

The Public Utility Commission of Texas (commission) proposes new §26.171 relating to Small Incumbent Local Exchange Company Regulatory Flexibility. The proposed new rule will replace §23.94 of this title (relating to Small Local Exchange Carrier Regulatory Flexibility). Project Number 17709 is assigned to this proceeding.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or re-adopting the rule continues to exist.

The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has been established for all commission substantive rules applicable to

telecommunications service providers. The duplicative sections of Chapter 23 will be proposed for repeal as each new section is proposed for publication in the new chapter.

General changes to rule language:

The proposed new rule reflects different section, subsection, and paragraph designations due to reorganization of the commission's rules. Citations to the Public Utility Regulatory Act (PURA) have been updated to conform to the Texas Utilities Code.

Other changes specific to each section:

The commission proposes to add language in subsection (a)(1) to reference PURA, Chapter 53, Subchapter G relating to Special Procedures for Small Local Exchange Companies and Cooperatives. The new rule is based upon the provisions of Subchapter G. Subchapter G, §53.304(a) allows a small incumbent local exchange company (ILEC) to offer extended local calling service or a new service on an optional basis or to make a minor change in its rates or tariffs.

The commission proposes to refine the rule to make it more consistent with PURA, Chapter 53, Subchapter G. To achieve greater consistency between the rule and PURA, the following changes are proposed. First, subsection (a)(2), which describes the application of the rule, is clarified to state that the rule is not applicable to cooperative corporations partially deregulated under PURA, Subchapter H, as specified in PURA §53.302. In addition, subsection (a)(2) is refined to conform to PURA §53.303. Second, subsection (c), which describes filing procedures, is modified to mirror the services identified in PURA §53.304(a). Third, subsection (f)(3) is added to the rule to identify the applicable rate-setting

principles required by PURA §53.307. Fourth, subsection (g) of the rule is modified to state that the commission may suspend the effective date of an application, consistent with PURA §53.306(b). Fifth, subsection (i) of the rule is eliminated to be consistent with PURA §53.304(a)(1), which identifies companies eligible to file under PURA, Chapter 53, Subchapter G, and with PURA §53.302, which identifies companies not eligible to file under Subchapter G. Sixth, references to "experimental services" are deleted from §26.171 because there is no mention of experimental services in PURA, Chapter 53, Subchapter G. Specifically, references to 'experimental services' are deleted from subsection (b)(2), subsection (c), subsections (d)(1) and (d)(3), and subsections (e), (e)(1) and (e)(2). Small ILECs may offer experimental services via Substantive Rule §26.209 of this title (relating to New and Experimental Services). Substantive Rule §26.209 was created to implement the provisions of PURA §52.058, General Provisions Relating to New or Experimental Services or Promotional Rates.

The commission proposes to delete definitions in subsection (b) that are duplicated in Substantive Rule §26.5 of this title (relating to Definitions).

The commission proposes to delete the notice requirement for a rate decrease in §23.94(d)(1)(B)(i) and (d)(3). The commission removes the burden to publish notice to benefit the citizens of Texas by encouraging small ILECs to initiate rate decreases.

Charles Johnson, Attorney, Office of Regulatory Affairs, has 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. Mr. Johnson has 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 facilitate the ability of small incumbent local exchange companies to offer technologically advanced services that are generally available in metropolitan areas from large incumbent local exchange companies. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed. Mr. Johnson has also determined that for each year of the first five years the proposed section is in effect there should be no affect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The *Texas Register* will publish the new rule as all new text. Persons who desire a copy of the proposed new rule as it reflects changes to existing §23.94 may obtain a redlined version from the commission's Central Records under Project Number 17709. 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 30 days after publication in the *Texas Register*. The commission invites specific comments regarding the costs and benefits of implementing the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The commission also invites specific comments regarding the Section 167 requirement as to whether the reason for adopting or readopting the rule continues to exist. All comments should refer to Project Number 17709.

This new rule 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. Specifically, PURA §53.305 requires a small incumbent local exchange company to provide notice in the manner prescribed by the commission and PURA §53.306 grants the commission authority to review changes proposed under Subchapter G.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §§53.301 - §53.308.

§26.171. Small Incumbent Local Exchange Company Regulatory Flexibility.

(a) **Purpose and application.**

- (1) **Purpose.** The purpose of this section is to establish procedures and pricing guidelines that small incumbent local exchange companies (ILECs), because of their special characteristics, may use to expedite commission approval of services and rates in accordance with the Public Utility Regulatory Act (PURA), Chapter 53, Subchapter G. Through this section, the commission encourages the provision of adequate and efficient telecommunications service by facilitating the ability of small ILECs' to offer to subscribers those technologically advanced services that are generally available in metropolitan areas from large ILECs.
- (2) **Application.** This section applies to any small ILEC as that term is defined in §26.5 of this title (relating to Definitions). This section does not apply to a cooperative corporation partially deregulated under PURA, Chapter 53, Subchapter H. Nothing in this section precludes a small ILEC from offering a new service or proposing a change in rates under other applicable sections of the PURA. Nothing in this section prohibits the commission from conducting a review in accordance with PURA, Chapter 53, Subchapter D. Notwithstanding limitations contained within §26.121 of this title (relating to Privacy Issues), §26.121 of this title applies to statements of intent filed under this section.

- (b) **Definition.** The term "affected customer" when used in this section means a customer that is in the class of customers, and in the exchange or exchanges, affected by the proposed action filed in accordance with the provisions of this section.
- (c) **Filing.** By following procedures outlined in this section, a small ILEC may offer extended local calling service or a new service on an optional basis or make a minor change in its rates or tariffs.
- (1) **Statement of intent.** At least 91 calendar days before the effective date of the proposed change, the small ILEC shall file six copies of a statement of intent with the commission and shall serve a copy upon the Office of Public Utility Counsel. Such statement of intent shall include:
- (A) a copy of the notice a small ILEC will provide as required by subsection (d) of this section;
 - (B) a sufficient description of how notice will be provided to allow the presiding officer to rule on the sufficiency of the notice;
 - (C) any request for a good cause waiver to the requirements of this section. The statement of intent shall provide sufficient justification for the good cause exception to allow the presiding officer to rule on the request;
 - (D) a copy of the resolution adopted by the small ILEC's board of directors approving the proposed change;
 - (E) the proposed effective date of the change;

- (F) a description of the services and the category of customers affected by the proposed change;
 - (G) a copy of the proposed tariff;
 - (H) the number of access lines the small ILEC and each of its affiliates has in service in the state;
 - (I) the amount by which the small ILEC's total regulated intrastate gross annual revenues will increase or decrease as a result of the proposed change, and, if the proposal is for a rate change, sufficient information to demonstrate that the proposed change is a minor change;
 - (J) a statement affirming that the rates are just and reasonable, are not unreasonably preferential, prejudicial, or discriminatory, and are sufficient, equitable, and consistent in application to each class of customers;
 - (K) information required by §26.121 of this title; and
 - (L) any other information the small ILEC wants considered in connection with the statement of intent.
- (2) **Response to the statement of intent.** No later than ten calendar days after the small ILEC files the statement of intent, the presiding officer assigned to the project shall notify the small ILEC of any deficiencies in the statement of intent, whether the proposed notice is approved, and whether a waiver request, if any, is granted.
- (d) **Notice.** A small ILEC satisfies the notice requirements in paragraphs (1)-(5) of this subsection by completing notice no later than 61 days before the proposed effective date of the tariff

sheets. If notice is not completed as required, the proposed effective date shall be postponed for as many days as completion of notice is delayed.

- (1) **Extended local calling service or new service.** For extended local calling service or for a new service, either two weeks published notice in a newspaper of general circulation in each telephone exchange affected by the statement of intent or direct mail notice to each affected customer shall be required or, in the case of a cooperative, publication of notice in the cooperative's newsletter and direct mail notice to affected nonmember customers shall be required.
- (2) **Rate increases.** For a rate increase, notice shall be published for four weeks in a newspaper of general circulation in each telephone exchange affected by the rate increase and direct mail notice shall be provided to each affected customer.
- (3) **Good cause exceptions.** The presiding officer may require for good cause that notice be provided in addition to notice proposed by the small ILEC or may waive for good cause the publication of notice requirement prescribed by this section for a proposed new service .
- (4) **Contents of notice.** Each notice must include:
 - (A) a description of the service(s) affected by the proposed change;
 - (B) a list of rates affected by the statement of intent and how the rates affect each category of affected customers;
 - (C) the proposed effective date of the change;

- (D) an explanation of the affected customer's right to petition the commission for review under subsection (g)(2) of this section, including the number of affected persons required to petition before commission review will occur and the date by which the petition must be received by the commission, which date must be 30 calendar days following the completion of notice;
 - (E) an explanation of the affected customer's right to obtain from the small ILEC a copy of the proposed tariff and instructions on how to do so; and
 - (F) the amount by which the small ILEC's total regulated intrastate gross annual revenues will increase as a result of the proposed change.
- (5) **Proof of notice.** Within seven calendar days following completion of notice, the small ILEC or a representative of the small ILEC shall file one or more affidavits establishing proof of direct mail notice and published notice required by this subsection and shall file a copy of each published notice.
- (6) **Texas Register notice.** Following approval of the notice by the presiding officer, the commission shall submit the notice to the Texas Register for publication.
- (e) **New service availability.** If the statement of intent concerns a new service, as defined in §26.5 of this title, that will not be offered systemwide initially, the small ILEC shall explain separately for each telephone exchange why the new service cannot be offered systemwide.

- (f) **Rates and revenues.** The following requirements shall apply to a statement of intent filed under this section:
- (1) **Minor change.** The proposed rate change must be a minor change as defined in §26.5 of this title.
 - (2) **Limitation on rate increases.** Except for good cause shown, a rate shall not be increased more than once in any 12-month period.
 - (3) **Rate-setting principles.** A rate established under this section must be in accordance with the rate-setting principles of PURA, Chapter 53, except that a small ILEC may provide to its board members, officers, employees, or agents free or reduced rates for services.
- (g) **Review.**
- (1) **Effective date.** A proposed tariff considered under this section shall be effective on the date proposed by the small ILEC, unless the effective date is suspended.
 - (2) **Suspension.** The effective date of a proposed tariff may be suspended up to 150 calendar days to provide the commission an opportunity to review the statement of intent. Additionally, within 35 calendar days of the filing of the proof of completion of notice, the presiding officer shall suspend the effective date if within 30 calendar days following completion of notice:
 - (A) the commission receives a complaint(s) relating to the proposed change signed by the lesser of 5.0% or 1,500 of the affected local service customers to which

the proposed change applies. Five percent shall be calculated based upon the total number of affected customers of record as of the calendar month preceding receipt of the complaint; or

- (B) the commission receives a complaint relating to the proposed change from an affected intrastate access customer or group of affected intrastate access customers that in the preceding 12 months the small ILEC billed and from which the small ILEC received more than 10% of its total regulated intrastate gross access revenues; or
- (C) the proposed change is not a minor change; or
- (D) the proposed change is not consistent with the commission's written substantive policies; or
- (E) the small ILEC has not complied with the procedural requirements of this section.

- (h) **Docketing.** Following suspension of the effective date of the proposed tariff, the presiding officer shall provide a small ILEC a reasonable opportunity to modify its statement of intent to address conditions that exist, if any, under subsection (g)(2) of this section. If conditions under subsection (g)(2) are not resolved during the suspension period, the presiding officer may docket the project. If the project is docketed, the effective date of the proposed tariff shall be automatically suspended and the commission shall review the statement of intent in accordance with the commission's procedural rules applicable to docketed cases.

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 26th DAY OF OCTOBER, 1999 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**