

The Public Utility Commission of Texas (commission) proposes new §26.225 relating to Requirements Applicable to Nonbasic Services for Chapter 58-Electing Companies. The proposed new section establishes substantive requirements affecting nonbasic services offered by Chapter 58 companies. Project Number 21157 is assigned to this proceeding.

The commission staff received comments on proposed §26.225 from interested persons at workshops held on November 15, 1999 and March 28, 2000. The November 15, 1999 workshop focused on Senate Bill 560 implementation. The March 28, 2000 workshop focused on several rules drafted for discussion.

In addition, the commission staff coordinated the end product of Project Number 21157 with Project Number 21155, *Rulemaking to Implement PURA Chapter 58 Provisions Relating to Customer Specific Contracts, Packaging Flexibility, and Promotional Offerings*; Project Number 21156, *Rulemaking to Implement PURA Chapter 58 Withdrawal of Election, Rate Caps and Rate Adjustments*; Project Number 21159, *Rulemaking to Implement New Services and Promotional Offerings and Pricing and Packaging Flexibility for PURA Chapter 52 and 59 Companies*; and Project Number 21161, *Rulemaking to Establish Process for New Services and Promotional Offerings and Pricing and Packaging Flexibility Provisions for PURA Chapters 52, 58, and 59*.

The language herein describes requirements relating to nonbasic services for Chapter 58 companies. Several other projects propose rules pertaining to Chapter 58 companies. Project Number 21155 proposes §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies). Project Number 21156 proposes §26.224 of this title (relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies). Finally, Project Number 21161 proposes §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).

Ms. Lynne LeMon, Senior Utility Specialist, 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.

Ms. LeMon 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 proposed section will be establishment of the commission's requirements relating to nonbasic services so that nonbasic services are offered by Chapter 58-electing companies to customers in a manner that is not anticompetitive, discriminatory, prejudicial, predatory or preferential. 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.

Ms. LeMon has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a joint public hearing on this rulemaking and Project Numbers 21155, 21156, 21159, and 21161 under Government Code §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, June 27, 2000, at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed new section (16 copies) may be submitted to the commission's 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*. Reply comments may be submitted within 45 days after publication in the *Texas Register*. In addition, the commission staff requests that commentors e-mail an electronic copy of comments and reply comments to [21157mail@puc.state.tx.us](mailto:21157mail@puc.state.tx.us).

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 comments on whether it is appropriate that proposed subsection (d)(1)(C) contain an anti-

competitive standard with respect to pricing, or whether such a standard should be developed through the facts determined in individual contested cases. All comments should refer to Project Number 21157.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (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, Chapter 58, Subchapter E, pertaining to nonbasic services and PURA, Chapter 60, pertaining to competitive safeguards.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 51.002 and 51.004; Chapter 58 and Chapter 60.

**§26.225. Requirements Applicable to Nonbasic 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, §26.224 of this title (relating to Requirements Applicable to Basic Network 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 for nonbasic services.
- (c) **Nonbasic services.**
- (1) Consistent with PURA §58.151 and §58.024, these services are nonbasic services:
- (A) flat rate business local exchange telephone service, including primary directory listings and the receipt of a directory, and any applicable mileage or zone;
- (B) business tone dialing service;

- (C) service connection for all business services;
- (D) direct inward dialing (DID) for basic business services;
- (E) public pay telephone services, 0+ and 0- operator services and directory assistance services;
- (F) call forwarding, call return, caller identification, call waiting and other custom calling services and call control options, except that residential call waiting is a basic network service;
- (G) speed dialing and three-way calling;
- (H) central office based PBX-type services;
- (I) billing and collection services, including installment billing and late payment plans for electing company customers;
- (J) integrated services digital network (ISDN) services;
- (K) new services;
- (L) 1-plus intraLATA message toll service (MTS);
- (M) services described in the WATS tariff of an electing company as the tariff existed on January 1, 1995;
- (N) 800 service and foreign exchange service;
- (O) private line services and special access services;
- (P) paging services and mobile services (IMTS);
- (Q) 911 service provided to a local authority, if the service is available from a provider other than the electing company;

- (R) all other services subject to the commission's jurisdiction that are not specifically classified as basic network services in PURA §58.051;
  - (S) any basic network service reclassified by the commission as a nonbasic service pursuant to PURA §58.024.
- (2) Consistent with PURA §58.155, neither interconnection to competitive providers nor interconnection for commercial mobile service providers is addressed in this section.
- (d) **Substantive requirements.** An electing company that seeks to introduce or modify rates, terms or conditions of a nonbasic service tariff shall follow the substantive requirements in this section and the procedural requirements in §26.227 of this title. Additionally, an electing company that seeks to flexibly price a nonbasic service shall follow the requirements in §26.226 of this title.
- (1) **Pricing standards.** The price of a nonbasic service may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.
- (A) Price ceilings. This subparagraph specifies the price ceilings for certain nonbasic services. Except as specified in this subparagraph, nonbasic services have no price ceiling.
    - (i) Until September 1, 2005, a nonbasic service listed in subsection (c)(1)(A)-(D) of this section shall be priced at or below the price in effect on September 1, 1999.

- (ii) Until September 1, 2005, a Basic Rate Interface (BRI) ISDN service, which comprises up to two 64 Kbps B-channels and one 16 Kbps D-channel, shall be priced at or below the price in effect on September 1, 1999.
  - (iii) Until an electing company that serves more than five million access lines implements the reductions in switched access rates described in PURA §58.301(2), residential nonbasic services listed in subsection (c)(1)(F) of this section shall be priced at or below the prices in effect on September 1, 1999.
  - (iv) An electing company shall provide to a residential customer the first three directory assistance inquiries in a monthly billing cycle at a maximum price of zero dollars (\$.00).
  - (v) Consistent with PURA §58.302, switched access services shall be priced at or below the lesser of the rates in effect on September 1, 1999, or the applicable rates described in PURA §58.301, either of which may be further reduced via the Texas universal service fund.
- (B) Price floors. A price that is set at or above the long run incremental cost of providing a service is presumed not to be a predatory price. The long run incremental cost of a nonbasic service must be established before the price floor of a nonbasic service can be determined, pursuant

to PURA §58.152. Establishment of a long run incremental cost requires commission approval of a cost study prepared by an electing company pursuant to §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services). Any application to establish or modify a long run incremental cost shall be filed by an electing company with the commission's Filing Clerk on or before the date a related informational notice is filed. Such an application shall be filed separately from the related informational notice. The minimum price of a nonbasic service shall be the lesser of:

- (i) the price for the service in effect on September 1, 1999, except that this clause shall not be considered for services that had either a rate of zero or no existing rate on September 1, 1999;  
or
  - (ii) the long run incremental cost of the service in accordance with the imputation rules and requirements prescribed by or under PURA, Chapter 60, Subchapter D.
- (C) Anticompetitive price. There is a rebuttable presumption that the price of a nonbasic service is anticompetitive against a competitor if an electing company's retail price for a nonbasic service is less than the sum of the total element long run incremental cost (TELRIC)-based

wholesale prices of components needed to provide the nonbasic service.

- (2) **Separately tariffed services.** Any nonbasic service offered by an electing company to customers as a component of a package or other pricing flexibility offering shall also be offered by the electing company as a separately tariffed service.
  
- (e) **New service.**
  - (1) A new service, as the term is defined in §26.5 of this title (relating to Definitions), is a nonbasic service under subsection (c)(1)(K) of this section.
  - (2) To introduce a new service tariff, an electing company shall follow the requirements in this section and the procedures in §26.227 of this title. If a new service is offered by an electing company as a component of a package, the new service shall also be offered as a separately tariffed service and the separately tariffed service shall be subject to the pricing standards in subsection (d) of this section.
  - (3) A package of services that includes one or more new services and one or more existing services shall not be considered a new service. To introduce such a package, an electing company shall follow the requirements in this section, the requirements in §26.226 of this title and the procedures in §26.227 of this title.

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 4th DAY OF MAY 2000 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**