

The Public Utility Commission of Texas (commission) adopts new §26.224 relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies with changes to the proposed text published in the May 19, 2000 *Texas Register* (25 TexReg 4434). New §26.224 will clarify the substantive and procedural requirements relating to basic network services offered by Chapter 58 electing local exchange telephone companies and will replace §26.212 and §26.213. Simultaneous with the adoption of new §26.224, the commission adopts the repeal of §26.212 relating to Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs) and §26.213 relating to Telecommunications Pricing. New section §26.224, which results from the enactment of Senate Bill 560 during the 76th Legislative Session, and the repeal of §26.212 and §26.213 are adopted under Project Number 21156.

New §26.224 implements provisions of Senate Bill 560 (SB 560), 76th Legislature, Regular Session, related to basic network services offered by Chapter 58 electing companies. First, §26.224 acknowledges the new categorization of certain services in PURA, Chapter 58 as basic network services. Second, §26.224 establishes guidelines for separately tariffing basic network services. Third, §26.224 states the pricing requirements for basic network services and states that certain service rates are capped. Fourth, §26.224 provides Chapter 58 electing companies with guidelines for changing the rates, terms or conditions of a tariff and for establishing a long run incremental cost floor. Finally, §26.224 establishes requirements for notice and for the handling of confidential information. Through

the adoption of new §26.224, the commission makes its rules consistent with PURA and clarifies the standards and procedures required of Chapter 58 electing companies for offering basic network services to customers.

*Comments on §26.224*

On June 19, 2000, the commission received written comments on the proposed rule from GTE Southwest Incorporated (GTE). A public hearing addressing the proposed rule was held at commission offices on June 27, 2000. No party in attendance presented oral comment on the proposed rule at the public hearing. On July 3, 2000, the commission received written reply comments from Sprint/Centel and Sprint/United on this project. All timely filed comments, including any not specifically referenced herein, were fully considered by the commission.

*Comments on §26.224(e)*

Subsection (e) prescribes how a long run incremental cost floor may be established. Although Sprint/Centel and Sprint/United are PURA Chapter 59 electing companies, they note that they may elect to be regulated under incentive regulation, pursuant to Chapter 58, at any time. Sprint urged the commission to modify subsection (e) to include smaller local exchange companies that may elect to be regulated under PURA Chapter 58 in the future. Specifically, Sprint recommended that the second sentence in subsection (e) be modified to read as follows: "Establishment of a LRIC floor requires

commission approval of a cost study prepared by an electing company pursuant to the standards in Section 26.215 of this title or, for electing companies with annual revenues from regulated telecommunications operations in Texas of less than \$100 million for five consecutive years, pursuant to Section 26.214."

The commission agrees with Sprint. Section 26.215 applies to dominant certificated telecommunications utilities (DCTUs) with annual revenues from regulated telecommunications operations in Texas of \$100 million or more for five consecutive years. Section 26.214 applies to incumbent local exchange companies (ILECs) with annual revenues from regulated telecommunications operations in Texas of less than \$100 million for five consecutive years. Because any local exchange company may elect to be regulated under PURA Chapter 58, it is appropriate to refer to §26.214, as well as §26.215, in the proposed rule. Thus, the commission modifies subsection (e) accordingly.

*Comments on §26.224(f) and (h)*

Subsections (f) and (h) address price increases for basic network services. GTE commented that subsections (f) and (h) should have the word "until" inserted before the date "September 1, 2005" because the current language incorrectly suggests that September 1, 2009 is the date for rate cap expiration.

The commission agrees with GTE that a misinterpretation of subsections (f) and (h) could result from the current language. Thus, the commission modifies subsections (f) and (h) as recommended by GTE.

In addition to modifications described supra, the commission makes other minor modifications for the purpose of clarifying its intent. For example, the first sentence in subsection (i) is modified to conform more closely to the language in PURA.

New §26.224 is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §53.103 which describes notice requirements for rate changes; PURA §58.051 which identifies basic network services for Chapter 58 companies, §58.054 which sets forth the cap on rates for basic network services for Chapter 58 companies, §58.055 which sets forth the circumstances under which Chapter 58 companies may adjust rates for basic network services during the rate cap period, §58.060 which sets forth the requirements for adjusting the rate for a basic network service after the rate cap period and §58.153 which requires that notice be provided by Chapter 58 companies with more than five million access lines in the state.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 53.103, 58.051, 58.054, 58.055, 58.060, and 58.153.

**§26.224. Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies.**

- (a) **Application.** This section applies to any electing company, as the term is defined in the Public Utility Regulatory Act (PURA) §58.002. Other sections applicable to an electing company, include, but are not limited to, §26.225 of this title (relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies), §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies), and §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies).
- (b) **Purpose.** The purpose of this section is to establish requirements and procedures relating to the provision of basic network services.
- (c) **Basic network services.**
- (1) **Services included in basic network services.** Unless reclassified pursuant to PURA §58.024, the following are classified as basic network services pursuant to PURA §58.051(a):
- (A) Flat rate residential local exchange telephone service, including primary directory listings and the receipt of a directory and any applicable mileage or zone charges;

- (B) Residential tone dialing service;
  - (C) Lifeline and tel-assistance service;
  - (D) Service connection for basic residential services;
  - (E) Direct inward dialing service for basic residential services;
  - (F) Private pay telephone access service;
  - (G) Call trap and trace service;
  - (H) Access for all residential and business end users to 9-1-1 service provided by a local authority and access to dual party relay service;
  - (I) Mandatory residential extended area service arrangements;
  - (J) Mandatory residential extended metropolitan service or other mandatory residential toll-free calling arrangements; and
  - (K) Residential call waiting service.
- (2) **Separate tariff requirement.** Consistent with PURA §58.051(b), a basic network service offered by an electing company to a customer as a component of a package or other pricing flexibility offering shall also be offered by the electing company as a separately tariffed service.
- (3) **Basic network service rates capped.** The rates for basic network services for an electing company may not increase before September 1, 2005, except as provided for in subsection (f) of this section relating to rate increases prior to the rate cap expiration.
- (4) **Basic network service rates charged.** The rates an electing company may charge during the period in which rates are capped are the rates charged by the company on

June 1, 1995, or, for a company that elects after September 1, 1999, the rates charged on the date of its election.

- (5) **Pricing flexibility.** An electing company may offer pricing flexibility for basic network services pursuant to the requirements of §26.226 of this title.
- (d) **Requirement for changes to terms of a tariff offering.** Prior to being offered, a change in the terms of a basic network service tariff offering, such as rate increases and decreases of a basic network service, must receive commission approval. Section 26.207 of this title (relating to Form and Filing of Tariffs) and §26.208 of this title (relating to General Tariff Procedures) shall apply to tariffs offering a basic network service.
- (e) **Establishment of a long run incremental cost floor.** For purposes of this section, long run incremental cost (LRIC) shall be consistent with §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services). Establishment of a LRIC floor requires commission approval of a cost study prepared by an electing company pursuant to the standards in §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs) or §26.215 of this title, as applicable. After commission approval of a LRIC floor for a particular service, an electing company may change the rates of that service in accordance with the procedures in this section. The procedures in subsection (i)

of this section, relating to rate decreases for basic network services, may not be available to an electing company for a service that does not have a LRIC floor.

(f) **Rate increase prior to rate cap expiration.** For a four-year period following Chapter 58 election or until September 1, 2005, whichever occurs later, an increase in the rate for a basic network service is permitted only after commission approval and only within the following parameters:

- (1) A rate increase for changes made by the Federal Communications Commission, as provided by PURA §58.056;
- (2) A rate increase for companies with fewer than five million access lines that are complying with infrastructure commitments, as provided by PURA §58.057;
- (3) A rate group reclassification, as provided by PURA §58.058.

(g) **Procedure for a rate increase prior to rate cap expiration.**

- (1) Prior to the rate cap expiration, an electing company is required to file an application to propose an increase in the rate for a basic network service. The application shall refer to this section, shall provide sufficient documentation to demonstrate that the rate increase meets the criteria prescribed in PURA Chapter 58, shall describe the increase, and shall identify the classes of customers and competitors to be affected by the electing company's application. The application shall also include any tariff sheets reflecting the proposed basic network service rate increase, as well as all data necessary to support

the application. The application shall include a copy of the text of any proposed notice to customers. The proposed notice to customers shall comply with §26.208 of this title and shall meet the criteria prescribed in PURA §58.059 and §53.103. The application shall also state the electing company's preferred effective date, which shall be no earlier than 90 days after completion of notice.

- (2) The commission shall cause notice of the application to be published in the *Texas Register*. The *Texas Register* notice shall state the intervention deadline, which shall be no earlier than 40 days following publication of notice. After publication of notice in the *Texas Register*, the presiding officer shall establish a deadline for the filing of a staff recommendation, which shall be no earlier than five days following the intervention deadline.
- (3) Within 20 days after filing of the application, the presiding officer shall notify the applicant if material deficiencies exist in the application and if the proposed notice is inadequate.
- (4) Within 50 days after filing of the application, the applicant shall file an affidavit attesting to the fact that notice to customers was published in accordance with the requirements of PURA §58.059 and §53.103. The affidavit shall contain a copy of all notice given.
- (5) Following receipt of a request for intervention filed by an affected party, or on the recommendation of commission staff, or on the commission's own motion, the commission may suspend the effective date of the proposed rate increase and may hold a hearing. Within 185 days of the filing of a sufficient application, the commission shall

issue an order approving or modifying the rate increase or, alternatively, rejecting the rate increase if it is not in compliance with this section and PURA §§58.056, 58.057 or 58.058. Any order modifying or rejecting the proposed rate increase shall specify why the proposed increase is not in compliance with the applicable provisions of PURA §§58.056, 58.057 or 58.058 and the means by which the proposed increase may be brought into compliance.

- (h) **Rate increase after rate cap expiration.** After a four-year period following Chapter 58 election or until September 1, 2005, whichever occurs later, a basic network service rate increase may be made pursuant to PURA §58.060.
  
- (i) **Rate decrease.** Consistent with PURA §58.055(c), an electing company may decrease a rate for a basic service at any time to an amount above the service's appropriate cost. If the electing company has been required to perform or has elected to perform a long run incremental cost study, the appropriate cost for the service is the service's long run incremental cost.
  - (1) After commission approval of a LRIC floor, an electing company shall follow the procedures in this subsection to decrease a rate for a basic network service or to change the tariff terms of a basic network service.
  - (2) An electing company shall file an application to decrease the rate for or change the tariff terms of a basic network service. On the same date, an electing company shall file one or more tariff sheets to decrease a rate for or change the tariff terms of a basic network

service with the application and all data necessary to support the application shall accompany the tariff sheets.

- (3) The commission shall cause notice of the application to be published in the *Texas Register*. The *Texas Register* notice shall state the intervention deadline, which shall be no earlier than 15 days following publication of notice. On or before five days after the intervention deadline, commission staff may file a recommendation to suspend, docket or reject the application. If either a request for intervention or a recommendation to docket is filed, the expedited administrative procedures in this subsection shall no longer apply. If neither an intervention request nor a staff recommendation to suspend, docket or reject the application is filed, the tariff sheets shall be approved by the commission effective ten days following the intervention deadline.

(j) **Proprietary or confidential information.**

- (1) Information filed pursuant to this rule is presumed to be public information. An electing company shall have the burden of establishing that information filed pursuant to this rule is proprietary or confidential.
- (2) Nothing in this subsection shall be construed to change the presumption that information filed pursuant to this rule is public information. An electing company that intends to rely upon data it purports is proprietary or confidential in support of an application made pursuant to this section shall submit two copies of the proprietary or confidential data to Central Records for use by the commission staff subject to a commission-approved

protective agreement. An electing company that intends to rely upon proprietary or confidential data has the burden of providing such data on the same date the associated tariff sheets are filed. In the event an electing company's proprietary or confidential data is not provided with the associated tariff sheets, the procedural schedule shall be adjusted day-for-day to reflect the number of days the proprietary or confidential data is delayed.

(k) **Additional notice requirement for an electing company serving more than five million access lines.** In addition to the notice requirements of §26.208 of this title and those applicable to informational notice filings, an electing company serving more than five million access lines in this state shall, until September 1, 2003:

- (1) Comply with the following notice requirements when proposing any changes in the generally available prices and terms under which the electing company offers basic telecommunications services regulated by the commission at retail rates to subscribers that are not telecommunications providers, including:
  - (A) Introduction of any new features or functions of basic services;
  - (B) Promotional offerings of basic services; or
  - (C) Discontinuation of then-current features or services.
- (2) Notice shall be provided to the following persons:
  - (A) A person who holds a certificate of operating authority in the electing company's certificated area or areas; or

- (B) A person who has an effective interconnection agreement with the electing company.
  - (3) The following timelines shall apply to the additional notice requirement:
    - (A) If the electing company is required to give notice to the commission, at the same time the company provides that notice; or
    - (B) If the electing company is not required to give notice to the commission, at least 45 days before the effective date of a price change or 90 days before the effective date of a change other than a price change, unless the commission determines that the notice should not be given.
- (l) **Semi-annual notice for rates or terms of service.** Semi-annually, an electing company shall notify affected persons, either by bill insert, bill message, or direct mail, that proposed changes in the rates or terms of basic network services are regularly published in the *Texas Register* through the Office of the Secretary of State. Such notification shall also appear in the public information pages of all telephone directories published in Texas. The notification shall identify the Internet address for the *Texas Register* ([www.sos.state.tx.us](http://www.sos.state.tx.us)) and shall provide a toll-free phone number for affected persons to request direct notice from an electing company of proposed changes in the rates or terms of service. For purposes of notice, affected persons include the applicant's Texas customers, persons registered with the commission to offer long distance service, and persons certificated by the commission to provide local exchange telephone service.



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 §26.224 relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies is hereby adopted with changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE 29th DAY OF SEPTEMBER 2000.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**Chairman Pat Wood, III**

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**Commissioner Judy Walsh**

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**Commissioner Brett A. Perlman**