

The Public Utility Commission of Texas adopts new §26.223 relating to Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates with changes to the proposed text as published in the April 7, 2000 issue of the *Texas Register* (25 TexReg 2895). The purpose of the new rule is to implement the Public Utility Regulatory Act (PURA) §52.155, which addresses the usage sensitive intrastate switched access rates that can be charged by holders of certificates of operating authority (COA) and service provider certificate of operating authority (SPCOA) holders. The new rule is adopted under Project Number 21174.

The commission received comments on the proposed new rule from AT&T Communications of the Southwest, Inc. (AT&T) and Southwestern Bell Telephone (SWBT). AT&T also filed reply comments. SWBT concurred with AT&T's comments in their entirety. At the public hearing held on May 22, 2000, AT&T and SWBT reiterated their written comments.

Commentors in favor of adoption of the rule are AT&T and SWBT.

Subsection (b) of this section lists the usage sensitive rate elements that apply to this section. SWBT suggests that all references to "originating and terminating residual interconnection charge (RIC)" should be deleted from this subsection and the remainder of this section. SWBT states that there are no local exchange carriers in Texas that charge a RIC.

The commission agrees with SWBT and deletes all references to originating and terminating RIC. If the RIC were created in the future as a result of federal or state regulatory action, the language in subsections (b) and (f) would allow for the inclusion of the RIC.

Subsection (d)(1) establishes the methodology the commission will use to develop the weighted statewide average composite usage sensitive intrastate switched access rates for each rate element in subsection (b) of this section. AT&T is concerned that this creates unnecessary ambiguities because subsection (b) does not purport to identify the comprehensive list of rate elements. In order to prevent misinterpretation of the section, AT&T suggests that "for each rate element in subsection (b) of this section" be replaced with "separately for each originating and for each terminating rate element category in subsection (f)(1)(A)-(G)."

The commission agrees with AT&T's rationale and makes the appropriate change to subsection (d)(1).

Subsection (e) establishes the process by which a COA/SPCOA holder may seek approval to charge usage sensitive intrastate switched access rates higher than those charged by the certificate of convenience and necessity (CCN) holder in the COA/SPCOA's territory. AT&T asserts that this subsection may result in a competitive local exchange company (CLEC) charging intrastate switched access rates that meet the specifics, are at or below the CCN holder's rates, but then imposing additional rate elements not charged by the CCN holder. AT&T requests that subsection (e)(1) be modified to address this concern. AT&T suggested modifications in its initial comments and then provided a modified proposal in its reply

comments. AT&T suggests that subsection (e)(1) be revised to read, "A COA/SPCOA holder seeking approval of *originating and/or terminating* usage sensitive intrastate switched access rates *whose elements are individually and/or in the aggregate higher than the individual and/or aggregate of the originating and/or terminating usage sensitive switched access rate elements* charged by the CCN holder in the COA/SPCOA's territory may do so by filing an application with the commission subject to the procedures outlined in Procedural Rule §22.33...."

The commission agrees with AT&T's rationale; however, the commission does not adopt AT&T's revisions. Instead, the commission makes changes that better address the concern AT&T expressed. Subsections (c) and (e)(1) have been revised to prevent a COA/SPCOA holder from charging intrastate switched access rates that are in the aggregate higher than the switched access rates charged by the prevailing CCN holder because the COA/SPCOA holder chose to impose additional rate elements not charged by the CCN holder. In addition, the commission adds language to subsections (g)(1)(C), (g)(2)(C), and (g)(3)(C) to clarify that a COA/SPCOA holder has the flexibility to charge access rates that are either equal to or less than the commission established weighted statewide average composite usage sensitive intrastate switched access rates.

AT&T also believes subsection (e) should be modified to capture the commission's decisions on the cost standards that are appropriate to establish cost-based telecommunications services. In order to eliminate the need to hash out in each proceeding what standard is required, AT&T proposes that the subsection identify the standards for "cost justification" as those already adopted in Substantive Rule §26.201 relating to Cost of Service. AT&T proposes that subsection

(e)(1)(A) be revised to incorporate the clarification. AT&T proposes a modification to subsection (e)(1)(A) to read, "Cost justification consistent with the requirements of Substantive Rule §26.201 for each rate element."

The commission rejects AT&T's recommendation to include a specific cost standard in the rule at this time. The issue of an appropriate cost standard for COA/SPCOA holders is best addressed on a case-by-case basis in individual proceedings. The commission may revisit this issue in the future.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA), which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §52.155 which grants the commission all jurisdiction necessary to enforce the prohibition of excessive access charges.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §52.155.

§26.223. Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates.

- (a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §52.155, which addresses the usage sensitive intrastate switched access rates that can be charged by a telecommunications utility that holds a certificate of operating authority (COA) or a service provider certificate of operating authority (SPCOA) (COA/SPCOA).
- (b) **Applicability.** This section applies to usage sensitive intrastate switched access rates of COA/SPCOA holders, including but not limited to, originating and terminating carrier common line (CCL), originating and terminating local switching (LS), originating and terminating switched transport (TR), originating and terminating tandem switching (TS), and originating and terminating tandem switched transport (TST).
- (c) **Requirements for COA/SPCOA usage sensitive intrastate switched access rates.** A telecommunications utility that holds a COA or a SPCOA may not charge a higher aggregate amount, including any rate elements not charged by the holder of the certificate of convenience and necessity (CCN), for originating or terminating usage sensitive intrastate switched access than the prevailing rates charged by the CCN holder in whose territory the call originated or terminated unless:
 - (1) the commission specifically approves the higher rate; or

- (2) subject to commission review, the telecommunications utility establishes statewide average composite originating and terminating usage sensitive intrastate switched access rates based on a reasonable approximation of traffic originating and terminating between all holders of certificates of convenience and necessity in this state.
- (d) **Statewide average composite rates.** The commission shall establish weighted statewide average composite usage sensitive intrastate switched access rates within 60 days of the effective date of this section. Weighted statewide average composite usage sensitive intrastate switched access rates will be developed based upon the submission of CCN holders' compliance filings pursuant to subsection (f) of this section.
- (1) **Methodology.** The commission shall employ the following methodology for development of the weighted statewide average composite usage sensitive intrastate switched access rates separately for each originating and for each terminating rate element category in subsection (f)(1)(A)-(F):
 - (A) Each CCN holder's individual rate elements' rates will be multiplied by the total actual minutes of use (MOUs) for that rate element, producing a total revenue for each rate element for each CCN holder.
 - (B) Revenues for each CCN holder's rate element will be added to create a statewide total revenue for that rate element.
 - (C) The actual MOUs for each CCN holder's rate element will be added to create a statewide total actual MOUs for that rate element.

(D) The statewide total revenue for that rate element will be divided by the statewide total actual MOUs for that rate element, producing a weighted statewide average composite usage sensitive intrastate switched access rate for that switched access rate element.

(2) **Recalculation.**

(A) The commission shall re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates biennially based upon the submissions of the CCN holders, as required in subsection (f) of this section. The re-calculated rates will become effective November 1 of that year.

(B) Any certificated telecommunications utility may file a petition requesting that the commission re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates at any time, but no sooner than six months from the effective date of this section or most recent re-calculation. The commission shall initiate re-calculation if it concludes that the petition has provided just cause for re-calculation.

(C) As provided in subsection (f) of this section, the commission may also require compliance submissions by CCN holders for re-calculation of the weighted statewide average composite usage sensitive intrastate switched access rates as appropriate because of significant changes in usage sensitive intrastate switched access rates or in response to the request of affected parties, as specified in subparagraph (B) of this paragraph.

(e) **Approval of higher rates.**

(1) A COA/SPCOA holder seeking approval of originating and/or terminating usage sensitive intrastate switched access rates that in the aggregate, including any rate elements not charged by the CCN holder, are higher than the aggregate of the originating and/or terminating usage sensitive switched access rate elements charged by the CCN holder in the COA/SPCOA's territory may do so by filing an application with the commission subject to the procedures outlined in Procedural Rule §22.33 of this title (relating to Tariff Filings). The COA/SPCOA's application must provide, at a minimum, the following information:

- (A) Cost justification for each rate element.
- (B) Rationale for implementation of the higher rate for each rate element.

(2) A COA/SPCOA holder's application must address all of the applicable switched access rate elements in subsection (b) of this section.

(3) The commission shall publish notice of the application in the *Texas Register*.

(f) **Requirement for CCN holders compliance submissions.**

(1) Within 30 days from the effective date of this section, all CCN holders must provide the following intrastate data to the commission as a compliance filing:

- (A) The current tariffed rate for originating and terminating CCL.
- (B) The current tariffed rate for originating and terminating LS.
- (C) The current tariffed rate for originating and terminating TR.
- (D) The current tariffed rate for originating and terminating TS.
- (E) The current average per minute rate for originating and terminating TST.

- (F) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).
 - (G) The total actual originating and terminating MOUs for the most recent 12 month period for each rate element in subparagraphs (A) – (F) of this paragraph.
- (2) Biennially all CCN holders must provide the following intrastate data to the commission as a compliance filing by June 1 of the year:
- (A) The current tariffed rate for originating and terminating CCL.
 - (B) The current tariffed rate for originating and terminating LS.
 - (C) The current tariffed rate for originating and terminating TR.
 - (D) The current tariffed rate for originating and terminating TS.
 - (E) The current average per minute rate for originating and terminating TST.
 - (F) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).
 - (G) The total actual originating and terminating MOUs for the most recent 12 month period for each rate element in subparagraphs (A) - (F) of this paragraph.
- (g) **Requirements of COA/SPCOA holders compliance submissions.**
- (1) Within 90 days of the effective date of this section, each COA/SPCOA holder shall either:
 - (A) file an application under subsection (e) of this section;

- (B) file compliance tariffs/price lists effective 125 days from the effective date of this section containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;
 - (C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the weighted statewide average composite usage sensitive switched access rates established by the commission effective 125 days from the effective date of this section; or
 - (D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.
- (2) If the commission subsequently recalculates the weighted statewide average composite usage sensitive switched access rates, no later than 30 days after the commission recalculates the weighted statewide average composite usage sensitive switched access rates, COA/SPCOA holders shall either:
- (A) file an application under subsection (e) of this section;
 - (B) file compliance tariffs/price lists effective 45 days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;

- (C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the recalculated weighted statewide average composite usage sensitive switched access rates established by the commission effective 45 days from the filing date of the compliance tariffs/price sheets; or
 - (D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.
- (3) If a COA/SPCOA holder establishes usage sensitive intrastate switched access rates pursuant to paragraphs (1)(B) or (2)(B) of this subsection and the underlying CCN holder(s) whose rates were the basis for the COA/SPCOA holder's usage sensitive intrastate switched access rates are modified, no later than 30 days after said CCN holder's rates are modified, the COA/SPCOA holder shall either:
- (A) file an application under subsection (e) of this section;
 - (B) file compliance tariffs/price lists effective 45 days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;
 - (C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the most recent commission established weighted statewide average composite usage sensitive switched access rates established by the commission

effective 45 days from the filing date of the compliance tariffs/price sheets; or

(D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.

(h) ***Texas Register notice.*** Notice shall be published in the *Texas Register* at the time of a CCN holder's application with the commission to revise its usage sensitive intrastate switched access rates or when the commission re-calculates the weighted statewide average composite usage sensitive intrastate switched access rates.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.223 relating to Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 7th DAY OF JULY 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman