

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

§26.209. New and Experimental Services.

- (a) **Application.** This section applies to dominant certificated telecommunications utilities (DCTUs), as that term is defined by §26.5 of this title (relating to Definitions). In addition, the services to which this section applies are those that are a subset of a service for which the utility is dominant.
- (b) **Purpose.** The procedures in this section establish the process by which DCTUs obtain approval to offer new and experimental services.
- (c) **Filings requesting approval of new and experimental services.** A DCTU may request approval of a new or experimental service by following the procedures outlined in 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 to the Office of Public Utility Counsel. Nothing in this section precludes a DCTU from utilizing other provisions of this title to seek approval to offer such services, however, the commission or the presiding officer, in its discretion, may require any application for a new or experimental service to comply with the requirements of this section. Not later than 30 days prior to the proposed effective date of the new or experimental service, the DCTU shall file with the commission and the Office of Public Utility Counsel an application containing the following information:
 - (1) a statement of intent by the DCTU to use the procedures established in this section;
 - (2) a description of the proposed service and the rates, terms and conditions under which the service is proposed to be offered;
 - (3) the proposed effective date of the service;
 - (4) a statement detailing the type of 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 in compliance with §26.208(c) of this title (relating to General Tariff Procedures);
 - (5) a copy of the text of the notice, if any;
 - (6) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service. The commission shall allow an incumbent local exchange carrier (LEC) that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC. The application shall also include projections of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, 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. Capital costs related to providing the service shall be separately identified in these projections. The application shall also include all workpapers and supporting documentation relating to computations or assumptions contained in the application.
 - (7) If the application concerns a service which will not initially be offered system-wide, the application shall separately explain for each exchange in which the service will not be offered why the DCTU's facilities in that exchange do not have the technical capability to handle the service. The application shall also include an implementation plan which shall specify the DCTU's plans for making the service available in such exchanges within a reasonable time after receipt by the LEC of a bona fide request for the service. The DCTU shall also specify in its plan what requirements must be met for a request for service to be considered bona fide. This requirement does not apply to experimental services, but the DCTU shall specify the exchanges in which it proposes to offer the experimental service.

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§26.209(c) continued

- (8) If the application concerns an experimental service for which a range of rates is proposed, the application shall state the range of rates requested and show in detail how the upper and lower rates in that range relate to the long run incremental cost of the service.
 - (9) Any other information which the DCTU wants considered in connection with the commission's review of its application.
- (d) **Modifications and waivers of requirements.** In its application a DCTU may request and the commission or the presiding officer may grant for good cause the modification or waiver of requirements set forth in this section concerning system-wide rates; system-wide provision of service; the one-year maximum period for offering an experimental service; the one-year, cost-related prove-in period; or long run incremental cost support. Subsequent to the introduction of an experimental service, a DCTU may also apply for modification of the period initially approved for offering the service. However, no experimental service shall be approved for more than two years, no prove-in period shall be extended beyond two years and, in lieu of incremental cost information, the DCTU must provide other cost support demonstrating that the proposed rates for the service will recover its costs plus a contribution within the required period. A waiver of the incremental cost standard shall only be granted if the presiding officer determines that such a standard imposes an unreasonable burden on a DCTU which has inadequate resources to produce the required cost information to meet that standard and if the presiding officer determines that an appropriate alternative cost standard is available. Any request for modification or waiver of these requirements shall include a complete statement of the DCTU's arguments supporting that request. The presiding officer shall rule on the waiver request within 15 days of the filing of the request. A copy of the presiding officer's ruling shall be provided to the commission, and the commission may overrule any waiver granted by a presiding officer within 15 days of the presiding officer's ruling.
- (e) **Requirements for proposed new and experimental services.** Unless waived or modified by the presiding officer as provided under subsection (d) of this section, the following requirements shall apply to any new service approved under this section:
- (1) Such new service shall be offered at the same price throughout the DCTU's system.
 - (2) The service shall also be offered in every exchange served by the DCTU, except exchanges in which the DCTU's facilities do not have the technical capability to handle the service.
 - (3) The rates for a new service shall be designed to generate sufficient annual revenues to recover the annual long run incremental cost of the service, including a contribution for joint and/or common costs, in the second year after it is first offered. Requirements related to system-wide pricing and system-wide provision of service do not apply to a proposed experimental service.
 - (4) An experimental service approved under this section may be flexibly priced provided that the minimum rate in the range of rates shall be above the long run incremental cost of providing the service. The DCTU may make a change in rates within an approved range of rates upon such notice to customers and the commission as the presiding officer may require. In addition, before discontinuing provision of an experimental service, the DCTU shall give such notice of the discontinuation as the presiding officer may require.
- (f) **Interim rates.** For good cause, interim rates may be approved after docketing. However, interim rates shall not be approved if the new service requires substantial initial investment by customers before they may receive the service unless the commission requires the DCTU to notify every customer prior to purchasing the service that this investment is at risk due to the interim nature of

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the service and the rates for the service and unless the DCTU makes appropriate provisions to protect its customers from the risks of the DCTU's failure to notify.

- (g) **Reporting requirements.** If a new service is approved based on either an administrative review or a docketed proceeding, the DCTU shall file with the commission tracking reports showing the actual revenues; demand and related expenses for the service; its progress on the implementation plan, if any such plan was approved by the commission; and such other information as may be required by the commission (or, in connection with an administrative review, by the presiding officer) or requested by the commission staff. One such report shall be due nine months after the service is first offered and shall contain information for at least the first six months the service was offered. The second such report shall be filed 12 months after the service is first offered and shall contain information for at least the first nine months the service was offered. The third such report shall be filed no later than 15 months after the service is first offered and shall contain information for at least the first 12 months the service was offered. Such reporting requirements shall be waived for experimental services of one year's duration or less, but the DCTU shall retain in its record such information related to revenues, demand and expenses and shall submit such information with any subsequent request to make a formerly experimental service a permanent new service.
- (h) **Subsequent review of the service.** Except as prohibited by the Public Utility Regulatory Act Chapters 58 or 59, if a new or experimental service is approved under the procedures set forth in this section, the commission staff or any affected person may file with the commission a petition seeking modification of the rates or terms under which the service is offered or withdrawal of the service.
- (i) **Provisions for SLECs.** Notwithstanding §26.208(e) of this title (relating to General Tariff Procedures) and subsections (c),(d), and (e) of this section, the provisions of this subsection apply to a small local exchange company (SLEC) as defined in §26.5 of this title (relating to Definitions). If the presiding examiner determines that the SLEC is seeking to adopt as its rates for its new or experimental services the rates for the same or substantially similar services offered by a incumbent local exchange company:
 - (1) the SLEC's proposed rates and terms of the service will be deemed not to be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and
 - (2) a waiver of the incremental cost standard shall be granted.