

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS PROVIDERS.

Subchapter L. WHOLESALE MARKET PROVISIONS.

§26.276. Unbundling.

- (a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §60.021, which requires an incumbent local exchange company (ILEC), at a minimum, to unbundle its network to the extent ordered by the Federal Communications Commission (FCC).
- (b) **Application.**
 - (1) The provisions of this section apply, as of its effective date, to each ILEC that serves one million or more access lines.
 - (2) The provisions of this section apply upon a bona fide request to each ILEC that serves fewer than one million access lines.
- (c) **Unbundling requirements.**
 - (1) **Unbundling pursuant to current FCC requirements.** Each ILEC that is subject to this section shall unbundle as specified in subparagraphs (A) and (B) of this paragraph. An ILEC with interstate tariffs in effect shall unbundle its network/services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC shall also not impose a charge or rate element that is not included in its interstate tariffs for these unbundled rate elements. Nothing herein precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled pursuant to this paragraph.
 - (A) The ILEC's network shall be unbundled to the extent ordered by the FCC in compliance with its open network architecture requirements; and
 - (B) Signaling for tandem switching shall be unbundled to the extent ordered by the FCC in compliance with CC Docket Number 91-141, Third Report and Order, In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II.
 - (2) **Unbundling pursuant to future FCC requirements.** An ILEC shall unbundle its network/services as defined in the term "unbundling" in §26.5 of this title (relating to Definitions) for intrastate services to the extent ordered, in the future, by the FCC for interstate services. An ILEC with interstate tariffs in effect shall unbundle these services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC shall also not impose a charge or rate element that is not included in its interstate tariffs for unbundling. Nothing herein precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled pursuant to this paragraph.
- (d) **Costing and pricing of services in compliance with this section.**
 - (1) **Cost standard.** Services unbundled in compliance with this section shall be subject to the following cost standard.
 - (A) The cost standard for unbundled services shall be the long run incremental costs (LRIC) of providing the service.
 - (B) Any ILEC subject to §23.91 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility Services) shall file LRIC studies pursuant to that rule for unbundled components specified in subsection (c)(1) of this section.

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- (C) For any ILEC that is subject to §23.91 of this title, the cost standard for unbundled services required under subsection (c)(2) of this section shall be the long run incremental costs pursuant to §23.91 of this title.
- (D) The long run incremental cost standard shall not apply if the ILEC proposes rates that are the same as the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or if the ILEC adopts rates of another ILEC pursuant to paragraph (2)(B) of this subsection.
- (2) **Pricing standard.** Services unbundled in compliance with this section shall be subject to the following pricing standard.
 - (A) Any ILEC may propose rates, without cost justification, that are at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service. The ILEC shall amend its intrastate rates, terms and conditions to be consistent with subsequent revisions in its interstate tariffs providing for unbundling pursuant to filing requirements established in subsection (f)(4) of this section.
 - (B) In addition to the provision in subparagraph (A) of this paragraph, ILECs that are not subject to §23.91 of this title may adopt the rates of another ILEC that are developed pursuant to the requirements of this section.
 - (C) If an ILEC proposes rates that are not at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or does not adopt the rates of another ILEC pursuant to subparagraph (B) of this paragraph, the following requirements shall apply to any service approved under this section:
 - (i) Unless waived or modified by the presiding officer, the service shall be offered in every exchange served by the ILEC, except exchanges in which the ILEC's facilities do not have the technical capability to provide the service.
 - (ii) If the sum of the rates of the new unbundled components is equal to the price of the original bundled service and if the ratio of the rate of each unbundled component to its LRIC is the same for each unbundled component, there shall be a rebuttable presumption that the rate of an unbundled component is reasonable.
 - (iii) The proposed rates and terms of the service shall not be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive.
 - (D) Rates based upon the new LRIC cost studies required under paragraph (1)(B) of this subsection shall be subject to the pricing rulemaking referred to in §23.91(p) of this title to the same extent as any other service offered by an ILEC subject to the pricing rule.
- (e) **Basket assignment.** An ILEC electing incentive regulation under PURA Chapter 58 shall, in its compliance tariff filed pursuant to subsection (f) of this section, include a proposal and rationale for designating the unbundled components as basic services or non-basic services.

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(f) **Filing requirements.**

- (1) **Initial filing to implement subsection (c)(1) of this section in effect for ILECs serving one million or more access lines.** An ILEC serving one million or more access lines shall file initial tariff amendments to implement the provisions of subsection (c)(1) of this section not later than 60 days from the effective date of this section. The proposed effective date of such filings shall be not later than 30 days after the filing date, unless suspended. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.
- (2) **Filings to comply with subsection (c)(2) of this section for ILECs serving one million or more access lines.** An ILEC serving one million or more access lines shall file tariff amendments to implement the provisions of subsection (c)(2) of this section, within 60 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings shall be not later than 30 days after the filing date, unless suspended. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.
- (3) **Filings to implement subsections (c)(1) and (2) of this section for ILECs serving fewer than one million access lines.** If an ILEC serving fewer than one million access lines receives a bona fide request, it shall unbundle its network/services pursuant to the bona fide request within 90 days from the date of receipt of the bona fide request or shall have the burden of demonstrating the reasons for not unbundling pursuant to the bona fide request.
- (4) **Filings to comply with subsection (d)(2)(A) of this section.** An ILEC proposing rates pursuant to subsection (d)(2)(A) shall file tariff amendments to implement the revisions in its interstate tariffs providing for unbundling, within 30 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings shall be not later than 30 days after the filing date, unless suspended. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.

(g) **Requirements for notice and contents of application in compliance with this section.**

- (1) **Notice of Application.** The presiding officer may require notice to be provided to the public as required by Chapter 22, Subchapter D of this title (relating to Notice). The notice shall include, at a minimum, a description of the service, the proposed rates and other terms of the service, the types of customers likely to be affected if the service is approved, the probable effect on ILEC's revenues if the service is approved, the proposed effective date for the service, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, PO Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or may reach the commission's toll free number by calling Relay Texas at (800) 735-2988."

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- (2) **Contents of application for an ILEC serving one million or more access lines that is required to comply with subsection (f)(1), (2), and (4) of this section.** An ILEC shall request approval of an unbundled service by filing an application that complies with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Office of Regulatory Affairs, Legal Division, and one copy to the Office of Public Utility Counsel. The application shall contain the following information:
- (A) a description of the proposed service and the rates, terms and conditions, under which the service is proposed to be offered and a demonstration that the proposed rates, terms and conditions are in conformity with the requirements in subsections (c), (d), and (e) of this section, as applicable;
 - (B) a statement detailing the type of notice, if any, the ILEC has provided or intends to provide to the public regarding the application and a brief statement explaining why the ILEC's notice proposal is reasonable;
 - (C) a copy of the text of the notice, if any;
 - (D) a long run incremental cost study supporting the proposed rates, if the rates are not at parity with the carrier's interstate rates;
 - (E) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service, including all workpapers and supporting documentation relating to computations or assumptions contained in the application, if the rates are not at parity with the carrier's interstate rates;
 - (F) projection 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, if the rates are not at parity with the carrier's interstate rates;
 - (G) explanation that the proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive;
 - (H) the information required by §§26.121 of this title (relating to Privacy Issues), 26.122 of this title (relating to Customer Proprietary Network Information, and 26.123 of this title (relating to Caller Identification Services); and
 - (I) any other information which the ILEC wants considered in connection with the commission's review of its application.
- (3) **Contents of application for an ILEC serving fewer than one million access lines that is required to comply with subsection (f)(3) and (4) of this section.** An ILEC shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Office of Regulatory Affairs, Legal Division, and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:
- (A) contents of application required by paragraph (2)(A), (B), (C), (H), and (I) of this subsection;

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- (B) contents of application required by paragraph (2)(D), (E), (F), and (G) of this subsection, if the rates are not at parity with the carrier's interstate rates or the rates of another ILEC;
 - (C) a description of the proposed service(s) and the rates, terms, and conditions under which the service(s) are proposed to be offered and an affidavit from the general manager or an officer of the ILEC approving the proposed service;
 - (D) a notarized affidavit from a representative of the ILEC affirming that the rates are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory; subsidized directly or indirectly by regulated monopoly services; or predatory, or anticompetitive; and
 - (E) projections of the amount of revenues that will be generated by the proposed service.
- (h) **Commission processing of application.**
- (1) **Administrative review.** An application considered under this section may be reviewed administratively unless the ILEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.
 - (A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be according to the requirements in subsection (f) of this section.
 - (B) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.
 - (C) While the application is being administratively reviewed, the commission staff and the staff of the Office of the Public Utility Counsel may submit requests for information to the ILEC. Six copies of all answers to such requests for information shall be filed with Central Records and one copy shall be provided to the Office of Public Utility Counsel within ten days after receipt of the request by the ILEC.
 - (D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the commission staff written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application.
 - (E) No later than 35 days after the effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the ILEC's application.
 - (2) **Approval or denial of application.** The application shall be approved by the presiding officer if the proposed tariff meets the requirements in this section. If, based on the

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administrative review, the presiding officer determines, that one or more of the requirements not waived have not been met, the presiding officer shall docket the application.

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- (3) **Standards for docketing.** The application may be docketed pursuant to §22.33(b) of this title (relating to Tariff Filings).
 - (4) **Review of the application after docketing.** If the application is docketed, the operation of the proposed rate schedule shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application shall be processed in accordance with the commission's rules applicable to docketed cases.
 - (5) **Interim rates.** For good cause, interim rates may be approved after docketing. If the service requires substantial initial investment by customers before they may receive the service, interim rates shall be approved only if the ILEC shows, in addition to good cause, that it will notify each customer prior to purchasing the service that the customer's investment may be at risk due to the interim nature of the service.
- (i) **Commission processing of waivers.** Any request for modification or waiver of the requirements of this section shall include a complete statement of the ILEC's arguments and factual support for that request. The presiding officer shall rule on the request expeditiously.