

PROJECT NO. 32334

**REQUIREMENTS APPLICABLE TO § PUBLIC UTILITY COMMISSION
PURA CHAPTER 65 SUBCHAPTER D §
TRANSITIONING CARRIERS' § OF TEXAS
INFORMATIONAL NOTICE FILINGS §**

**PROPOSAL FOR PUBLICATION OF NEW §26.230
AS APPROVED AT THE MAY 10, 2006 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §26.230, relating to requirements applicable to transitioning incumbent local exchange companies' (ILECs') one-day informational notice filings made pursuant to Public Utility Regulatory Act (PURA) Chapter 65, Subchapter D. Project Number 32334 has been assigned to this proceeding.

PURA Chapter 65, Subchapter D, establishes provisions and requirements for ILECs that are transitioning to a fully competitive market. A "transitioning company" is an ILEC for which at least one, but not all, of the company's markets have been deregulated by the commission. Transitioning companies may exercise pricing flexibility and introduce new services one day after providing an informational notice to the commission pursuant to PURA §65.151, §65.152 and §65.153 and, as referenced therein, PURA §58.063 and §58.153.

Ms. Janis Ervin, Senior Policy Specialist, Infrastructure Reliability Division, and Mr. James Tourtelott, Attorney, Legal Division, have determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Ervin and Mr. Tourtelott have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing this section will be the clarification of the substantive requirements and procedures relating to the offering of new services and pricing and packaging flexibility through one-day information notice filings. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Ervin and Mr. Tourtelott have also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Texas Government Code §2001.029, or deemed necessary by commission staff, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, June 21, 2006 at 10:00 a.m. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Parties are also requested to e-mail an electronic copy of

comments to janis.ervin@puc.state.tx.us, if possible. The commission invites specific comments regarding any costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the proposed section. All comments should refer to Project Number 32334 and §26.230.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §65.152 and §65.153 regarding general requirements and rate requirements for one-day informational notice filings provided by transitioning companies.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 65.152, and 65.153.

§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 or through filings pursuant to §§26.207-26.211 of this title.
- (b) **Purpose.** The purpose of this section is to establish the requirements for a transitioning ILEC 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.
 - (2) In a deregulated market, the transitioning ILEC shall price its retail services as follows:

- (A) for all services, other than basic local telecommunications service, at a price 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, provided that the company does not increase rates for stand-alone residential local exchange voice service as defined in PURA §65.002(4) before the date that the commission revises monthly per line support under the Texas High Cost Universal Service Plan pursuant to PURA §56.031, regardless of whether the company is an electing company under PURA Chapter 58.
- (3) 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.
- (4) In any market, regulated or deregulated, the transitioning ILEC 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.

- (5) A rate that meets the pricing requirements of paragraph (2) of this subsection is deemed compliant with paragraph (4)(B) of this subsection.
- (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 the informational notice required by this section 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.
- (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. Copies of confidential information shall be filed in Central Records in accordance with §22.71(d) of this title.
- (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 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 the requirements of subsection (c)(2) of this section and affirm that the said rates, terms and conditions comply with requirements in subsection (c)(3)-(4) 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.** Complaints filed by an affected person, the Office of Public Utility Counsel or commission staff regarding service offerings introduced by one-day informational notice filings shall be subject to the provisions of §26.227(e) of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 11th DAY OF MAY 2006 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**