Notice must also be given to individual subscribers either through inserts in customer bills, or through a separate mailing to each subscriber. The notice must state: the project number, the nature of the request, and the commission's mailing address and telephone number to contact in the event an individual wishes to protest or intervene. The commission shall also publish notice in the *Texas Register*.
- (B) Written notice containing the information described above shall be provided to the governing official(s) of all incorporated areas within the affected exchanges and the county commission(s) or the board of directors

or trustees of a community association representing any unincorporated areas within the affected exchanges.

(C) The cost of notice shall be borne by the petitioners.

(8) **Joint filings.**

(A) EAS agreements. The commission may approve agreements for EAS or EAS substitute services filed jointly by the representatives of petitioning exchanges and the affected utility(ies) (joint filings) so long as the agreements are in accordance with subparagraph (C)(i)-(x) of this paragraph. Notwithstanding any other provisions of this paragraph, if more than one political subdivision is affected by a proposed optional calling plan under PURA §55.023, the agreement of each political subdivision is not required.

(B) Multiple exchange common calling plans. Joint filing agreements for EAS or EAS substitute services among three or more exchanges shall be permitted pursuant to subparagraph (C)(i)-(x) of this paragraph.

(C) Standards for joint filings. Joint filings shall be permitted subject to the following:

(i) The parties to joint filings shall include the name of each utility which provides service in the affected exchanges and one duly appointed representative for each affected exchange. Each exchange representative shall be designated jointly by the governing officials of all incorporated areas within the affected

exchange and the county commission(s) representing any unincorporated areas within the affected exchange.

- (ii) Joint filings are exempt from the traffic requirements contained in paragraph (2) of this subsection.
- (iii) Joint filings may include rate proposals which are flat rate, usage sensitive, block rates, or other pricing mechanisms. If usage-sensitive rates are proposed, joint applicants shall include the commission staff in their negotiations.
- (iv) Joint filings may propose either one-way or two-way calling.
- (v) Joint filings may propose either optional or non-optional calling.
- (vi) Joint filings shall specify all non-recurring and recurring rate additives to be paid by the various classes and grades of service in the affected exchanges.
- (vii) Joint filings shall demonstrate that the proposed rate additives:
 - (I) are in the public interest, and in the case of non-optional joint filings which include flat rate additives, the filing shall demonstrate that more than 50% of the total subscribers who will experience a rate change are in favor of this joint filing at the proposed rates; and
 - (II) recover, for the utility providing the service, the appropriate cost of providing EAS including a contribution to joint costs.

- (viii) The notice requirements of paragraph (7) of this subsection are applicable to joint filings. In addition, the commission shall publish notice of the proposed joint filing in the *Texas Register* and shall provide notice to the Office of Public Utility Counsel upon receipt of the joint filing.
- (ix) If intervenor status is not granted within 60 days of completion of notice, the joint filing shall be handled administratively, with the commission determining whether the service meets the criteria listed in clause (vii) of this subparagraph. If requested by an intervenor or the commission staff, the joint filing shall be docketed for hearing and final order. Any of the parties to the joint filing may withdraw the joint filing without prejudice at any time prior to the rendition of the final order. Any alteration or modification of the joint filing by the commission may only be made upon the agreement of all parties to the proceeding.
- (x) The exchanges to be included within the proposed common calling plan area shall be contained within a continuous boundary and all exchanges within that boundary shall be included in the common calling plan.

§26.219. Administration of Expanded Local Calling Service Requests.

- (a) **Purpose.** The purpose of this section is to describe the process used to administer requests from telephone service subscribers for two-way toll-free expanded local calling service (ELCS) pursuant to the Public Utility Regulatory Act (PURA), Chapter 55, Subchapter C. Only incumbent local exchange companies (ILECs) are subject to the provisions of PURA, Chapter 55, Subchapter C. On or after September 1, 2011, the commission may not require a telecommunications provider to provide mandatory or optional expanded local calling services to additional metropolitan areas or calling areas.
- (b) **Definitions.** The following terms, when used in this section, have the following meanings unless the context clearly indicates otherwise.
- (1) **Expanded local calling service (ELCS)** -- The meaning assigned in §26.221 of this title (relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges).
 - (2) **Expanded local calling service (ELCS) fee** -- The meaning assigned in §26.221 of this title.
 - (3) **Expanded local calling service (ELCS) surcharge** -- The meaning assigned in §26.221 of this title.
 - (4) **Metropolitan exchange** -- The meaning assigned in PURA §55.041, including Austin, Corpus Christi, Dallas/Fort Worth, Houston, San Antonio and Waco.

(c) **ELCS requests, notice and intervention.**

(1) **Filing a request for ELCS.** Telephone subscribers in an exchange that has 10,000 or fewer access lines are eligible to request ELCS from the commission by filing information listed in paragraph (2) of this subsection. The request shall be assigned a project number. A presiding officer shall be assigned to the project and the request shall be reviewed administratively unless the presiding officer, for good cause, determines at any point during the review that the request should be docketed. A request from telephone subscribers in an exchange that has more than 10,000 access lines shall be dismissed by the presiding officer within 20 days of the date the request is filed.

(2) **Contents of a request for ELCS.**

(A) **Filing letter.** A request for ELCS shall include a letter that designates a contact person to respond to inquiries about the request for ELCS. The name, address, and daytime telephone number of the contact person shall be identified in the letter. The letter shall be sent with all other parts of the request to the commission's Filing Clerk.

(B) **Community of interest statement.** If the petitioning and petitioned exchanges do not meet the geographic proximity requirement set forth in subsection (d)(3)(C) of this section, the request for ELCS shall contain a statement describing the community of interest between the petitioning and petitioned exchanges, based upon standards in subsection (d)(3)(D) of this section. The statement must describe the existence of a community of

interest between the petitioning exchange and each petitioned exchange in sufficient detail to allow for verification of assertions made.

- (C) Statement of changed circumstances. If subscribers in the petitioning exchange denied by ballot a petition for ELCS to any one or more of the same petitioned exchange(s) within the previous 18 months, the new request shall contain a statement explaining what circumstances have changed since the time of the prior ballot that materially affect the need for ELCS between the petitioning exchange and each petitioned exchange. A petition is denied by ballot if it fails to receive an affirmative vote of at least 70% of the voting subscribers in the petitioning exchange.
- (D) Petition. A request for ELCS shall include a petition. A petition may request ELCS between a single petitioning exchange and one or more petitioned exchanges. A petition shall be signed by at least 100 subscribers or 5.0% of subscribers in the petitioning exchange, whichever is less. Each signatory shall include his or her name and telephone number on the petition. Each signature page of the petition for ELCS shall include:
- (i) the name and telephone number of a petition coordinator, whom signatories may contact for further information about the petition;
 - (ii) the name, area code and prefix of the exchange from which the petitioners receive telephone service (the petitioning exchange);
 - (iii) the name, area code and prefix(es) of exchange(s) to which ELCS is sought (the petitioned exchange(s));

- (iv) a clear statement that only subscribers in the petitioning exchange may sign the petition;
 - (v) a clear statement that subscribers in the petitioning exchange will be billed a monthly ELCS fee of up to \$3.50 per residential line and \$7.00 per business line for the first five petitioned exchanges granted, with an additional \$1.50 per line for each exchange in excess of five, whether obtained in one or more petitions, in addition to basic local exchange service rates;
 - (vi) a clear statement that there must be an affirmative vote of at least 70% of those subscribers responding within the petitioning exchange as to each petitioned exchange before ELCS can be implemented to that petitioned exchange; and
 - (vii) a clear statement that, in addition to ELCS fees billed to petitioning subscribers, an ELCS surcharge may, if necessary, be billed to that ILEC's Texas customers to recover the costs of implementing ELCS.
- (3) **Notice to affected ILECs.** Within five working days of receipt by the commission of a filed request for ELCS, the commission shall send a copy of the request by certified mail to each ILEC serving either a petitioning or a petitioned telephone exchange.
- (4) **Notice to affected telephone service subscribers.** An ILEC serving a petitioning exchange shall arrange for publication of notice in the petitioning exchange and shall bear the cost of notice as a regulatory case expense. This

notice shall be published once, not later than 15 days before ballots are mailed in accordance with subsection (f) of this section, in each local newspaper in the petitioning exchange. The information contained in subsection (f)(2)(A)-(D) and (F) of this section shall be published. Published notice shall identify the assigned project number, shall include the language in Procedural Rule §22.51(a)(1)(F) of this title (relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapter C-E, Chapter 51, §51.009; and Chapter 53, Subchapters C-E Proceedings) modified to reflect the appropriate intervention deadline and shall be written in both English and Spanish. Additionally, the presiding officer shall cause notice to be published in the *Texas Register* no later than 15 days before ballots are mailed.

- (5) **Intervention.** The intervention deadline shall be no sooner than ten days after the last date notice is published in the petitioning exchange. On or before the intervention deadline stated in the published notice, any interested person may file a request to intervene in the project. The presiding officer shall rule on a request to intervene in accordance with Procedural Rule §22.103 of this title (relating to Standing to Intervene) within ten days from the date the request to intervene is filed with the commission's Filing Clerk. Intervention by an interested person does not by itself require that the project be docketed.
- (d) **Initial review of a request for ELCS.**
 - (1) **Sufficiency.** The presiding officer shall, by order issued within 15 days of the filing of a request for ELCS, determine if the request is sufficient as to the requirements in subsection (c)(2) of this section. If the presiding officer finds

that the request is deficient, the presiding officer shall notify the designated contact person so that the contact person may cure any such deficiencies. Deficiencies in the request for ELCS may be cured within 30 days of its initial filing. If not cured by the subsequent filing of sufficient information within that time, the presiding officer shall dismiss the request in whole, if appropriate, or in relevant part, without prejudice to the filing of another request involving the same petitioning and petitioned exchanges.

- (2) **Changed Circumstances.** The presiding officer shall, by order issued no later than 15 days after the filing of the request for ELCS, determine whether a statement of changed circumstances required by subsection (c)(2)(C) of this section justifies allowing another ballot sooner than 18 months after the denial by ballot of a prior petition involving the same petitioning and petitioned exchanges. If the presiding officer finds that the statement does not justify allowing another ballot, the presiding officer shall dismiss the request in whole, if appropriate, or in relevant part.

- (3) **Geographic proximity or community of interest.**

(A) Distance limitation. ELCS is not available where the most distant central switching offices in a petitioning and petitioned exchange are more than 50 miles apart as measured by using vertical and horizontal (V&H) geographic coordinates.

(B) Determination. The presiding officer shall, by order issued no later than 15 days after the request for ELCS is filed, determine whether the request satisfies either the geographic proximity requirement set forth in

subparagraph (C) of this paragraph or the community of interest requirement set forth in subparagraph (D) of this paragraph. If the presiding officer determines that neither the geographic proximity nor the community of interest requirements are satisfied, the presiding officer shall dismiss the request in whole, if appropriate, or in relevant part.

- (C) Geographic proximity. The geographic proximity requirement is satisfied as to each petitioned exchange if the nearest central switching office in the petitioning exchange is located within 22 miles of the nearest central switching office in the petitioned exchange as measured using vertical and horizontal (V&H) geographic coordinates.
- (D) Community of interest. A community of interest statement shall address situations where the nearest central switching offices in a petitioning and petitioned exchange are more than 22 miles apart and the most distant central offices in a petitioning and petitioned exchange are 50 or less miles apart. A community of interest between a petitioning exchange and a petitioned exchange exists, for purposes of this section, when the community of interest statement includes information demonstrating that the petitioning and petitioned exchanges have a relationship because of schools, hospitals, local governments, or business centers, or that the petitioning or petitioned exchanges have other relationships that make the unavailability of ELCS a hardship on residents of the area.

(e) **Exemptions.**

- (1) **ILEC requests for exemption.** An ILEC serving either the petitioning or the petitioned exchange may file a request for exemption from the potential requirement to provide ELCS. Such requests must be filed no later than 20 days after the filing of the request for ELCS. The request for exemption shall be accompanied by an affidavit identifying in detail which conditions described in paragraph (2) of this subsection exist. If the petition includes more than one petitioned exchange, the request for exemption shall clearly identify which conditions apply to which exchanges. The presiding officer shall look to facts or circumstances existing on the date the ELCS request is filed in determining whether a request for exemption may be granted.
- (2) **Types of exemptions.** The following conditions shall be considered by the presiding officer in determining whether to exempt an ILEC from being required to provide ELCS:
 - (A) the ILEC serves fewer than 10,000 access lines statewide; or
 - (B) the petitioning or petitioned exchange is served by a telephone cooperative; or
 - (C) extended area service (EAS) or extended metropolitan service is currently available between the petitioning exchange and the petitioned exchange(s); or
 - (D) the petitioning or petitioned exchange is a metropolitan exchange as defined in subsection (b) of this section; or

- (E) it is technologically or geographically infeasible to provide ELCS to the area; or,
 - (F) the request for ELCS proposes to split a petitioning or petitioned exchange.
- (3) **Determination.** If one or more of the conditions described in paragraph (2)(A)-(D) or (2)(F) of this subsection exist, the presiding officer shall, within 40 days after the filing of the request for ELCS, dismiss the request in whole, if appropriate, or in relevant part. If the ILEC requests an exemption based on paragraph (2)(E) of this subsection, the presiding officer shall, by order issued no later than 40 days after the filing of the request for ELCS, determine whether the ILEC's affidavit sufficiently demonstrates that technology is not available in the marketplace to make ELCS feasible. If the exemption request is granted, the presiding officer shall dismiss the request for ELCS in whole, if appropriate, or in relevant part.
- (f) **Balloting.** If all applicable requirements contained in subsections (c) and (d) of this section are met and no exemption requests are outstanding, the presiding officer shall issue an order directing the ILEC serving the petitioning exchange to begin balloting subscribers in that exchange, and the presiding officer shall notify the designated contact person for the petitioning exchange that balloting will take place.
- (1) **Cost of balloting.** The cost of preparing and distributing ballots shall be borne by the ILEC serving the petitioning exchange as a regulatory case expense.

- (2) **Ballot format.** No later than 30 days after the presiding officer's order directing the ILEC serving the petitioning exchange to begin balloting, that ILEC shall distribute a ballot, written in English and Spanish, to each subscriber in the petitioning exchange. The ballot shall require a separate vote from each subscriber for each petitioned exchange. The ballot must be in a standard form approved by the commission and each ballot shall include:
- (A) a statement explaining ELCS;
 - (B) a statement that subscribers in the petitioning exchange have petitioned to expand the toll-free local calling area into the named exchange(s);
 - (C) a description of the proposed ELCS area, including the name, area code and prefix of the petitioning exchange and each petitioned exchange for which toll-free local calling is sought;
 - (D) a statement that if at least 70% of those subscribers responding vote "yes" as to any petitioned exchange:
 - (i) subscribers in the petitioning exchange will be billed, in addition to the company's local exchange service rates, a monthly ELCS fee of up to \$3.50 per residential line and up to \$7.00 per business line for the first five petitioned exchanges granted, with an additional \$1.50 per line for each exchange in excess of five, whether obtained as the result of one or more petitions; and
 - (ii) in addition to the ELCS fee billed to petitioning subscribers, an ELCS surcharge may, if necessary, be billed to all of the ILEC's Texas subscribers to recover the costs of implementing ELCS; and

- (iii) the amount of the monthly ELCS fee and ELCS surcharge will depend on the revenue lost and costs incurred by the company providing the service;
 - (E) unambiguous instructions for voting, including the following statement in large print: "It is important that you return this ballot. If you are in favor of obtaining Expanded Toll-Free Local Calling to a listed exchange, check the box labeled 'YES' next to that exchange. If you do not want Expanded Toll-Free Local Calling to a listed exchange, check the box labeled 'NO' next to that exchange";
 - (F) a statement that a petitioned exchange will be included in the expanded toll-free local calling area only if at least 70% of the petitioning subscribers responding vote affirmatively for ELCS to that exchange;
 - (G) the date by which the returned ballot must be postmarked, which shall be 15 days from the date the ballot is mailed to the customer;
 - (H) the address to which the ballot should be returned upon completion of voting, identifying the commission as the recipient of returned ballots; and
 - (I) a unique identification number assigned by the ILEC serving the petitioning exchange to each subscriber in that exchange.
- (3) **Master list of subscribers.** No later than 35 days after the presiding officer's order to the ILEC serving the petitioning exchange to begin balloting, that ILEC shall submit to the commission a master list of all subscribers within the petitioning exchange in an electronic spreadsheet format prescribed by the

commission. The ILEC shall classify the master list as confidential, and the list shall be treated as such under the provisions of the Government Code, Title 5, Chapter 552. The master list shall be arranged sequentially by billing number and shall include for each subscriber in the petitioning exchange:

- (A) the billing name;
- (B) the billing number;
- (C) the service address;
- (D) the mailing address;
- (E) the class of service; and
- (F) the unique identification number assigned to the subscriber by the ILEC

(4) **Response to balloting.** The commission shall, no later than 15 days after the date stated on the ballot for return of the ballot, notify the presiding officer, the contact person, and affected ILEC(s) of the results of the ballot by filing a ballot report. The ballot report shall specify the results of the ballot for each petitioned exchange.

- (A) Affirmative vote.
 - (i) If at least 70% of petitioning subscribers responding vote affirmatively as to any petitioned exchange, the ILEC serving the petitioning exchange shall file with the commission, within 30 days after the filing of the commission's ballot report, an application to establish ELCS fees pursuant to PURA §55.048(b). The ILEC's application shall include the ILEC's proposed implementation schedule and proposed schedule of fees as well as

other information described in §26.221(e)(1)-(9) of this title (relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges).

- (ii) The implementation of ELCS shall be scheduled for completion within five months after an order is issued by the presiding officer acknowledging the ballot results. The ILEC shall explain and justify the reasons for any implementation delay beyond five months.
 - (iii) No later than 15 days after the ILEC's filing of its application to establish ELCS fees, the presiding officer shall issue an order granting interim approval of the ILEC's proposed fees, which may be billed as of the first billing cycle following implementation of ELCS from the petitioning exchange. All fees given interim approval are subject to refund.
 - (iv) No later than 30 days after the ILEC's filing of its implementation schedule, the presiding officer shall issue an order approving, modifying, or denying the schedule.
- (B) Negative vote. If less than 70% of those responding vote in favor of ELCS to a petitioned exchange, the presiding officer shall, within 10 days after the filing of the commission's ballot report, deny the request for ELCS to that specific petitioned exchange.

- (g) **Calculation of ELCS Fees.** ELCS fees shall be calculated using the formula described in this subsection unless the presiding officer, for good cause, modifies the formula. Key formula terms are defined in §26.221(b) of this title.
- (1) **Regulatory case expenses.** In accordance with PURA §55.048(d), an ILEC may not recover regulatory case expenses under this subsection by surcharging petitioning subscribers.
 - (2) **ELCS fee formula.** First, sum lost revenues and costs incurred to determine the ILEC's annual ELCS requirement. Divide the annual ELCS requirement by 12 to obtain the monthly requirement, which is the numerator. Second, obtain the most current count of access lines in the petitioning exchange. Multiply the number of business lines by two. Add the doubled business lines to the number of residential lines. This total is the denominator. Third, divide the numerator by the denominator to obtain the monthly ELCS fee per residential line. Multiply the monthly ELCS fee per residential line by two to obtain the monthly ELCS fee per business line. Round ELCS fees up or down to the nearest penny.
 - (3) **ELCS fee maximums.** The monthly ELCS fee per residential line shall not exceed \$3.50 for up to five petitioned exchanges. The monthly ELCS fee per business line shall equal twice the monthly ELCS fee per residential line; however, the monthly ELCS fee per business line shall not exceed \$7.00 for up to five petitioned exchanges. For each additional petitioned exchange beyond five, the monthly ELCS fee shall not exceed an additional \$1.50 per residential or business line.

- (4) **ELCS surcharge.** If ELCS fees do not recover the annual ELCS requirement, an ILEC may request establishment of an ELCS surcharge under §26.221 of this title.
- (h) **Docketing.** Within 30 days of the issuance of an order under subsection (f)(4)(A)(iii) of this section granting interim approval of fees to be billed by the ILEC serving the petitioning exchange, any intervenor or the commission may request that the presiding officer docket the project. Docketing may be requested in order to allow further investigation of the ILEC's application or, for good cause shown, any other reason. Upon receipt of a request for docketing, the presiding officer shall docket the project and shall establish a procedural schedule. Upon docketing, discovery may commence in accordance with the commission's Procedural Rules, Chapter 22, Subchapter H of this title (relating to Discovery Procedures).
- (i) **Final approval.** If no request for docketing is timely filed under subsection (h) of this section, the presiding officer shall, within 60 days after the order granting interim approval of fees, issue an order granting final approval to or modification of the ELCS fees to be billed by the ILEC serving the petitioning exchange. Upon final approval by the presiding officer of either the proposed or modified tariff sheets, the fees shall be considered permanent unless modified in the future, for good cause, by the commission.

§26.226. Requirements Applicable to Pricing Flexibility 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. Other sections applicable to an electing company, include, but are not limited to §26.211 of this title (relating to Rate-Setting for Services Subject to Significant Competitive Challenges), §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 §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies).
- (b) **Purpose.** The purpose of this section is to establish requirements for Chapter 58 electing incumbent local exchange companies (ILECs) to exercise pricing flexibility.
- (c) **Pricing flexibility.** An electing ILEC shall exercise pricing flexibility in accordance with this section and §26.227 of this title.
- (1) Pricing flexibility includes:
- (A) customer specific contracts;
 - (B) packaging of services;
 - (C) volume, term, and discount pricing;
 - (D) zone density pricing, with a zone to be defined as an exchange; and
 - (E) other promotional pricing.

- (2) A discount or other form of pricing flexibility for a basic or nonbasic service may not be preferential, prejudicial, discriminatory, predatory or anticompetitive.
 - (3) This section does not prohibit a volume discount or other discount based on a reasonable business purpose.
 - (4) Notwithstanding PURA §58.052(b) or PURA, Chapter 60, Subchapter F, an electing company may exercise pricing flexibility for basic network services, including the packaging of basic network services with any other regulated or unregulated service or any service of an affiliate.
 - (5) An electing company may flexibly price a package that includes a basic network service in any manner provided by paragraph (1) of this subsection.
 - (6) An electing company may use pricing flexibility for a basic or nonbasic service.
- (d) **Pricing standards.** An electing company exercising pricing flexibility shall price its offerings pursuant to this subsection.
- (1) The electing ILEC shall set the price of a package of services containing basic network services and nonbasic services at any level at or above the lesser of:
 - (A) the sum of the long run incremental costs of any basic network services and nonbasic services contained in the package; or
 - (B) the sum of tariffed prices of any basic network services contained in the package and the long run incremental costs of nonbasic services contained in the package.
 - (2) A price that is set at or above the long run incremental cost of a service is presumed not to be a predatory price.

- (3) The price of a package that combines regulated products or services with unregulated products or services shall, in addition to the requirements of paragraph (1) of this subsection, recover the cost to the electing company of acquiring and providing the unregulated products or services. In this section, unregulated products or services are products or services provided by an entity that is unaffiliated with the electing company.
- (4) The price of a package that combines regulated products or services with the products or services of an affiliate shall, in addition to the requirements of paragraph (1) of this subsection, recover the cost to the electing company of acquiring and providing the affiliate products or services, which shall be greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to the electing company of acquiring or providing the affiliate's products or services shall be valued in a manner consistent with FCC requirements and with paragraph (5) of this subsection. A group of products or services that are jointly marketed by an electing company in conjunction with one or more of its affiliates shall be priced in a manner consistent with FCC requirements, if any, and with paragraph (5) of this subsection.
- (5) Consistent with PURA §52.051(1)(C), an electing company shall not use revenues from regulated monopoly services to subsidize services subject to competition.
- (e) **Requirements for customer-specific contracts.** Consistent with PURA §58.003, an electing ILEC may enter into customer-specific contracts for certain basic network

services and certain nonbasic services as provided in this subsection. An electing ILEC may but is not required to file customer-specific contracts with the commission.

(1) An electing company serving fewer than five million access lines may offer customer-specific contracts in accordance with this subsection.

(A) An electing company serving fewer than five million access lines shall not offer customer-specific contracts until it notifies the commission of the company's binding commitment to make the following infrastructure improvements consistent with PURA §58.003(b):

(i) install Common Channel Signaling 7 capability in each central office; and

(ii) connect all of the company's serving central offices to their respective local access and transport area (LATA) tandem central offices with optical fiber or equivalent facilities.

(B) The commitments described by subparagraph (A) of this paragraph do not apply to exchanges of the company sold or transferred before, or for which contracts for sale or transfer are pending on, September 1, 2001. In the case of exchanges for which contracts for sale or transfer are pending as of March 1, 2001, where the purchaser withdrew or defaulted before September 1, 2001, the company shall have one year from the date of withdrawal or default to comply with the commitments.

(2) An electing company serving more than five million access lines may offer customer specific contracts in accordance with this subsection.

- (A) Unless the other party to the contract is a federal, state, or local governmental entity, an electing company serving more than five million access lines may not offer in an exchange a service, or an appropriate subset of a service, listed in PURA §58.051(a)(1) - (4) or §58.151(1) - (4) in a manner that results in a customer-specific contract until the earlier of:
- (i) September 1, 2003; or
 - (ii) the date on which the commission finds that at least 40% of the total access lines for that service or appropriate subset of that service in that exchange are served by competitive alternative providers that are not affiliated with the electing company.
- (B) Pursuant to subparagraph (A)(ii) of this paragraph, the commission may find that the following subsets of services are served by an alternative provider that is not affiliated with an ILEC serving more than five million access lines:
- (i) flat residential rate local exchange telephone service;
 - (ii) residential primary directory listings;
 - (iii) residential tone dialing service;
 - (iv) lifeline and tel-assistance service;
 - (v) service connection for basic residential services;
 - (vi) flat business rate local exchange telephone service;
 - (vii) business primary directory listings;
 - (viii) business tone dialing service;
 - (ix) service connection for all business services;

- (x) direct inward dialing for basic business services; and
 - (xi) receipt of a directory.
- (3) This subsection does not preclude an electing company from offering a customer-specific contract to the extent allowed by PURA as of August 31, 1999.

§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).

(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.**

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.

(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.
- (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 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.

- (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.
- (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.

§26.229. Requirements Applicable to Chapter 59 Electing Companies.

- (a) **Application.** This section applies to electing companies, as defined in the Public Utility Regulatory Act (PURA) §59.002(1).
- (b) **Purpose.** The purpose of this section is to establish the substantive and procedural requirements for an electing company that chooses to provide an informational notice to introduce new services and/or to exercise pricing and packaging flexibility, including customer promotional offerings, and for complaints regarding service offerings introduced by informational notice offerings.
- (c) **New services.** The term "new services" has the meaning assigned in §26.5 of this title (relating to Definitions) and shall include services for which no rate was in effect on September 1, 1999. An electing company may file an informational notice to introduce a new service. An electing company filing an informational notice pursuant to this subsection shall file the appropriate information in accordance with subsection (g)(2) of this section.
- (1) **Pricing standards.**
- (A) An electing company shall price each new service at or above the service's long run incremental cost (LRIC).
- (B) The price of a new service may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.

- (C) A price that is set at or above the service's LRIC is presumed not to be predatory.
- (2) **LRIC studies.** An electing company may establish a service's LRIC by submitting a LRIC study, as specified in subsection (g)(2)(D)(ix) of this section, that conforms to the requirements of §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs)).
- (3) **LRIC adoption.** An electing company serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same service.
- (4) **Rate adoption.** In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an electing company with less than one million access lines may adopt a rate that is identical to or higher than a larger company's tariffed rate for the same service.
- (5) **Packaging of new services.** If an electing company offers a new service as a component of a package, the electing company shall also offer the new service as a separately tariffed service.
- (d) **Pricing and packaging flexibility.** An electing company may file an informational notice to exercise pricing and packaging flexibility by filing the appropriate information in accordance with subsection (g)(2) of this section.
- (1) **General requirements.**
- (A) Pricing flexibility includes:

- (i) customer specific contracts;
 - (ii) packaging of services;
 - (iii) volume, term, and discount pricing;
 - (iv) zone density pricing, with a zone defined as an exchange; and
 - (v) other promotional pricing.
- (B) A discount or other form of pricing flexibility may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.
- (C) An electing company may exercise pricing flexibility, including the packaging or joint marketing of any regulated service with any other regulated or unregulated service or any service of an affiliate.

(2) Pricing standards.

- (A) An electing company shall price each regulated service offered separately or as part of a package at either the service's tariffed rate or at a rate not lower than the service's LRIC.
- (B) An electing company shall price each service at or above the service's LRIC.
- (C) A price that is set at or above the service's LRIC is presumed not to be predatory.
- (D) The price of a package that combines regulated products or services with unregulated products or services shall recover the cost to the electing company of acquiring and providing the unregulated products or services. In this section, unregulated products or services are products or services provided by an entity that is unaffiliated with the electing company.

- (E) The price of a package that combines regulated products or services with the products or services of an affiliate shall recover the cost to the electing company of acquiring and providing its affiliate's products or services, which shall be 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 Federal Communications Commission (FCC) requirements, to the extent such requirements are applicable to the electing company, and with subparagraph (F) of this paragraph. A group of products or services that are jointly marketed by an electing company in conjunction with one or more of its affiliates shall be priced in a manner consistent with FCC requirements, to the extent such requirements are applicable to the electing company, and with subparagraph (F) of this paragraph.
- (F) Consistent with PURA §52.051(1)(C), an electing company shall not use revenues from regulated monopoly services to subsidize services subject to competition.
- (3) **LRIC studies.** An electing company may establish a service's LRIC by submitting a LRIC study, as specified in subsection (g)(2)(D)(ix) of this section, that conforms to the requirements of §26.214 of this title.
- (4) **LRIC adoption.** An electing company serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same services.

- (5) **Rate adoption.** In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an electing company with less than one million access lines may adopt a rate that is identical to or higher than a larger company's tariffed rate for the same service.
- (e) **Customer promotional offerings.** An electing company may file an informational notice to offer customer promotional offerings by filing the appropriate information in accordance with subsection (g)(2) of this section.
- (1) An electing company may offer a promotion for a regulated service for not more than 90 days in any 12-month period.
- (2) Customer promotional offerings may consist of:
- (A) a waiver of installation charges or service order charges, or both, for not more than 90 days in a 12-month period; or
- (B) a temporary discount of not more than 25% from the tariffed rate for not more than 60 days in a 12-month period.
- (3) Although electing companies are not required to file LRIC studies with informational notices regarding these customer promotional offerings, the offerings are subject to the standards for pricing flexibility in subsection (d) of this section, in the event of a complaint.
- (f) **Requirements for customer specific contracts.** An electing company may enter into customer-specific contracts for certain services as provided in §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive

Challenges). For all services not addressed in §26.211 of this title, an electing company must offer customer specific contracts pursuant to this section.

(g) **Procedures related to the filing of informational notices and associated tariffs.** The provisions of this subsection apply to electing companies choosing to introduce new services and exercise pricing and packaging flexibility including customer promotional offerings through informational notice filings.

(1) **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.

(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 (including deficiencies in LRIC studies submitted) 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.

(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 to the requirements of §26.207 of this title (relating to Form and Filing of Tariffs);
- (vi) proposed implementation date (if different from effective date);
- (vii) affidavit of notice to the Office of Public Utility Counsel, certificate of operating authority holders, and parties to interconnection agreements;
- (viii) type of filing (new service; pricing flexibility; packaging, or promotional offering; customer specific contract);
- (ix) except for customer promotional offerings, relevant 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 to establish a LRIC floor and shall be filed before or simultaneously with the informational notice filing. The electing company shall file a notice of intent to file LRIC studies pursuant to §26.214 of this title no later than ten days before the filing of the LRIC study;
- (x) except for customer promotional offerings, relevant LRIC study or LRIC study reference, and relevant supporting materials (confidential/proprietary/protected materials provided to

commission only), if an electing company chooses to adopt LRIC studies of a larger company pursuant to the requirements of subsection (c)(3) or (d)(4) of this section, as applicable;

(xi) except for customer promotional offerings, relevant tariff rates or specific tariff references, if the electing company chooses to adopt rates of a larger company pursuant to requirements of subsection (c)(4) or (d)(5) of this section, as applicable;

(xii) a response of "yes", "no", or "not applicable", with explanatory language, to the following question: "Is the sum of the TELRIC-based wholesale prices of components needed for provision of the retail service at or below the retail price set forth in this filing?" Except for customer promotional offerings, 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;

(xiii) 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; 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, to the extent FCC requirements are applicable to the electing company, and with subsection (d)(2)(F) of this section. 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 subsection (d)(2)(F) of this section and FCC requirements, to the extent FCC requirements are applicable to the electing company;

- (xiv) 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 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, to the extent FCC requirements are applicable to the electing company, and with subsection (d)(2)(F) of this section. 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 subsection (d)(2)(F) of this section and FCC requirements, to the extent FCC requirements are applicable to the electing company;

- (xv) description of the offering's terms and conditions, including location of service or a statement that it is to be provided state-wide; and
- (xvi) a privacy concerns statement.

(E) For customer promotional offerings:

- (i) Affidavit that a promotion for this service has not exceeded 90 days for the previous 12-month period.
- (ii) Promotional tariff or letter identifying the promotional service and whether it is for a waiver of installation or service order charges, or both (90 days) or a discount of 25% or less (60 days).

(3) **Disputes as to sufficiency or appropriateness of informational notice filing.**

- (A) 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.
- (B) A contested case will also exist if the commission files a complaint addressing sufficiency or appropriateness of an informational notice filing.
- (C) Parties other than the commission staff may not challenge the sufficiency of an informational notice filing.

(4) **Complaints regarding service offerings introduced by informational notice filings.**

- (A) Subject to subparagraph (E) of this paragraph, an affected person, the 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.
- (B) A complaint addressing an informational notice involving pricing flexibility, including customer promotions, may challenge whether the filing is in compliance with PURA and the commission substantive rules.
- (C) A complaint addressing an informational notice involving a new service may challenge whether the tariff is in compliance with the pricing standards of PURA and commission substantive rules. If the complaint is

finally resolved in a final order issued by the commission in favor of the complainant, the electing company shall either:

- (i) 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
 - (ii) discontinue the service.
- (D) 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.
- (E) The commission shall consider any complaint alleging that the pricing of a regulated service does not meet the pricing standards of PURA and commission substantive rules, which is filed 31 or more days after the implementation date of the tariff, to be untimely.
- (F) All complaints shall be docketed and governed by the commission's procedural rules and shall be filed and reviewed pursuant to the following requirements:
- (i) Complaints shall be captioned: COMPLAINT BY {NAME OF COMPLAINANT} REGARDING TARIFF CONTROL NUMBER(S) {NUMBER(S)} {STYLE OF TARIFF CONTROL NUMBER}.
 - (ii) 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(s).

- (G) 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.
- (H) A complaint filed pursuant to this section shall be considered to be an exception to the informal resolution requirements of procedural rule §22.242(c) of this title (relating to Complaints).
- (5) **Interim relief.** All 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.
 - (A) Any request that a tariff be suspended during the pendency of a complaint must meet the following requirements:
 - (i) the pleading must state an appropriate and bona fide cause of action;
 - (ii) the pleading must be verified or supported with affidavits based on personal knowledge; and
 - (iii) the pleading must set forth the following elements: probable right of recovery, probable and irreparable injury in the interim, and no adequate alternative remedy.
 - (B) The presiding officer shall schedule a hearing on interim relief in the form of suspension of a tariff on an expedited basis.

- (C) 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.
- (h) 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 in relation to services that are not subject to regulation without commission approval;
 - (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.
- (i) 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.

§26.230. Requirements Applicable to Chapter 65 One-day Informational Notice Filings.

- (a) **Application.** This section applies to incumbent local exchange companies (ILECs), as defined in the Public Utility Regulatory Act (PURA) §51.002(3), with markets deregulated pursuant to PURA Chapter 65 who choose to offer services through one-day informational notice filings pursuant to PURA §§65.151-65.153. A transitioning company, as defined in PURA §65.002(5), which does not choose to offer services through a one-day informational notice filing must either offer services through ten-day informational notice filings pursuant to §§26.227-26.229 of this title (relating to Costs, Rates and Tariffs) or through filings pursuant to §§26.207-26.211 of this title (relating to Costs, Rates and Tariffs).
- (b) **Purpose.** The purpose of this section is to establish the requirements for a transitioning ILEC that chooses to provide an informational notice to introduce new services, and/or to exercise pricing flexibility for basic and non-basic retail telecommunications services, and to outline the procedures for processing complaints regarding service offerings introduced by such informational notice filings.
- (c) **Pricing standards.**
- (1) In a market that remains regulated, the transitioning ILEC shall price its retail services in accordance with the provisions as set forth in §§26.224-26.226 of this title (relating to Costs, Rates and Tariffs).

- (2) In a deregulated market, the transitioning ILEC shall price its retail services as follows:
 - (A) for all services, other than residential service, at a price equal to or higher than the service's long run incremental costs (LRIC); and
 - (B) for basic local telecommunications service, at any price higher than the lesser of the service's LRIC or the tariffed price on the date the market was deregulated.
- (3) Notwithstanding any other long-run incremental cost filing requirements in this subchapter, a transitioning company, upon written notice to the commission, is not required to comply with a direct or indirect requirement to price a residential service at, above, or according to the long-run incremental cost of the service or to otherwise use long-run incremental cost in establishing prices for residential services or to file with the commission a long-run incremental cost study for any service. .
- (4) Notwithstanding paragraphs (2) and (3) of this subsection, a transitioning company may not:
 - (A) establish a retail rate, term, or condition that is anticompetitive or unreasonably preferential, prejudicial, or discriminatory;
 - (B) establish a retail rate for a basic or non-basic service in a deregulated market that is subsidized either directly or indirectly by a basic or non-basic service provided in an exchange that is not deregulated; or
 - (C) engage in predatory pricing or attempt to engage in predatory pricing. A rate or price for a basic local telecommunications service is not

anticompetitive, predatory, or unreasonably preferential, prejudicial, or discriminatory if the rate or price is equal to or greater than the rate or price in the transitioning company's tariff, or price list, for that service in effect on the date the transitioning company submits notice to the commission under paragraph (3) of this subsection.

- (5) In each deregulated market, a transitioning company shall make available to all residential customers throughout that market the same price, terms, and conditions for all basic and non-basic retail telecommunications services, consistent with any pricing flexibility available to the company on or before August 31, 2005.
 - (6) A rate that meets the pricing requirements of paragraph (2) of this subsection is deemed compliant with paragraph (4)(B) of this subsection.
 - (7) A deregulated or transitioning company may offer to an individual residential customer a promotional offer that is not available uniformly throughout the market if the company makes the offer through a medium other than direct mail or mass electronic media and the offer is intended to retain or obtain a customer.
- (d) **Procedures related to the filing of one-day informational notices and associated tariffs.** The provisions of this subsection apply to ILECs choosing to introduce new services and/or exercise pricing and packaging flexibility through one-day informational notice filings.
- (1) **Notice requirements.** A transitioning ILEC shall provide notice of an impending informational notice filing to the commission, the Office of Public Utility

Counsel (OPC), and to any person who holds a certificate of operating authority in the transitioning ILEC's certificated area or areas, or who has an effective interconnection agreement with the transitioning ILEC. Such notice shall inform the recipient of the nature and material terms of the impending filing.

(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 shall be delivered to OPC. Copies of confidential information shall be filed in Central Records in accordance with §22.71(d) of this title (relating to Filings of Pleadings, Documents and Other Materials).

(B) **Format of filing.** An informational notice under this section must include the same elements as set forth in §26.227(c)(2)(D) of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies) and the following:

- (i) For retail services offered in regulated markets, the transitioning company must demonstrate that the rates, terms, and conditions comply with the requirements of subsection (c)(1) of this section and affirm that the said rates, terms and conditions comply with requirements in subsection (c)(4) of this section.
- (ii) For retail services offered in deregulated markets, the transitioning company must demonstrate that the rates, terms, and conditions

comply with requirements in subsection (c)(2), and (4)-(7) of this section.

(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.

(D) **Effective date.** A transitioning ILEC's service offering shall be effective one day after the transitioning ILEC files an informational notice with the commission.

(e) **Notice of deficiencies and disputes as to sufficiency or appropriateness of one-day informational notice filings.**

(1) The commission staff may file a notice of deficiency for incomplete filings or non-compliant filings or a pleading alleging that the service offering is inappropriately filed as a one-day informational notice.

(2) Within five working days after the date of the commission staff's filing, an applicant shall file an explanation of the actions it has taken or intends to take in response to the notice or pleading filed under paragraph (1) of this subsection.

(3) Disputes as to sufficiency or appropriateness of one-day informational notice filings shall be subject to the provisions of §26.227(d) of this title.

(f) **Complaints.**

- (1) An affected person may file a complaint at the commission challenging whether a transitioning company is complying with subsection (c) of this section.
- (2) Notwithstanding subsection (c)(3) of this section, the commission may require a transitioning company to submit a long-run incremental cost study for a business service that is the subject of a complaint submitted under paragraph (1) of this subsection.

(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 the provider's intrastate switched access rates are the same as the provider's 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.

§26.401. Texas Universal Service Fund (TUSF).

- (a) **Purpose.** The purpose of the Texas Universal Service Fund (TUSF) is to implement a competitively neutral mechanism that enables all residents of the state to obtain the basic telecommunications services needed to communicate with other residents, businesses, and governmental entities. Because targeted financial support may be needed in order to provide and price basic telecommunications services in a manner to allow accessibility by consumers, the TUSF will assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas. In addition, the TUSF will reimburse qualifying entities for revenues lost as a result of providing Lifeline services to qualifying low-income consumers under the Public Utility Regulatory Act (PURA); reimburse telecommunications carriers providing statewide telecommunications relay access service and qualified vendors providing specialized telecommunications devices and services for the disabled; and reimburse the Texas Health and Human Services Commission, the Texas Department of Housing and Community Affairs, the Texas Department of Assistive and Rehabilitative Services, the Office for Deaf and Hard of Hearing Services , the TUSF administrator, and the Public Utility Commission for costs incurred in implementing the provisions of PURA Chapter 56 (relating to Telecommunications Assistance and Universal Service Fund).
- (b) **Programs included in the TUSF.**
- (1) Section 26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP));

- (2) Section 26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan);
- (3) Section 26.406 of this title (relating to the Implementation of the Public Utility Regulatory Act §56.025);
- (4) Section 26.408 of this title (relating to Additional Financial Assistance (AFA));
- (5) Section 26.410 of this title (relating to Universal Service Fund Reimbursement for Certain IntraLATA Service);
- (6) Section 26.412 of this title (relating to Lifeline Service Program);
- (7) Section 26.414 of this title (relating to Telecommunications Relay Service (TRS));
- (8) Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP));
- (9) Section 26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));
- (10) Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds);
- (11) Section 26.420 of this title (relating to Administration of Texas Universal Service Fund (TUSF));
- (12) Section 26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas);

- (13) Section 26.422 of this title (relating to Subsequent Petitions for Service to Uncertificated Areas);
 - (14) Section 26.423 of this title (relating to High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service); and
 - (15) Section 26.424 of this title (relating to Audio Newspaper Assistance Program).
- (c) **Support available to deregulated markets.**
- (1) An incumbent local exchange company may not receive support from the universal service fund for a deregulated market that has a population of at least 30,000.
 - (2) An incumbent local exchange company may receive support from the universal service fund for a deregulated market that has a population of less than 30,000 only if the company demonstrates to the commission that the company needs the support to provide basic local telecommunications service at reasonable rates in the affected market. A company may use evidence from outside the affected market to make the demonstration.
 - (3) An incumbent local exchange company may make the demonstration described by paragraph (2) of this subsection in relation to a market before submitting a petition to deregulate the market.

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 §§26.29, 26.73, 26.124, 26.128, 26.134, 26.205, 26.208, 26.211, 26.226, 26.229, and 26.401 are hereby adopted with no changes to the text as proposed and §§26.5, 26.22, 26.23, 26.27, 26.54, 26.89, 26.141, 26.171, 26.217, 26.219, 26.227 and 26.230, are hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS on the 15th day of MARCH 2012.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

ROLANDO PABLOS, COMMISSIONER