

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

§26.134. Market Test to be Applied in Determining if Markets with Populations Less than 100,000 Should Remain Regulated.

- (a) **Purpose.** The purpose of this section is to establish the market tests to be applied in determining if markets with populations less than 100,000 should remain regulated.
- (b) **Application.** This section applies to all incumbent local exchange companies (ILECs), as defined in §26.5 of this title (relating to Definitions).
- (c) **Market Test.** Markets as defined in PURA §65.002 with a population of less than 100,000 shall be deregulated only if the ILEC providing services to such a market submits evidence demonstrating that the population in the market is less than 100,000 and in addition to the ILEC there are at least two competitors operating in all or part of the market that:
 - (1) are unaffiliated with the ILEC; and
 - (2) provide voice communications service without regard to the delivery technology, including through:
 - (A) Internet Protocol or a successor protocol;
 - (B) satellite; or
 - (C) a technology used by a wireless provider or a commercial mobile service provider, as that term is defined by PURA §64.201.
- (d) **Market Test Procedures.**
 - (1) An ILEC may petition the commission to deregulate a market of the ILEC that the commission previously determined should remain regulated.
 - (2) Only the ILEC may initiate a proceeding to deregulate one of its markets. Not later than the 90th day after the date the commission receives the petition, the commission shall:
 - (A) determine whether the regulated market should remain regulated; and
 - (B) issue a final order classifying the market in accordance with this section.
 - (3) If the commission deregulates a market that results in a regulated or transitioning company no longer meeting the definition of a regulated or transitioning company, the commission shall issue an order reclassifying the company as a transitioning company or deregulated company, as those terms are defined by PURA §65.002.
- (e) **Rural Exemption Waiver.** In the event that an ILEC seeking deregulation of a market area with a population of less than 100,000 has a rural exemption as provided for in 47 U.S.C §251(f)(1) "Exemption For Certain Rural Telephone Companies" of the Communications Act of 1934, a petition for the removal of that rural exemption for that market must be approved by the commission in order for the market in question not to remain regulated. In addition, any such market must meet the conditions of the market test set forth in subsection (c) of this section.
- (f) **Timing.**
 - (1) After September 1, 2011, an ILEC petitioning for deregulation of a market with a population of less than 100,000 shall submit with its petition the evidence in compliance with subsection (c) of this section and, if applicable, subsection (e) of this section.
 - (2) A market deregulated as of September 1, 2011, shall remain deregulated.
 - (3) The commission may not reregulate a market or company that has been deregulated.