

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter G. ADVANCED SERVICES.

§26.142. Integrated Services Digital Network (ISDN).

- (a) **Purpose.** The commission finds that Integrated Services Digital Network (ISDN) is an alternative to “plain old telephone service.” At this time, ISDN is not a replacement for “plain old telephone service,” but rather ISDN provides the public switched telephone network with end-to-end digital connectivity. As such, ISDN should be made available to customers at a reasonable price, should be as accessible as possible to customers who want ISDN, should meet minimum standards of quality and consistency, and should be provided in such a manner that permits the dominant certificated telecommunications utility (DCTU) a reasonable opportunity to earn a reasonable return on invested capital. The provisions of this section are intended to establish the minimum criteria for the provision of ISDN.
- (b) **Application.**
- (1) This section applies to DCTUs.
 - (2) All DCTUs providing ISDN must do so in accordance with the requirements of this section.
 - (3) An application to make ISDN available under this section shall comply with the requirements of §26.121 of this title (relating to Privacy Issues), and §26.123 of this title (relating to Caller Identification Services).
- (c) **Availability of ISDN.**
- (1) Each DCTU shall make ISDN available to all customers in exchange areas having 50,000 or more access lines as of February 22, 1995. For purposes of this section, making ISDN available means providing ISDN to a customer within 30 days of that customer’s request. Nothing in this section shall be construed as requiring a DCTU to provide ISDN to any customer prior to that customer’s request for ISDN. The requirements of this paragraph shall not be met by making ISDN available to the customers of these exchange areas using a foreign exchange (FX) arrangement.
 - (2) Each DCTU subject to the requirements of paragraph (1) of this subsection shall make ISDN available to all customers in exchange areas having less than 50,000 access lines as of February 22, 1995. The requirements of this paragraph may be met by making ISDN available to the customers of these exchange areas using a FX arrangement, if that is the most economically efficient means for the DCTU to make ISDN available.
 - (3) It is the goal of the commission that ISDN should be made available to customers in all exchange areas not included in paragraphs (1) and (2) of this subsection. To this end, all telecommunications providers are encouraged to work together to make ISDN available to the customers of the DCTUs that do not have the facilities with which to make ISDN available to their customers. In the exchange areas not included in paragraph (1) of this subsection, the commission recognizes that ISDN may be made available using a FX arrangement, if that is the most economically efficient means for the DCTU to make ISDN available.
- (d) **ISDN standards and services**
- (1) **ISDN standards.**
 - (A) At a minimum, all ISDN shall comply with National ISDN-1 and National ISDN-2 Standards as promulgated by Bellcore as of February 22, 1995.
 - (B) All ISDN shall be capable of providing end-to-end digital connectivity.
 - (2) **ISDN services.** At a minimum, the DCTU shall make available the ISDN services listed in the National ISDN-1 and National ISDN-2 Standards promulgated by Bellcore as of February 22, 1995.
 - (3) **Existing customers.** Existing customers as of February 22, 1995 may continue to receive ISDN irrespective of whether that ISDN complies with this subsection. Those customers

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may continue to receive such ISDN and shall be required to receive ISDN under the requirements of this subsection only if there is at least a 30 day customer-caused cessation of the ISDN service provided by the DCTU.

- (4) **Waiver provision.** A DCTU may request, and the presiding officer may grant for good cause, modification or waiver of paragraphs (1) and/or (2) of this subsection. Such a request may be reviewed administratively. Any request for modification or waiver of the requirements of paragraphs (1) and/or (2) of this subsection shall include a complete statement of the DCTU's arguments and factual support for that request.
- (e) **Costing and pricing of ISDN.**
- (1) **Costing of ISDN.** The cost standard for ISDN shall be the long run incremental cost (LRIC) of providing ISDN.
- (2) **Pricing of ISDN.**
- (A) Rates and terms.
- (i) The rates and terms of ISDN, including basic rate interface (BRI), primary rate interface (PRI) and other ISDN services, shall be just and reasonable and shall not be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive.
- (ii) The annual revenues for ISDN, including BRI, PRI, and other ISDN services, shall be sufficient to recover the annual long run incremental cost and a contribution for joint and/or common costs, in the second year after it is first offered under the tariffs approved pursuant to this section.
- (B) Foreign serving office (FSO) rate. Where the DCTU makes ISDN available by designating a foreign serving office (FSO) arrangement, the DCTU shall not charge an FSO rate.
- (C) Foreign exchange (FX) rate.
- (i) Except as provided in clause (ii) of this subparagraph, where the DCTU is allowed to make ISDN available by designating a FX arrangement, the DCTU may charge an FX rate. A new FX rate shall be developed specifically for ISDN and this rate shall not be usage based. If the FX rate is priced at not less than 100% of LRIC and at not more than 105% of LRIC, there shall be a rebuttable presumption that the amount of joint and/or common costs recovered is appropriate.
- (ii) Where the DCTU can make ISDN available to a customer by designating an FSO arrangement, the DCTU shall not charge a FX rate.
- (D) Pricing of BRI. To further the commission's policy that ISDN be made available at a reasonable price and that ISDN be as accessible as possible to those customers who want ISDN, BRI should be priced to recover its LRIC plus a minimal amount of joint and/or common costs. If BRI is priced at not less than 100% of LRIC and at not more than 105% of LRIC, there shall be a rebuttable presumption that the amount of joint and/or common costs recovered is appropriate.
- (E) Existing customers. Existing customers as of February 22, 1995 shall be subject to the rates set in compliance with this subsection, notwithstanding their choice to continue receiving ISDN under subsection (d) of this section.
- (3) **Pricing of ISDN for small LECs.** After a Class A DCTU is in compliance with this section, a small local exchange carrier (SLEC) as defined in §26.5 of this title (relating to Definitions) may price ISDN services at plus or minus 25% of the rates approved by the commission for that Class A DCTU providing the service within the State of Texas or at the

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rates for ISDN services approved by the commission for a similar SLEC. For the purpose of this section a similar SLEC is defined as a SLEC having a total number of access lines within 5,000 access lines of the applying SLEC.

- (f) **Requirements for notice and contents of application in compliance with this section.**
- (1) **Notice of application.** The presiding officer may require notice to the public as required by the commission's Procedural Rules, Chapter 22, Subchapter D, of this title and shall require direct notice to all existing ISDN customers. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service, the proposed rates and other terms of the service, the types of customers likely to be affected if the application is approved, the proposed effective date for the application, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136."
 - (2) **Contents of application for each DCTU not electing the SLEC pricing provisions of subsection (e)(3) of this section.** A DCTU that makes ISDN available shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the Office of Regulatory Affairs and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:
 - (A) the proposed tariff sheets to implement the requirements of subsections (c), (d), and (e) of this section as required by subsection (g) of this section;
 - (B) a statement by the DCTU describing how it intends to comply with this section, including how it intends to comply with subsections (c), (d), and (e) of this section as required by subsection (g) of this section;
 - (C) a description of the proposed service(s) and the rates, terms, and conditions under which the service(s) are proposed to be offered and an explanation of how the proposed rates and terms of the service(s) are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive;
 - (D) a statement by the DCTU of whether the application contains a rate change;
 - (E) the proposed effective date of the service;
 - (F) a statement detailing the method and content of the notice, if any, the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the DCTU's notice proposal is reasonable and that the DCTU's notice proposal complies with applicable law;
 - (G) a copy of the text of the notice, if any;
 - (H) a long run incremental cost study (LRIC) supporting the proposed rates;
 - (I) projections of revenues, demand, and costs demonstrating that in the second year after the ISDN service is first offered under the tariffs approved pursuant to this section, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint and/or common costs;
 - (J) the information required by §26.121 and §26.123 of this title;
 - (K) a statement specifying the exchanges in which the DCTU proposes to offer ISDN, the exchanges in which the DCTU proposes to offer ISDN using an FSO arrangement, the exchanges in which the DCTU proposes to offer ISDN using an

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- FX arrangement, and the exchanges in which the DCTU does not propose to offer ISDN; and
- (L) any other information which the DCTU wants considered in connection with the commission's review of its application.
- (3) **Contents of application for a SLEC.** A SLEC that makes ISDN available and elects to price ISDN services under subsection (e)(3) of this section shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the Office of Regulatory Affairs and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:
- (A) contents of application required by paragraph (2)(A), (B), (D), (E), (F), (G), (J), (K), and (L) of this subsection;
- (B) a description of the proposed service(s) and the rates, terms, and conditions under which the service(s) are proposed to be offered and an affidavit from the general manager or an officer of the SLEC approving the proposed ISDN service;
- (C) a notarized affidavit from a representative of the SLEC:
- (i) verifying the number of access lines, including the access lines of affiliates of such SLEC providing local exchange telephone service within the state, the SLEC has in service in the State of Texas;
- (ii) verifying that the rates have been determined by the SLEC independently;
- (iii) including a statement affirming that the rates are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory; subsidized directly or indirectly by regulated monopoly services; or predatory, or anticompetitive; and
- (D) an explanation demonstrating that the rates for the proposed ISDN service are within the guidelines provided by subsection (e)(3) of this section; and
- (E) projections of the amount of revenues that will be generated by the ISDN service.
- (g) **Timing of and requirements for each DCTU's compliance with this section.**
- (1) Each DCTU that is required to make ISDN available under subsection (c)(1) and (2) of this section shall file with the commission an application as described in subsection (f) of this section. Pursuant to subsection (f)(2)(A) and (B) of this section, the DCTU shall show its compliance with the requirements of:
- (A) subsection (c)(1) and (2) of this section;
- (B) subsections (d)(1)(A) and (B), (d)(2) and (d)(3) of this section or request a waiver pursuant to subsection (d)(4) of this section and provide sufficient justification for the good cause exception; and
- (C) subsection (e)(2)(B), (C), and (D) of this section.
- (2) Each DCTU having ISDN tariffs in effect as of February 22, 1995 and that is not subject to paragraph (1) of this subsection shall file with the commission an application as described in subsection (f) of this section. Pursuant to subsection (f)(2)(A) and (B) of this section, the DCTU shall show its compliance with the requirements of:
- (A) subsections (d)(1)(A) and (B), (d)(2) and (d)(3) of this section or request a waiver pursuant to subsection (d)(4) of this section and provide sufficient justification for the good cause exception; and
- (B) subsection(e)(2)(B), (C), and (D) of this section.
- (3) Rates proposed for services pursuant to paragraphs (1)(B) and (2)(A) of this subsection that are not tariffed as of the effective date of this section and rates proposed under paragraphs (1)(C) and (2)(B) of this subsection shall comply with the requirements of subsections (e)(1), (2)(A) and (E) of this section.

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- (4) Each DCTU offering ISDN after the effective date of this section shall file with the commission an application as described in subsection (f) of this section. Pursuant to subsection (f)(2)(A) and (B) of this section the DCTU shall show its compliance with the requirements of:
 - (A) subsections (d)(1)(A) and (B) and (d)(2) of this section or request a waiver pursuant to subsection (d)(4) of this section and provide sufficient justification for the good cause exception; and
 - (B) subsection (e)(1) and (2) of this section for each DCTU not electing the SLEC pricing provisions of subsection (e)(3) of this section or subsection (e)(3) of this section for a SLEC.
- (h) **Commission processing of application.**
 - (1) **Administrative review.** An application considered under this section may be reviewed administratively unless the DCTU requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.
 - (A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later.
 - (B) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.
 - (C) While the application is being administratively reviewed, the staff of the Office of Regulatory Affairs and the staff of the Office of Public Utility Counsel may submit requests for information to the DCTU. Six copies of all answers to such requests for information shall be filed with Central Records and one copy shall be provided the Office of Public Utility Counsel within ten days after receipt of the request by the DCTU.
 - (D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the staff of the Office of Regulatory Affairs written comments or recommendations concerning the application. The staff of the Office of Regulatory Affairs shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application.
 - (E) No later than 35 days after the effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the DCTU's application.
 - (2) **Approval or denial of application.** The application shall be approved by the presiding officer if the proposed ISDN offered by the DCTU complies with each requirement of this section. If, based on the administrative review, the presiding officer determines that one or more of the requirements not waived have not been met, the presiding officer shall docket the application.
 - (3) **Standards for docketing.** The application may be docketed pursuant to Procedural Rule §22.33(b) of this title (relating to Tariff Filings).
 - (4) **Review of the application after docketing.** If the application is docketed, the operation of the proposed rate schedule shall be automatically suspended to a date 120 days after the

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applicant has filed all of its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

- (5) **Interim rates.** For good cause, interim rates may be approved after docketing. If the service requires substantial initial investment by customers before they may receive the service, interim rates shall be approved only if the DCTU shows, in addition to good cause, that it will notify each customer prior to purchasing the service that the customer's investment may be at risk due to the interim nature of the service.
- (i) **Commission processing of waivers.** Any request for modification or waiver of the requirements of this section shall include a complete statement of the DCTU's arguments and factual support for that request. The presiding officer shall rule on the request expeditiously.
- (j) **Limitation on filings and postings.** Notwithstanding any provision in this section to the contrary, the commission may not require a transitioning company to obtain advance approval for a filing with the commission or a posting on the company's Internet website that adds, modifies, withdraws, or grandfathers services under this section.