The Public Utility Commission of Texas (commission) adopts new §26.465 relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers with changes to the proposed text as published in the October 8, 1999 *Texas Register* (24 TexReg 8678). This section is adopted under Project Number 20935.

New §26.465 implements the provisions of House Bill 1777 (HB 1777), Act of May 25, 1999, 76th Legislature, Regular Session, chapter 840, 1999 Texas Session Law Service 3499 (Vernon) (to be codified as an amendment to Local Government Code §283.001, *et. seq.*). HB 1777 requires the commission to establish a uniform method for compensating municipalities for the use of a public right-of-way by certificated telecommunications providers (CTPs). Not later than March 1, 2000, the commission must establish, for each municipality, rates per access line, by category, for the use of the rights-of-way in that municipality. The sum of the amounts derived by applying the commission's access line rates by category to the total number of access lines by category in the municipality, shall be equal to the municipality's base amount. This rule establishes the procedures for counting access lines, by category, and requirements for reporting access line counts.

Prior to publication of the proposed rule, the commission staff held a workshop on September 1, 1999 at the commission offices. Input received from the commenters was used to develop the proposed rule. A public hearing on the proposed rule was held at the commission offices on November 5, 1999.

Representatives from municipalities and industry, and other affected persons, participated in the hearing and provided written comments. To the extent the oral comments differed from the submitted written comments, such comments are summarized herein.

Upon publication of the proposed rule, the commission requested specific comments regarding whether the access line counting methodology in this rule is consistent with the access line counting methodology used in the commission's USF dockets (Docket Numbers 18515, *Compliance Proceeding for Implementation of the Texas High Cost Universal Service Plan,* and 18516, *Compliance Proceeding for Implementation of the Small and Rural ILEC Service Plan*) and/or the Rate Reclassification Project (Docket Number 18509, *Application of Southwestern Bell Telephone Company to Revise General Exchange Tariff, to Change Rate Group Classification of Fifty-Two (52) Exchanges*) and, if not, whether it should be. In addition, the commission requested comments regarding the inclusion of lines that a CTP, either an incumbent local exchange carrier (ILEC) or a competitive local exchange carrier (CLEC) provides to itself, in the access line count. Further, the commission solicited comments on whether connections (transmission facilities) to wireless providers which are used solely for the purpose of providing wireless telecommunication services should have to be counted as access lines and, if not, whether an exemption creates implications for Internet service providers and other providers of voice or data transmission whose access lines are counted. Finally, the commission asked for specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. Where parties responded to the above questions, those comments have been summarized, as well.

Hearing and Commenters

The following parties filed comments on the rule language: AT&T Communications of the Southwest, Inc. (AT&T); TXU Communications Telephone Company (TXU); NorthPoint Communications (NorthPoint); Rhythms Links, Inc. (Rhythms); City of Garland and City of San Angelo (Garland/San Angelo); Texas Coalition of Cities on Franchised Utility Issues (TCCFUI), a coalition of over 100 Texas cities; Texas Municipal League (TML); GTE Southwest Incorporated (GTESW); Southwestern Bell Telephone Company (SWBT); Austin, El Paso, Everman, Irving, Laredo, Missouri City, Plano, and Rosenberg (Cities); Addison, Bedford, Colleyville, Euless, Farmers Branch, Grapevine, Hurst, Keller, Killeen, North Richland Hills, Pasadena, Texas City, Tyler, West University Place, and Wharton (Coalition) (hereinafter, Cities and Coalition will be referred to jointly as "Cities"); TEXALTEL; CLEC Coalition; City of Dallas (Dallas); and MCI WORLDCOM (MCIW).

Consistency of line counting methodology

Several commenters responded to the commission's question on whether the access line counting methodology proposed in this rule is consistent with the access line counting methodology used in the commission's Universal Service Fund (USF) dockets (Docket Numbers 18515 and 18516) and/or Rate Reclassification Project (Docket Number 18509), and, if not, whether it should be. TEXALTEL responded that HB 1777 very specifically instructs the commission as to how access lines are to be

counted for municipal franchise purposes; TEXALTEL concluded that HB 1777 provides more explicit instructions than in the USF context. TEXALTEL agreed that, to the extent the commission has latitude within the language of HB 1777 to choose to conform or not conform to USF definitions, all other things being equal, consistency is desirable. Cities, joined by Dallas and TML, echoed this sentiment, stating that, to the extent these dockets deal with the same issues, there should be consistency; however, while there are overlaps between HB 1777 and the commission's other dockets (18515/18516 and 18509), there is only an imperfect correlation. TXU contended that it is not necessary for the methodologies to coincide because USF monies will be received for access lines both inside and outside a city's boundaries, while fees for right-of-way (ROW) compensation are limited to within a city's boundaries. Further, TXU pointed out that USF is received only for flat rate single-line residential lines and the first five flat rate single-line business lines at a customer's location.

Cities (endorsed by Dallas and TML), SWBT and CLEC Coalition responded that the line counting methodology under HB 1777 does not need to be consistent with either the USF dockets (Docket Numbers 18515 and 18516) or commission Docket Number 18509. SWBT pointed out that the statutory purposes and applicable definitions of "access line" vary in each of these contexts, underscoring their position that the methodologies should not be consistent. CLEC Coalition reiterated this point, arguing that the methodologies were specific to the purposes of each docket and a separate counting methodology must be established to implement HB 1777.

The commission agrees that, where feasible, consistency is a desired outcome. However, as noted by commenters, the commission's USF dockets and the rate reclassification project have significantly different purposes which dictate the different definitions of access lines. For instance, the USF Docket does not track access lines by municipal boundaries, and does not differentiate between categories of access lines. Accordingly, the commission will not seek to revise the proposed counting methodology under HB 1777 for purposes of matching other commission methodologies at this time. However, the commission reserves the right to revisit the issue of consistency between counting methodologies when, pursuant to HB 1777, the commission reviews the definition of "access line" in the future.

Inclusion of company lines in access line count

Several commenters responded to the commission's question regarding the inclusion in the access line count of lines that a certificated telecommunications provider (CTP), either an incumbent local exchange carrier (ILEC) or a competitive local exchange carrier (CLEC) provides to itself. TEXALTEL responded that the desire is that the assessment of fees and pass-through be simple to administer, auditable, easy to explain to customers, and not subject to challenge or contest. TEXALTEL submitted that to assess fees on non-revenue producing lines would complicate the process, arguing that, in order to recover the fees paid on such non-revenue producing lines, CTPs would have to pass through a slightly higher fee on the revenue producing lines than the fees charged by the cities. TEXALTEL argued that the commission should simply exclude such lines. TXU echoed the concern that lines used by a CTP do not produce revenue and should, therefore, be excluded from the access line count.

GTESW stated that company official lines should continue to be exempt because these lines are not a source of revenue and, therefore, have been exempted in the past. SWBT agreed with this position, asserting that the services it provides for its own use have never been included in any form of municipal fee assessment; SWBT further argued that HB 1777 gives no indication that the Legislature contemplated such a complete departure from historical practices. GTESW also pointed out that in the counting of lines for gas and electric utilities, company official lines are excluded.

Moreover, GTESW reasoned that these lines do not terminate at an end-use customer's premises (as that phrase is generally defined). AT&T contended that the phrase "end-use customer" historically has been defined as the ultimate, retail customer; that same historical definition is the only one that makes sense in every place the phrase is used in HB 1777. AT&T proposed that the commission should require a CTP to include in its access line count only those access lines provided to itself for its own end-use. AT&T argued that all other access lines should be excluded; AT&T maintained that excluding some facilities from consideration as access lines is consistent with the intent of HB 1777.

SWBT also argued in favor of excluding from the HB 1777 access line count lines that a CTP provides to itself. SWBT contended that such lines are outside the statutory definition of "access line," which is defined in the Local Government Code §283.002 in terms of transmission paths and termination points extending to or provided to an "end-use customer." CLEC Coalition also argued that a CTP is not an end-use customer as that term is used in the Local Government Code §283.002, maintaining that the term "end-use customer" denotes a third-party purchaser of goods or services. SWBT argued that it is

not its own customer; instead, the ultimate retail consumer of SWBT's sold services is the end-use customer within the meaning of HB 1777 and pursuant to Texas case law. SWBT also contended that inclusion in the access line count of lines a CTP provides to itself would require a retroactive, manual adjustment to each customer's account at the end of the year to effectuate CTPs' right of pass-through. SWBT cited PURA §51.009, Municipal Fees, and §54.206, Recovery of Municipal Fee, as support for CTPs' right to pass through any municipal fees that are assessed on the lines they provide to themselves. SWBT asserted that inclusion of such lines would result in a time-consuming and costly manual adjustment on an annual basis. SWBT stressed that HB 1777 requires that the commission consider administrative convenience in writing its rules. SWBT also maintained that a very large number of the lines that a CTP provides to itself do not burden the public ROW because, in many cities, the buildings that house the largest number of SWBT employees (and therefore the largest number of company official lines) also house the central offices that serve those lines; Thus, the company lines do not intrude into the ROW.

On the other hand, Garland/San Angelo argued that there is no reason under the Local Government Code, Chapter 283, to exclude from an access line count those lines that an ILEC or CLEC provides to itself. Garland/San Angelo argued that if the line goes through a ROW, it should be counted and that nothing in the Local Government Code, Chapter 283, provides that, in order to be counted, a fee must be received by the CTP for the access line. TCCFUI added that, for the sake of consistency, all lines should be included. Dallas endorsed these comments.

The commission agrees that HB 1777 defines access line in terms of the end-use customer; the commission has followed this approach in determining whether other types of lines ought to be included in the access line count. The commission agrees with SWBT and the CLEC Coalition that a CTP cannot be an end-use customer of itself. Therefore, consistent with the definition of access lines in the Local Government Code §283.002, and with the concept that end-use refers to *retail* end-use customers, the commission believes that it is appropriate to exclude company official lines from the access line count. The commission clarifies that this exclusion for company official lines does not apply to lines that a CTP provides to its employees, such as employee concession lines or other similar types of lines provided to employees, that may not be revenue-producing and are used for matters other than official business. Given that the employees would be the end-use customers, the commission believes that an adjustment to the accounts of other customers to effectuate CTPs' right of pass-through, as suggested by SWBT and TEXALTEL, is unwarranted. Accordingly, the commission declines at this time to require the inclusion of company official lines but does require the inclusion of employee concession lines in the access line counts. For additional discussion please refer to the commission discussion for subsection (e)(4).

Inclusion of transmission facilities to wireless providers

Multiple parties commented on the issue of whether connections (transmission facilities) to wireless providers which are used solely for the purpose of providing wireless telecommunications services must be counted as access lines and, whether an exemption for such lines would create implications for

Internet service providers (ISPs) and other providers of voice or data transmission whose access lines are counted. TEXALTEL, SWBT and CLEC Coalition responded that a wireless provider is not an end user and, thus, the services fall outside the definition of "access line." GTESW argued that transmission facilities to wireless providers are just another example of interoffice trunking. SWBT made the same argument using inter-facility transport as an example that should not be counted as access lines, as such transport does not terminate at an end-use customer. GTESW argued that an access line should include each transmission path to an end-use customer, so that, in the case of a wireless or Internet provider, this should only include landlines provided to the wireless provider or Internet provider as an end-use customer. CLEC Coalition also indicated that connections to wireless providers used solely for the purpose of providing wireless telecommunications services should not be counted as access lines. GTESW emphasized that the language of HB 1777 specifically excludes wireless airwaves as being outside the ROW.

At the public hearing, SWBT explained that no sales taxes are applied to the facilities purchased by a wireless provider that is tying its cell sites together, or tying its cell site to the ILEC switch. Thus, the wireless provider is not the retail customer, but instead is part of the wholesale transaction providing the wireless service to wireless customers. Cities asserted, however, that the exemption of wireless providers from HB 1777, makes them, in that instance, a retail customer. Cities went on to add that the cell site itself is purchasing the services, making it the customer premises. El Paso argued that the entire retail/wholesale concept should not be applied to the question of how to define the end use customer for purposes of compensation for use of ROWs because they are two different things. Dallas pointed out

that lines interconnecting different companies and wireless providers have historically been assessed franchise fees. SWBT and GTESW did not necessarily agree that this was the practice statewide.

TML, on the other hand, contended that HB 1777 does not exempt wireless providers when they place or maintain lines in the ROW. TML asserted that, to exclude lines used to connect "CTP, wireless provider or IXC equipment" or backhaul lines that are so located, not only creates a competitive advantage for such providers, but prevents cities from meeting their legal obligations and the intent of HB 1777. TML further asserted that a wireless provider is an "end-use customer," and such a provider's cell site is the "customer premise."

TML and Cities, joined by Dallas, asserted that to exclude cell site customers and CTP equipment would expand the meaning of "interoffice transport" under the Local Government Code, §283.002(1)(B), in a way not contemplated by the statute. Cities pointed out that, for the purpose of HB 1777, there is no distinction between a wireless provider's use of access lines in the public ROW and that of any other customer of a CTP. In contrast, AT&T asserted that lines provided to wireless providers qualify as interoffice transport. AT&T cited the Local Government Code, §283.002(1)(B), which specifically excludes "interoffice transport or other transmission media that do not terminate at an end-use customer's premises" from being considered an access line. Both AT&T and CLEC Coalition cited the Local Government Code, §283.056(f), as evidence that HB 1777 expressly contemplates transmission media that do not terminate at an end-use customer's premises, and moreover, provides that those lines are not to be used in the calculation of the compensation. Therefore, claimed AT&T,

transmission facilities provided to wireless providers, who in turn use them to provide services to their end users, may not be counted as access lines. AT&T concluded that just as an ILEC or CLEC may have interoffice lines in the public ROW to connect their facilities that are excluded from counting, so would the lines used in connecting to a wireless provider's facility be similarly excluded.

Cities, as endorsed by Dallas and TML, cited the Local Government Code, §283.002(1), to show that a wireless provider is an "end-use customer" because the provider's cell site is the "customer premises." TCCFUI, supported by Dallas, echoed that the wireless carrier is the end-use customer of a service being provided over facilities located in a municipal ROW. El Paso explained that the wireless carrier is purchasing land-line telecommunications service. TEXALTEL differentiated such lines used by the telecommunications provider itself from lines used as a part of the process of providing telecommunications services. Cities, joined by Dallas and TML, maintained that, because HB 1777's purpose is to establish a competitively neutral, non-discriminatory compensation method, to exclude one significant type of customer without a valid legal distinction is *prima facie* discriminatory and unlawful, and also not competitively neutral. Cities also addressed the issue of implications for ISPs and other providers of voice or data transmission whose access lines are counted, stating that an exclusion for wireless providers' lines would discriminate against ISPs and other providers, in that they would now have to subsidize wireless providers. CLEC Coalition, on the other hand, stated that the implications of any exemption for ISPs remains to be seen, but that there are important distinctions between an ISP and a wireless provider; an ISP provides information services, not telecommunications services, to its end-use customers.

Cities, joined by Dallas and TML, believed that the proposed rule instills confusion by purporting to exclude (or include) lines purchased by cell site customers and customers of interexchange carriers (IXCs) when, in fact, for purposes of HB 1777, these customers cannot be deemed to provide "retail services" as they are not CTPs covered by this chapter. Therefore, Cities, supported by Dallas and TML, asserted that there is no statutory or policy basis to treat cell site customers or IXC customers differently than any other retail customer. Garland/San Angelo asserted that all access lines must be counted if there is no exemption for them granted by statute and, therefore, connections to wireless providers should not be exempt from the access line count. Garland/San Angelo maintained that the statute does not authorize excluding wireless providers as customers.

TCCFUI, joined by Dallas, strongly opposed exempting those access lines used or purchased by a wireless carrier to complete calls, stating that such an exemption violates one of the stated purposes of HB 1777 – to ensure there is no competitive advantage or disadvantage among providers. TCCFUI, joined by Dallas, strongly opposed the presumption that access lines to wireless providers are somehow different than lines to other customer classes, including resellers and rebundlers. TCCFUI and Dallas maintained that the connection between the cell tower and the wireline carrier's switch goes through a ROW and that any exemption denies the municipality its right to collect compensation. Further, argued TCCFUI and Dallas, it makes no difference if the end user wireless provider is a subsidiary of the original provider – CTPs should not be exempted from paying access fees simply because they resell

access lines to their own subsidiaries, wireless or not. TCCFUI also raised concerns that once one exemption is created, others will seek such an exemption, too.

The commission recognizes the potential for confusion in counting only certain types of lines and excluding others. The commission notes that the confusion may be fueled by the fact that the term "interoffice transport" is not defined within the statute. Nonetheless, the commission believes that wireless lines must be excluded for the following reasons: first, the Local Government Code §283.002(6) states that, "the term (public right-of-way) does not include the airwaves above a right-of-way with regard to wireless telecommunications." By excluding the airways from the definition of the ROW, the Legislature specifically excluded the "last mile" of the wireless network from the application of HB 1777. Next, each element of the definition of "access line" refers to transmission media *within* the right-of-way extended to the *end-use customer's premises*. Since the framework of HB 1777 is built around the "last mile," (the final segment of the network which terminates at the end-use customer's premises), it would be inappropriate to call a wireless provider an end-use customer simply to capture those lines. Therefore, by definition, the wireless network falls outside the definition of access lines. Furthermore, the proposed subsection (f) of the commission's rules has held that other landline-based CTPs are not end users. To be consistent under this approach, the commission also excludes the lines terminating at a wireless provider. The commission also clarifies that it does not consider lines to wireless providers to be interoffice transport. The commission notes that the FCC is currently addressing issues related to the treatment of wireless providers vis-à-vis landline-based providers. The

commission reserves the right to revisit the issue of whether wireless providers are end-use customers, should the FCC make a determination on this issue.

Costs and benefits of rule

Several commenters expressed opinions analyzing the costs and benefits of the proposed rule. GTESW highlighted consistency in the way CTPs count access lines and ease of administration for CTPs, the commission, and municipalities as benefits of the proposed rule. GTESW acknowledged that the proposed rule would increase costs for the commission and municipalities to assure no duplicate charging of access line fees occurs. AT&T expanded on the cost analysis, stating that precise cost quantification of system development, modification and deployment remains difficult, but is expected to be substantial as entirely new software and accounting systems will have to be developed. SWBT generally shared the position that there will be significant costs associated with implementation of the rule. CLEC Coalition stated that costs to CTPs will be very high. Creating a system that will not only count access lines (as they are ultimately defined), but which will also segregate access lines by category and municipality is very burdensome and costly. CLEC Coalition members intend to recoup costs from customers, so it is imperative that the counting methodology be tied to the CLEC's billing system – but it may be months before such systems are capable of reflecting these fees on customers' bills.

The commission recognizes that the changes required under HB 1777 will necessitate modifications to a CTP's billing system. However, consistent with HB 1777, the counting of access lines under this rule

focuses on the end-use customer, and the counting methodology is designed to track as much as possible the CTPs' billing systems, thereby minimizing administrative costs to the extent possible.

Inclusion of Lifeline and Tel-assistance lines

Several commenters responded to questions regarding an exemption for Lifeline and Tel-assistance lines, raised during the commission workshop. GTESW did not oppose assessing fees on these lines but wanted to ensure that the rule is non-discriminatory and competitively neutral; either include lines in all municipalities, or exclude lines in all municipalities; GTESW also felt that such a standardized approach is essential for administrative simplicity, a key objective of HB 1777. Like GTESW, SWBT stated it has no objection to exempting Lifeline and Tel-assistance lines, but asked that for purposes of administrative simplicity and nondiscrimination, such lines be treated consistently statewide – either all included or all exempt. SWBT pointed out that HB 1777 provides no explicit exemption for Lifeline and Tel-assistance lines, but in SWBT's experience, most municipalities have chosen to exempt them from municipal fees.

Dallas opposed adding another exclusion for Lifeline services, because excluding a new class of customers from the definition of access lines will automatically increase the rates of other customers. Further, Dallas argued that such an exclusion seems to establish a fourth access line category, not approved under HB 1777. Dallas also maintained that, once an exclusion is created, others, such as schools or charities, may seek similar exclusions.

The commission believes that HB 1777 does not allow the commission to specifically exclude a class of access lines. As commission rules have already established the maximum three access line categories, there is no basis for establishing Lifeline and Tel-assistance lines as a separate access line category. Furthermore, some municipalities have historically chosen to exclude Lifeline and Tel-assistance lines from franchise fee compensation, while others have chosen to include compensation from these lines. Because HB 1777 creates a statewide system of municipal compensation, the commission must either include Lifeline and Tel-assistance lines from the access line count in all municipalities or exclude Lifeline and Tel-assistance lines in all municipalities. However, the commission does not want to pre-judge a municipality's choice regarding compensation from Lifeline and Tel-assistance customers in this rule. Therefore, the commission concludes that at this time, it is appropriate to include Lifelines and Tel-assistance lines as part of the access line count, but will defer to the adoption of the rates and compensation rule, §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting), on whether or not municipalities have the option to forgo compensation from these lines. Depending upon the determination made in §26.467, CTPs may be required to separately identify Lifeline and Tel-assistance lines on an as-needed basis. To sum up, Lifeline and Tel-assistance access lines have been added to the list of lines to be counted under subsection (e) of this section.

Section 26.465(c)(1)—transmission media

Proposed §26.465(c)(1), defines transmission media as, "The physical wires within a public-right-of-way that may consist of, but are not limited to, copper, coaxial, or optical fibers or other media, extended to the end-use customer's premises within the municipality, that allow the delivery of local exchange telephone services within a municipality, and that are provided by means of owned facilities, unbundled network elements or leased facilities or resale."

Several comments were received on proposed §26.465(c)(1). Dallas asserted that the proposed definition limits the media to "physical wires" and to those providing switched services only, and pointed out that facilities typically found in the ROW include a number of other facilities. To eliminate any possible inadvertent limitation caused by the definition, Dallas proposed a definition that includes all facilities located in a public ROW such as coaxial cable, fiber optics, poles, manholes, conduits, and "other plant equipment and appurtenances used to deliver telecommunications services to the end-use customer's premises." Dallas argued that, without such a change, the exception may be broader than the rule. Further, Dallas pointed out that such a definition would permit more technological flexibility than the use of the word "wires."

Garland/San Angelo observed that the descriptive language in the Local Government Code, §283.002(1)(A)(i) that applies to transmission "path" has been erroneously applied to transmission "media" in the proposed rule. Garland/San Angelo explained that there are different types of media and the transmission path is provided through the media. Garland/San Angelo argued that because "wires" may be too limiting, it should be replaced with "facilities." TCCFUI agreed with this recommended

change. SWBT concurred with the replacement of the term "wires" with "facilities," among other wording changes.

Cities, as endorsed by Dallas and TML, found the definition of "transmission media" confusing and unnecessary. In particular, Cities pointed out that the definitional test of "physical wires within the public ROWs" would result in the exclusion of lines within any building served through a PBX (or other equipment).

The commission agrees with the commenters that the definition of transmission media may be confusing. Also, given that the categories of access lines are no longer distinguished by bit rate or speed (bandwidth), the commission believes that the definition of transmission path may be unnecessary. Therefore, the commission deletes the definition of transmission media from this section of the rule.

Section 26.465(c)(2)—transmission path

Proposed §26.465(c)(2), defines transmission path as, "A physical or virtual path within the transmission media used to provide a certain level of service. A transmission path may consist of, but is not limited to, one or more wires, either as a pair of copper wires, coaxial, optical fiber, or a combination of any of these.

(A) Each individual service, including a service offered as part of a bundled group of services, shall constitute a single transmission path. Features of services, such as call waiting and caller-ID, shall not constitute a separate transmission path.

(B) Where a service or technology is channelized, each channel shall constitute a single transmission path."

Several commenters addressed the commission's definition of "transmission path." TEXALTEL reiterated its view that each service should be counted as an access line, regardless of the number of paths within that service. TEXALTEL noted, however, that if the commission goes forward with the "channel" concept as shown in the proposed rule, the definition of transmission path should be amended (by adding the italicized section) to read: " Where a service or technology is channelized, each channel *over which service is provided* shall constitute a single transmission path." CLEC Coalition argued against counting each channel of a channelized service because doing so may result in the ROW fee exceeding the cost of the service. CACC made this same point at the public hearing, citing examples of customers paying for both a T1 line and for each channel of the T1 line, as well. CLEC Coalition contended that this result was not intended by HB 1777 and has no basis under the legislation. In addition, CLEC Coalition pointed out that channelizing does not physically modify the transmission media that occupies the ROW or place a greater burden on the ROW. GTESW agreed, stating that there is no additional incursion in the ROW for providing a multi-channel product.

Garland/San Angelo discussed the overlap between definitions in §26.465(c)(1) and (c)(2), recommending that (c)(2) be revised to remove references to media such as wires or fiber. SWBT agreed that "wires" should be replaced with "physical facilities" and also recommended that "a certain level of service" be specifically identified as "switched local exchange telephone" service. Similarly, CLEC Coalition recommended that the service level be specifically identified, but suggested the description be "retail," on the basis that level of service is no longer necessary given that access line categories are no longer distinguished by bit rate or speed. SWBT also recommended the addition of the word "cable" after "coaxial." Cities, endorsed by Dallas and TML, reiterated their concern that the wording of §26.465(c)(2), when read with the proposed (c)(1), would result in the exclusion of lines inside buildings such as multiple dwelling units, because the commission's proposed definition did not make specific references to other physical structures in such locations which might serve as a transmission media for the transmission path.

Under §26.465(c)(2)(A), CLEC Coalition recommended that if a bundled group of services is offered to an end-use customer and each "individual" service of that bundle is provided over the same transmission media, it should be counted as a single transmission path or a single access line. CLEC Coalition asserted that, as technology develops, the "bundle" of services that can be transmitted over the same transmission media is likely to increase due to technological advances at either end of the cable. CLEC Coalition contended that it is not necessary to cut a street and lay additional cable each time an additional service is provided to an end-use customer. CLEC Coalition maintained that HB 1777 says ROW compensation must be consistent with and have a nexus to the provider's incursion into the public

ROW, arguing that where there is not some physical nexus or connection or burden on the ROW, there is no basis to see incremental increases in the cost. Imposing unrelated or inflated ROW costs on the deployment of advanced technology will be a disincentive to use and enjoy the benefits of advanced technology and is contrary to the federal Telecom Act and Texas law. Further, the CLEC Coalition argued that counting "individual" services and attempting to determine whether a product is a "service" or merely a "feature" of a service, is like counting wires – inconsistencies will abound and verification will be enormously burdensome and costly. CLEC Coalition concluded that unless and until the commission modifies the definition of "access line" in two years, the nature or type of service provided over an access line is not relevant to a determination of ROW compensation.

AT&T gave lengthy comments on the difficulties associated with the commission's proposed definition of "transmission path." AT&T argued that the proposed definition of "transmission path" is inconsistent with HB 1777 and departs from the underpinnings of both federal and state law. AT&T stated that the commission's proposal would impose multiple access line fees without regard to the physical facilities or ROW burden. AT&T argued that, under HB 1777, in order for a transmission path to be an access line, it must: 1) be physically in the ROW; 2) be extended to the end-use customer premises; 3) allow the delivery of local exchange services within a municipality; and 4) be provided by means of owned facilities, unbundled network elements (UNEs) or leased facilities, or resale. AT&T contended that the proposed definition fails to recognize these requirements and: 1) would allow a virtual path to be a transmission path; 2) does not require each transmission path to be extended to an end-use customer's premises; 3) fails to reflect that a transmission path must allow delivery of local exchange services – but

says that a path may be "used to provide a certain level of service;" and 4) fails to reflect the means by which the path may be provided.

AT&T claimed that the proposed definition would require the counting of a single transmission path for each individual service offered, while a feature of a service would not constitute a separate path. AT&T raised concerns that there is no definition regarding what is a service and what is a feature of a service, asking whether Caller ID, per line blocking, and per call blocking are features or services.

Specifically referring to §26.465(c)(2)(B), AT&T found the commission's choice to count each channel as a single transmission path fundamentally flawed. AT&T observed that the rule is not restricted as to who does the channelizing. If, for example, the end-use customer channelizes the line, the CTP may have no information as to the number of channels that have been created and are being used. GTESW echoed this concern, stating that GTESW would not know the number of channels used by a customer or how the facility is being multiplexed. GTESW emphasized that this would be particularly difficult on facilities provided to other CTPs. AT&T added that the commission's proposal would allow higher fees on a technology that imposes less burden on the ROW and will result in a disincentive to the development and purchase of new technology. AT&T declared that the counting methodology should reward, not penalize, carriers which do more with less. AT&T also pointed out that any level of service provided over fiber optic cable is a function of the equipment placed at both ends that, again, does not impact the ROW. AT&T argued that all services should be subject to the same access line fee. One

fiber facility, regardless of the equipment placed on it, should be counted as one access line, asserted AT&T.

GTESW focused on the specific billing problems associated with counting each channel, pointing out that it bills the end-use customer based upon the transmission path of the facility, not the individual channel. GTESW also stated that it cannot determine the number of channels actually being used by a customer and so cannot bill per channel without making costly changes to GTESW's ordering and billing processes and systems. Because two pairs of copper cables can be engineered to provide 24 channelized voice grade circuits, GTESW contended that it should only be subject to ROW fees for one access line and not the potential 24 channels available to the end user. GTESW emphasized that this problem becomes more complex when one considers the immense circuit-carrying capabilities of fiber optic systems.

On the other hand, at the public hearing SWBT responded that if a fee is not assessed based upon the service that is provided over that switched network that the customer orders, but is instead assessed only upon the facility that is in the ROW, SWBT would be placed at a competitive disadvantage because of the fact that SWBT serves some of its customers with the old technology of copper wires. In other words, SWBT might need 23 facilities, 23 separate copper pair wires, to provide a specific service; if the fee is assessed upon a facility basis, SWBT is assessed 23 fees, while a competitor using a T1 line to provide the same service would be assessed only one fee. SWBT urged the commission to take into consideration issues of competitive neutrality. Dallas echoed the need for fees to be assessed

the same way, regardless of whether the service is provided over twisted-pair copper wires or a channelized fiber optic line. TEXALTEL's position was that the access lines be counted based on services, but the provider should define what the service is; a large ISDN sold as one service should be defined as one access line, or 150 local exchange lines sold separately should be counted as 150 access lines.

On the other hand, TML and Cities explained that cities do not share industry's traditional position that the issue is a burden on the ROW, a cost argument. Instead, TML and Cities asserted that ROW compensation is based upon the value of the use of the ROW and, therefore, the greater the profit from the commercial enterprise that is using the ROW, the greater the value of the use of the ROW. TML also pointed out that HB 1777 was a compromise between cities and industry whereby the parties did not have to decide that ultimate issue and instead ensured that cities would get the customary reasonable compensation they had received in the past, generally based in some way upon gross receipts. Cities and City of El Paso argued that the federal standard of "fair and reasonable" supports the position that compensation is based on the value of the ROW, not the burden on it. Cities stated that this issue has not been totally resolved either way. City of El Paso asserted that the issue of physical occupation of the ROW is only a threshold question in a two-tier process; once the presence of facilities in the ROW has been established, the calculation of municipal compensation occurs based upon the number of access lines, as defined in the statute.

At the public hearing, SWBT asserted that, on switched lines, the CLEC or the ILEC will always know how many services have been provided to a customer over that line, whether the services were packet switched or simply analog service. TEXALTEL agreed that the providers know how many paths the customer will be allowed to use simultaneously to complete local calls. But both TEXALTEL and AT&T pointed out that the provider would not necessarily know how many numbers the customer actually has in use on their side of the facilities, although the provider would probably know the amount of toll numbers that are in use by the customer due to the need to program the switch to complete the calls to those numbers.

SWBT cautioned that while one may know the number of paths for switched services, the same is not true for point-to-point connections that do not tie to the public switched network. SWBT argued that expanding the channelization concept of payment to the private line or point-to-point connection is untenable from the ILEC or CLEC's point of view because they do not know what the customer is using the private line for. CLEC Coalition expressed concern over apparent inconsistent treatment where lines channelized by the CTP would be counted, while lines channelized by the end-use customer would not be counted. Dallas, on the other hand, observed at the public hearing that the customer's actions cannot be controlled, but the CTP's billing records can be recognized and treated accordingly.

The commission has amended the definition of transmission path to exclude references to "wires" and, therefore, does not find it necessary to adopt the clarification suggested by Garland/San Angelo and SWBT. The commission agrees with TEXALTEL's definition for channelization and has included

language similar to that proposed by TEXALTEL in revised subsection (c)(2)(E). The commission believes that the concerns raised by Cities, Dallas, and TML regarding the exclusion of lines within building facilities is unfounded because the definition of access line in the Local Government Code §283.002(1)(A)(i) includes all access lines "extended to the end-use customer's premises." Therefore, to the extent an access line extends to an end-use customer residing in a multiple dwelling unit, that access line will be counted.

The commission rejects CLEC Coalition's and AT&T's comments with regard to channelizing and equating transmission paths with services for the following reasons. As set forth in the Local Government Code §283.001(c)(1), administrative simplicity is a guiding principle of HB 1777; throughout this process, industry has repeatedly highlighted the need for ease of administration. Next, the commission believes that, as a practical matter, performing an actual count of the physical infrastructure buried in the rights-of-way of every city in the state of Texas would be impossible. Furthermore, during this rulemaking project, most of the telecommunications providers requested that the commission utilize existing billing systems to develop an access line count. Taking these factors into consideration, the commission has proposed a method to count facilities in the right-of-way through the services provided over the facilities, instead of burdening the providers with performing an actual count of the physical infrastructure in the rights-of-way. Under the commission's proposed rules, services and channelization serve as a *proxy* for the actual facilities in the right of way. Using this method, as requested by several industry participants, companies need only their billing records to develop an access line count. Finally, should the commission follow AT&T's and CLEC Coalition's proposal for

counting access lines, it creates the potential for discriminatory treatment of end-use customers and is inconsistent with the statute. The definition of access line in the Local Government Code §283.002(1)(A)(i) equates each "access line" with "*each* switched path" (emphasis added). It is the commission's interpretation that, even if several switched services can be bundled together and offered over a single strand of fiber optic cable, at the central office end they have to be demultiplexed into individual switched paths, either externally or as an integral function of the switch. Since this results in *multiple switched paths*, each switched service in a bundled group of services should be counted as a single transmission path. The commission believes that the proposed definition will result in a consistent count of access lines, will be easily auditable, and will be administratively simple. The commission has added language to revised subsection (c)(2)(A), (B), and (C) and to subsection (d) to provide clarity and to help identify the types of services that should be counted. Please also refer to commission's response for subsection (d)(1)(C) for further discussion on counting access lines. It should be noted that the commission's counting has tied switched transmission path to circuit-switched networks, as this is how local exchange services are currently provided. In the future, if it is determined that services provided over other switched networks, such as packet switched networks, are local exchange services, the commission reserves the right to address this issue appropriately at that time.

The commission, however, agrees with AT&T's concern that the term "services" is not defined and that it could be misunderstood and confused with the term "features," thereby resulting in an inaccurate access line count. The commission will address this by providing detailed instructions in the forms used for access line data collection. The commission also notes that features do not increase the number of

circuit switches and therefore, should not be counted as individual switched paths. The commission has added language to revised subsection (c)(2)(D) to clarify the types of features (or vertical services) that do not count as separate transmission paths.

The commission understands GTESW's concern regarding billing problems associated with channelization. The commission believes that CTPs have the capability to determine how many channels are provided to a customer as these are tracked by billing systems. However, if a line or circuit is channelized at the customer's end, then the CTP would have no knowledge about channelization and the commission rules for channelization would not apply. The commission also clarifies that it is not the potential number of channels that have to be counted but only the actual number of channels provided by the CTP. For instance, if a customer orders a channelized T1 line consisting only of 12 channels, then the municipal fee would be applicable only for the 12 channels ordered, not for the potential 24. The commission agrees with GTESW that two copper wires may be engineered to provide 24 channels, but notes that in other circumstances 24 copper wires may be used to provide 24 channels. The only way to ensure consistency in municipal fees between these two scenarios is to use the concept of channelization. Channelization results in multiple switched paths; the commission concludes that each switched path is an access line by definition, and therefore each channel shall be counted as an access line. The commission has added language to revised subsection (c)(2)(E) clarifying that channelization would only apply to the actual number of channels provided and only when channelized by the CTP.

Section 26.465(c)(3)—wireless provider

Proposed §26.465(c)(3) defines a wireless provider as, "A provider of wireless telecommunication services."

AT&T proposed a revision to the definition of "wireless provider." Specifically, AT&T recommended that the definition be modified to follow the language of PURA §51.002(10)(A)(iv). AT&T also reiterated that should the commission agree with AT&T that lines to a wireless provider should be excluded from the access line count, no revision to the definition would be necessary.

The commission agrees with AT&T and modifies the definition of wireless provider to reflect the language of PURA §51.002(10)(A)(iv). The commission has already responded to AT&T's concerns regarding the inclusion of lines provided to a wireless carrier in the discussion regarding end-use customer.

Section 26.465(d)(1)—Switched transmission paths

The proposed §26.465(d)(1) delineates the methodology for counting access lines for switched transmission paths. SWBT recommended revising the title to "switched services", rather than "switched transmission paths", to parallel the title of §26.465(d)(2).

The commission agrees that SWBT's suggestion provides a better catchline to subsection (d)(1) and therefore adds SWBT's suggested catchline to the original catchline.

Section 26.465(d)(1)(A)

The proposed §26.465(d)(1)(A) requires that a CTP shall determine the total number of switched transmission paths and should take into account the number of services provided and the number of channels used where a service or technology is channelized.

AT&T reiterated its comments regarding the definition of transmission path in §26.465(c)(2). AT&T supported the elimination of the proposed counting methodology which requires CTPs to take into consideration the number of services provided and the number of channels used where a service or technology is channelized. CLEC Coalition proposed deleting all references to the number of services or channels provided, reiterating its comments on channelization set forth in its response to §26.465(c)(2) above.

The commission has addressed in detail AT&T's and the CLEC Coalition's concerns regarding counting services and channelization (refer to commission's response to §26.465(c)(2)). As noted above, the commission believes that services are the best *proxy* for counting facilities in the rights-of-way. Therefore the commission retains subsection (d)(1) with minor clarifying modifications.

Section 26.465(d)(1)(B)

Proposed §26.465(d)(1)(B) stated that the bandwidth of each transmission path determines the access line category, as established in §26.461 of this title (relating to Access Line Categories).

TXU, GTESW, Rhythms, NorthPoint and Garland/San Angelo recommended that the commission remove all references to bandwidth in §26.465(d)(1)(B). Garland/San Angelo provided language revising this definition to refer to the categories established in §26.461 of this title. AT&T, CLEC Coalition and SWBT requested rejection of §26.465(d)(1)(B) as moot, in light of the commission's adoption of the access line categories. MCIW likewise observed that the commission's access line categories had been changed in the adopted version and recommended deleting references to bandwidth.

The commission agrees that the revised access line categories no longer distinguish between bandwidth, rendering §26.465(d)(1)(B) moot. Accordingly, the commission deletes any references to bandwidth in this section.

Section 26.465(d)(1)(C)

Proposed §26.465(d)(1)(C) requires that a switched service be counted consistently in the same manner regardless of the type of transmission media used to provide that service.

AT&T reiterated its comments regarding the definition of transmission path in §26.465(c)(2) as support for eliminating this proposed requirement. AT&T pointed out that different counts that take into account differences in transmission media are appropriate since such an approach would reflect the fact that different transmission media place different burdens on the ROW. SWBT proposed some minor wording changes, including referring to *all* switched *services*, deleting the term "consistently," and changing "that" to "the".

The commission understands AT&T's response to this subsection and several other subsections is based on the argument that advanced transmission media like fiber optic cable place considerably less burden on the right-of-way than the older copper network. The CLEC Coalition has espoused a similar view. But taking transmission media into account when counting access lines raises unresolvable issues such as how to measure the burden placed by different transmission media, what unit of measurement to use, how to compare the relative burden placed by a thicker fiber optic cable versus a thinner twisted copper pair, or how to establish the relative burden placed by different lengths of cable. Furthermore, the *same* transmission media could place different burdens on the right-of-way depending upon the geography and terrain of the right-of-way. A counting methodology that required a site-by-site analysis would not meet the statute's overriding goal of establishing a uniform methodology for compensation, as access lines (as related to transmission path in the case of switched services) are the basic unit upon which any fee is assessed. Moreover, given CTPs' statements that the industry itself does not have an

accurate count of the transmission media currently buried in rights-of-way, such an approach would appear to be a futile exercise.

The bill does not require such an approach to counting of access lines. The bill defines the unit of measurement as "each switched transmission path" or "each termination point or points of a nonswitched telephone or other circuit." Because this definition does not distinguish between different types of media, different sizes of cable, different lengths of cable or different terrain, examining these issues is of limited utility. The purpose of the Local Government Code, Chapter 283, is to establish a uniform method for compensating municipalities for the use of a public right-of-way that is administratively simple for the municipalities and the CTPs, competitively neutral, and nondiscriminatory. Basing the fee-per-line upon length, type, location, or size of the access line would directly contravene these principles. Moreover, such an approach could discourage competition, increase barriers to entry and create competitive advantages or disadvantages for CTPs.

Accordingly, the commission concludes that the methodology proposed by commenters is not consistent with the requirements of the Local Government Code, Chapter 283. The commission, however, agrees with the minor wording changes recommended by SWBT and has modified subsection (d)(1)(C) accordingly.

Section 26.465(d)(1)(E)

Proposed §26.465(d)(1)(E) stated that, "Where xDSL service is provided along with basic local exchange service or ISDN service, the CTP shall not count the basic local exchange service or the ISDN service as a separate transmission path and the bandwidth of the xDSL service shall determine the access line category for that service, as established in §26.461 of this title."

TXU, GTESW, CLEC Coalition, SWBT, Rhythms and NorthPoint recommended that the commission remove all references to bandwidth. MCIW likewise observed that the commission's access line categories have been changed in the adopted version and recommended deleting references to bandwidth. Rhythms and NorthPoint specifically requested that the commission modify its unique treatment of xDSL service in a line-sharing situation. Rhythms and NorthPoint suggested that when a single carrier offers different services over the same loop, only one service should be counted for taxation purposes, but when two or more carriers share the same loop, one service (e.g., xDSL) should not be singled out for assessment of franchise fees while other services are exempt. Rhythms and NorthPoint stated that doing so would unlawfully discriminate, does not further the public policy objective of protecting "plain old telephone service" (POTS) from taxation, and creates an economic disincentive for the deployment of xDSL to residences. Rhythms and NorthPoint maintained that all carriers sharing the loop should contribute a proportionate share of the franchise fees. NorthPoint added that in a two-carrier line shared environment, the DSL carrier is unfairly singled out. This shift of the financial burden does not result in additional benefit to the municipalities or end users, but places a serious burden on new entrant DSL providers. NorthPoint raised concerns that such a shift will threaten

the development of line sharing, and recommended that those carriers offering the more basic local exchange service should bear the burden of reporting.

AT&T reiterated its comments regarding the definition of transmission path in §26.465(c)(2) as support for eliminating the requirement to take into consideration the number of services provided and the number of channels used where a service or technology is channelized.

SWBT, at the public hearing, maintained that DSL is a vertical service, not an access line and not subject to the fee. SWBT pointed out that using local exchange services is a good measure when talking about switched services, but the process becomes much more difficult when measuring private lines; a provider can only report what it knows, what the customer ordered, not how the customer uses that access line.

The commission accepts the recommendation from various commenters to remove the reference to bandwidth in §26.465(d)(1)(E).

The commission revises its original position and modifies the rule language to exclude all xDSL lines from the access line count for the following reasons. The definition of access line in the Local Government Code, §283.002(1)(A)(i), refers to a *switched transmission path* that *allows* the delivery of *local exchange telephone services*. It is not clear at this point if an xDSL service is a switched service or an unswitched service. An xDSL service may not be a switched service because the POTS

line over which it is provisioned terminates at a circuit-switch, thereby resulting in a *switched transmission path*, but the xDSL service *does not* terminate the same way. Whether provisioned stand-alone or along with a POTS service, the DSL line in the central office connects to the ISP network and bypasses the circuit-switch. Since the commission's revised set of rules has focused on services that result in *switched paths*, DSL services cannot be counted as switched services. Further, PURA excludes "non-voice data transmission services" from the definition of local exchange telephone service (PURA §51.002 (5)(H)). Arguably, xDSL services could be considered as non-voice data transmission services, and therefore merit exclusion from the access line count under the Local Government Code §283.002(1)(A)(i). The only other option to capture an xDSL service would be to count a stand-alone DSL line as a point-to-point access line under the second part of the definition of access lines (Local Government Code §283.002(1)(A)(ii)). However, xDSL service provisioned over a POTS line would still be exempt, as POTS lines are inherently different from point-to-point lines. At this point, there is not enough evidence from the field to determine whether the xDSL technology is used for the purpose of providing point-to-point access. However, when xDSL technology is used for this purpose, those lines shall be counted consistent with subsections (d), (e), (f), of this section. Therefore, the commission refrains from making a premature determination on whether to include DSL lines in the access line count. The commission reserves the right to revisit this issue in the future. Proposed subsection (d)(1)(E) has been deleted to exclude xDSL services from the access line count.

Rhythms and NorthPoint also raised an interesting issue regarding line sharing specifically with regard to xDSL services. Since xDSL services have been exempted from the access line count pursuant to the

revised definition of transmission path, the issues raised by Rhythms and NorthPoint are moot. At present, the commission's rules do not address the general issue of counting access lines in a line-sharing situation. This should not be an issue as this concept is evolving and the commission finds that there are not enough line-shared lines to warrant taking up this issue at this time. Moreover, the FCC is also in the process of dealing with this issue. The commission will revisit the issue of line-sharing at an appropriate time. The commission deletes §26.465(d)(1)(E) in its entirety.

Section 26.465(d)(2)(A)

Proposed §26.465(d)(2)(A) stated that each circuit used to provide nonswitched telecommunications services or private lines shall be considered to have two termination points, one on each end.

SWBT recommended that the commission amend subsection (d)(2)(A) to add a reference to "end-use customer", and to add language replacing "end" with "customer location identified by the customer and served by the circuit."

The commission agrees that SWBT's proposal would add clarity and makes revisions to subsection (d)(2)(A) accordingly.

Section 26.465(d)(2)(B)

Proposed §26.465(d)(2)(B) requires that a CTP shall count nonswitched telecommunications services or private lines by totaling the number of terminating points within a municipality and dividing the sum by two. Further, if the division results in a fraction, the number shall be rounded up to the nearest whole number.

TML and Cities, joined by Dallas, and AT&T opposed the counting of non-switched or private lines by totaling the number of terminating points within a municipality and then dividing by two. TML contended that because the definition of "access line" in the Local Government Code §283.002(l)(ii) explicitly provides that "each termination point or points" represents an "access line," it can not be construed to mean "one-half." TML asserted that, in other words, the plain meaning of the statute should be given effect rather than directing that the number of termination points be divided by two. Cities, as endorsed by Dallas, argued that the commission has no authority to divide the number of termination points by two, as the statute refers to "each" termination point or points.

AT&T concurred with this interpretation, pointing out that the rounding aspect of the proposal does not comply with the Local Government Code, §283.002(a)(B), which says that the access line count for nonswitched services represents a unit of measurement for each termination point or points of the phone or other circuit within a municipality. AT&T added that the commission's approach could have the unintended consequence of penalizing a customer who has termination points in different municipalities. SWBT proposed deleting subsection (d)(2)(B) altogether, asserting that the proposed requirement to divide the number of termination points in half directly contradicts the statutory definition of "access

line." SWBT pointed out that the Local Government Code, §283.002(1)(A)(ii), defines each "access line" in part as "each termination point of…a nonswitched…circuit," and thus, the transmission path of a switched line must be counted as one access line, but each termination point of a nonswitched circuit must be counted as one access line.

TML added that if literal application of the statutory language does, in fact, prove unfair, unreasonable, discriminatory, or otherwise unsatisfactory, then the legislature, not the commission, should amend the definition of access line in HB 1777.

The commission agrees with the various commenters that the wording of "access line" in the Local Government Code §283.002(l)(ii) explicitly provides that "each termination point or points" represents an "access line." This means that, for the purposes of counting, each point could be an access line. Accordingly, the commission has revised §26.465(d)(2)(B) to remove references to dividing the number of termination points.

Section 26.465(d)(2)(C)

Proposed §26.465(d)(2)(C) stated that the bandwidth between the two terminating points of the circuit shall determine the access line category for that service, as established in §26.461 of this title.

TXU, GTESW, SWBT, Rhythms, NorthPoint and Garland/San Angelo recommended that the commission remove all references to bandwidth. Garland/San Angelo provided language revising this definition to refer to the categories established in §26.461 of this title. AT&T requested rejection of this proposed rule as moot, given the commission's adoption of the access line categories.

The commission concurs and removes all references to bandwidth, as the revised set of categories make references to bandwidth moot.

Section 26.465(d)(2)(D)

Proposed §26.465(d)(2)(D) required CTPs to count nonswitched telecommunications services consistently regardless of the type of transmission media used to provide that service.

AT&T requested that the commission reject this proposed section, reiterating its position that different counts that take into account differences in transmission media is appropriate since this reflects the fact that different transmission media place different burdens on the ROW. SWBT recommended that some minor clarifying language be added to this section to ensure consistency with other rules.

The commission declines to delete this section, for reasons outlined in the commission response to subsection (c)(2) and proposed subsection (d)(1)(C). In response to SWBT's comments, the commission makes minor changes to clarify this subsection for purposes of consistency.

Section 26.465(d)(2)(E)

Proposed §26.465(d)(2)(E) required a CTP to attribute the terminating point of a private line to the municipality where that point is located.

SWBT recommended substantial revisions to this section to ensure consistency with the Local Government Code, Chapter 283. Currently, SWBT's billing systems for the assessment of municipal fees on point-to-point services are set up to be consistent with the assessment of state and local sales taxes. Sales taxes are due in the municipality where the premises designated by the customer as its "service address" are located. SWBT argued that providers cannot readily revamp their billing systems to permit billing sales taxes on one basis and municipal fees on another. SWBT asserted that if this different approach is required, providers cannot meet the HB 1777 deadlines. Also, SWBT maintained that counting and attributing each termination point to the municipality where that particular point is located will result in tremendous implementation costs without offsetting benefits. Similarly, CLEC Coalition suggested that when the transmission path crosses more than one municipality, both points of the private line should be considered to be located in the municipality where the line originates. CLEC Coalition explained that this approach will make it easier to administer and verify the counting – more so than using fractions, rounding, and payments to two cities.

The commission recognizes SWBT's and CLEC Coalition's comments on counting point to point lines. The commission believes that subsection (d)(2)(B), as worded, would be the most equitable method of compensating a municipality for the use of its right-of-way. The municipality where a point-to-point line terminates is the one that should receive the benefit due from the CTP's use of its rights-of-way. Nonetheless, the commission recognizes the inherent difficulty in immediately revamping a CTP's billing systems to accommodate the proposed method. While the commission has retained its initial counting approach in subsection (d)(2)(B), the use of this method is optional if a CTP is unable to attribute the point to a municipality where that point is physically located. The commission has added additional language to allow some flexibility in counting point-to-point lines. The commission encourages providers to track point-to-point access lines so that a point can be attributed to the municipality where it is physically located. As suggested by the CLEC Coalition, the commission has deleted language on fractional line count adjustments in order to keep the rule administratively simple. Subsection (d)(2)(E) has been revised to allow CTPs to attribute point to point lines to the municipality identified by their billing systems if they are not able to identify the physical location of the point to point line.

Section 26.465(d)(3)

Proposed §26.465(d)(3) required the CTPs to count one access line for every ten stations served by a central office based PBX. Should the division result in a fraction of 0.5 or greater, CTPs were required to round up the access line count to the nearest whole number.

GTESW urged the commission to assess the right-of-way fee for central office based PBX-type services at 10% of the Category 2 (business) rate and require that the fee be remitted to the municipality in that same manner, instead of using a mathematical formula to determine the number of lines. Similarly, SWBT proposed that CTPs be given the option of counting each station as one-tenth of an access line, arguing that the numerical result should be the same as under the commission's proposal, but the alternative method would be more compatible with SWBT's, and perhaps other CTPs', billing systems. GTESW raised concerns that use of the formula could result in unequal and discriminatory fees on some customers.

At the public hearing, GTESW explained that they do know the number of stations in the customer's premises and that their approach is to set up the rate for each of those stations at one-tenth of the business rate. GTESW further commented that the billing system can produce access counts and, therefore station counts, but cannot fractionalize each account. SWBT echoed this concern, indicating that such an approach would require looking at each customer on a customer-by-customer basis, determining how many stations that customer has, and assessing the fee accordingly. An added difficulty is how to address rounding of the fractions. Assessing the fee at one-tenth would avoid the rounding difficulties and the customer-by-customer analysis. SWBT also mentioned that they would count only the number of stations that the customer has ordered, not the ports or the trunks. Cities had no difficulty with this approach, although Dallas requested that when lines subject to a one-tenth fee are reported, they should be differentiated from regular access lines, to assist cities in reconciling the fees.

Time Warner Telecom raised an issue at the public hearing questioning the assumption that every customer has ten stations behind that one line in a PBX-based central office service, and suggested this as an added reason not to channelize facilities that are delivered via one single demarcation point to a customer's premises.

The commission agrees that, as proposed by GTESW and SWBT, ROW fees for PBX-services could be assessed at 10% of the fee for Category 2 non-residential lines. The commission will add appropriate language in the rates and compensation rule, §26.467, to address this issue. The commission also removes the reference to the fractional adjustment in subsection (d)(3) for administrative simplicity. While CTPs may charge one-tenth of the Category 2 rate for PBX lines, CTPs must still count and report to the commission one access line for every ten stations served. If the number of central office-based PBX access lines in a municipality is proportionally large compared to the number of Category 2 lines in that municipality, an access line count that does not divide the PBX lines count by ten would result in a diluted rate for Category 2. Depending upon the number of central office-based PBX exchanges in that municipality, the diluted rates may impact compensation from Category 2 lines. Therefore, the commission declines to make any further revisions to subsection (d)(3).

Section 26.465(e)(1)

Proposed §26.465(e)(1) required CTPs to count all access lines provided as a retail service to customers.

AT&T maintained that if the commission adopts AT&T's recommendation to adopt a definition for "end-use customer" (instead of "customer"), then (e)(1) will need to be revised to read "(1) all lines provided to end-use customers." CLEC Coalition recommended this same language.

The commission agrees with commenters and adds the words "end-use" before customer in this subsection for purposes of clarification. The commission has also added a definition of customer in subsection (c)(1).

Section 26.465(e)(2)

Proposed §26.465(e)(2) required CTPs to count all lines provided as a retail service to other CTPs and resellers for their own end-use.

GTESW asserted that the access lines it provides to other CTPs and resellers should be excluded from the access line counts that GTESW reports to the commission. If the underlying CTP and the other CTP or reseller both report these lines, then the commission and municipalities will have to reconcile each count to ensure that there is no duplication of fees on a single access line. GTESW argued that it would be an unreasonable administrative burden to require the underlying provider (the line wholesaler)

to perform any manner of access line reconciliation. Also, GTESW raised concerns that the availability of information on small CTPs may create problems with the commission and municipalities in reconciling access lines. AT&T proposed that if the commission adopts a definition of "end-use customer," this subsection should be deleted as unnecessary.

The commission disagrees with GTESW's interpretation of subsection (e)(2). The commission's rules require all CTPs to report their retail end user lines, and exclude lines resold to other CTPs. Therefore, to the extent that a CTP provides retail access lines to another CTP, the underlying carrier (wholesaler) is the one responsible for reporting those lines. As noted above, the commission has added a definition of customer in subsection (c)(1) but believes that retaining the language in (e)(2), with minor modifications for consistency, provides the necessary clarity.

Section 26.465(e)(3)

In §26.465(e)(3), the commission proposed that CTPs count all lines provided as a retail service to wireless telecommunication providers and interexchange carriers (IXCs) for their own end-use.

GTESW concurred with subsection (e)(3) as proposed that all "land-lines" provided to wireless providers and IXCs as a retail service for their own end-use on their premises should be counted as access lines. AT&T proposed that, if the commission adopts a definition of "end-use customer," this subsection should be deleted as unnecessary.

The commission has added a definition for "customer," but believes that retaining (e)(3), with minor modifications, for consistency, provides the necessary clarity and therefore declines to delete it.

Section 26.465(e)(4)

In §26.465(e)(4) the commission proposed that CTPs count all lines a CTP provides to itself for its own use, including a CTP's official and employee concession lines.

SWBT maintained that company official lines should not be included in the access line count. While employee concession lines are lines extending to an end-use customer's premises (they just may be "franked," or free of charge), and historically have been counted, company official lines are not extended to an end-use customer and historically have not been counted. SWBT also proposed inserting the word "access" in front of the word "line" throughout subsection (e). AT&T proposed that, if the commission adopts a definition of "end-use customer," this subsection should be deleted as unnecessary. CLEC Coalition echoed this position. GTESW reiterated its comments in response to the staff's question about "company official" lines, explaining that company official lines are not a source of revenue for the company and have historically been exempted from the calculation of ROW use payments to cities, just as gas and electric utilities do not pay cities for the utilities' own usage.

The commission has revised its position on company official lines, determining that a CTP cannot be an end-use customer of itself. However, the commission retains the language relating to employee concession lines, as these lines *are* access lines extended to an end-use customer. Subsection (e)(4) has been revised accordingly. The commission has previously addressed this issue in this adoption preamble in its response to certain questions set out in the proposal preamble. The commission also agrees with SWBT's recommendation that the term "access" be added before the term "line" and has made appropriate changes to the rule.

Section 26.465(e)(5)

In §26.465(e)(5) the commission proposed that CTPs count all lines provided as a retail service to a CTP's wireless and IXC affiliates for their own end-use, and all lines provided as a retail service to any other affiliate for their own end-use.

AT&T proposed that, if the commission adopts a definition of "end-use customer," this subsection should be deleted as unnecessary.

The commission believes that retaining subsection (e)(5), with minor modifications for consistency, provides the necessary clarity, and therefore, declines to delete it.

Section 26.465(e)(6)

In §26.465(e)(6), the commission proposed that CTPs count dark fiber to the extent it is provided as a service or is resold.

SWBT suggested that the commission revise this subsection to assess the Category 3 private line termination point fees for services provided by dark fiber. Because dark fiber can be "lit" by a non-CTP that is outside the commission's jurisdiction and not required to report access lines, assessing the Category 3 fee will diminish incursions upon competitive neutrality. GTESW contended that dark fiber should not be counted as an access line since there are no end users associated with it and, thus, it does not fit into the definition of an access line. AT&T requested rejection of this subsection, maintaining that dark fiber does not fit within the definition of "access line." AT&T argued that, while dark fiber is an unbundled network element (UNE) and a component of creating access lines, its mere existence or lease does not mean that there are customers receiving services from it.

CLEC Coalition also raised concerns about leasing capacity from a non-CTP dark fiber provider, in a situation where the dark fiber provider may already be paying municipal compensation. CLEC Coalition requested that the rules make clear that there will not always be payment made on 100% of the reported access lines, if one reads the bill to require every line to be counted.

The commission finds merit in some of the proposals offered by commenters. The commission agrees with AT&T, in part, that dark fiber, by itself, is not an access line and should not be counted so long as

it resides with the provider. Also, as pointed out by the CLEC Coalition, dark fiber provided by non-CTPs should not be counted, as HB 1777 does not apply to non-CTPs. The commission agrees with the CLEC Coalition that under certain circumstances there will not be 100% compensation from all access lines used by CTPs. On the other hand, when dark fiber is sold or resold to a customer by a CTP, who then "lights" the fiber, it becomes an access line. The challenge is that the underlying CTP may not know the access line category of the resold dark fiber. As suggested by SWBT, dark fiber should default to a Category 3 line, as this would be the most reasonable interpretation of its use. The commission has deleted subsection (e)(6), as this issue is resolved in revised (d)(2)(F).

Section 26.465(e)(7)

In §26.465(e)(7) the commission proposed that CTPs count all other lines meeting the definition of access line as set forth in §26.461 of this title.

CLEC Coalition recommended that this section be deleted.

The commission believes that the language is a catchall phrase to include all lines not currently addressed in commission rules and hence retains it.

Section 26.465(f)(1)

Proposed §26.465(f) delineates the types of lines not to be counted. Proposed subsection (f)(1) required CTPs to exclude from the access line count all lines that do not terminate at a customer's premises.

SWBT, CLEC Coalition and AT&T proposed adding the words "end-use" before the word "customer" for clarity and consistency with statutory definitions.

The commission agrees with this clarifying wording and has revised the section accordingly.

Section 26.465(f)(2)

Proposed subsection (f)(2) required CTPs to exclude from the access line count, lines used by a CTP, wireless provider, or IXC for interoffice transport, or transmission facilities used to connect such providers' telecommunications equipment for the purpose of providing telecommunications services.

SWBT proposed adding the words "to end-use customers" for clarity and consistency with statutory definitions. Cities, endorsed by Dallas and TCCFUI, raised concerns that the proposed rule could be read to exclude broad categories of access lines. In particular, Cities cited the facility connecting the PBX that is excluded because it is a facility used to connect such provider's equipment. AT&T recommended consolidating (f)(2)-(4) into one section, with minor revisions.

The commission agrees with the clarifying wording proposed by SWBT and has revised the section accordingly. The commission agrees with Cities, Dallas, and TCCFUI that broad interpretations could be made with the proposed language that may result in exclusion of broad categories of access lines. The commission's intention was to exclude back-haul facilities, as these would constitute interoffice transport. Therefore, the commission has revised subsection (f)(2) by replacing the term "transmission facilities" with the term "back-haul" facilities to provide clarity.

Section 26.465(f)(3)

Proposed subsection (f)(3) required CTPs to exclude from the access line count, lines used by a CTP's wireless and IXC affiliates for interoffice transport, or transmission facilities used to connect such affiliates' telecommunications equipment for the purpose of providing telecommunications services.

SWBT proposed adding the words "to end-use customers" for clarity and consistency with statutory definitions.

The commission agrees with the clarifying wording suggested by SWBT and has revised the subsection accordingly. The commission has also revised subsection (f)(3) by replacing the term "transmission facilities" with the term "back-haul" facilities to be consistent with the use of the term in subsection (f)(2).

Section 26.465(f)(4)

AT&T recommended consolidating (f)(2)-(4) into one section, with minor revisions.

The commission believes that consolidating (f)(2) - (4) may not provide clarity and has retained them with revisions, as outlined above.

Section 26.465(f)(5)

Proposed subsection (f)(5) required CTPs to exclude from the access line count, any other lines that do not meet the definition of access line as set forth in §26.461 of this title.

CLEC Coalition recommended deleting this subsection.

The language in (f)(5) is a catchall phrase to exclude all lines that are not explicitly identified in the commission's rules. Therefore, the commission retains (f)(5) without change.

Section 26.465(g)

Proposed §26.465(g) outlined the initial and the subsequent reporting requirements for CTPs.

CLEC Coalition raised a number of questions about the reporting of access lines that are resold, leased, or otherwise provided to another CTP. First, CLEC Coalition asked whether a CTP reselling lines or leasing capacity must assume that the transmission media is physically located within a public ROW. Second, CLEC Coalition questioned whether capacity or facilities leased from a non-CTP must be reported but with an indication that no fee will be remitted in connection with such access lines. In particular, CLEC Coalition requested that the reporting forms be able to track that lines leased from non-CTPs are not subject to the access line fee under HB 1777 in order to avoid giving cities the misimpression that payment will be made on every single access line that is reported.

At the public hearing, CLEC Coalition explained that every access line that is counted and reported is not necessarily going to be subject to the access line fee under HB 1777. For example, CLEC Coalition described a situation where a company leases capacity from a non-certificated dark fiber provider that is already paying municipal compensation pursuant to some sort of agreement. Similarly, CLEC Coalition mentioned the situation in which a CTP leases capacity from a cable company that, pursuant to the terms of its cable franchise, is already paying municipal compensation for rights-of-way use. AT&T concurred with these comments, adding that, in particular, leased capacity from a cable company should not be subject to fees under HB 1777 because the municipality has already been fully compensated for the use of the rights-of-way through the cable provider.

A. Clarification of facilities vs. capacity

The commission clarifies that leasing capacity is akin to leasing facilities and therefore, access lines associated with a lease of either facilities or capacity should be reported. The commission has added clarifying language to subsection (g)(2)(A)(iv) stating that a CTP shall not differentiate between capacity and facilities leased or resold in reporting its access line count. This ensures that all lines are accurately reported. However, questions arise when capacity or facilities are leased from non-CTPs, as HB 1777 does not govern such providers. These issues are addressed under parts B and C of the commission's response.

B. Leasing dark (unlit) fiber

Although both are non-CTPs, the commission distinguishes between non-CTPs that provide dark (unlit) fiber/infrastructure only, and other non-CTPs, such as cable providers. In an effort to avoid a double counting of dark (unlit) fiber/infrastructure, (which could result in a double pass-through of municipal fees for the same access line if the municipality assesses franchise fees on non-CTPs), the commission determines that dark (unlit) fiber/infrastructure is not subject to counting under HB 1777 when that dark (unlit) fiber/infrastructure is resold to a CTP. This analysis is based on the fact that a CTP is not, itself, the end user of the dark (unlit) fiber/infrastructure. Consistent with the commission's treatment of other access lines leased, sold or otherwise conveyed to CTPs, the trigger for the HB 1777 counting and compensation thereof is when an access line is provided to the ultimate end-use customer. The commission also clarifies that when a CTP leases dark (unlit) fiber/infrastructure from a non-CTP, extends it to the end-use customer, "lights" the fiber, and provides switched, non-switched or PBX-type

services (resulting in access lines consistent with the definition of the Local Government Code, §283.002(1)), then those access lines shall be counted under HB 1777. The commission revises subsection (d)(2)(E) as follows: "Where dark (unlit) fiber is provided to an end-use customer who then lights it, the line shall be counted as a private line, by default, unless it is evident that it is used for providing switched services."

C. Leasing facilities or capacity from non-CTPs such as cable providers

The commission's analysis is different as to leasing facilities or capacity from non-CTPs such as cable providers. Providing local exchange services over a cable network is an issue of shared use of the same infrastructure for two different types of services. HB 1777 establishes a uniform method for compensating municipalities for the use of the public right-of-way by CTPs using the end-use customer as a "proxy" for counting access lines. Moreover, HB 1777 does not exclude any class of access lines provided by CTPs, whether or not that class of access lines has been provided over cable lines. In fact, the definition of access lines in Local Government Code §283.002(1), uses broad terms such as "transmission path" and "transmission media," without limitation. Further, the compensation mechanism for a cable network (percentage of gross receipts) is not consistent with the fee-per-line methodology outlined in HB 1777. Accordingly, the commission determines that cable lines used by a CTP that have switched transmission paths, meet the definition of access lines under the Local Government Code §283.002(1). The same rationale applies to cable lines that are used by CTPs for providing non-switched telephone or other circuit or central office-based PBX-type services.

The commission concludes that any transmission medium that meets the definition of access lines is subject to counting and compensation under HB 1777 regardless of whether such medium compensated a municipality for the use of the right-of-way for purposes outside HB 1777. Short of a legislative directive on this issue, the commission believes that this interpretation is consistent with HB 1777. However, to the extent that the FCC determines that certain transmission media do not meet the definition of access lines under the Local Government Code §283.002(1) and do not deliver local exchange services, the commission reserves the right to amend its analysis of this issue.

In response to overall concerns about this issue outlined in the sections above, the commission revises subsection (g)(2)(A)(iv), as follows: "A CTP shall not make a distinction between facilities and capacity leased or resold in reporting its access line count."

Section 26.465(g)(2)(A)(i)

Proposed §26.465(g)(2)(A)(i) sets forth the deadlines for the initial reporting of access line count from CTPs. CTPs are required to report access line counts as of December 1, 1999 with certain exceptions no later than January 3, 2000 in a commission-approved form.

SWBT requested an additional two weeks for the initial reporting due date of January 3, 2000 because of billing cycles and the holidays; SWBT maintained that it cannot obtain data for the billing period

ending November 30, 1999 until December 15, 1999, at the earliest. MCIW raised concerns about meeting the proposed deadline, in part because of internal definitions for access lines that differ from commission's adopted definitions, and in part because of Y2K issues. AT&T and GTESW echoed SWBT's request for extension; GTESW proposed a January 21 deadline.

Cities, supported by Dallas and TCCFUI, raised concerns that the requirement in the proposed §26.465(g)(2)(A)(i) to report line counts by December 1, 1999 does not comport with the statute's intent. Cities argued that, because the base amount is derived from the 1998 revenue levels, to calculate a rate based on 1999 access line numbers effectively eliminates the revenue growth that a city would have received during 1999. There is no indication the Legislature intended cities to suffer such a loss, Cities asserted.

The commission agrees with the commenters, and has extended the initial reporting date to January 24, 2000. The commission agrees with the comments offered by Cities, Dallas, and TCCFUI. It is appropriate to associate the line counting period with the base amount reporting period, which was calendar year 1998. Therefore, the commission revises subsection (g)(2)(A)(i) to require CTPs to provide a 1998 access line count to the extent possible. The commission will develop an alternative method to derive 1998 line counts from 1999 line count information where a CTP is unable to report a 1998 count. This methodology will be discussed in the rates and compensation rule, §26.467.

Section 26.465(g)(2)(A)(iii)

Proposed §26.465(g)(2)(A)(iii) requires that in the event a municipality has provided notice to the CTP by November 15, 1999 of its election to use the statewide average rate method, the CTP shall report the access line count as of December 31, 1998.

Several cities complained about being required to notify their CTPs by November 15, 1999 if they wish to choose the statewide average. Dallas said this notification is not found in the statute, is unnecessary, and further complicates a city's decision making process. Further, Dallas pointed out that cities will not know their access line estimates on that date and may not know the CTPs that are operating in their city. An additional concern of Dallas' was that cities would not have sufficient information to make their decision to use the statewide average by November 15, 1999. Garland/San Angelo noted that this requirement is unworkable because this rule will not be final until two weeks after the November l5th deadline. Alternatively, Garland/San Angelo suggested that the CTPs obtain the base amount forms for the municipalities in which they operate to determine for themselves which cities have selected the statewide average. SWBT proposed deleting this subsection altogether.

TCCFUI contended that the November 15, 1999 deadline puts cities at a substantial disadvantage because it is prior to the December 1 deadline for the CTP to notify cities of its decision to terminate its existing contracts. A CTP would be able to assess if they were better off terminating or continuing the existing franchise based on the cities' election. TCCFUI favored a December 1, 1999 deadline instead to eliminate this problem. AT&T requested clarification regarding the requirement that the adequate

notice to CTPs be consistent with subsection (k) as it is not clear what requirements this cross reference refers to.

SWBT commented that they do not have and cannot provide an access line count as of December 31, 1998. SWBT explained that it did not count "access lines" in 1998 for all cities to which it paid municipal fees; some cities assessed fees on a flat-sum basis and some on a gross receipts basis. But even in cities on a fee per line system, the counting method was not completely consistent with the commission's counting methodology. Similarly, GTESW pointed out that CTPs, including GTESW, may not be able to recreate December 31,1998 access line counts, as defined under HB 1777 and commission rules. Both GTESW and SWBT recommended that the commission approximate the 1998 line count from the 1999 count that will be provided, by subtracting a reasonable estimate of growth.

At the public hearing, SWBT revised its position, stating that, based on the revised categories of access lines, SWBT might be able to produce a 1998 line count for Categories 1 and 2, residential and non-residential switched access lines. Cities emphasized the need to be able to match up 1998 revenues to 1998 line counts.

The commission agrees with Garland/San Angelo that it is unworkable to require municipalities to report their base amount decision by November 15, 1999 because the rule will not be final until after December 16, 1999. Further, the commission has amended the rule in subsection (g)(2)(A)(i) to add that, whenever possible, a CTP shall provide a 1998 line count for all municipalities. Since the

commission's revised rules require the CTPs to provide a 1998 access line count for all municipalities, it is not necessary for municipalities that choose the statewide average option to notify CTPs of their option. Accordingly, the commission deletes the reference to the municipality's notice to select statewide average in subsection (g)(2)(A)(iii). The commission understands the difficulty for certain CTPs in providing a 1998 access line count. Where a CTP is unable to report a 1998 count, the commission will develop an alternative method to derive 1998 line counts from 1999 line count information. This methodology will be discussed in the rates and compensation rule, §26.467. The commission has added language to subsection (g)(2)(A)(iii) that would allow CTPs to file a good cause exemption for reporting a 1999 access line count.

Section 26.465(g)(2)(B)(i)—Subsequent Reporting

Proposed §26.465(g)(2)(B) outlined subsequent reporting procedures for CTPs. In particular, proposed §26.465(g)(2)(B)(i) requires quarterly reporting of access lines with the first report due 30 days following the end of the second quarter of 2000. GTESW commented that the first report will contain only one month of data (June). This assumption is based on the fact that quarterly reporting requirements will begin when CTPs begin billing the access line fees, which is expected to be in the second quarter, or approximately June 1; the first quarterly report will be for the second quarter of 2000, filed in August 2000, and may contain only June access line information, while the subsequent report will include three months of data. SWBT suggested that the reporting requirement should

commence with the quarterly payments to municipalities, which is 45 days after the end of the quarter, and should include data beginning with the month in which the CTP implements rates.

The commission disagrees with GTESW and disagrees, in part, with SWBT. The commission believes the first access line report should contain three months of access line counts for the second calendar quarter of 2000. For administrative simplicity, subsequent access line reports should be based on calendar quarters for all CTPs rather than the date of implementation by CTPs, which could vary. However, consistent with SWBT's suggestion, the commission will amend the rule in subsection (g)(2)(B)(i) for the reports to be provided 45 days after the end of each calendar quarter and this date shall be consistent with the municipal payment date. Therefore, the first report shall be due no later than August 15, 2000. The first payments from CTPs pursuant to HB 1777 shall also coincide with this date. The first payments should reflect compensation for access line count reported for the second quarter. The commission has also added language to subsection (g)(2)(B)(ii) to clarify when the access line reports are due to the commission and when the payments associated with those access lines are due to the municipality.

Section 26.465(g)(2)(B)(ii)

Proposed §26.465(g)(2)(B)(ii) states that a provider may not include in its monthly count of access lines any access lines that are resold, leased, or otherwise provided to another CTP if the provider receives adequate proof that the provider leasing or purchasing the access lines will include the access lines in its

own monthly count. Adequate proof shall consist of a notarized statement of notice prepared consistent with subsection (k) of this section.

Garland/San Angelo and GTESW objected to this subsection of the rule. Garland/San Angelo suggested that a description of the circumstances under which the commission would ask a CTP to identify either access lines that are resold or unbundled or the identity of the reseller or unbundled facilities should be added to this subsection. Garland/San Angelo also pointed out that the only subsequent reporting requirements in the Local Government Code are the reports from the CTPs to the commission. They are concerned that there is no requirement for the CTP to give information to the municipality. They point out that the only report required to be filed with municipalities is the quarterly report, and then, only if requested by the municipality. Municipalities, according to Garland/San Angelo, should be able to review all access line information, including resold and unbundled services, to verify that all access lines in the municipality have been accounted for. Therefore, Garland/San Angelo proposed language to state the commission would request such information if it receives a request from a municipality. In contrast, GTESW opposed requiring the underlying provider to report access lines that are resold to a CLEC because it would be a burdensome and costly effort since this information is not readily available.

The commission agrees with Garland/San Angelo, in part. The commission believes that access line count information should be reported to the commission each quarter. The commission, however, does not believe that quarterly reporting from the CTPs should include all lines that are resold, unless a

reseller and the underlying carrier have reached an agreement that the underlying CTP will provide such information on its behalf. Local Government Code §283.056(C) gives specific authority to a municipality to conduct a review of the provider's access line count. Should the commission receive a request from a municipality for a review of a CTP's access line count, the commission will then request a CTP to provide information on resold lines. However, requiring the CTPs to provide such information as a matter of routine would confuse the quarterly reporting process and be administratively burdensome. Also, the commission believes that GTESW's concern is unfounded since CTPs only have to report such information to the extent it is available. The commission has made no changes to subsection (g)(2)(B)(iii).

Section 26.465(g)(2)(B)(vi)

Proposed §26.465(g)(2)(B)(vi) required each CTP to provide each affected municipality with a copy of the report required by this subsection.

AT&T and SWBT requested that this subsection be clarified to state that the CTP will provide to the municipality a report of its own access lines, but not the access lines of other municipalities.

The commission agrees with the commenters, and has revised the rule clarifying that a CTP need only provide to a municipality those access line counts that are attributable to that municipality.

Section 26.465(h)—Exemption

Proposed §26.465(h) delineates the exemptions permitted under the rule.

NorthPoint opposed this subsection, which would exempt any CTP that continues under an existing franchise agreement or ordinance from the subsequent reporting requirements. Because all CTPs are subject to the initial reporting provisions under subsection (g)(2)(A), there would seem to be a benefit to requiring all CTPs to continue updating their reports on a quarterly basis. Further, NorthPoint suggested that encompassing all CTPs in the subsequent reporting requirements would eliminate possible confusion as to an otherwise exempt CTP's obligation to report access lines provided by resale or unbundled facilities.

The commission believes that requesting CTPs that have unterminated agreements to report quarterly access line count is unnecessary; consistent with the Local Government Code §283.054(a), a provider is not governed by HB 1777 until that provider actually terminates its agreement. Further, such counts would actually confuse the quarterly reporting process. All CTPs were required to report their initial access line count so that the commission could establish statewide average rates and fee-per-access line rates for all municipalities. On the other hand, the purpose of the subsequent reporting is to ensure that municipalities receive adequate compensation from CTPs who have terminated their franchise agreements. Therefore the commission declines to include subsequent reporting for those CTPs that have unterminated franchise agreement with municipalities.

Section 26.465(j)—Proprietary or confidential information.

Proposed §26.465(j) set forth the terms and conditions for the treatment of proprietary or confidential information filed pursuant to this section.

NorthPoint opposed provisions in subsection (j)(1) which state that information filed by CTPs is presumed public and that a CTP has the burden of establishing that the information is proprietary or confidential. NorthPoint argued that this is not consistent with the commission's treatment of similar material in other proceedings. The access line reports required of CTPs are highly confidential and inherently fall under the confidential and competitive information exceptions to the Government Code, Chapter 552. NorthPoint proposed that subsection (j) should be amended to provide that the access line reports filed under this rule are deemed confidential. NorthPoint also mentioned that, under the procedures set forth in the Open Records Act, at most, only aggregate numbers of access lines for the State should ever be disclosed to the public following an adverse commission or court order. Garland/San Angelo mentioned that the Open Records Act is now entitled the Public Information Act and suggested correcting this reference within subsections (j)(2) and (j)(3).

GTESW, SWBT, and MCIW also objected to the proposed language; AT&T voiced shared concerns at the public hearing. GTESW requested that the rule indicate that the information is deemed proprietary because it can be used by competitors. Further, GTESW noted that the commission must

provide the CTP with notice of requests for access line data in a timely manner in order for the CTP to have the maximum opportunity to seek injunctive release. SWBT requested that the subsection be amended to clarify that the information provided to the commission is exempt from disclosure. Local Government Code §283.005 makes clear that the commission and municipalities are required to maintain the confidentiality of all such information the CTPs claim to be confidential as is necessary to implement the provisions of HB 1777 in accordance with PURA §52.207. Section 52.207 requires the commission to maintain the confidentiality of information that is claimed to be confidential for competitive purposes. Section 52.207 also exempts the confidential information from disclosure under the Government Code, Chapter 552. SWBT pointed out that it is this claim of confidentiality that establishes the statutory exemption from disclosure. MCIW urged the commission to remove any language that suggests the line counts are subject to public disclosure, as this information is highly confidential and proprietary.

At the public hearing, Cities questioned whether city councils would be able to discuss line count information in a public forum. SWBT argued that even aggregated information should be kept confidential and private, even in a public meeting. TML explained the nature and limitations of the Open Meetings Act, indicating that free speech cannot be abridged. Dallas also discussed the need to make recommendations, at least as to allocation, in an open meeting. In smaller cities, with only one provider, the problem is magnified.

The commission agrees with Garland/San Angelo and will correct references to the Government Code, Chapter 552. Further, the commission agrees with the various commenters and revises this subsection by adding new paragraphs (2) and (4) as follows:

(2) The commission shall maintain the confidentiality of the information provided by certificated telecommunications providers in accordance with the Public Utility Regulatory Act (PURA) §52.207.

(4) Information provided to municipalities under the Local Government Code, Chapter 283, shall be governed by existing confidentiality procedures which have been established by the commission in compliance with PURA §52.207.

Section 26.465(k) Attestation.

Proposed §26.465(k) sets forth the rules of attestation for filings made pursuant to this section. Proposed subsection (k) requires the access line reports to be filed pursuant to the commission's procedural rules, and to be attested to by an officer or authorized representative of the CTP. Proposed subsection (g)(2)(A)(iii) by reference also requires the municipalities to give notice to CTPs regarding their election to use the statewide average for determining their base amount to comply with this subsection. Garland/San Angelo suggests that municipalities should not be required to comply with subsection (k) because the requirements are onerous, not necessary, and inappropriate for notice from a municipality to a CTP.

The commission has deleted proposed §26.465(g)(2)(A)(iii) which required municipalities to notify each CTP by November 15 regarding whether the municipality elected to use the statewide average rate. No change to this section to address the form of such notification is needed.

Section 26.465(l)—Reporting of access lines by means of resold services or unbundled facilities to another CTP.

Proposed §26.465(l) addresses the reporting of access lines by means of resold services or unbundled facilities to another CTP. The last sentence of subsection (l) states that "Nothing in this subsection shall prevent a CTP reporting another CTP's access line count from charging an appropriate, tariffed administrative fee for such service."

NorthPoint sought clarification of, and recommended specific language for, the last sentence of subsection (l), to indicate that a CTP may only charge an administrative fee when it is required to report access lines provided by resale or unbundled facilities and the provider leasing or purchasing the access lines has not given the CTP adequate proof that it will be submitting its own monthly count. GTESW commented that the administrative burden of requiring an underlying provider to account for a competitor's access lines is incomprehensible. GTESW asserted that such a requirement would be onerous and goes beyond normal business requirements because GTESW does business in approximately 500 jurisdictions. Further, since GTESW could not report lines that are multiplexed by

the reseller, they would not be fairly assessed a ROW fee. GTESW stated that the access line count, if required to be reported by the CTP, can be nothing greater than what is reflected in the CTP's billing records. SWBT requested that the subsection be amended to require CTPs that elect to have the underlying CTP report or pay their access line count or fees to provide the underlying CTP all required information, in properly verified and authenticated form, together with a certified check made out to the municipality for all sums due for ROW compensation, within 30 days after the end of the quarter. SWBT suggested that this approach will allow the underlying CTP to meet the 45-day deadline for getting the report to the commission and making payment to the municipalities. SWBT stated that if the CTP has to do anything other than pass on the information and payments from the CLECs, this rule will have to be substantially amended. Alternatively, if the rule requires the ILECs to count, assess, report and pay on access lines that CLECs actually provide to end users, a result SWBT opposes and believes is contrary to the Local Government Code, Chapter 283, it must also require the CLECs to provide the necessary information for the ILECs to perform the task. SWBT recommended that the CLECs must provide in certified and electronic format the following information: 1) end user addresses; 2) services provided; 3) class (e.g. residential or non-residential) and commission category of service; and 4) tax authority information for the municipalities to be paid (TAR). Further, SWBT asserted that this information must be provided on the embedded base of UNEs and resold services.

At the public hearing, several parties responded to the question of how the municipal fee should be paid in a line-sharing situation, assuming that only one fee is paid despite multiple services being provided over the same line. TEXALTEL suggested that the ground rule should be that whoever has the facilities

in the ROW pays the fee. TEXALTEL argued that this analysis applies even where the underlying facilities belong to a cable company, maintaining that, where payment is being made under a cable franchise, no additional payment is owed for a telephone franchise. TEXALTEL also mentioned that where CTPs providing services over a line have elected to pay their own fees, then that reseller should pay the municipality based on the services the reseller provides. Thus, the reseller's election shifts the responsibility for payment of the fees from the owner of the facility to the reseller. But absent such an election by a reseller, TEXALTEL indicated that a facility owner might be responsible for paying multiple fees for all the services provided over the lines.

AT&T reiterated its earlier arguments concerning the burden on the ROW as the basis for their analysis that where municipalities have been compensated for the use of the ROW through the underlying facilities, whether cable facilities or telecommunications facilities, there is no additional burden to trigger the assessment of access line fees under HB 1777. AT&T asserted this same analysis should apply whether the mixed use involves a single CTP providing local exchange services or a combination of services, or whether the services are provided by different affiliates.

Cities responded that municipalities are to be paid on every line that is reported. Cities highlighted the fact that, as to cable providers, federal law requires a separate agreement or certification for a cable provider to provide telecommunications services. Once certificated, such a provider's lines would be subject to HB 1777 and they would have to pay municipal compensation. City of El Paso opined that to allow only a single fee to be assessed on a multiple-use line would not just create a loophole, but

would dissolve the compensation scheme set up by HB 1777. Cities also raised concerns that allowing certain access lines to be assessed fees while excluding others does not create a competitively neutral compensation scheme.

The commission disagrees with NorthPoint that the commission should restrict CTPs' ability to charge reasonable administrative fees based only on certain circumstances. The commission's rules do not make it mandatory for CTPs to charge an administrative fee for reporting CLEC access lines and possibly remitting municipal fee payments; the determination of counting lines and paying fees between CTPs is an issue of inter-carrier compensation that must be developed in a case-specific context between CTPs. The commission agrees with GTESW that when UNE providers offer multiplexed services, it is impossible for the underlying provider to know the number of the lines being provided and more importantly, the category of these access lines. Therefore, this information must be provided by the CLEC that has the actual knowledge of the retail end-use customers. Again, whether the CLECs compensate the municipality directly or through the underlying carrier is not up to the commission to decide. As noted earlier, it is an inter-carrier compensation issue and is best left up the individual CTPs to make a business decision on this issue. SWBT has outlined specific details on what it takes for an ILEC to report access lines on behalf of a CLEC. While the commission agrees with the format proposed by SWBT, it does not believe that such specific details need to be reflected in rule language. These requirements can vary from one CTP to another and imposing one set of formats may reduce the flexibility which some CTPs may desire. Therefore, the commission has not made any changes to §26.465(l).

Section 26.465(m)—Commission review of the definition of access line.

Consistent with the Local Government Code, Chapter 283, the rule requires that the commission determine whether changes in technology, facilities, or competitive or market conditions justify a modification of the adoption of the definition of access line. Garland/San Angelo suggested language to clarify the commission's authority to modify the statutory definition of "access line."

The commission has added language to subsection (m) citing statutory authority to review the definition of access line.

Other comments regarding definitions

Dallas commented that the terms "affiliates" and "interoffice transport" are undefined. Dallas proposed that "interoffice transport" be defined as "any line which is owned by a CTP to connect to its own facilities."

The commission rejects Dallas's definition of interoffice transport as it is more narrow than that contemplated under the statute. The commission believes it is unnecessary to adopt a definition of interoffice transport, given the fact that the commission's rules provide detailed and specific guidance on what types of lines must be counted and what types are excluded. The commission notes that the term

"affiliates" has been commonly understood by its plain meaning and no other commenters have raised this as an issue. Therefore, the commission declines to add a definition for the term "affiliates".

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

This new rule is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. This rule is also authorized by House Bill 1777, Act of May 25, 1999, 76th Legislature, Regular Session, chapter 840, 1999 Texas Session Law Service 3499 (Vernon) (to be codified as an amendment to the Local Government Code §283.055) which provides that not later than March 1, 2000, the commission shall establish rates per access line by category for the use of a public right-of-way by certificated telecommunications providers in each municipality and the statewide average of those rates. The rates shall be applied to the total number of access lines by category in the municipality.

Cross Reference to Statues: Public Utility Regulatory Act §14.002 and Local Government Code §283.055.

§26.465. Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers.

(a) **Purpose**. This section establishes a uniform method for counting access lines within a municipality by category as provided by §26.461 of this title (relating to Access Line Categories), sets forth relevant reporting requirements, and sets forth certain reseller obligations under the Local Government Code, Chapter 283.

(b) **Application**. This section applies to all certificated telecommunications providers (CTPs) in the State of Texas.

(c) **Definitions**. The following words and terms when used in this section, shall have the following meaning, unless the context clearly indicates otherwise.

(1) **Customer** – The retail end-use customer.

(2) **Transmission path** – A path within the transmission media that allows the delivery of switched local exchange service.

(A) Each individual circuit-switched service shall constitute a single transmission path.

(B) Where services are offered as part of a bundled group of services, each switched service in that bundled group of services shall constitute a single transmission path.

(C) Only those services that require the use of a circuit-switch shall constitute a switched service.

(D) Services that constitute vertical features of a switched service, such as call waiting, caller-ID, etc., that do not require a separate switched path, do not constitute a transmission path.

(E) Where a service or technology is channelized by the CTP and results in a separate switched path for each channel, each such channel shall constitute a single transmission path.

(3) **Wireless provider** – A provider of commercial mobile service as defined by §332(d), Communications Act of 1934 (47 U.S.C. §151 *et seq*.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66).

(d) **Methodology for counting access lines.** A CTP's access line count shall be the sum of all lines counted pursuant to paragraphs (1), (2), and (3) of this subsection, and shall be consistent with subsections (e), (f) and (g) of this section.

(1) **Switched transmission paths and services.**

(A) The CTP shall determine the total number of switched transmission paths, and shall take into account the number of switched services provided and the number of channels used where a service or technology is channelized.

(B) All switched services shall be counted in the same manner regardless of the type of transmission media used to provide the service.

(C) If the transmission path crosses more than one municipality, the line shall be counted in, and attributed to, the municipality where the end-use customer is located.

(2) **Nonswitched telecommunications services or private lines.**

(A) Each circuit used to provide nonswitched telecommunications services or private lines to an end-use customer, shall be considered to have two termination points, one on each customer location identified by the customer and served by the circuit.

(B) The CTP shall count nonswitched telecommunications services or private lines by totaling the number of terminating points within a municipality.

(C) A nonswitched telecommunications service shall be counted in the same manner regardless of the type of transmission media used to provide that service.

(D) A terminating point shall be counted in, and attributed to, the municipality where that point is located. In the event a CTP is not able to identify the physical location of the terminating point, that point shall be attributed to the municipality identified by the CTP's billing systems.

(E) Where dark (unlit) fiber is provided to an end-use customer who then lights it, the line shall be counted as a private line, by default, unless it is evident that it is used for providing switched services.

(3) **Central office based PBX-type services**. The CTP shall count one access line for every ten stations served.

(e) **Lines to be counted.** A CTP shall count the following access lines:

(1) all access lines provided to a retail end-use customer;

(2) all access lines provided as a retail service to other CTPs and resellers for their own end-use;

(3) all access lines provided as a retail service to wireless telecommunication providers and interexchange carriers (IXCs) for their own end-use;

(4) all access lines a CTP provides as employee concession lines and other similar types of lines;

(5) all access lines provided as a retail service to a CTP's wireless and IXC affiliates for their own end-use, and all access lines provided as a retail service to any other affiliate for their own end-use;

(6) dark fiber, to the extent it is provided as a service or is resold by a CTP and shall exclude lines sold and resold by non-CTPs;

(7) any other lines meeting the definition of access line as set forth in §26.461 of this title; and

(8) Lifeline and Tel-assistance lines.

(f) **Lines not to be counted.** A CTP shall not count the following lines:

(1) all lines that do not terminate at an end-use customer's premises;

(2) lines used by providers who are not end-use customers such as CTP, wireless provider, or IXC for interoffice transport, or back-haul facilities used to connect such providers' telecommunications equipment;

(3) lines used by a CTP's wireless and IXC affiliates who are not end-use customers, for interoffice transport, or back-haul facilities used to connect such affiliates' telecommunications equipment;

(4) lines used by any other affiliate of a CTP for interoffice transport; and

(5) any other lines that do not meet the definition of access line as set forth in §26.461 of this title.

(g) **Reporting procedures and requirements.**

(1) **Who shall file.** The record keeping, reporting and filing requirements listed in this section shall apply to all CTPs in the State of Texas.

(2) **Reporting requirements.** Unless otherwise specified, periodic reporting shall be consistent with this subsection and subsection (d) of this section.

(A) **Initial reporting.**

(i) No later than January 24, 2000, a CTP shall file its access line count using the commission-approved *Form for Counting Access Line* or *Program for Counting Access Lines* with the commission. The CTP shall report the access line count as of December 31, 1998, except as provided in clause (iii) of this subparagraph.

(ii) A CTP shall not include in its initial report any access lines that are resold, leased, or otherwise provided to a CTP, unless it has agreed to a request from another CTP to include resold or leased lines as part of its access line report.

(iii) A CTP that cannot file access line count as of December 31, 1998 shall file request for good cause exemption and shall file the most recent access line count available for December, 1999.

(iv) A CTP shall not make a distinction between facilities and capacity leased or resold in reporting its access line count.

(B) **Subsequent reporting.**

(i) Each CTP shall file with the commission a quarterly report beginning the second quarter of the year 2000, showing the number of access lines, including access lines by category, that the CTP has within each municipality at the end of each month of the quarter. The report shall be filed no later than 45 days after the end of the quarter using the

commission-approved Form for Quarterly Reporting of Access Lines and shall coincide with the payment to a municipality.

(ii) The first report shall be due to the commission no later than August 15, 2000 and shall include access line for the second calendar quarter of 2000 and shall coincide with the first payment to a municipality pursuant to the Local Government Code, Chapter 283.

(iii) Except as provided in clause (iv) of this subparagraph, on request of the commission, and to the extent available, the report filed under clause (i) of this subparagraph shall identify, as part of the CTP's monthly access line count, the access lines that are provided by means of resold services or unbundled facilities to another CTP who is not an end-use customer, and the identity of the CTPs obtaining the resold services or unbundled facilities to provide services to customers.

(iv) A CTP may not include in its monthly count of access lines any access lines that are resold, leased, or otherwise provided to another CTP if the CTP receives adequate proof that the CTP leasing or purchasing the access lines will include the access lines in its own monthly count. Adequate proof shall consist of a notarized statement prepared consistent with subsection (k) of this section.

(v) The CTP shall respond to any request for additional information from the commission within 30 days from receipt of the request.

(vi) Reports required under this subsection may be used by the commission only to verify the number of access lines that serve customer premises within a municipality.

(vii) On request from a municipality, and subject to the confidentiality protections of subsection (j) of this section, each CTP shall provide each affected municipality with a copy of the municipality's access line count.

(h) **Exemption**. Any CTP that does not terminate a franchise agreement or obligation under an existing ordinance shall be exempted from subsequent reporting pursuant to subsection (g)(2)(B) of this section unless and until the franchise agreement is terminated or expires on its own terms. Any CTP that fails to provide notice to the commission and the affected municipality by December 1, 1999 that it elects to terminate its franchise agreement or obligation under an existing ordinance, shall be deemed to continue under the terms of the existing ordinance. Upon expiration or termination of the existing franchise agreement or ordinance by its own terms, a CTP is subject to the terms of this section.

(i) **Maintenance and location of records.** A CTP shall maintain all records, books, accounts, or memoranda relating to access lines deployed in a municipality in a manner which allows for easy identification and review by the commission and, as appropriate, by the relevant

municipality. The books and records for each access line count shall be maintained for a period of no less than three years.

(j) **Proprietary or confidential information.**

(1) The CTP shall file with the commission the information required by this section regardless of whether this information is confidential. For information that the CTP alleges is confidential and/or proprietary under law, the CTP shall file a complete list of the information that the CTP alleges is confidential. For each document or portion thereof claimed to be confidential, the CTP shall cite the specific provision(s) of the Texas Government Code, Chapter 552, that the CTP relies to assert that the information is exempt from public disclosure. The commission shall treat as confidential the specific information identified by the CTP as confidential until such time as a determination is made by the commission, the Attorney General, or a court of competent jurisdiction that the information is not entitled to confidential treatment.

(2) The commission shall maintain the confidentiality of the information provided by CTPs, in accordance with the Public Utility Regulatory Act (PURA) §52.207.

(3) If the CTP does not claim confidential treatment for a document or portions thereof, then the information will be treated as public information. A claim of confidentiality by a CTP does not bind the commission to find that any information is proprietary and/or confidential under law, or alter the burden of proof on that issue.

(4) Information provided to municipalities under the Local Government Code, Chapter 283, shall be governed by existing confidentiality procedures which have been established by the commission in compliance with PURA §52.207.

(5) The commission shall notify a CTP that claims its filing as confidential of any request for such information.

(k) **Report attestation.** All filings with the commission pursuant to this section shall be in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to Be Filed With the Commission). The filings shall be attested to by an officer or authorized representative of the CTP under whose direction the report is prepared or other official in responsible charge of the entity in accordance with §26.71(d) of this title (relating to General Procedures, Requirements and Penalties). The filings shall include a certified statement from an authorized officer or duly authorized representative of the CTP stating that the information contained in the report is true and correct to the best of the officer's or representative's knowledge and belief after inquiry.

(l) **Reporting of access lines that have been provided by means of resold services or unbundled facilities to another CTP.** This subsection applies only to a CTP reporting access lines under subsection (g) of this section, that are provided by means of resold services or unbundled facilities to another CTP who is not an end-use customer. Nothing in this subsection

shall prevent a CTP reporting another CTP's access line count from charging an appropriate, tariffed administrative fee for such service.

(m) **Commission review of the definition of access line.**

(1) Pursuant to the Local Government Code §283.003, not later than September 1, 2002, the commission shall determine whether changes in technology, facilities, or competitive or market conditions justify a modification of the adoption of the definition of "access line" provided by §26.461 of this title. The commission may not begin a review authorized by this subsection before March 1, 2002.

(2) As part of the proceeding described by paragraph (1) of this subsection, and as necessary after that proceeding, the commission by rule may modify the definition of "access line" as necessary to ensure competitive neutrality and nondiscriminatory application and to maintain consistent levels of compensation, as annually increased by growth in access lines within the municipalities.

(3) After September 1, 2002, the commission, on its own motion, shall make the determination required by this subsection at least once every three years.

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 §26.465 relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 27th DAY OF DECEMBER 1999.

PUBLIC UTILITY COMMISSION OF TEXAS

_____

Chairman Pat Wood, III

_____

Commissioner Judy Walsh

_____

Commissioner Brett A. Perlman