

The Public Utility Commission of Texas (commission) proposes new §26.465 relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers (CTPs). The proposed new rule implements certain provisions of 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 Local Government Code §§283.001 *et seq.*) (HB 1777), which authorizes the commission to determine a uniform method for calculating municipal franchise compensation paid by CTPs. The proposed new rule is part of a series of rules that will be adopted by the commission to implement HB 1777. Project Number 20935 has been assigned to this proceeding.

D. Diane Parker, Senior Attorney, Office of Policy Development and Elango Rajagopal, Senior Policy Analyst, Office of Regulatory Affairs, have determined that for each year of the first five-year period the proposed section is in effect, there are no fiscal implications to local governments as a result of enforcing or administering the section. Ms. Parker and Mr. Rajagopal do not anticipate any fiscal implications to the state government.

Ms. Parker and Mr. Rajagopal have determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be a uniform method of compensating municipalities for the use of the public rights-of-way by CTPs. This uniformity will promote competition for local telephone service in Texas by ensuring that CTPs do not obtain a

competitive advantage or suffer a disadvantage in their ability to obtain use of a public right-of-way within a municipality. There is no anticipated effect on small businesses or micro-businesses as a result of enforcing this section.

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

In proposing this rule, the commission's objective is to establish a method for compensating municipalities for the use of a public right-of-way by CTPs that: (1) is administratively simple for municipalities and telecommunications providers; (2) is nondiscriminatory; (3) is competitively neutral; (4) is consistent with the burdens on municipalities created by the incursion of CTPs into a public right-of-way; (5) provides fair and reasonable compensation for the use of a public right-of-way; and (6) is consistent with state and federal law.

The commission seeks any comments on the proposed rule that interested parties believe are appropriate. Parties should organize their comments in a manner consistent with the organization of the proposed rule. In particular, the commission invites comments regarding the following issues:

1. In considering the lines that should be included under the access line count, is the access line counting methodology in this rule consistent with the access line counting methodology used in

the commission's USF dockets (Docket Numbers 18515 and 18516) and/or the Rate Reclassification Project (Docket Number 18509)? If not, should it be?

2. 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;
3. Whether connections (transmission facilities) to wireless providers which are used solely for the purpose of providing wireless telecommunication services 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; and
4. The costs associated with, and benefits that will be gained by, implementation of the proposed section.

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days after publication. All comments should refer to Project Number 20935. The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 in the Commissioners' Hearing Room, Room 7-100, at the commission offices located in the William B. Travis building, 1701 North Congress Avenue, Austin, Texas 78701, on Friday, November 5, 1999, at 9:30 a.m. until 3:00 p.m.

Forms and instructions for reporting access line count information can be obtained after October 20, 1999 at the commission's Central Records, by sending an email to hb1777@puc.state.tx.us, or by

downloading the information from the HB 1777 web site at <http://www.puc.state.tx.us/telecomm/projects/20935/20935.cfm>. The commission staff will hold a separate workshop to discuss forms and instructions for reporting access line count information in the Commissioners' Hearing Room, Room 7-100, at the commission offices located in the William B. Travis building, 1701 North Congress Avenue, Austin, Texas 78701, on Friday, November 5, 1999, at 3:00 p.m. until 5:00 p.m. Interested persons may submit written comments on the form and instructions on or before October 29, 1999. The commission is specifically interested in learning whether the forms are clear and easy to use, and whether additional instructions are needed to accommodate special circumstances.

This section is proposed 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 proposed 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, 3503 (Vernon) (to be codified as 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 Statutes: Public Utility Regulatory Act §14.002 and by House Bill 1777, 76th

Legislature, Regular Session (1999) §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) **Transmission media** – 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.
- (2) **Transmission path** – 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.

(3) **Wireless provider** – A provider of wireless telecommunication services.

(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.**

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

(B) The bandwidth of each transmission path shall determine the access line category, as established in §26.461 of this title.

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

- (D) 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.
 - (E) 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.
- (2) **Nonswitched telecommunications services or private lines.**
- (A) Each circuit used to provide nonswitched telecommunications services or private lines shall be considered to have two termination points, one on each end.
 - (B) The 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. If the division results in a fraction, the number shall be rounded up to the nearest whole number.
 - (C) 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.
 - (D) A nonswitched telecommunications service shall be counted consistently in the same manner regardless of the type of transmission media used to provide that service.

- (E) A terminating point shall be counted in, and attributed to, the municipality where that point is located.
- (3) **Central office based PBX-type services.** The CTP shall count one access line for every ten stations served. If the division results in a fraction of 0.5 or greater, the number shall be rounded up to the nearest whole number.
- (e) **Lines to be counted.** A CTP shall count the following access lines:
- (1) all lines provided as a retail service to customers;
 - (2) all lines provided as a retail service to other CTPs and resellers for their own end-use;
 - (3) all lines provided as a retail service to wireless telecommunication providers and interexchange carriers (IXCs) for their own end use;
 - (4) all lines a CTP provides to itself for its own use, including a CTP's official and employee concession lines;
 - (5) 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;
 - (6) dark fiber, to the extent it is provided as a service or is resold; and
 - (7) any other lines meeting the definition of access line as set forth in §26.461 of this title.
- (f) **Lines not to be counted.** A CTP shall not count the following lines:
- (1) all lines that do not terminate at a customer's premises;

- (2) 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;
- (3) 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;
- (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 3, 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 1, 1999, 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 another CTP.
- (iii) Where a municipality has provided adequate notice to the CTP, by November 15, 1999, that it is electing to use the statewide average rate method described in Local Government Code §283.053(c)(1) and §283.053(d)(1), the CTP shall report the access line count as of December 31, 1998. The adequate notice shall be consistent with subsection (k) of this section.

(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 provider has within each municipality at the end of each month of the quarter. The report shall be filed no later than 30 days after the end of the quarter using the commission-approved Form for Quarterly Reporting of Access Lines.
- (ii) Except as provided in clause (iii) 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.

- (iii) 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.
 - (iv) The CTP shall respond to any request for additional information from the commission within 30 days from receipt of the request.
 - (v) 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.
 - (vi) On request, and subject to the confidentiality protections of subsection (j) of this section, each CTP shall provide each affected municipality with a copy of the report required by this subsection.
- (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) Information filed pursuant to this section is presumed to be public information. A CTP shall have the burden of establishing that information filed pursuant to this section is proprietary or confidential. The commission shall notify a CTP claiming the information is confidential of any request for such information.
 - (2) 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 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.

- (3) The commission may determine, upon its own motion and before a request is received, upon notice and opportunity for hearing by the party claiming confidentiality, that information claimed to be confidential is not entitled to exemption from the Texas Open Records Act.
 - (4) 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.
- (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 provider 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) 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 24th DAY OF SEPTEMBER 1999 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**