The Public Utility Commission of Texas (commission) adopts new §26.25 relating to Issuance and Format of Bills, with changes to the proposed text as published in the April 7, 2000, *Texas Register* (25 TexReg 2882). The rule is necessary to decrease the confusion associated with the proliferation of charges on residential customers' telephone bills for separate services and products and of related surcharges, fees, and taxes. The new section requires certificated telecommunications utilities (CTUs) to comply with minimum bill information and format guidelines, and to clarify information disseminated to residential customers in order to reduce complaints of slamming and cramming. New §26.25 implements these requirements pursuant to the mandates set forth in the Public Utility Regulatory Act (PURA) §55.012, Telecommunications Billing; in PURA §17.003(c) and §17.004(a)(8); and in the Federal Communications Commission's (FCC) Truth-in-Billing rules (47 C.F.R. §64.2000 and §64.2001 (1999)). This new section was adopted under Project Number 22130.

A public hearing on the proposed section was held at commission offices at 9:00 a.m. on May 2, 2000. Representatives from the following entities attended the hearing and provided comments: Consumers Union Southwest Regional Office (CU); Office of Public Utility Counsel (OPC); AT&T Communications of Texas, L.P. (AT&T); Southwestern Bell Telephone Company (SWBT); GTE Southwest Incorporated and GTE Communications Corporation (collectively GTE); Sprint Communications Company L.P., United Telephone Company of Texas doing business as Sprint, and Central Telephone Company of Texas doing business as Sprint (collectively Sprint); Texas Telephone

Association (TTA); Texas Statewide Telephone Cooperative, Inc.; Focal Communications Corp. of Texas (Focal); and a coalition of competitive local exchange carriers (CLEC Coalition) (comprising Birch Telecom of Texas Ltd., L.L.P.; CCCTX, doing business as Connect!; Excel Telecommunications, Inc.; Global Crossing Local Services, Inc.; Intermedia Communications, Inc.; JATO Operating Corp.; NEXTLINK Texas, Inc.; Teligent Services, Inc.; Time Warner Telecom, L.P.; and Winstar Wireless, Inc.). To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received initial written comments on the proposed new section from TTA, SWBT, CU/OPC (filing jointly), Focal, GTE, Sprint, TSTCI, AT&T, and the CLEC Coalition. All of these parties except TSTCI and Focal also submitted reply comments. The parties' comments are summarized below.

As a result of parties' written comments and oral comments made at the public hearing, the rule has been revised, with certain provisions renumbered. As appropriate, discussion of the comments and commission responses will refer to the provisions of the rule as published and will note the new location of any affected provision.

TTA observed that the new PURA §55.012 does not direct the commission to promulgate a bill-format rule, and opined that no such rulemaking is necessary. TSTCI also questioned the need for a new rule. CU/OPC, on the other hand, contended that Senate Bill 560 (SB 560) and Senate Bill 86 (SB 86),

76th Legislative Session, "recognized that consumers are frustrated with their telephone bills, and both pieces of legislation gave the commission authority and directive to design readable, understandable, consumer-friendly bills."

AT&T, SWBT, Sprint, GTE, TTA, TSTCI, and the CLEC Coalition protested that the proposed rule represents an attempt by the commission to micromanage the bill format of CTUs. AT&T, which submitted the most extensive comments, offered a representative response. AT&T stated that adopting the detailed, prescriptive requirements of the proposed rule "could preclude the development of nationwide billing systems and thwart the ability of CTUs in Texas to implement billing systems that comply with such common billing standards. In addition, such requirements also would limit the ability of CTUs to use their bills as a basis on which they could compete with other CTUs by providing higher quality service to their customers." Indeed, the CLEC Coalition and Sprint cautioned that the billing requirements of the proposed rule may discourage many smaller and/or multi-state CLECs from operating in Texas because of significant compliance costs. Because the bill itself is a significant aspect of a provider's competitive strategy, AT&T concluded, "to the extent the commission imposes requirements that limit the ability to use this crucial tool, the commission will harm competition." AT&T recommended that the commission instead minimize the extent to which it goes beyond the express requirements of PURA and the FCC's Truth-in-Billing guidelines and rely on competitive forces to encourage CTUs (especially non-dominant ones) to use clear and concise bill formats; companies failing to do so are more likely to go out of business as customers "vote with their feet."

As explained later in this preamble, the commission is granting carriers considerably more flexibility than was reflected in the published version of §26.25. With this greater flexibility, the rule implements the specific requirements of PURA §55.012(c) and the general requirements of PURA §17.003(c) and §17.004(a)(8) without inappropriately micromanaging the bill formats of CTUs.

Whereas AT&T expressed its support for the commission's intent to apply the rule "only to CTUs," the CLEC Coalition presented an argument, summarized below, that "the proposed rule should not be applied in its entirety to all CTUs." The CLEC Coalition pointed out that PURA §55.012(c) applies to local exchange companies (LECs) only. The CLEC Coalition protested that the commission lacks the authority to apply the provisions of the rule implementing PURA §55.012(c) to service provider certificates of operating authority (SPCOA) holders, which are not included in the definition of a LEC given in PURA §51.002(4).

In support of its position, the CLEC Coalition offered a number of cases that it claims illustrate its contention that the commission has overstepped its authority in imposing portions of this rule on SPCOA holders. The CLEC Coalition specifically objected to including SPCOA holders in the summarization portion of proposed §26.25(e). This objection is based on the CLEC Coalition's conclusion that the commission's general grant of authority under PURA cannot overcome the specific exemption contained in PURA §55.012(c) regarding SPCOA holders. The CLEC Coalition asserted that a specific statutory provision normally controls over a general statutory provision. (Code Construction Act, Texas Government Code Annotated §311.026 (Vernon 1999)).

Among the many cases cited by the CLEC Coalition was the holding by the Court of Appeals in Austin in *Southwestern Bell Telephone Co. v. Public Utility Commission of Texas* (Southwestern Bell Telephone Co. v Public Utility Commission of Texas, 888 S.W.2d 921 (Tex. App.-Austin 1994, writ ref'd n.r.e.)). In that case, the Austin Court held as settled law that an agency rule may not impose additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions. The CLEC Coalition pointed out that this Court further noted that "If there is no specific express authority for enacting a particular rule, and if the rule is inconsistent with a statutory provision or ascertainable legislative intent, then the agency has exceeded its grant of statutory authority."

The CLEC Coalition further stated that it has also been long held that every word of a statute is presumed to have been used for a purpose and every word excluded must also be presumed to have been excluded for a purpose. (Cameron v. Terrell & Garrett, Inc., 618 S.W.2d 844, 849 (Tex. 1981).) Moreover, the CLEC Coalition argued that the commission's attempt to use PURA §17.003 to trump the exemption of SPCOA holders in §55.012(c) would render the exemption useless, in violation of the Texas Supreme Court's holding in *Hunter v Ft. Worth Capital Corp.* (Hunter v Ft. Worth Capital Corp., 620 S.W.2d 547, 551 (Tex. 1981).) In that case, the Court held that it should not be presumed that the Legislature would perform a useless act when promulgating legislation.

The CLEC Coalition proposed a compromise by suggesting that the proposed rule create *guidelines* for SPCOA holders that require bills to be presented in a clear, readable format and easy-to-understand language, but *do not* require the summarization provisions.

The CLEC Coalition further argued that the imposition of §55.012(c) upon SPCOA holders would be costly and contrary to the public interest of promoting diversity among carriers and fostering competition. (PURA §51.001(b).) It also contended that the commission's action runs counter to the State's policy of eliminating regulatory barriers to competition and the goal of ensuring that entry into the market is based on economically rational factors. (PURA §58.202(6)).

No party specifically responded to the CLEC Coalition's argument. CU/OPC, however, recommended no change to subsection (a), which applied the section to all CTUs.

The commission acknowledges the CLEC Coalition's argument. Nevertheless, the commission concludes that PURA §17.003(c) and §17.004(a)(8) confer sufficient authority to the commission to allow it to apply PURA §55.012(c) to all CTUs. The commission must strike a balance between avoiding undue barriers to competition and the need to protect customers of all CTUs, including SPCOA holders. As a matter of policy, the commission determines that it is reasonable to apply these provisions uniformly to all providers of local service, including SPCOA holders. The distinction between certificate of operating authority (COA) holders and SPCOA holders has blurred over time, so that now most facilities-based competitors have the option of operating under an SPCOA, rather than a

COA. Moreover, applying these requirements to all CTUs will extend protections to customers of SPCOA holders, which constitute the large majority of competitive local carriers. Such protections include increased clarity, as well as information necessary to make informed choices regarding telecommunications carriers, consistent with PURA §17.003. In addition, as explained below, the commission is granting considerably more flexibility to CTUs in their compliance with the requirements of PURA §55.012(c) than was allowed in the published version of §26.25; consequently, the burden on SPCOA holders should be much less onerous.

In addition to commenting on provisions in the proposed new section, parties responded to several matters raised in the preamble of the proposed section. These questions dealt with the proposed effective date, billing over the Internet, and whether the footnoted or asterisked references associated with the subtotal for basic local telecommunications service must state the actual amount of the fees or surcharges, or whether a listing of the fees or surcharges would suffice. Several parties also commented on the costs of implementing the proposed section. Finally, certain parties addressed the topic of focus groups, including information already gleaned from focus groups and other consumer research on making telephone bills more customer-friendly.

***Implementation Costs***

Most commenters estimated the proposed rule would cost between $650,000 and $5 million. TSTCI and TTA commented that while they did not have firm estimates of cost, preliminary indications from

billing vendors suggest that these changes could potentially cost small companies a hundred dollars or more per access line.

SWBT, GTE, TSTCI, and TTA stated they had already incurred significant expenses, in some cases in excess of $1 million, to make their bills Y2K-compatible and to comply with requirements imposed by SB 560, SB 86, and the FCC's Truth in Billing guidelines, and asserted that this was not a good time to mandate additional costly billing changes.

Sprint estimated that to implement the rule as published would cost "between $3 million and $5 million for Texas alone." Sprint also reported that it had already spent $12 million to design a new bill format.

GTE estimated that the cost of changing to a larger-size paper would exceed $2 million, and said that "the costs of the system changes would be excessive as well." GTE further stated that the cumulative costs incurred by all providers to make changes in the billing system will ultimately be passed on to Texas customers with no benefit to them.

The CLEC Coalition stated that one member recently contracted for a $10 million billing system that does not currently have the capability of conforming to the commission's proposed rule. The CLEC Coalition claimed that because its members are relative newcomers to the Texas market, the cost of modifying the billing system cannot be spread over a massive customer base, such as incumbent local exchange companies (ILECs) have. The cost instead must be borne by a small group of customers, so

CLEC customers will see a more significant price increase than will ILEC customers. The CLEC Coalition also commented that the enormous cost of imposing a detailed regulatory burden on competitive providers would have a very negative effect on the development of competition in Texas.

Without giving a dollar estimate, AT&T noted in its initial comments that if the commission deferred adopting any bill-format requirements pending the development of a model national bill-format rule, the cost attributable to Texas requirements would be less. In its reply comments, AT&T estimated that to implement the rule as published would cost approximately $3 million, or $2.5 million if the term "initial page" is interpreted to mean "first page of the appropriate section." AT&T estimated that "to implement the necessary system changes for a less prescriptive approach, but … that is nonetheless consistent with the requirements of PURA §55.012 and is reflected in AT&T's Mock Bill," would be roughly $800,000. AT&T also commented that the imposition of additional system development requirements would divert its resources from the real issue of offering Texans a competitive alternative for their local telecommunications needs.

The commission concludes that the high estimates are based on the published version of §26.25, which required many changes to the first page of the bill. Because the commission has amended the published rule to greatly reduce the number of first-page requirements, the cost of implementation should be significantly less. Some expenses cannot be avoided because of the explicit requirements of SB 560. The timing of these expenses also cannot be avoided. The commission notes that some time has passed since the Y2K compliance expenses were incurred. As for the FCC issues, some amendments are still

pending, and it would be difficult to avoid any of the expenses related to the many changes the FCC is considering. The commission understands the concerns expressed regarding national bill-format rule development. However, with the greater flexibility afforded by the amendments to the published version of §26.25, the costs of complying with any future national bill-format rule should be lessened.

***Effective Date***

Subsection (a) of the published section specified an effective date of November 1, 2000. TSTCI, TTA, GTE and SWBT requested that the effective date be changed to 18 months from the date of adoption of the rule. Sprint commented that it would take approximately 24 months to introduce the necessary system changes the proposed rule would require. AT&T provided two estimates: 24 months if the term "initial page" is interpreted to mean the *first page of the entire bill*, and 22 months if the term "initial page" is interpreted to mean the *first page of the appropriate section*. The CLEC Coalition commented that estimates provided at an early workshop ranged from six to twelve months, and asserted that the commission should allow at least the low end of the range (six months).

TSTCI noted that the majority of its members outsource the billing programming function, and that the turn-around time for programming changes is nine to twelve months. However, due to the significant changes proposed to the first page, TSTCI anticipated that most of its members would be required to request a waiver from this provision because current billing system platforms cannot accommodate all of the proposed changes.

GTE cited bill design, coding, and testing as matters that would need to addressed, and claimed the need for a more reasonable amount of time to achieve compliance. At the public hearing, AT&T cited as reasons for its estimate the need for back-end system development to modify the final presentation of the bill and the need to track revenues and expenditures for remittance to different entities.

AT&T stated that its own less onerous approach to bill format, without extensive changes to the "initial page," would take nine months to fulfill, and anticipated the final estimate for this rule would be significantly longer. AT&T also stated that the system development work could not even begin until after the commission had adopted the rule. AT&T requested the commission to consider deferring adoption of any bill-format rule until the National Association of Regulatory Commissioners (NARUC) releases its draft model rule for bill guidelines sometime in July 2000, because the potential conflict with the model guidelines that could be adopted on a national basis could result in a significant waste of resources. AT&T stated that if the commission decided to continue with a bill format rule, the commission should consider a restrained approach that would facilitate the adoption of more uniform bill format rules in the future.

AT&T also commented that the FCC extended its original compliance date for the Truth-in-Billing rules to provide almost a full year for compliance, and as a result of clarifications by the FCC, the effective date of some of the rules is now undetermined. In light of this national experience, AT&T stated the commission should anticipate that CTUs in Texas may require at least as much, if not more, time to

implement the requirements of the new rule. However, at the public hearing, AT&T stated that every FCC requirement in effect has been implemented by AT&T. AT&T also stated that an FCC order released in March 2000 modified some of the requirements of the Truth-in-Billing order, and those modifications have not gone into effect.

In reply comments, CU/OPC stated their opposition to delaying adoption of §26.25. They cited the directives in SB 560 and SB 86 for the commission "to design readable, understandable, consumer-friendly bills." CU/OPC also noted that the Senate Economic Development Committee had held an interim hearing addressing consumers' increasing frustration with disorganized telephone-bill formats and misleading service descriptions.

In reply comments, GTE supported the waiver requirements suggested by TSTCI, Sprint, and AT&T, while CU/OPC proposed an amendment to allow waivers from the rule if the requirements are in violation of the Truth in Billing order.

The commission acknowledges the concerns expressed regarding the need for additional time to comply with this section, and extends the compliance date to six months from the effective date of the section. The commission notes that the lengthy time estimates requested by parties for compliance are based on the published version of §26.25, which mandated many changes to the first page of the bill. However, the amendments to the published rule that reduce the number of first-page requirements, coupled with the extended compliance date, should address these concerns to a significant degree. The commission

also notes that companies may apply for good-cause waivers pursuant to §26.3. Thus the commission finds it unnecessary to add a specific waiver provision to this section. The commission further notes that §26.25 as a whole reflects legislative intent, and certain provisions mirror specific legislative requirements; therefore, granting waivers to this section, particularly such mirroring provisions, may conflict with a clear legislative directive.

Additionally, while the commission acknowledges that NARUC is considering the adoption of national bill-format guidelines, the commission notes that these guidelines will be voluntary. Moreover, amendments to the published rule should provide sufficient flexibility to carriers that wish to comply with the national guidelines.

***Issues Related to Internet Billing***

AT&T commented that due to the early-stage development of this new service, the commission should refrain from imposing any mandatory bill-format obligations that could limit creativity currently being explored. AT&T noted that customers are interested in functionality, such as sorting bill detail information and receiving information in various useful formats, and recommended that the commission avoid adopting a rule that would eliminate or significantly restrict the availability of such functionality. AT&T also stated that mandating a bill format on the Internet may be meaningless or overly restrictive, if the end result eliminates the ability of a customer to choose the format in which he would like to view his charges.

GTE commented that any new or existing rules should provide the greatest amount of flexibility to enable providers to offer customers choices. GTE said it currently provides on-line billing; however, GTE recognized that not all customers wish to establish electronic service relationships, and deemed it inappropriate to require carriers to provide customer billing using this vehicle only. Thus, GTE opposed rules that limit customer choices and rules that limit a carrier's ability to offer choices.

TSTCI, TTA, and SWBT supported allowing companies the option of providing billing through the Internet or any other means mutually agreeable. However, TSTCI emphasized that Internet billing should not be mandated by the rule.

TTA commented that the rule needs to be flexible to allow the greatest amount of customer service and company innovations while still meeting the spirit of the bill format requirements. TTA noted customers who may choose the Internet billing option may be more knowledgeable regarding telecommunications services and may not require the level of detail that is proposed. TTA asserted that if Internet billing is an option offered, customers who select that option understand that a different level of detail may be provided. TTA stated that it believes these alternative arrangements should be allowed.

CU and OPC did not object to customers' choosing Internet billing so long as it is simply an option and such customers are afforded the same rights and protections of their other customers. CU and OPC stated there should be no reduction in information or customer protection on the Internet bills.

Additionally, companies must inform customers of the protections they have in place to ensure that Internet transactions are secure.

The commission concludes that the published rule, as amended in subsection (d), allows sufficient flexibility for providers to offer Internet billing while ensuring that the appropriate information is easily and initially discernible.

***U.S. Mail Option***

In initial comments, Focal proposed that the method of bill delivery be left to the marketplace. Focal cited the long-distance market as an example where different on-line billing options have already been introduced and stated that CTUs should be permitted to follow the lead of long-distance providers; it asserted that the rule as drafted would deny providers the benefit of striking bargains with customers. Focal proposed that §26.25(d)(1) be narrowed to state, "when necessary, a customer who has chosen electronic billing may receive a printed bill via the United States mail upon arrangement with the appropriate CTU." Focal commented that customers who prefer a traditional paper bill could simply shop around for a carrier who would provide one.

The CLEC Coalition commented that Internet billing is becoming prevalent in many industries and creating many customer conveniences, including permitting ongoing tallies of charges throughout the month, cost savings, and electronic storage of billing information. The CLEC Coalition stated that the

commission's rules should facilitate the provision of bills over the Internet and should permit companies to bill only over the Internet or require payment of costs associated with a paper bill if the customer requires a paper bill.

AT&T recommended that the commission refrain from requiring all CTUs to provide customers the option of receiving bills via United States mail or prohibit CTUs from billing only over the Internet. AT&T stated that the commission should recognize that a CTU offering service that allows for only Internet billing may result in lower costs for customers. Customers who select such a service would willingly choose to forgo the option of receiving a paper bill in exchange for lower rates. At the public hearing, AT&T stated it concurred with Focal's written comments about bargain benefits and maintained that customers wanting to switch from Internet billing to paper bills should incur additional charges.

AT&T commented that at this early stage in the development of such offers, it is unlikely that any person would be forced into a situation where his or her only option for local telephone service is to accept Internet-only billing. AT&T stated that it supports the language in subsection (d) that allows a customer to receive a bill in a manner other than via United States mail.

CU/OPC commented that billing exclusively over the Internet should not be allowed as it effectively redlines customers who do not have access to computers and/or the Internet. CU/OPC noted discrimination against rural customers because of less availability of advanced services in rural areas and against low-income customers due to the requirement of a credit card for Internet billing. CU/OPC

stated that the effect of billing exclusively over the Internet would be to further alienate lower income and rural customers by denying them the potential benefits of competitive choice. In reply comments, CU/OPC reiterated that Internet-only billing denies competitive options to customers who do not have access to the Internet or computers.

CU/OPC did not object to the option of Internet billing so long as customers could choose to switch from Internet billing to paper bills without penalty.

In reply comments, AT&T disagreed with CU/OPC's suggestion that customers who choose the option of Internet billing should be able to switch to paper billing without penalty. AT&T claimed that if providers were subject to such prohibitions, the result would be that customers in Texas would loose the ability to pay less for service.

Sprint commented that it is appropriate for a CTU to provide web billing for its customers if the CTU has the capability; however, it should be the option of the customer to receive a bill via the Internet or one via regular mail.

The commission agrees to modify subsection (d)(1) by substituting the following language for the language in the published version: "All residential customers shall receive their bills via the United States mail, unless the customer agrees with the CTU to receive a bill through different means, such as electronically via the Internet." The commission determines that this approach strikes a reasonable

balance between the need not to inhibit the development of a competitive market and the need, emphasized by CU and OPC, to protect the interests of customers who lack ready access to the Internet. The language does not prohibit a holder of a service provider certificate of operating authority (SPCOA) from promoting itself as a company that bills via the Internet only. A company that operates under a certificate of convenience and necessity (CCN) or a certificate of operating authority (COA), however, may not condition the provision of service on a residential customer's willingness to receive bills by a means other than via the United States mail. This conclusion is based on PURA §55.007(a), which requires holders of a CCN or a COA to provide local exchange telephone service to any customer in its service area who requests service. Therefore, a holder of a CCN or a COA must be willing to send bills via the United States mail to customers who want to receive paper bills.

***Internet First Page Requirements***

SWBT stated there should be no first-page mandates regardless of whether the bill is by mail or over the Internet.

The CLEC Coalition commented that for Internet billing, the commission could simply make clear that the "first-page" information should be presented first on the Internet bill. If it will not fit on the first screen, the customer could merely scroll to the rest of the information.

Sprint commented that the formatting of a web bill should not be constrained with some of the stated rules because information available on the web is very different from information on a paper page.

AT&T commented that to the extent customers will have the ability to determine their own unique format for receiving bills, customers will determine what will be the first screen of information they view. According to AT&T, to mandate the information that a CTU must ensure a customer see first would restrict the flexibility the customer might otherwise enjoy.

Focal stated the commission should not require overly rigid adherence of electronic bills to the format prescribed for traditional paper bills. Focal noted that the options for on-line billing are unlimited, and the concept of a first page loses significance because an electronic page can contain more information than an entire paper bill due to scrolling and hypertext links. Given these possibilities, Focal noted that electronic bills could be easier to navigate than traditional formats, and recommended that the commission allow CTUs the flexibility to design electronic bills that take full advantage of potential formats. Focal proposed that §26.25(e)(1) be revised so that the initial page requirements of the paper bill would only be required to be readily discernible by the customer on the electronic bill. Focal commented that as proposed, §26.25(e)(1) would unduly restrict CTUs utilizing electronic billing from presenting information in a meaningful fashion and undermine the intent for full disclosure.

CU/OPC stated that the bill-content requirements proposed for the first page of the paper bill could be required for the first "screen" of an Internet bill. CU/OPC also stated there should be no reduction in customer protection information on Internet bills.

In reply comments, GTE disagreed with CU/OPC and pointed to Focal's comments stating that the first page loses significance in electronic bills. GTE also agreed with AT&T that mandating a specific bill format hinders creativity and prohibits providers from offering customers a multitude of choices in viewing their bills.

The commission agrees with Focal that the concept of a first page loses significance for on-line billing, due to the availability of such features as scrolling and hypertext links. Therefore, the commission agrees to modify the published rule by inserting at the start of subsection (e) a statement that bills sent via the Internet shall provide the specified information in a readily discernible manner. The commission concludes that such a requirement will allow sufficient flexibility for providers to offer Internet billing while ensuring that customers can easily view the appropriate information.

***Footnotes and Asterisks***

AT&T stated that while it understands the intent of the requirement for footnotes or asterisks, CTUs should be allowed the option of whether, in addition to identifying the relevant fees and surcharges, they state the actual amounts charged for each identified fee or surcharge.

Sprint stated that it would prefer to make references to the information that is proposed to be asterisked or footnoted in its "Important Information Section" of the bill, and not include additional asterisk references to the bill presentation. Sprint also stated that more keys and legends would frustrate customers, and it has striven to remove cryptic presentations from its bills.

SWBT opined that there should be no requirement that any fees, surcharges, or assessments be asterisked or footnoted and commented that its system cannot currently accommodate footnotes that have changing numerical values. At the public hearing, SWBT stated it has no problem with listing the amounts of surcharges on bills, but simply has a problem with listing dollar amounts in footnotes.

The CLEC Coalition commented that the intent of creating a simple summary bill would be complicated with multiple footnotes corresponding to proposed subsection (e)(4). The footnoting mechanism would actually highlight all the charges relating to state and municipal regulations and lead to customer confusion about why they are being assessed so many "different" fees. The CLEC Coalition recognized the commission's attempt to reconcile various code requirements, but stated that the commission's proposed rule would require all telecommunications providers to spend millions of dollars to conform with a rule that necessarily produces an awkward result. The CLEC Coalition noted that should the legislature correct the problem in the future, then providers will be required to spend additional monies again to implement a clearer format. The CLEC Coalition requested a solution for SPCOA holders by

exempting them from the rigid requirements of this rule and substituting the principles that guided the legislature to enact the amendments in the last session.

In reply comments, the CLEC Coalition opined that both AT&T and Sprint admirably demonstrated that the requirements for multiple footnoting and division of surcharges is more likely to confuse customers than to help them. In addition, the CLEC Coalition stated that footnoting certain surcharges that are required by law to be separately identified will give the appearance of duplicative charges or cause customers to hunt through their bill to find the footnoted reference.

CU/OPC stated that both the aggregated subtotal and the itemization of fees and surcharges are essential to customers' reading, understanding, and verifying their bills, and asserted that there is no reason to make customers investigate the amount of charges. In addition to listing the charges, CU/OPC requested that the footnoted or asterisked portion of the bill be in legible type size and on the first or second page of the bill. They noted that a footnote or asterisk is a sham if customers cannot easily find or easily read the information referenced and recommended amendments to subsection (e)(4) to require legible font.

In reply comments, CU/OPC stated that using footnotes or asterisks is not their preference, but was a better option for customers than the strict reading of PURA §55.012 offered in an earlier "strawman" that prohibited CTUs from listing anything other than aggregated local charges. At the public hearing, CU opined that it is not as important where the information is placed, so long as it is there and can be

found; accordingly, CU recommended that the footnote be legible and not tiny. CU stated that it does not believe the carrier should have the discretion to determine whether to identify these charges.

The commission's published rule was intended to give customers a clearer picture of what customers must pay to receive local phone service. The commission does not intend to confuse customers or hide relevant information. The commission finds, however, that state statutes require that certain fees and surcharges a phone company chooses to pass on to customers be line-itemized and/or labeled in a particular way. (In fact, the 911 service fee and the 911 equalization surcharge must be separately shown.) The commission recognizes that requiring the identification of these fees and surcharges included in local-service subtotals by footnotes or asterisks may conflict with the design plans of some CTUs' bills. Therefore, the commission amends the proposed rule to allow companies to use a footnote, asterisk, or "other conspicuous statement" to denote the fees and surcharges included in the subtotals for basic local service and optional local services. The commission also notes that amendments to the published rule no longer require the identification of these fees and surcharges on the first page of the bill.

With respect to whether CTUs should be required to display the actual amounts of fees and surcharges they are authorized to collect by a governmental entity, the commission determines it is appropriate to grant some discretion to CTUs. Specifically, the CTU shall either display these amounts, or if it does not, the CTU must clearly state on the bill a toll-free method, including a toll-free telephone number, by which the customer may obtain information regarding such amounts and their methods of calculation.

This provision is contained in new paragraph (8) of subsection (e). In addition, the commission modifies subsection (c) to allow customers to request and receive, with the agreement of the CTU, recurring bills with more detailed information, including actual amounts of fees and surcharges, if the CTU does not display such amounts on the bill.

***Focus Group Development***

TSTCI and TTA stated that their members are interested in listening to their customers' opinions, and said if the commission is interested in pursuing customer focus group input they would support these efforts and coordinate with commission staff. However, TSTCI and TTA opined that it would best serve the process to facilitate these customer focus groups before the commission moves forward with the proposed rulemaking. TTA also invited representatives of the Office of Customer Protection (OCP) to meet with members' customer service representatives to hear what they are hearing from customers.

TTA also observed, at the public hearing, that some of its members had already conducted focus groups. TTA stated it would be advantageous for the facilitation of other focus groups to allow time for customers to adjust to the Truth in Billing changes before visiting with them on the proposed state changes. TTA also noted that focus groups conducted by providers and OCP showed there is no consensus on what each customer wants on his or her bill.

In reply comments, TTA stated that the majority of its members believe the focus group meeting could be planned and executed with at least two weeks notice for planning and communication with customers about the event. TTA anticipated that OCP, CU, and/or OPC would also provide the focus group with preferred customer-invitees.

At the public hearing, AT&T stated that it had utilized focus groups to develop its current bill format, and although the illustrative proposed format provided in their initial comments had not been reviewed by a focus group, AT&T felt the proposed format was consistent with the findings of the prior focus group testing. AT&T also commented that another round of focus groups could be conducted before the rule is adopted, but that doing so would take a fair amount of time and be a relatively expensive process. It estimated that additional costs of approximately $125,000 would be needed to survey 500 customers and approximately $42,000 would be needed to conduct eight focus groups.

In reply comments, AT&T stated its support for the concept of using focus groups to assist in the development of a bill format used, but expressed concern with the apparent notion that focus groups alone are sufficient to determine whether a particular bill format is clear and whether that format should be mandated on all providers. AT&T asserted that focus groups alone do not provide definitive market research analysis and will not provide statistically valid data on the views of Texas consumers as a whole because focus groups are designed to provide a qualitative look at information. AT&T noted that limiting the development of customer research data to the use of focus groups alone would not provide the commission with the level of information that would substantively facilitate this rulemaking. For these

reasons, AT&T stated it is important to couple qualitative results with quantitative results because in the absence of quantitative analysis, the reliance on focus groups could lead to invalid conclusions and hence detrimental actions. AT&T suggested that 500 customers would need to be surveyed to obtain the needed quantitative results, and the survey would take six to eight weeks to complete.

AT&T also expressed concern that the interest in relying only on the feedback received from new focus groups fails to recognize the significant efforts that providers have already expended in their market research. AT&T stated the commission could take into account the results of research already conducted to evaluate whether the bill format that would result from the proposed rule would achieve the goal of increasing customer understanding.

AT&T's focus groups and other market research yielded the following conclusions:

(1) Customers did not readily understand a more aggregated bill format.

(2) Customers preferred a bill format similar to the "mock bill" provided with AT&T's initial comments to a bill with a more aggregated, less segmented format. AT&T concluded that an aggregated bill format would be more likely to generate customer questions about both bill content and specific charges.

(3) Most customers review the total on the front page and then check the detailed charges.

Based on the results of its own research, AT&T commented that the bill format resulting from the proposed rule would fail to achieve the commission's goals, as the mandated format would be contrary to customers' desires for a clear, useful bill.

Sprint reported that it had spent at least 52 hours in focus groups and received input from service representatives before putting out its new bill. Based on the results of its focus groups, Sprint said that the requirements of the proposed rule would cause customers dissatisfaction and would counter the work Sprint has done over the last two years. Therefore, Sprint strongly urged the commission to consider a good-cause waiver to companies who have demonstrated their willingness to re-design their bill formats according to their customers' needs and expectations.

However, at the public hearing, Sprint stated that it would be willing to participate in focus groups for this rulemaking, but believed it would need to present something definite to customers. Sprint suggested that the commission take all comments and develop a final proposal and, after review by commissioners, issue an order to conduct focus groups before final adoption of the proposal.

At the public hearing, SWBT also suggested having customer focus groups before the commission launches into a strict bill formatting rule. In its reply comments, SWBT estimated it would take four to five months from inception to the production of a final report on the focus groups. SWBT's estimate is based on producing discussion guides and bill samples, selecting various cities (at least three), conducting the focus groups (about 12), compiling and analyzing data, and preparing the report. SWBT

suggested that the focus groups would be necessary only if the commission continues to mandate what the first page of the bill should look like.

In reply comments, the CLEC Coalition noted the discussions of AT&T and Sprint and asserted that to cast aside input based on an assumption that the rule's proposed format will better satisfy customers is unwarranted. The CLEC Coalition noted that while the commission is rightfully concerned about the delay in implementation, it should not force providers to spend millions of dollars without a demonstration that customers will prefer the format proposed in the rule.

GTE commented that it supports the commission's pursuit of data from customer focus groups and believes that these activities are worthwhile, given customers' sensitivity to their telecommunications bills. GTE noted that studies reveal that significant changes in a customer's bill can create confusion and generate significant increases in billing inquiries.

In its reply comments, GTE noted it had already spent a considerable amount of time and resources gathering input from its customers, and had made significant changes to its billing system in order to provide customers bills that are easy to understand.

In supplemental comments, GTE provided more details of the qualitative research it conducted in 1998. GTE's research produced the following conclusions:

(1) Customers are generally satisfied with their bill.

(2) The level of detail is important to customers.

(3) Customers view their bills in varying degrees of detail.

(4) Most participants said the summary information and the itemized long-distance calls were the most important parts of the bill.

The commission finds that since at most minimal changes will be mandated for the first page, there is no need to require providers to undergo the expense of conducting focus groups. The essence of this rule can be achieved within the context of the existing bill formats and without additional bill-format focus groups or other market research.

In both initial and reply comments, AT&T advocated applying the rule not to all services included in a bundled bill, as in the published proposal, but rather applying it to only the portion of the bill related to charges for local exchange telephone service. AT&T stated that its market research indicates that mandating the further aggregation of charges for different services "is inconsistent with the goal of clarifying bills for consumers." Furthermore, AT&T claimed that the plain language of PURA §55.012(c) clearly evidences a legislative intent that its requirements apply to charges for local exchange telephone service only: "a monthly bill from a local exchange company for *local exchange telephone service* shall include…" (emphasis added by AT&T). SWBT supported AT&T's recommendation in its reply comments, also citing the language of PURA §55.012(c).

The commission agrees with AT&T and SWBT that the provisions of new §26.25 implementing PURA §55.012(c) should apply to only those portions of the bill associated with local exchange telephone service. These provisions are found in paragraphs (1), (2), (5), (6), and (8) of subsection (e). Other provisions of §26.25, however, apply more generally to bills of CTUs, including portions dealing with non-local services, provided the bills contain charges for local services (as noted in subsection (b)). The commission concludes that PURA §17.003(c) and §17.004(a)(8), along with the FCC's Truth-in-Billing Guidelines, grant the commission sufficient authority to so apply these provisions.

AT&T also recommended amending subsection (a) to emphasize that the rule applies only to bills for residential customers. Without singling out subsection (a) for amending, the CLEC Coalition also urged expressly limiting the rule to residential bills. To do so and to limit its application to local service, AT&T proposed adding the following second sentence to this subsection: "The provisions of this section apply only to residential customer bills and only to the portions of such bills related to the provision of local exchange telephone service."

CU/OPC, while not opposing the application of the rule to residential-customer bills, did not recommend changing the wording of subsection (a).

The commission agrees to state the residential-customer limitation in this subsection, consistent with the commission's proposed language in subsection (b). The commission declines to adopt AT&T's suggestion to limit the application of the entire section to only the portions of a customer's bill that relate

to local exchange telephone service. As explained above in more detail, the commission is applying certain provisions of subsection (e), which implement PURA §55.012(c), to local exchange telephone service only. However, other sections of the rule apply to portions of customers' bills that relate to non-local services as well.

CU/OPC recommended adding to subsection (b) the following sentence: "Charges should be simplified into general categories to the extent that simplification is consistent with providing customers sufficient information about the charges included in the bill to understand the basis and source of the charges."

The commission finds it unnecessary to adopt CU/OPC's recommended addition, because implementing the entire rule should result in a bill format that provides customers with sufficient information to understand the basis and source of charges for telecommunications services purchased by the customer.

AT&T, TTA, and CU/OPC addressed proposed subsection (c), on billing frequency. TTA suggested substituting the clause "unless through mutual agreement between the company and the customer a less frequent billing interval is established" for the clause "the customer specifically requests a less frequent billing interval," to clarify that the CTU is not obligated to offer less frequent billing as an option. CU/OPC supported TTA's recommended language. AT&T suggested allowing a customer to request a more frequent billing interval as well.

In addition, AT&T suggested adding a second sentence to subsection (c) to state that a customer and CTU are free to agree that the customer will receive a less detailed bill than the rule otherwise would require.

The commission accepts the recommendations of TTA, CU/OPC and AT&T regarding billing frequency, and amends subsection (c) accordingly. It also accepts AT&T's suggestion regarding a less detailed billing option. Another possibility is that a customer and a CTU may agree on a more detailed option. Accordingly, the commission will add to subsection (c) the following sentence: "Through mutual agreement with the CTU, a customer may request and receive a bill with more detailed or less detailed information than otherwise would be required by the provisions of this section if the CTU also will provide the customer with detailed information on request."

AT&T expressed support of proposed subsection (d), with one minor change. It recommended that the term "billing cycle" replace "monthly" in the first sentence of subsection (d)(3), so that there will be no conflict between an agreement that a CTU has with its customer for non-monthly billing and the requirement to maintain "monthly billing records."

SWBT also proposed modifying subsection (d)(3), by adding the condition that a copy of a customer's billing records may be obtained upon request "and payment of the cost to reproduce."

The commission accepts AT&T's recommended change to subsection (d)(3). The commission declines to make the change to subsection (d)(3) recommended by SWBT. The commission notes that the current language does not preclude a CTU from charging a customer for such billing records. A dominant CTU, however, may charge only tariffed rates for reproducing such billing records.

All of the telecommunications utilities commenting on the proposed rule strongly objected to requiring that all of the information specified in proposed subsection (e)(1) be included on the first page of a customer's bill. In fact, SWBT, GTE, TTA, and TSTCI indicated that these first-page requirements constitute their primary concern with the proposed rule. The objecting carriers argued that including all of the required information would necessitate time-consuming and costly changes in their billing systems and would be contrary to the wishes of most consumers. TTA, TSTCI, GTE, and SWBT observed that PURA §55.012 contains no such mandate, and TTA asserted that including such "an inordinate amount of information" on the first page would be infeasible "for technical, financial, and customer-specific reasons." TTA, TSTCI, GTE, SWBT, and AT&T urged that companies be allowed to continue treating the first page as a summary page, with most companies including some information on a "tear off and return portion" of the page. Subsequent pages of a customer's bill would contain the listing of charges "consistent with the legislatively required information for the local exchange service portion of the bill," in TTA's words. In its reply comments, TTA reiterated these views, and noted that forcing so much information onto a page already limited in available space by the customer-return portion would be "contrary to what some companies have already received as preferred format from customer focus groups." Similarly, GTE asserted that the first-page requirements are contrary to the

wishes its customers have communicated through focus groups, opinion research tools, and conversations relating to bill inquiries: "Repeatedly, customers tell GTE to 'keep the first page simple.' … Customers have told GTE that they turn directly to the summary information on *page one* to review the total amount due, the previous payment received, and the summary of charges." In its reply comments, GTE also stated its opposition to requiring service providers to list separately each long-distance carrier and each carrier's total charges on the first page.

SWBT and TSTCI offered the same criticisms of mandating the substitution of a detailed billing page for a summary page. TSTCI warned that this mandate would require small ILECs to revamp their billing systems, possibly at costs of over $100 per access line; consequently, TSTCI stated, "most of its member companies would be required to request a waiver from this provision." Similarly, SWBT asserted that it would be practically impossible to fit all the required information onto one page when a customer has multiple lines, services, and providers. In addition, SWBT claimed that attempting to compress the specified information onto the first page would "require a complete bill redesign for SWBT," requiring at least 18 months and costing "many more hundreds of thousands, if not millions, of dollars" in addition to the $1,150,000 SWBT has already spent to comply with the FCC's Truth-in-Billing requirements for deniable/non-deniable charges and the requirements in SB 560 and SB 86 for aggregating amounts for basic local services and fees, optional services, and taxes. Moreover, SWBT stated that it knows of no empirical data, including customer focus-group data, supporting the first-page mandate of proposed subsection (e)(1).

Sprint had no objection to the requirements in proposed subsection (e)(1)(E) and (F), to show on the first page of the bill the grand total amount due and the billing period or billing end date. AT&T did not object to the former requirement, but objected to having to show a billing period or billing end date on the first page, on the grounds that charges from carriers other than the billing CTU may be based on a different period.

Both Sprint and AT&T strongly objected to requiring that most of the other information in proposed subsection (e)(1) appear on the first page of the bill. In AT&T's words, "Such a requirement would necessitate a substantial redesign of the first page of the bill and a significant number of systems used to generate the bill." However, AT&T stated that it has no objection to an alternative interpretation of the "initial page" requirement, namely, requiring most of this information on the first page of the section of the bill dealing with *local exchange telephone service*. AT&T offered three exceptions. First, it recommended requiring the payment-due date to be shown only on the actual first page of the bill. Second, it opposed requiring CTUs to show, on either the first or the "initial" page, the minimum amount the customer must pay to maintain basic local telecommunications service. In support of the latter position, AT&T noted that the FCC recently imposed a requirement for carriers to distinguish between "deniable" and "non-deniable" charges on bills, but had chosen to give carriers flexibility in the manner of their compliance. Additionally, it observed that the commission, in Project Number 21030, *Amendments to Substantive Rule §§26.23, 26.24 and 26.28 regarding Limitations on Local Telephone Services Disconnections*, recently required that carriers send customers this specific

information in a notice of suspension or disconnection; in AT&T's view, there has been no indication that such notice has provided customers insufficient protection.

Apparently agreeing with the essence of AT&T's argument, Sprint contended that its new bill format complies with the FCC's requirements concerning deniable and non-deniable charges by using symbols and an explanatory message. On the other hand, SWBT and TTA, in recommended rule language attached to their initial comments, included the requirement that a subsequent page identify the total amount the customer must pay to maintain basic local telecommunications service.

AT&T stated that its third objection to the alternative version of the "initial page" mandate is to subsection (e)(1)(H), requiring CTUs to provide on the initial page "a clear and conspicuous notification of any change in service provider, including notification to the customer that a new provider has begun providing service." AT&T noted that the FCC's Truth-in-Billing order did not mandate a specific placement for this notification, and reported that it had developed a format in which such notification appears at the end of the bill. To require that such notification be provided on the "initial page" would "cause significant problems, and, indeed, not improve the customer's notification of this information."

Sprint expressed the belief that its new bill format complies with the change-in-service-provider requirement by means of a reference on the first page to a "Change in Service" section elsewhere in the bill. Sprint also noted that services provided by a dial-around carrier do not warrant this type of special customer notification.

Unlike TTA's recommended rule language, SWBT's language included the requirement that some page of the bill provide "a clear and conspicuous notification of any change in service provider, including notification to the customer that a new provider has begun providing service." In addition, SWBT proposed including the following statements: "For purposes of this subsection, 'new service provider' means a service provider that did not bill the subscriber for service during the service provider's last billing cycle. This definition shall include only providers that have continuing relationships with the subscriber that will result in periodic charges on the subscriber's bill, unless the service is subsequently canceled."

Sprint opposed the specific requirements of subsection (e)(1)(A)-(D), based in part on the results of over 52 hours of customer focus groups and from input received from its service representatives. With respect to subparagraphs (A) and (B), it noted its experience that "customers prefer to see charges by carrier, and do not understand regulatory categorization of charges as indicated in the proposed rule for basic and optional services." To comply with these provisions, Sprint said it would have to "completely redefine the bill organization and hierarchy exclusively for the state of Texas." Similarly, Sprint contended that its approach of listing applicable fees and surcharges, as well as taxes, on the detailed bill pages for each carrier would satisfy the intent of subparagraphs (C) and (D), and would be less confusing to customers than the categorization required by these subparagraphs.

Several carriers, including SWBT, also argued that the first-page mandate "is entirely at odds with the FCC's approach in its Truth-in-Billing guidelines," which "recognized the importance of flexibility in allowing providers to differentiate themselves in the marketplace in designing customer-friendly bills."

In their initial comments, CU/OPC supported the basic requirements set forth in the proposed rule. At the APA public hearing and in reply comments, however, CU/OPC expressed sympathy for carriers' concerns that the proposed rule required too much information to be packed onto the first page of a bill, and agreed that not all of this information has to be shown on the first page. Specifically, CU/OPC proposed that subsequent pages must include an itemization of the services and related charges included in the "basic local telecommunications" subtotal and in the "other services" (provided by that CTU) subtotal, as well as clear descriptions of services provided by the CTU. In addition, such later pages would include a similar itemization and service descriptions associated with charges being billed on behalf of other providers. CU/OPC also proposed that the total payment required for the customer to maintain basic local service, and a notification of any change in service provider, need not appear on the first page; instead, such information would be required to "be clearly and conspicuously displayed on the bill in a prominent location and in bold and legible type size."

The most important difference remaining between CU/OPC and the commenting carriers (most notably AT&T) involves whether the aggregate charges for basic local service and optional services provided by the billing CTU must appear on the first page. CU/OPC supported such a requirement; the carriers opposed it. Most of the carriers did not object to including these totals on a page specifically devoted

to local exchange service, as AT&T recommended. An exception is Sprint, which, as noted above, claimed that customers "do not understand regulatory categorization of charges … for basic and optional services." Sprint asserted that, in presentations in other states, its redesigned bill had been found to be clear to customers, and urged that the commission consider granting a good-cause waiver to "companies who have demonstrated their willingness to redesign their bill formats according to their customers' needs and expectations."

At the public hearing, CU and OPC offered three reasons for including on the first page the aggregate charges for basic local service and optional services provided by the billing CTU. First, OPC asserted that the intent of the Texas Legislature in 1999 had been to prohibit disconnection of basic local service for non-payment of charges for optional local services. Second, CU concluded that the Legislature, by specifically mandating the inclusion in a customer's bill of the charges for these groups of services, indicated that listing them on the first page provides useful information to the customer. In addition, CU opined that consumers would benefit by receiving as much information on the first page as possible without being overwhelmed with detail.

AT&T and SWBT disputed these points. At the public hearing, AT&T noted that the commission's Project Number 21030 (in which P.U.C. Substantive Rule §26.28, Suspension or Disconnection of Service, was adopted) prohibited disconnection of a residential customer's basic local service for non-payment of only long-distance charges, not charges for optional local services. Addressing the second contention in its reply comments, SWBT argued that the Texas Legislature implicitly had declined to

mandate the inclusion of the aggregate-charge information on the first page. It contrasted PURA §55.012(c) with PURA §55.011(a), which explicitly did require a LEC to print on the first page of a bill the name of the customer's primary interexchange carrier (IXC) if the LEC bills on behalf of that IXC. Additionally, AT&T, SWBT, GTE, Sprint, and TTA said that focus groups and other customer input indicated that many customers prefer a simpler first page, with local service charges broken out on subsequent pages.

CU/OPC and SWBT disagreed on an additional point: whether the first page must include the "amount of charges billed by the CTU on behalf of other providers, listed by provider or as the aggregated amount of charges billed by the CTU on behalf of other providers," in CU/OPC's words. At the public hearing, SWBT explained that it did not oppose disclosing this information in the bill, but objected to having to provide it on the first page. In particular, SWBT stated that it prefers to list each carrier and its charges, in part because such itemization assists customers in detecting slamming. But if the customer used a number of other providers, confining the specification of each carrier and its charges to the first page could be infeasible.

The commission is persuaded that CTUs should have some discretion concerning the location in the bill of most of the information required by the published version of §26.25(e) to be shown on the first page. Specifically, the commission will require that only the following information be clearly and conspicuously shown on the first page of the bill: the grand-total amount due for all services being billed; the payment-due date; a notification of any change in service provider, including notification to the customer that a

new provider has begun providing service; and the customer's main telephone number or account number. (If possible, the first page also should list any other applicable telephone numbers or account numbers for which charges are being summarized on the bill; otherwise, such numbers must be clearly identified on subsequent pages.) The commission concludes that requiring the notification of a change in service provider to be shown on the first page is justified because such display will help customers to detect instances of slamming. The commission notes additionally that including such identification on the first page should be easily coordinated with the PURA §55.011(a) requirement referenced by SWBT.

The commission also agrees with SWBT regarding the need to clarify the meaning of "new service provider." Accordingly, the commission modifies proposed subsection (e)(1)(H) (now renumbered as (e)(1)(C)) to clarify this meaning, and to require that the notification include the identity of the new service provider and a description of the provider's relationship with the customer. The commission observes that the clarified definition of "new service provider" excludes a provider charging the customer for services billed solely on a per-transaction basis, such as dial-around long-distance service and directory-assistance services.

The subtotals related to local service (basic local service, optional services, and taxes) shall be clearly and conspicuously displayed on either the first page or in a subsequent section dealing with local exchange telephone service. These requirements are now set forth in subsection (e)(2).

Other important information, including charges for non-local services provided by the billing CTU and charges for services provided by parties other than the billing CTU, must be clearly and conspicuously displayed on the bill. In addition, the CTU shall clearly and conspicuously identify on the bill those charges for which non-payment will not result in disconnection of basic local telecommunications service, or identify those charges that must be paid for the customer to retain basic local service. In either case, the CTU also must include an explicit statement that failure to pay the identified charges will or will not (depending on the option selected) result in the loss of basic local service. Such a requirement is consistent with 47 C.F.R. §64.2001(c). The requirement also allows a carrier to identify the total amount that must be paid for a customer to retain basic local service. The commission additionally notes that, under Project Number 21423, *Rulemaking regarding Telephone Customer Service and Protection*, proposed P.U.C. Substantive Rule §26.28(a)(7)(E) and (b)(6)(E) require dominant CTUs and non-dominant CTUs, respectively, to "indicate the specific amount owed for tariffed local telephone services required to maintain basic local telephone service" in any suspension or disconnection notice sent to a residential customer. Taken together, these provisions should provide appropriate information and protection to residential customers.

The above requirements relating to non-local services are now included in subsection (e)(3).

The commission concludes that the decisions described above provide residential customers with worthwhile information in an appropriate format, pursuant to PURA §55.012(c), PURA §17.003 and §17.004, and the FCC's Truth-in-Billing rules, while not imposing undue burdens on CTUs.

Consistent with the interpretation that PURA §55.012(c) applies to only the part of a telephone bill relating to local service, in its reply comments AT&T strongly recommended that subsection (e)(1)(D) be modified to require displaying only the total amount of taxes related to local service. (To do so, it suggested deleting the word "total" in this subparagraph.) AT&T objected to interpreting this provision so as to require displaying the total amount of taxes for *all* services presented on the bill, including non-local services. Following the latter interpretation, AT&T alleged, would necessitate a summing of tax subtotals, thereby delaying the processing of bills and their issuance to customers. Moreover, AT&T asserted, "a customer is more likely to be concerned with the additional expense associated with each service (including the associated taxes) than a total amount of taxes that are being paid in conjunction with a particular bill."

No other party specifically addressed this point in its comments.

The commission accepts AT&T's recommendation to require displaying in the section dealing with local service only those taxes related to local service. Taxes related to non-local services, however, shall be shown in a section detailing such services.

In initial comments and at the public hearing, AT&T also recommended that the aggregate-charge requirements in subsection (e)(1) apply only to monthly recurring charges. AT&T contended that "a mandate that would require non-recurring charges, such as charges for use of directory assistance,

automatic call return, and operator assisted calls, to be included in one of the three 'buckets' provided in PURA §55.012(c) would cause significant volatility in the per month expense of each bucket and cause significant customer confusion." Instead, AT&T recommended presenting such charges separately on a customer's bill.

No party specifically addressed this recommendation in reply comments. The suggested language contained in the reply comments of CU/OPC did not include such limiting language, however.

The commission concludes that the issue of whether non-recurring charges should be included in the aggregate charges for "basic local telecommunications service" and "optional services" shall be left to the discretion of the carrier. Such non-recurring charges related to local services, however, should be displayed in the section dealing with local exchange telephone service. Thus a service installation charge may be included in the basic-local charge, or it may be shown separately in the section dealing with local service. Similarly, per-use local charges may be included in the "optional" charge, or they may be shown separately in the section dealing with local exchange telephone service. If these non-recurring charges are included in the aggregate charges for basic local service and optional services, however, they must be clearly identified in a more detailed itemization elsewhere in the section of the bill dealing with local exchange telephone service.

The commission adds new subsection (e)(6) to address the listing of non-recurring charges.

The CLEC Coalition proposed that subsection (e)(2) of the published rule be amended to duplicate the wording of the corresponding provision in the FCC's Truth-in-Billing rule, 47 C.F.R. §64.2001(b). Such an exact tracking, the CLEC Coalition stated, would "allow carriers to know that their compliance with the FCC's rules will guarantee compliance with this part of the commission's rule, without wondering whether the commission's wording means something different from the FCC rule."

The commission declines to make the change suggested by the CLEC Coalition. The commission concludes that published subsection (e)(2) will accomplish the same objective as the FCC's provision, namely, to enable customers to ascertain whether they are being billed for services they requested. The commission assures parties that the language in published subsection (e)(2), which is now in subsection (e)(4), should be interpreted as being consistent with 47 C.F.R. §64.2001(b).

Sprint, TTA, and SWBT opposed the requirement in subsection (e)(4) that the Texas Universal Service Fund (TUSF) assessment be allocated to all telecommunications services on a proportionate basis. SWBT stated that its customers are used to seeing a single TUSF assessment for all of their services; under the proposed rule, some customers will think "they are being double or triple billed, or worse." Sprint agreed with SWBT that such a proportionate allocation would increase confusion among customers: "With the Federal USF, the customer could have up to four USF charges on the bill." Sprint also defended its new nationwide policy of lumping local service-related surcharges, including the TUSF, together with taxes, rather than in an aggregate basic local charge or split between that charge and separate charges for optional local services, long-distance, and other services. TTA urged the

commission to exercise as much flexibility as possible regarding the TUSF assessment. It observed that although the billing systems of some of its member companies are already equipped to apportion and display the TUSF assessment across service categories, other companies' systems are "programmed to roll the assessment up to a single displayed number on the customers' bills." TTA concluded that complying with the proposed allocation requirement would present such companies with a need to undertake a massive reprogramming effort. TTA also cited two other reasons for not requiring the allocation of the TUSF assessment. First, in some billing systems the mathematical "rounding" caused by multiple TUSF assessments could prevent those assessments from summing to the correct total TUSF assessment. Second, because new P.U.C. Substantive Rule §26.28 deems the TUSF assessment one that a customer must pay to retain basic local service, some companies modified their billing systems "to accommodate the roll-up calculation of that amount into the total due for basic service."

GTE stated in its reply comments that although it had modified its billing systems to calculate and display the TUSF assessment for each service category, it supported TTA's recommendation that the commission allow as much flexibility as possible in displaying the assessment.

AT&T's offered a compromise position, under which the TUSF assessment (and other fees and surcharges assessed as a percentage of revenue) would have to be allocated only between charges for local services and those for long-distance services. The former charges could be displayed as part of the aggregate charge for basic local service. AT&T cited two of the reasons other commenters

adduced to oppose requiring a split of these revenue-based assessments between basic local telecommunications service and optional local services: the increased potential for customer confusion and anger stemming from multiple appearances of the same surcharge and assessment, and "the significant danger of bill errors" due to rounding. Additionally, AT&T asserted that PURA §55.012(c) does not require such an allocation: "the plain language of the statute indicates that all fees, assessments, and surcharges may be included in the charge for basic local telephone service." Finally, AT&T observed that its compromise solution "would go a long way towards the apparent goal of allowing CTU marketers to quote a price for basic local service that will not vary significantly from month to month" for a given customer; any variation in the listed subtotal for basic local service would be due to changes in purchases of optional local services, including per-use services.

Consistent with its recommendation not to require the allocation of revenue-based assessments between the local-service subtotals, AT&T proposed deleting the phrase "and any applicable fees or surcharges authorized by a governmental entity" from proposed subsection (e)(1)(B)-(C).

In their reply comments, CU/OPC agreed to accept inclusion of that part of the TUSF assessment related to local service with the *basic* local service total. In fact, their proposed rule language would require this inclusion. SWBT, in reply comments, stated that AT&T's proposal is preferable to the further allocation among local services required by subsection (e)(4). Nevertheless, SWBT argued that because PURA §55.012(c) applies only to "local exchange telephone service," the fees related to long-distance services (including the poison-control and 911 equalization surcharges and that part of the

TUSF assessment associated with long distance) are not required to be aggregated into a long-distance component. TTA, at the public hearing, indicated that it preferred for carriers to have the option of including *all* assessments in the aggregate charge for basic local service.

This provision in the published version of §26.25, which required that the TUSF assessment be allocated to all telecommunications service on a proportionate basis, rested on a two-part rationale. First, such an allocation is consistent with the manner in which this assessment is levied, as a percentage of all taxable telecommunications receipts. Second, such an allocation would enable a CTU's marketers to quote a set amount for basic local telecommunications service that includes all associated fees and surcharges, whereas if the TUSF assessment is lumped into the basic local subtotal, such a quoted subtotal would vary by customer and by month, depending on optional services used and long-distance calls made. This sort of variation could be confusing to customers.

On the other hand, the commission recognizes that commenting parties make valid points regarding the possibilities for rounding errors and for customer confusion created by multiple listings of a "TUSF assessment," as well as the significant costs to some CTUs to modify their billing systems to reflect such an allocation. (The commission notes, however, that some CTUs already list multiple "TUSF assessments" on their bills.) Consequently, the commission determines that the portion of the TUSF assessment *related to local exchange telephone service* may be included in the basic local service subtotal, or be split proportionately between the subtotals for basic local service and optional local services. The same ruling applies to any other percentage-of-revenue-based assessments related to

local exchange telephone service. The portion of the TUSF assessment and other percentage-of-revenue-based assessments related to non-local service, however, may *not* be included in either subtotal for local service. This ruling is consistent with proposed P.U.C. Substantive Rule §26.28(a)(4)(D) and (b)(4)(D), as well as existing P.U.C. Substantive Rule §26.28(d)(5). These provisions, while not addressing the TUSF assessment, prohibit a residential customer's basic local service from being disconnected for non-payment of long-distance charges. (Neither the proposed version nor the existing version of P.U.C. Substantive Rule §26.28 prohibits disconnection of basic local service for non-payment of optional local charges.) In addition, a given customer's quoted subtotal for basic local telecommunications service, while depending on optional services purchased, will not vary on the basis of long-distance calls made.

In accordance with the above ruling, the commission is inserting the phrase "consistent with paragraph (8) of this section" in new subsection (e)(2)(A)-(B). The new subsection (e)(8) is a modified version of proposed subsection (e)(4).

With respect to the portion of the TUSF assessment and other percentage-of-revenue-based assessments associated with non-local charges, the commission determines that carriers may use their discretion as to whether to include such portion in a subtotal. In fact, as stated in new subsection (e)(3)(A)-(B), carriers shall have discretion in the use of subtotals for any non-local services, including services provided by other carriers. If such subtotals are shown, an asterisk, footnote, or other statement of any inclusion of the relevant part of the TUSF assessment and other percentage-of-

revenue-based assessments (and any other long-distance-specific surcharge, such as the poison-control surcharge and the 911 equalization surcharge) must be provided, consistent with subsection (e)(8) of the new section. If the specific amounts of such assessments are not shown on the bill, the CTU must clearly indicate on the bill a toll-free method, including a toll-free telephone number, by which the customer may obtain information regarding such amounts and their methods of calculation. This provision is contained in subsection (e)(8). In addition, the commission modifies subsection (c) to allow customers to request and receive, with the agreement of the CTU, recurring bills with more detailed information, including actual amounts of fees and surcharges, if the CTU does not display such amounts on the bill.

In connection with subsection (e)(1)(G), CU/OPC urged that "it should be made clear that the total amount a customer must pay to maintain basic local telecommunications service is only the basic service charge, which does not include the costs of optional services." CU/OPC claimed that legislators intended to prohibit disconnection of basic local service so long as the customer pays the charge for basic local service. Additionally, CU/OPC asserted that such a policy is in the public interest.

The commission declines to adopt CU/OPC's recommendation. First, issuing such a declaration would be beyond the scope of this rulemaking. The commission notes that neither the proposed version nor the existing version of P.U.C. Substantive Rule §26.28 prohibits disconnection of a residential customer's basic local service for nonpayment of optional local charges, though both versions prohibit disconnection for nonpayment of long-distance charges. Second, the commission fails to find clear

evidence in either PURA §55.012, Limitations on Discontinuance of Basic Local Telecommunications Service (added by SB 86), or PURA §55.013, Limitations on Discontinuance of Basic Local Telecommunications Service (added by SB 560), to support CU/OPC's assertion regarding legislative intent. Subsection (a) in each of these sections in PURA specifically forbids a provider of basic local telecommunications service from disconnecting a residential customer's basic service for nonpayment of long-distance charges, but does not address disconnecting such service for nonpayment of optional local charges.

Sprint urged the commission to exempt from proposed subsection (e)(3), which requires the bill to provide a description of services included in a bundled package, carriers whose customers sign an agreement regarding the bundled services they purchase. Sprint cited as an example its new Integrated On-Demand Network services.

The commission declines to issue a blanket exemption in advance to CTUs whose customers sign an agreement to receive a package of specific services. The commission notes, however, that modified subsection (c) allows a CTU, through mutual agreement with a customer, to provide a bill with less detailed information if the CTU also will provide the customer with detailed information on request.

Finally, AT&T recommended that the commission delete the phrase, "and clearly reference a subsequent page where the customer's additional numbers are plainly identified" from proposed subsection (e)(7). AT&T pointed out that some numbers may be unique to providers other than the

billing CTU, in which case specifying on which page a particular phone number will appear would (at least in AT&T's case) amount to a "very onerous and expensive" proposition.

The commission agrees to accept the substance of AT&T's recommendation. Specifically, the commission moves the provision in question to new subsection (e)(1)(D) and rewords the provision to read as follows: "If possible, the first page of the bill shall list each applicable telephone number or account number for which charges are being summarized on the bill. If such inclusion is not possible, the first page shall show the main telephone number or account number, and subsequent pages shall clearly identify the additional numbers."

Finally, the commission is aware that some CTUs may want to seek input from the commission as to whether their contemplated bill formats comply with the requirements of this section. To accommodate this desire, the commission will allow CTUs to seek review from the commission of sample bills that are intended to comply with such requirements. As stated in new subsection (f), CTUs should seek such review within 45 days of the effective date of the section. Such review will be conducted under Project Number 22130.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §17.003 and §17.004, which grant the commission the authority to require a CTU to provide bills that present clear, uniform, and understandable information to customers about rates, services, customer rights, terms, and other necessary information that the commission deems appropriate; and PURA §55.012, Telecommunications Billing, which seeks to simplify and clarify bills issued by local exchange companies (LECs).

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.003, 17.004, and 55.012.

**§26.25. Issuance and Format of Bills.**

(a) **Application.** The provisions of this section apply to residential-customer bills issued by all certificated telecommunications utilities (CTUs). CTUs shall comply with the changes required by this section within six months of the effective date of the section.

(b) **Purpose.** The purpose of this section is to specify a user-friendly, simplified format for residential customer bills that include charges for local exchange telephone service.

(c) **Frequency of bills and billing detail.** Bills of CTUs shall be issued monthly for any amount unless the bill covers service that is for less than one month, or unless through mutual agreement between the company and the customer a less frequent or more frequent billing interval is established. Through mutual agreement with the CTU, a customer may request and receive a bill with more detailed or less detailed information than otherwise would be required by the provisions of this section if the CTU also will provide the customer with detailed information on request.

(d) **Billing information.**

(1) All residential customers shall receive their bills via the United States mail, unless the customer agrees with the CTU to receive a bill through different means, such as electronically via the Internet.

(2) Customer billing sent through the United States mail shall be sent in an envelope or by any other method that ensures the confidentiality of the customer's telephone number and/or account number.

(3) A CTU shall maintain by billing cycle the billing records for each of its accounts for at least two years after the date the bill is mailed. The billing records shall contain sufficient data to reconstruct a customer's billing for a given month. A copy of a customer's billing records may be obtained by the customer on request.

(e) **Bill content requirements.** The following requirements apply to bills sent via the U.S. mail. Bills rendered via the Internet shall provide the information specified in this subsection in a readily discernible manner.

(1) The first page of each residential customer's bill containing charges for local exchange telephone service shall include the following information, clearly and conspicuously displayed:

(A) the grand total amount due for all services being billed;

(B) the payment due date; and

(C) a notification of any change in service provider, including the identity of the new service provider and notification to the customer that a new provider has begun providing service. The notification should describe the nature of the relationship with the customer, including the description of whether the new service provider is the presubscribed local exchange or interexchange carrier. For purposes of

this subparagraph, "new service provider" means a service provider that did not bill the customer for services during the service provider's last billing cycle. This definition shall include only providers that have continuing relationships with the customer that will result in periodic charges on the customer's bill, unless the service is subsequently canceled.

(D) If possible, the first page of the bill shall list each applicable telephone number or account number for which charges are being summarized on the bill. If such inclusion is not possible, the first page shall show the main telephone number or account number, and subsequent pages shall clearly identify the additional numbers.

(2) Each residential customer's bill shall include the following information, clearly and conspicuously displayed, on the first page or in a subsequent section dealing with local exchange telephone service:

(A) the total amount being charged for basic local telecommunications service, including any charges for mandatory extended/expanded calling scope services and, consistent with paragraph (8) of this subsection, any applicable fees or surcharges authorized by a governmental or regulatory entity;

(B) the service description and total amount being charged for any optional local services provided by the billing CTU, including charges for any optional extended/expanded calling scope services and, consistent with paragraph (8) of

this subsection, any applicable fees or surcharges authorized by a governmental or regulatory entity; and

(C) the total amount being charged for taxes related to subparagraphs (A) and (B) of this paragraph.

(3) Each residential customer's bill also shall include the following information, clearly and conspicuously displayed:

(A) the service descriptions and charges, including any applicable fees or surcharges authorized by a governmental or regulatory entity, for non-local services provided by the billing CTU. In addition, the charges for such non-local services may be displayed as a subtotal in a manner that is consistent with paragraph (8) of this subsection;

(B) the service description, service provider's name, and charges, including any applicable fees or surcharges authorized by a governmental or regulatory entity, for any services provided by parties other than the billing CTU, with a separate line for each different provider. In addition, the charges for services provided by other parties may be displayed as a subtotal or subtotals in a manner that is consistent with paragraph (8) of this subsection;

(C) taxes associated with the charges required by subparagraphs (A) and (B) of this paragraph, stated separately or as a combined charge if such combination is stated;

(D) the billing period or billing end date; and

(E) an identification of those charges for which non-payment will not result in disconnection of basic local telecommunications service, along with an explicit statement that failure to pay these charges will not result in the loss of basic local service; or an identification of those charges that must be paid to retain basic local telecommunications service, along with an explicit statement that failure to pay these charges will result in the loss of basic local service.

(4) Charges must be accompanied by a brief, clear, non-misleading, plain-language description of the service being rendered. The description must be sufficiently clear in presentation and specific enough in content to enable customers to accurately assess the services for which they are being billed. Additionally, explanations shall be provided for any non-obvious abbreviations, symbols, or acronyms used to identify specific charges.

(5) Charges for bundled-service packages that include basic local telecommunications service are not required to be separated pursuant to paragraph (2)(A)-(B) of this subsection; however, a brief, clear, non-misleading, plain-language description of the services included in a bundled-service package is required to be provided either in the description or as a footnote.

(6) Non-recurring local charges, such as service-installation charges and per-use charges, may be included in the totals required by paragraph (2)(A)-(B) of this subsection; alternatively, such charges may be displayed as a separate category(ies) in the section dealing with local exchange telephone service. If the totals required by paragraph (2)(A)-(B) of this subsection include such charges, the CTU shall so state and identify

the charges in a more detailed itemization elsewhere in the section dealing with local exchange telephone service.

(7) Each customer's bill shall include specific per-call detail for time-sensitive charges, itemized by service provider and by telephone or account number (if the customer's bill is for more than one such number). Each customer's bill shall include the rate and specific number of billing occurrences for per-use services, itemized by service provider and by telephone or account number. Additionally, time-sensitive charges and per-use charges may be displayed as subtotals in summary sections of the bill.

(8) Flat monthly fees or surcharges, including the 911 service fee, the Federal Communications Commission's subscriber-line charge, and the number-portability charge, related to governmental or regulatory actions shall be included in the amount for basic local telecommunications service described in paragraph (2)(A) of this subsection; the portion of the Texas Universal Service Fund (TUSF) assessment and other percentage-of-revenue-based assessments related to local exchange telephone service may be included in the amount for basic local telecommunications service or may be allocated to basic local telecommunications services and optional local services on a proportionate basis. The portion of the TUSF assessment and other percentage-of-revenue-based assessments related to non-local services shall not be included in either subtotal for local service. Each subtotal for local service, and any subtotal for non-local services, must clearly indicate by an asterisk, footnote, or other conspicuous statement any such assessments included in the subtotal. Similarly, if federal law or regulation

requires that a charge be separately stated, using standardized labels, that requirement may be satisfied by use of an asterisk or footnote reference, or other conspicuous statement. If the specific amount of each assessment is not shown on the bill, the CTU must clearly indicate on the bill a toll-free method, including a toll-free telephone number, by which the customer may obtain information regarding such amount and its method of calculation.

(9) Bills shall provide a toll-free number that a customer can call to resolve disputes and obtain information from the CTU. If the CTU is billing the customer for any services from another service provider, the bill shall identify the name of the service provider and provide a toll-free number that the customer can call to resolve disputes or obtain information from that service provider.

(f) **Compliance review of bills.** Within 45 days of the effective date of this section, CTUs may seek review from the commission of sample bills that are intended to comply with the requirements of this section.

This agency hereby certifies that the rule, as adopted, 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 rule §26.25, relating to Issuance and Format of Bills, is hereby adopted with changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE 25th DAY OF JULY, 2000.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**Chairman Pat Wood, III**

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**Commissioner Judy Walsh**

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**Commissioner Brett A. Perlman**