

The Public Utility Commission of Texas proposes new §26.223 relating to Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates. The purpose of the new section is to implement the Public Utility Regulatory Act (PURA) §52.155, which addresses the usage sensitive intrastate switched access rates that can be charged by holders of certificates of operating authority (COA) and service provider certificate of operating authority (SPCOA) holders. Project Number 21174 has been assigned to this proceeding.

Ms. Melanie Malone, Senior Economic Analyst, and Mr. Stephen Journey, Director of the Office of Policy Development, have determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Malone and Mr. Journey also have determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing this section will be to prevent excessive usage sensitive switched access rates.

There is no anticipated economic cost to persons who are required to comply with the section as proposed.

For each year of the first five years the section is in effect, there will be no effect on small businesses or micro-businesses as a result of enforcing the proposed section.

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

Comments on the proposed rule (15 copies) may be submitted to Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78701-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. All comments should refer to Project Number 21174. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the section. The commission will consider the costs and benefits in deciding whether to adopt the section.

The commission staff will conduct a public hearing on this rulemaking under Texas Government Code §2001.029 at the Commission's Offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Monday, May 22, 2000 in the Commissioners' Hearing Room from 1:00 p.m. to 5:00 p.m.

This section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA), which provides the Public

Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §52.155 which grants the commission all jurisdiction necessary to enforce the prohibition of excessive access charges.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §52.155.

**§26.223. Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates.**

- (a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §52.155, which addresses the usage sensitive intrastate switched access rates that can be charged by a telecommunications utility that holds a certificate of operating authority (COA) or a service provider certificate of operating authority (SPCOA) (COA/SPCOA).
- (b) **Applicability.** This section applies to usage sensitive intrastate switched access rates of COA/SPCOA holders, including but not limited to, originating and terminating carrier common line (CCL), originating and terminating local switching (LS), originating and terminating switched transport (TR), originating and terminating tandem switching (TS), originating and terminating tandem switched transport (TST), and originating and terminating residual interconnection charge (RIC).
- (c) **Requirements for COA/SPCOA usage sensitive intrastate switched access rates.** A telecommunications utility that holds a COA or a SPCOA may not charge a higher amount for any originating or terminating usage sensitive intrastate switched access rate element than the prevailing rates charged by the holder of the certificate of convenience and necessity (CCN) in whose territory the call originated or terminated unless:
- (1) the commission specifically approves the higher rate; or

- (2) subject to commission review, the telecommunications utility establishes statewide average composite originating and terminating usage sensitive intrastate switched access rates based on a reasonable approximation of traffic originating and terminating between all holders of certificates of convenience and necessity in this state.
  
- (d) **Statewide average composite rates.** The commission shall establish weighted statewide average composite usage sensitive intrastate switched access rates within 60 days of the effective date of this section. Weighted statewide average composite usage sensitive intrastate switched access rates will be developed based upon the submission of CCN holders' compliance filings pursuant to subsection (f) of this section.
  - (1) **Methodology.** The commission shall employ the following methodology for development of the weighted statewide average composite usage sensitive intrastate switched access rates for each rate element in subsection (b) of this section:
    - (A) Each CCN holder's individual rate elements' rates will be multiplied by the total actual minutes of use (MOUs) for that rate element, producing a total revenue for each rate element for each CCN holder.
    - (B) Revenues for each CCN holder's rate element will be added to create a statewide total revenue for that rate element.

- (C) The actual MOUs for each CCN holder's rate element will be added to create a statewide total actual MOUs for that rate element.
  - (D) The statewide total revenue for that rate element will be divided by the statewide total actual MOUs for that rate element, producing a weighted statewide average composite usage sensitive intrastate switched access rate for that switched access rate element.
- (2) **Recalculation.**
- (A) The commission shall re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates biennially based upon the submissions of the CCN holders, as required in subsection (f) of this section. The re-calculated rates will become effective November 1 of that year.
  - (B) Any certificated telecommunications utility may file a petition requesting that the commission re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates at any time, but no sooner than six months from the effective date of this section or most recent re-calculation. The commission shall initiate re-calculation if it concludes that the petition has provided just cause for re-calculation.
  - (C) As provided in subsection (f) of this section, the commission may also require compliance submissions by CCN holders for re-calculation of the weighted statewide average composite usage sensitive intrastate switched access rates as appropriate because of

significant changes in usage sensitive intrastate switched access rates or in response to the request of affected parties, as specified in subparagraph (B) of this paragraph.

(e) **Approval of higher rates.**

(1) A COA/SPCOA holder seeking approval of usage sensitive intrastate switched access rates higher than those charged by the CCN holder in the COA/SPCOA's territory may do so by filing an application with the commission subject to the procedures outlined in Procedural Rule §22.33 of this title (relating to Tariff Filings). The COA/SPCOA's application must provide, at a minimum, the following information:

(A) Cost justification for each rate element.

(B) Rationale for implementation of the higher rate for each rate element.

(2) A COA/SPCOA holder's application must address all of the applicable switched access rate elements in subsection (b) of this section.

(3) The commission shall publish notice of the application in the *Texas Register*.

(f) **Requirement for CCN holders compliance submissions.**

(1) Within 30 days from the effective date of this section, all CCN holders must provide the following intrastate data to the commission as a compliance filing:

- (A) The current tariffed rate for originating and terminating CCL.
  - (B) The current tariffed rate for originating and terminating LS.
  - (C) The current tariffed rate for originating and terminating RIC.
  - (D) The current tariffed rate for originating and terminating TR.
  - (E) The current tariffed rate for originating and terminating TS.
  - (F) The current average per minute rate for originating and terminating TST.
  - (G) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).
  - (H) The total actual originating and terminating MOUs for the most recent 12 month period for each rate element in subparagraphs (A) – (G) of this paragraph.
- (2) Biennially all CCN holders must provide the following intrastate data to the commission as a compliance filing by June 1 of the year:
- (A) The current tariffed rate for originating and terminating CCL.
  - (B) The current tariffed rate for originating and terminating LS.
  - (C) The current tariffed rate for originating and terminating RIC.
  - (D) The current tariffed rate for originating and terminating TR.
  - (E) The current tariffed rate for originating and terminating TS.
  - (F) The current average per minute rate for originating and terminating TST.
  - (G) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).

- (H) The total actual originating and terminating MOUs for the most recent 12 month period for each rate element in subparagraphs (A) - (G) of this paragraph.

(g) **Requirements of COA/SPCOA holders compliance submissions.**

- (1) Within 90 days of the effective date of this section, each COA/SPCOA holder shall either:
  - (A) file an application under subsection (e) of this section;
  - (B) file compliance tariffs/price lists effective 125 days from the effective date of this section containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;
  - (C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that equal the weighted statewide average composite usage sensitive switched access rates established by the commission effective 125 days from the effective date of this section; or
  - (D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.
- (2) If the commission subsequently recalculates the weighted statewide average composite usage sensitive switched access rates, no later than 30 days after the commission recalculates the weighted statewide average

composite usage sensitive switched access rates, COA/SPCOA holders shall either:

- (A) file an application under subsection (e) of this section;
  - (B) file compliance tariffs/price lists effective 45 days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;
  - (C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that equal the recalculated weighted statewide average composite usage sensitive switched access rates established by the commission effective 45 days from the filing date of the compliance tariffs/price sheets; or
  - (D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.
- (3) If a COA/SPCOA holder establishes usage sensitive intrastate switched access rates pursuant to paragraphs (1)(B) or (2)(B) of this subsection and the underlying CCN holder(s) whose rates were the basis for the COA/SPCOA holder's usage sensitive intrastate switched access rates are modified, no later than 30 days after said CCN holder's rates are modified, the COA/SPCOA holder shall either:
- (A) file an application under subsection (e) of this section;

- (B) file compliance tariffs/price lists effective 45 days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;
  - (C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that equal the most recent commission established weighted statewide average composite usage sensitive switched access rates established by the commission effective 45 days from the filing date of the compliance tariffs/price sheets; or
  - (D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.
- (h) **Texas Register notice.** Notice shall be published in the *Texas Register* at the time of a CCN holder's application with the commission to revise its usage sensitive intrastate switched access rates or when the commission re-calculates the weighted statewide average composite usage sensitive intrastate switched access rates.

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 MARCH 2000, BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA DEMPSEY**