

PROJECT NO. 26955

RULEMAKING TO ESTABLISH	§	PUBLIC UTILITY COMMISSION
BUSINESS/MARKETING CODE OF	§	
CONDUCT FOR CERTIFICATED	§	OF TEXAS
TELECOMMUNICATIONS	§	
UTILITIES	§	

**PROPOSAL FOR PUBLICATION OF NEW §26.133
AS APPROVED AT THE APRIL 2, 2003 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §26.133 relating to the Business and Marketing Code of Conduct for Certificated Telecommunications Utilities (CTUs). The proposed new rule is intended to ensure that CTUs conduct fair business practices and safeguard against fraudulent, unfair, misleading, deceptive or anticompetitive practices in order to ensure quality service and a competitive market. Project Number 26955 is assigned to this proceeding.

Randy Klaus, Policy Analyst, Telecommunications Division and Katherine Farrell, Attorney, Legal and Enforcement Division, have determined that, for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Farrell and Mr. Klaus 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 to encourage a fully competitive telecommunications marketplace and promote diversity of telecommunications providers by discouraging certain activities that would tend to have an anti-competitive impact. There will be no adverse economic effect

on small businesses or micro-businesses as a result of enforcing this section. It is anticipated that there may be some economic costs incurred by persons who are required to comply with the new section as proposed. The costs incurred are likely to vary from CTU to CTU, and are difficult to ascertain. The benefits accruing from implementation of these rules, however, are expected to outweigh these costs.

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

The commission staff will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, 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 Thursday, May 29, 2003 at 10:00 a.m. in Hearing Room Gee.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments are due 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the

proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 26955.

In addition, the commission requests specific comments on the following questions:

1. What should be the proper and permissible standard of proof of a violation of any provision in this rule?
2. What proof is sufficient and allowable pursuant to PURA to meet such standards (i.e., affidavit only, valid customer complaint, live testimony, letter, etc.)?

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998, Supplement 2003) (PURA) §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and PURA §51.001 and §64.001, which grant the commission authority to make and enforce rules necessary to protect customers of telecommunications services consistent with the public interest and to encourage a fully competitive telecommunications marketplace.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 51.001 and 64.001.

§26.133. Business and Marketing Code of Conduct for Certificated Telecommunications Utilities (CTUs).

- (a) **Purpose.** The purpose of this section is to establish a code of conduct in order to implement Public Utility Regulatory Act (PURA) §51.001 and §64.001 relating to fair business practices and safeguards against fraudulent, unfair, misleading, deceptive, or anticompetitive practices in order to ensure quality service and a competitive market.
- (b) **Application.** This section applies to all certificated telecommunications utilities (CTUs), as defined in §26.5 of this title (relating to Definitions), and CTU employees. This section also applies to all authorized agents of the CTU.
- (c) **Communications.**
- (1) A CTU employee or authorized agent shall conduct communications with competitors and competitors' end-user customers with the same degree of professionalism, courtesy, and efficiency as that performed on behalf of their employer and end-user customers.
 - (2) A CTU employee or authorized agent, while engaged in the installation of equipment or the rendering of services (including the processing of an order for the installation, repair or restoration of service, or engaged in the actual repair or restoration of service) on behalf of a competitor shall not

make false or misleading statements regarding the service of any competitor and shall not promote any of the CTU's services to the competitor's end-user customers.

(d) Corporate advertising and marketing.

- (1) A CTU, CTU employee or authorized agent shall not engage in false, misleading or deceptive practices, advertising or marketing with respect to the offering of any telecommunications service.
- (2) A CTU, CTU employee or authorized agent shall not falsely state or falsely imply that the services provided by the CTU on behalf of a competitor are superior when purchased directly from the CTU.
- (3) A CTU, CTU employee or authorized agent shall not falsely state or falsely imply that the services offered by a competitor cannot be reliably rendered, or that the quality of service provided by a competitor is of a substandard nature.
- (4) A CTU, CTU employee or authorized agent shall not falsely state nor imply to any end-user customer that the continuation of any telecommunications service provided by the CTU is contingent upon ordering any other telecommunications service offered by the CTU. This section is not intended to prohibit a CTU from offering, or enforcing the terms of, any bundled or packaged service or any other form of pricing flexibility permitted by PURA and commission rules.

(e) **Information sharing and disclosure.**

- (1) Pursuant to the federal Telecommunications Act §222(a), each CTU has a duty to protect the confidentiality of proprietary information of, and relating to, other CTUs.
- (2) Pursuant to the federal Telecommunications Act §222(b), each CTU that receives or obtains proprietary information from another CTU for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts or any other unauthorized purpose.

(f) **References to other Chapter 26 substantive rules.** The following commission rules also affect the conduct of CTU employees and authorized agents. The applicability of each of the following sections is unaffected by the reference in this section and does not relieve any CTU of its responsibility to abide by other applicable commission rules.

- (1) Section 26.21 of this title (relating to General Provisions of Customer Service and Protection Rules);
- (2) Section 26.31 of this title (relating to Disclosures to Applicants and Customers);
- (3) Section 26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming"));

- (4) Section 26.37 of this title (relating to Texas No-Call List);
 - (5) Section 26.122 of this title (relating to Customer Proprietary Network Information (CPNI));
 - (6) Section 26.126 of this title (relating to Telephone Solicitation); and
 - (7) Section 26.130 of this title (relating to Selection of Telecommunications Utilities).
- (g) **Adoption and dissemination.**
- (1) Every CTU or authorized agent shall formally adopt and implement all applicable provisions of this section as company policy, or modify existing company policy as needed to incorporate all applicable provisions, within 90 days of the effective date of this section. A CTU shall provide a copy of its internal code of conduct required by this section to the commission upon request.
 - (2) Every CTU or authorized agent shall disseminate the applicable provisions of this section to all existing and new employees and agents, and take appropriate actions to both train employees and enforce compliance with this section on an ongoing basis. Every CTU shall document every employee's and agent's receipt and acknowledgement of its internal policies required by this section, and every CTU shall make such documentation available to the commission upon request.

(h) **Investigation and enforcement.**

- (1) **Administrative penalties.** If the commission finds that a CTU has violated any provision of this section, the commission shall order the utility to take corrective action, as necessary, and the utility may be subject to administrative penalties and other enforcement actions pursuant to PURA, Chapter 15.
- (2) **Certificate revocation.** If the commission finds that a CTU is repeatedly and recklessly in violation of this section, and if consistent with the public interest, the commission may suspend, restrict, or revoke the registration or certificate of the CTU.
- (3) **Coordination with the Office of the Attorney General.** The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

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 4th DAY OF APRIL BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**