

The Public Utility Commission of Texas (commission) proposes new §26.172, relating to Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives. The proposed new rule will replace §23.95 of this title (relating Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives). Project Number 17709 has been 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 section reflects different section, subsection, and paragraph designations due to the reorganization of the rules. Citations to the Public Utility Regulatory Act have been updated to conform to the Texas Utilities Code throughout the sections and citations to other sections of the commission's rules have been updated to reflect the new section designations. The *Texas Register* will publish this section as all new text. Persons who desire a copy of the proposed new section as it reflects changes to the existing section in Chapter 23 may obtain a redlined version from the commission's Central Records under Project Number 17709.

*Other changes specific to each section:*

Section 23.95(c)(9), (c)(10), (d)(9), and (d)(10) have not been included in proposed new §26.172. The sections relate to the use of a generic ballot and generic balloting instructions. The commission does not believe the use of a generic ballot or generic balloting instruction is necessary when a telephone cooperative is voting on its status of deregulation. The modification also removes the telephone cooperatives' requirement to file with the commission any alternative ballot language or alternative voting instructions.

Subsection (g) has been added to the rule. The subsection, titled "Reporting requirements," requires cooperatives to notify the commission when it votes to deregulate or reverse its

deregulation. This reporting requirement will assist the commission in compiling an accurate list of telephone cooperatives that are deregulated.

James Ezell, assistant general counsel, Office of Regulatory Affairs-Legal Division, 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.

James Ezell 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 provide to all of the state's citizens adequate and efficient telecommunications service by facilitating the small incumbent local exchange carriers' abilities to offer, in a more timely manner, to subscribers those technologically advanced services that are 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.

James Ezell 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.

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. 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. 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; and specifically, PURA §53.306 which 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.

**§26.172. Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives.**

- (a) **Purpose.** A cooperative seeking to partially deregulate or to reverse partial deregulation shall utilize the voting procedures required in this section.
- (b) **Definition.** The term "majority vote" shall mean a vote of more than 50% of the valid ballots returned by the cooperative's members.
- (c) **Balloting.** Balloting by a cooperative shall comply with the requirements in this subsection.
  - (1) A ballot and a postage-paid return envelope, or a ballot on a postage-paid postcard addressed to the cooperative, and instructions shall be provided to each member of the cooperative.
  - (2) Materials required in paragraph (1) of this subsection may be provided as bill inserts or as a separate mailing.
  - (3) The ballot shall be printed as a separate form on paper that is a different color from any other paper contained in the same mailing and shall be contained on one page or postcard.
  - (4) Ballots shall be written in English and in Spanish if §26.26 of this title (relating to Spanish Language Requirements) is applicable.
  - (5) **The ballot shall be entitled:**

- (A) "BALLOT SEEKING THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one for partial deregulation; or
  - (B) "BALLOT SEEKING TO REVERSE THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one to reverse partial deregulation.
- (6) **Each ballot shall:**
- (A) provide brief instructions to mark with an "X" either the box "FOR" or "AGAINST" the action that is the subject of the balloting;
  - (B) provide in boldface type that is larger than surrounding text the date certain by which the ballot must be postmarked for tabulation; and
  - (C) contain a box labeled "FOR Authorizing the Partial Deregulation of the (Name of the Cooperative)" and a box labeled "AGAINST Authorizing the Partial Deregulation of the (Name of the Cooperative)" if the ballot is one to partially deregulate, or contain a box labeled "FOR Authorizing the Reversal of Partial Deregulation of the (Name of the Cooperative)" and a box labeled "AGAINST Authorizing the Reversal of Partial Deregulation of the (Name of the Cooperative)" if the ballot is one to reverse partial deregulation.
- (7) Ballots must include the statement "By signing this ballot, I affirm that I am the member to whom this ballot was addressed" and must provide, following the statement, lined spaces for the member to provide his or her printed name, address, telephone number, and signature.

- (8) Ballots shall not contain any statement regarding how a member should cast a vote on the action that is the subject of the balloting.
  
- (d) **Instructions for balloting.** Instructions for balloting by a cooperative shall comply with the requirements in this subsection.
  - (1) Instructions for balloting shall accompany each ballot provided to a member of the cooperative.
  - (2) Instructions shall be printed as a form separate from the ballot and any other insert provided in the same mailing and shall be provided in English and in Spanish, if §26.26 (relating to Spanish Language Requirements) is applicable.
  - (3) **Instructions shall be entitled:**
    - (A) "INSTRUCTIONS FOR BALLOT SEEKING THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one for partial deregulation; or
    - (B) "INSTRUCTIONS FOR BALLOT SEEKING TO REVERSE THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one to reverse partial deregulation.
  - (4) **Instructions shall explain in plain language the meaning of:**
    - (A) partial deregulation and the effects of partial deregulation, if the vote is one to partially deregulate; or
    - (B) reversal of partial deregulation and the effects of reversal of partial deregulation, if the vote is one to reverse partial deregulation.

- (5) Instructions must state in boldface type that is larger than surrounding text the date certain by which the ballot must be postmarked for tabulation.
  - (6) Instructions shall explain that a ballot must be returned for tabulation via U.S. mail.
  - (7) Instructions shall not contain any statement regarding how a member should cast a vote on the action that is the subject of the balloting.
  - (8) Instructions shall define majority vote and shall explain that a majority vote is required in order to achieve the action that is the subject of the balloting.
- (e) **Tabulation of ballots.**
- (1) **A ballot will be tabulated if it:**
    - (A) contains a mark in the box either "FOR" or "AGAINST" the action being sought;
    - (B) is postmarked for tabulation within 45 days following the date that ballots are mailed to members; and
    - (C) is returned via U.S. mail.
  - (2) **The following votes will not be tabulated:**
    - (A) a ballot for which neither a "FOR" nor an "AGAINST" vote is cast;
    - (B) a ballot for which both a "FOR" and an "AGAINST" vote is cast;
    - (C) a ballot that represents a second vote for the member;
    - (D) a ballot for which the procedures required by this section are not followed;

- (E) a ballot for which the envelope or postcard bears a postmark later than the 45th day following the date the ballot or postcard was mailed to the member.
- (F) a ballot that represents a vote from a non-member customer.
- (G) a ballot which represents a proxy vote.
- (H) a ballot for which the envelope or postcard bears no legible postmark from the U.S. Postal Service unless it is received by the cooperative via the U.S. mail within 45 days following the date the ballot or postcard was mailed to the member.

(f) **Retention of Ballots.**

- (1) A cooperative shall retain for 90 days after the end of the 45 day voting period all ballots and envelopes returned by the members in the voting process.
- (2) During the 90 day retention period a cooperative shall produce the ballots and envelopes to the commission for inspection if so requested by the commission.

- (g) **Reporting Requirement.** Any telephone cooperative deregulated prior to the effective date of this section shall file a letter with the commission within 30 days from the **effective** date of this section. Any telephone cooperative deregulated or reversing its deregulation after the effective date of this section shall file a letter with the commission within 30 days of deregulation or reversal of deregulation. The letter shall state whether the cooperative is partially deregulating or reversing deregulation, the date of the change,

and whether its members approved the change. The letter shall be filed in Project Number 21122.

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 13th DAY OF AUGUST 1999 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**