

**PROJECT NO. 36260**

**RULEMAKING RELATING TO THE § PUBLIC UTILITY COMMISSION  
OBLIGATIONS OF TELEPHONE § OF TEXAS  
PROVIDERS UNDER THE TEXAS §  
PROMPT PAYMENT ACT §**

**ORDER ADOPTING NEW §26.33  
AS APPROVED AT THE SEPTEMBER 1, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §26.33, relating to the Prompt Payment Act (PPA) with changes to the proposed text as published in the March 26, 2010 issue of the *Texas Register* (35 TexReg 2470). The rule ensures that customers that are “governmental entities” under Texas Government Code (Prompt Payment Act or PPA) are billed by certificated telecommunications utilities (CTUs) in compliance with the PPA. This new section is adopted under Project Number 36260.

A public hearing was not requested.

The commission received initial comments on the rule from the State of Texas (State); the Steering Committee of Cities Served by Oncor (Cities); GTE Southwest Incorporated d/b/a Verizon Southwest, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc. d/b/a Verizon Business Services (collectively, Verizon); Southwestern Bell Telephone company d/b/a AT&T Texas (AT&T). The commission received reply comments from Southwestern Tariff Analyst (STA); the State; Verizon; AT&T; Texas Statewide Telephone Cooperative (TSTCD); Cities; and United Telephone Company of Texas, Inc. d/b/a CenturyLink, Central Telephone Company of Texas,

Inc. d/b/a CenturyLink, CenturyTel of San Marcos, Inc. d/b/a CenturyLink, CenturyTel of Lake Dallas, Inc. d/b/a CenturyLink, CenturyTel of Port Aransas, Inc. d/b/a CenturyLink, and CenturyTel of Northwest Louisiana, Inc. d/b/a CenturyLink, CenturyLink Acquisitions (collectively, CenturyLink).

### Comment Summary

#### General Need for the New Rule

The State stated that it supports addition of the rule to the commission's substantive rules. The State stated that when resolving billing disputes between agencies and service providers, the most difficult aspect, for its counsel and support staff, is convincing providers that the PPA applies to utility bills. CenturyLink stated that the rule addresses a longstanding billing problem for certificated telecommunication utilities (CTUs) and governmental entities, particularly when it comes to the imposition of late fees. CenturyLink stated that in the past few years, the commission has received complaints from various governmental entities about CTU billing, with the problem usually stemming from the CTU being unaware that the customer qualifies as a governmental entity under the PPA or that the customer is a governmental entity for purposes of the CTU's tariff. CenturyLink noted that it had been caught off guard when one of its customers, a hospital district, subsequently became a "special district." With a caveat asking for more detail, CenturyLink stated that it supports the commission's proposed attempt to clarify the applicability of the PPA to billing by CTUs.

The Cities stated that they believe that the rule is unnecessary because the PPA itself establishes the procedure for payments by governmental entities regardless of whether the rule provides for

application of the PPA. STA stated that the appropriate and logical section for any language about the PPA is in the existing §26.27, relating to Bill Payment and Adjustments. STA stated that the applicability of the PPA to telephone and electric utilities has been clear since the Texas Legislature removed the contract exemption language from the PPA in 1993 and that the PPA was fully addressed in Docket Number 11735. STA stated that the commission has considered adding rule language to address the applicability of the PPA to political subdivisions and decided it was unnecessary. STA stated that the commission intended existing §26.27 to address the PPA. STA stated that PPA billing errors are not due to a lack of regulation or a lack of clarity in the rules, and that such billing errors cannot be fixed by simply amending the rules.

CenturyLink stated that the PPA does not waive late fees for PPA entities and noted that only state agencies, and not all political subdivisions, are exempt from late fees under the Public Utility Regulatory Act (PURA). Thus, CenturyLink stated that a CTU's waiver of late fees under PURA is more generous than required by the PPA. CenturyLink stated that a complaint to the commission is not the only recourse for a governmental entity under the PPA, and that governmental entities are not required to look to the Commission to enforce the PPA.

### *Commission Response*

**The commission agrees with the State that adoption of the rules is appropriate because it will help avoid confusion as to the applicability of the PPA to CTUs. Because parts of §26.27 are inconsistent with parts of the PPA and the PPA controls over these rules and because the PPA applies to a large number of customers served by CTUs, it is appropriate to clarify the Commission's rule to state that the PPA controls over the commission's**

**generally applicable billing rules. The commission declines to adopt STA's recommendation to amend §26.27 to address the PPA, because doing so would require a new rulemaking and adding the new rule rather than amending §26.27 accomplishes the same objective.**

#### General Level of Detail

The State applauded the commission for crafting a rule that is simple and straightforward. The Cities stated that the limited scope of the rule is appropriate, since the Texas Comptroller of Public Accounts (Comptroller) is given the rulemaking authority with respect to the application of the PPA, not the Commission. However, Verizon stated that the rule does not provide clarity or resolve the problems the rulemaking was intended to prevent. CenturyLink requested more detail in the rule. AT&T suggested several specific revisions to the rule that provide more detail. Specifically, AT&T stated that §26.33(b) is a simple statement that is inadequate for two reasons: it fails to distinguish two PPA provisions and it does not adequately address the effects of following (or failing to follow) such procedures. The State stated that the kind of prescriptive detail that AT&T wants is not necessary. The State stated that they have a great deal of experience in resolving billing disputes between agencies and service providers, and as noted above the most difficult aspect, both for counsel and its support staff, is convincing providers that the PPA applies to utility bills. The State stated that once utilities are given a copy of the PPA, most such disputes are easily handled and that simply stating that bills, billing disputes, and penalties for delinquent bills shall be resolved in accordance with the PPA is all that is necessary. The State also noted that the level of detail sought by AT&T does not allow for changes to the

PPA or its construction, and that AT&T's amendments would freeze AT&T's preferred view in the commission's substantive rules.

*Commission Response*

**The commission believes that, with certain changes addressed elsewhere, the appropriate level of detail is reflected in the rule as proposed. The commission agrees with the State; new §26.33 will make resolving disputes between CTUs and governmental entities easier. The commission also agrees with the State that if it were to set forth PPA-specific language in the rule, it would need to change the rule if the Legislature changes the PPA or if the courts interpret the PPA in some fashion inconsistent with the language of the rule. In addition, as pointed out by the Cities, the Comptroller has rulemaking authority to implement the PPA; therefore, affected entities should look to the Comptroller's rules, rather than the commission, for detailed guidance on the implementation of the PPA.**

Section 26.33(b) Bill Due Date

AT&T suggested that §26.33(b) should be re-titled "Time for payment by a governmental entity" and should state "A payment by a governmental entity subject to the PPA shall become overdue as provided in the PPA." AT&T states that its billing systems do not differentiate between governmental and non-governmental customers with regards to due dates, and changes to billing systems are costly. Additionally, AT&T stated that billing system changes to accommodate the PPA would be very complicated because the PPA contains two potential overdue timing provisions under which there are three different methods by which a governmental entity can calculate when the overdue time period begins. AT&T stated that the due date listed on a

governmental entity's bill is unrelated to the PPA and addressing it in this rulemaking is unnecessary, especially since CTUs must comply with the PPA. AT&T stated that the PPA places the burden of calculating a correct payment date and amount for overdue payments on the governmental entity. AT&T proposed changes to §26.33(b) to more accurately reflect the terms of the PPA.

STA stated that AT&T's concerns about difficulty calculating a due date for governmental entities were completely hypothetical speculation and stated that AT&T has for over a decade differentiated between federal government entities and all other customers for purposes of calculating a due date. STA stated that AT&T bills all of its customers in advance, with the sole exception being service to federal entities, which AT&T bills in arrears. STA stated that AT&T's policy manual expresses the method to differentiate between federal governmental entities and other customers and that its actual billing practice is to extend the time for payment only for federal entities. STA stated that AT&T need only implement its policy as expressed in its policy manual to extend the time for payment to PPA-eligible entities. STA stated that AT&T is correct that the due date expressed on a bill does not affect the date an invoice is overdue under the PPA, but that the due date on the bill should not misstate the due date. STA supported AT&T suggested changes to §26.33(b). Cities stated that to the extent AT&T's proposed changes would bring more clarity, the modifications are appropriate.

### *Commission Response*

**The commission concludes that the stated due date on a CTU's bill to a governmental entity does not affect the governmental entity's rights under the PPA and adopts AT&T's**

**proposed revisions to §26.33(b), with minor changes. These revisions accurately reflect the requirements of the PPA. PPA §2251.021 generally provides that a payment by a governmental entity is overdue on the 31st day after the date the governmental entity receives an invoice for the goods or service.**

Section 26.33(c) Disputed Bill

The State asked the Commission to clarify that the rule is not intended to create any statute of limitations on the time for contesting overbilling of governmental entities. The Cities stated that the rule correctly provides that disputes “shall be resolved as provided in the PPA,” and properly declines to enact a rule regarding a statute of limitations. AT&T stated that the simple statement in the proposed rule was inadequate because it fails to distinguish between the PPA’s “Disputed Payment” provision and its “Vendor Remedy for nonpayment of Contract” provisions. AT&T also stated that merely stating that billing disputes should be resolved pursuant to the terms of the PPA fails to adequately address the effect of following (or failing to follow) such procedures. AT&T asked that the PPA’s 21-day dispute provision be included in the rule because it is unambiguous and mandatory.

STA stated that the PPA does not impose any duty to dispute errors within 21 days, and cited the commission’s holding in Docket Number 34332 that the PPA’s mandatory dispute language merely means that payment of the invoice is overdue on the 31<sup>st</sup> day if no dispute is raised and that failure to dispute potentially exposes a governmental entity to interest charges beginning with the date that payment of the invoice becomes overdue. The State stated that if the Commission incorporates the PPA’s 21-day notice of dispute requirement into the rule, and the

Legislature were to alter this requirement or the courts interpret it in some fashion contrary to the commission's rule, the commission would need to revisit and revise the rule. The State also stated that there is no support in the PPA, PURA, or the commission's existing rules for AT&T's proposed notice and dispute provisions.

AT&T requested that the Commission create exceptions to the commission's existing overbilling rule to explicitly allow for a partial refund when a governmental entity fails to comply with certain obligations under the rule. The Cities stated that AT&T's suggested language is beyond the Commission's rulemaking authority. Cities also stated that while the PPA establishes a time period for a governmental entity to dispute billings, it does not limit the entity's ability to seek correction of those errors after payment has been made. Cities stated that AT&T's language would deny governmental entities the protection of PURA that all other customers enjoy. Cities stated that AT&T's suggested language is an attempt to insert a statute of limitations which contradicts the positions of the Comptroller and the commission. Cities stated that the commission has stated that an interpretation of the PPA that precludes a governmental entity from disputing an invoice after the 21-day period would render statutes dealing with the auditing of governmental entities on a quadrennial basis meaningless because errors identified in the audits would be discovered well after the 21-day period had passed.

CenturyLink stated that a PPA entity's failure to notify the CTU that it is PPA eligible should be taken into account if there is a claim for refunds under §26.27.

*Commission Response*

**The Commission declines to change §26.33(c). AT&T is correct that the PPA’s dispute provision is unambiguous and mandatory. PPA §2251.042 provides that “[a] governmental entity shall notify a vendor of an error in an invoice submitted for payment by the vendor not later than the 21<sup>st</sup> day after the date the entity receives the invoice.” However, STA and Cities correctly cite commission precedent on this provision. In Docket Number 34332, the commission interpreted this provision in the PPA to mean that if an invoice is not disputed, it merely means the payment is overdue on the 31<sup>st</sup> day and interest may accrue. Additionally, the Commission concluded that this provision in the PPA is not a statute of limitations. Therefore, the commission declines to specifically include the PPA’s 21-day dispute provision in §26.33(c).**

Section 26.33(d) Penalty on Delinquent Bills for Retail Service

AT&T stated that the title and language of this subsection should be amended to more closely align with the language in the PPA, because the PPA imposes the obligation to calculate and remit interest on overdue payments on PPA-eligible entities. AT&T stated that the current title and language leaves room for confusion.

*Commission Response*

**The commission agrees with AT&T and adopts its suggested amendment to §26.33(d). In addition, the commission clarifies that CTUs may accept interest submitted by a PPA entity on an overdue payment. Furthermore, the commission clarifies that, pursuant to §26.27(a)(2) (relating to Bill Payment and Adjustments), a governmental entity that is also**

**an agency in any branch of government is not subject to a fee, penalty, interest, or other charge to the state for delinquent payment of a bill from a dominant certificated telecommunications utility.**

Section 26.33(e) Disclosure

Verizon stated that the rational and prudent approach is to place the burden on the governmental entity to disclose to a CTU any accounts that it may have that are subject to the PPA so that the CTU can establish the appropriate billing arrangement. Verizon went on to state that a CTU employee is unlikely to have the facts and information necessary to determine the legal status of each customer when setting up the initial billing arrangements, and further a CTU should not bear the responsibility to determine the legal status of a customer under the PPA. Verizon went on to state that the PPA-eligible entity possesses the information and is better positioned to determine its eligibility under the PPA. Verizon stated that a governmental entity is not likely to receive service from many CTUs, but that the CTU on the other hand could have hundreds of customers that are PPA-eligible, and therefore placing the burden on the CTU to identify all PPA-eligible entities is unduly burdensome. Verizon stated that this issue is compounded because a governmental entity may have multiple accounts with a single CTU, which can be confusing. Verizon stated that it is not always clear that a given account is associated with a governmental entity, citing as an example a residential property owned by a hospital district to which the CTU provides service.

AT&T recommended deletion of §26.33(c) because of the amendments it proposed to §26.33(d).

AT&T stated that if the CTU sends inquiry as required by §26.33(d) and the PPA-eligible entity

provides sufficient notice and supporting documentation as AT&T proposes, then it can be presumed that the CTU will bill the governmental entity in accordance with the PPA. STA stated that no commenter expressed that any telephone or electric utility has generally misapplied the PPA with regards to the application of late payment charges. STA stated that it does not support the rule's disclosure language.

### *Commission Response*

**The commission has determined that the PPA applies to telephone service. See *Petition of Southwestern Bell Telephone Company for Authority to Change Rates*, P.U.C. Docket No. 6200, Order, 1986 WL 383429 at 29-30 (September 24, 1986). Therefore the commission believes that to ensure PPA-eligible entities are billed correctly by CTUs, identification of PPA-eligible entities is necessary. To accomplish this task, the commission requires CTUs to notify all non-residential customers of the applicability of the PPA to their service. The commission has revised subsection (e) to incorporate and clarify its intentions as originally expressed in subsection (e) and (f), and re-titled the subsection "Notice."**

### Section 26.33(f) Inquiry

The State and Cities stated that the rule properly places the burden upon a CTU to make inquiry into each customer's status. Cities stated that the inquiry requirement is not a significant burden because in most cases, the customer's identity as a governmental entity is obvious to the utility, and where it is not it is fairly simple to ask during enrollment. Conversely, Cities stated that placing the burden on governmental entities is significantly difficult because many PPA-eligible entities might not know of the notification requirement and because the failure to notify could be

construed as an effective waiver of their rights under the PPA, which is statutorily void. Cities stated that the PPA applies regardless of whether a utility knows the customer is PPA-eligible, and given that a PPA-entity's rights under the PPA cannot be waived, the burden of inquiry is rightfully placed on the utilities. Cities stated that the 6-month inquiry period established in the rule is reasonable, but stated that the rule is unclear as far as consequences for a utility that fails to inquire. Cities noted again that failure to inquire has no effect on the PPA-eligible entities' rights under the PPA.

Verizon stated that the rational and prudent approach is to place the burden on the governmental entity to disclose to a CTU any accounts that it may have that are subject to the PPA so that the CTU can establish the appropriate billing arrangement. Verizon went on to state that a CTU employee is unlikely to have the facts and information necessary to determine the legal status of each customer when setting up the initial billing arrangements, and further a CTU should not bear the responsibility to determine the legal status of a customer under the PPA. Verizon went on to state that the PPA-eligible entity possesses the information and is better positioned to determine its eligibility under the PPA. Verizon stated that a governmental entity is not likely to receive service from many CTUs, but that the CTU on the other hand could have hundreds of customers that are PPA-eligible, and therefore placing the burden on the CTU to identify all PPA-eligible entities is unduly burdensome. Verizon stated that this issue is compounded because a governmental entity may have multiple accounts with a single CTU, which can be confusing. Verizon stated that it is not always clear that a given account is associated with a governmental entity, citing as an example a residential property owned by a hospital district to which the CTU provides service.

AT&T stated that §26.33(f) appears to have been designed to address the concern of properly identifying PPA-eligible entities. AT&T requested that the rule be clarified that the CTU be required to send the inquiry to its customers, through a bill message or otherwise, and that a governmental entity be required to affirmatively notify the CTU if they are a governmental entity subject to the PPA within 60 days of receipt of the CTU's inquiry. AT&T stated that this places the proper burden on each party, the CTU to inquire, the PPA-entity to identify itself.

AT&T went on to state that that the rules should also explicitly create an exception to the existing overbilling rule to explicitly allow for a partial refund when a governmental entity fails to notify a CTU of its status as a PPA-eligible entity. AT&T stated that such an exception is not a *per se* waiver of any rights a governmental entity has under the PPA. AT&T stated that the failure of a PPA entity to identify itself should have some effect and should be taken into account in determining the appropriate amount of any refund. AT&T noted that this is consistent with Commission precedent.

AT&T stated that the rule should require the governmental entity to provide some form of supporting documentation, similar to what tax-exempt customers are currently required to provide to receive tax-exempt status, along with its self-identification which clearly indicates that a governmental entity is subject to the PPA's terms. AT&T expressed concern that it might get responses from customers that self-identify as being PPA eligible, when they are not.

STA stated that because there is no evidence of a widespread problem, it does not support the disclosure or the inquiry language in the proposed rule. STA stated that the facts are CTUs generally had a policy and practice of suppressing late payment charges for political subdivisions. STA stated that the billing errors that occur are not from lack of regulation or a lack of clarity in the rules, and thus cannot be fixed by amending the rules. The State stated that the premise that it is difficult to identify PPA-eligible entities is without merit because it is only aware of the two complaint dockets initiated by STA on behalf of its client political subdivision, and further stated that there was never any serious doubt that STA's client complainant was a political subdivision of the State of Texas.

Verizon stated that the burden of identifying when an entity is PPA-eligible should rest on the PPA entity, not the CTU. Verizon stated that having the governmental entity notify the CTU of its status under the PPA so that the appropriate billing arrangement can be established is a more fair, efficient, and practical approach. TSTCI stated that it is concerned with the obligations and burdens that the rule would place on its member companies by putting all of the responsibility on the CTU for identifying which customers are governmental entities subject to the PPA. TSTCI agrees with Verizon that this would put CTUs in the impossible position of identifying governmental entities subject to the PPA and informing them of their rights under the PPA without access to the necessary information and any obligation on the part of the governmental entity to disclose this information. TSTCI stated that it is not equitable to impose all of the burdens on the CTU when the governmental entity receives all the benefits of PPA billing. Moreover, TSTCI stated that the process for notifying existing and new customers as contemplated in the proposed rule could lead to abuse absent a requirement for supporting

documentation from the governmental entity. TSTCI supported AT&T's proposal to delete §26.33(e) and modify §26.33(f).

Cities support the rule because it places the burden of inquiry regarding a customer's status as a PPA entity on the CTU, and because regardless of whether the CTU can identify a PPA-eligible entity, the PPA applies to that entity's billing. Cities stated that AT&T's proposed exception to the commission's *per se* overbilling rule is a statute of limitations and that such a limitation is beyond the commission's authority. Cities goes on to say that enacting a specific rule addressing billing disputes by governmental entities and creating a statute of limitations would be inconsistent with the law and bad public policy. Cities also stated that this change would deny PPA entities consumer protections provided by PURA because all other customers are entitled to a full refund for overbilling, but the suggested change would limit recovery for overbilling related to the PPA. Cities also stated that the commission's prior interpretation of the PPA precludes it from adopting the suggested revisions because they are inconsistent with the statutory requirement for quadrennial audits of governmental entities. Cities stated that in most cases it is obvious to a utility that their customer is a PPA entity, and for those few customers who are not easily identified, a simple inquiry by the CTU is all that is required. Cities agrees with AT&T that requiring the CTU to send an inquiry to its customers places the proper burden on each party, the CTU to inquire and the governmental entity to identify itself. Cities stated that it fears that placing a notification requirement on PPA entities might be construed as a waiver of rights if the entity fails to identify itself, which waiver is void under the PPA. Cities noted that the PPA applies whether the utility knows of the entity's PPA-eligible status, and there can be no waiver of PPA rights.

CenturyLink stated that since a complaint of overbilling based on the PPA but brought to the commission invokes the commission's singular authority under PURA, not the PPA, the rule should recognize that overbilling complaints by governmental entities often have little to do with the PPA and are mostly about applying a CTU's tariff, which depends on the ability of the CTU to identify the customer as a governmental entity. CenturyLink stated that in that context, requiring a governmental entity to identify itself as such makes sense. Further, CenturyLink stated that allowing discretion as to the period that refunds may be due when the governmental entity did not reasonably identify itself as such, nor protest its bill for many years, also makes sense. CenturyLink stated that it supports AT&T's suggested modifications.

In a letter filed after the proposal for adoption was filed with the commission, Cities stated that the rule is internally inconsistent. Cities stated that although they support the applicability of the PPA to PUC proceedings and do not object to the overall direction of the proposed rule, the appearance of subsections (e)(1) and (2) for the first time in the proposal for adoption is problematic. Cities stated that subsections (e)(1) and (2) are internally inconsistent with subsection (c) relating to disputed bills, because they suggest that in a PPA billing complaint proceeding, the commission could consider facts other than those stated in the PPA, and may limit a party's relief under the PPA after such consideration. Cities stated that PPA rights cannot be waived and that the PPA includes no notice requirement or condition on a party's rights or remedies. Cities stated that if the commission believes it has the legal authority to undertake the consideration of notice as set forth in subsection (e)(1) and (2), that authority must derive from

the statute and does not require a rule to embody it, rendering the provisions unnecessary. Cities ask that paragraphs (1) and (2) be removed from any rules ultimately adopted.

*Commission Response*

**The commission deletes subsection (f). The commission incorporates and clarifies its intent as originally proposed in subsections (e) and (f), identification of PPA-eligible entities, in revised subsection (e). The commission concludes that the appropriate balance between maximizing compliance with the PPA and minimizing costs to CTUs is to require CTUs to provide written notice to all of their non-residential customers of the applicability of the PPA to their service to governmental entities and has changed the rules accordingly. This requirement is not burdensome but will increase the likelihood that governmental entities will inform their CTUs of their status as governmental entities subject to the PPA. The commission requires CTUs to provide this notice to their existing non-residential customers within six months of the effective date of this section and, within three months of the effective date of this section, to new non-residential customers at the same time as or before the terms of service are provided to the customer. The commission clarifies that failure to provide this notice does not create an independent claim under the PPA and that the notice does not initiate or terminate either party's rights or obligations under the PPA.**

**In addition and consistent with its decision in Docket Number 34332, the commission has changed the rules to state that the failure of a CTU to provide written notice in accordance with this subsection may be considered in a PPA billing complaint and the failure of a governmental entity to inform the CTU of its status as a governmental entity may be**

considered in a PPA billing complaint. These provisions provide incentives for a CTU to provide the required notice and for a governmental entity to inform its service provider of its status as a governmental entity.

The commission does not agree with Cities that these provisions make the rule internally inconsistent. First, subsection (c) operates from the presumption that both parties know their billing is according to the PPA; therefore identification of PPA status has already been accomplished. Second, while Cities is correct that the commission's consideration of the factors listed in subsection (e)(1) and (2) could limit a party's relief in a complaint proceeding before the commission, this result is consistent with commission precedent. *See Complaint of Harris County Hospital District Against Southwestern Bell Telephone, LP d/b/a AT&T Texas*, Docket No. 34332, Order at 2 (April 15, 2009). In that case, the commission decided that because Harris County Hospital District (HCHD) was a large, sophisticated public entity with sufficient resources to have discovered and addressed the billing problem long before it brought the complaint to the commission, it was appropriate to hold HCHD partially responsible for the prolonged accrual of overcharges. *Id.* Subsections (e)(1) and (e)(2) are intended to memorialize the commission's decision in the HCHD case. However, these provisions do not initiate or terminate a party's rights or obligations under the PPA. Instead, the primary intent of these provisions is to increase the likelihood that PPA-entities will be identified and billed correctly. Finally, these provisions are directly responsive to concerns raised by commenters regarding a lack of consequences for failure to provide notice, and claiming that notice is onerous and meaningless unless the PPA entities are required to respond. The commission cannot require PPA entities to self-

**identify. However, an entity's identifying itself as eligible for PPA billing, especially after receiving the required notice from its CTU is reasonable and reduces the chance of incorrect billing.**

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this rule, the commission makes changes for the purpose of clarifying its intent.

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (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 §§17.004 and 64.004, which authorize the commission to adopt and enforce rules to protect customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices by CTUs.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, and 64.004.

**§26.33. Prompt Payment Act.**

- (a) **Application.** This section applies to billing by a certificated telecommunication utility (CTU) to a “governmental entity” as defined in Texas Government Code Chapter 2251, the Prompt Payment Act (PPA). This section controls over other sections of this chapter to the extent that they conflict.
- (b) **Time for payment by a governmental entity.** A payment by a governmental entity shall become overdue as provided in the PPA.
- (c) **Disputed bills.** If there is a billing dispute between a governmental entity and a CTU about any bill for CTU service, the dispute shall be resolved as provided in the PPA.
- (d) **Interest on overdue payment.** Interest on an overdue governmental entity payment shall be calculated by the governmental entity pursuant to the terms of the PPA and remitted to the CTU with the overdue payment. However, pursuant to §26.27(a)(2) of this title (relating to Bill Payment and Adjustments), a governmental entity that is also an agency in any branch of government is not subject to a fee, penalty, interest, or other charge to the state for delinquent payment of a bill from a dominant certificated telecommunications utility.
- (e) **Notice.** A CTU shall provide written notice to all of its non-residential customers of the applicability of the PPA to the CTU’s service to governmental entities. This notice shall be completed within six months of the effective date of this section for existing non-

residential customers and, within three months of the effective date of this section, shall be provided to a new customer at or before the time that the terms of service are provided to the customer. A CTU's failure to provide this notice does not give rise to any independent claim under the PPA, nor does this notice initiate or terminate any party's rights or obligations under the PPA.

- (1) The failure of a CTU to provide written notice in accordance with this subsection may be considered in a PPA billing complaint.
- (2) The failure of a governmental entity to inform the CTU of its status as a governmental entity may be considered in a PPA billing complaint.

This agency hereby certifies that the adoption 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 §26.33, relating to relating to the Prompt Payment Act, is hereby adopted with changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE \_\_\_\_\_ DAY OF SEPTEMBER 2010.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**BARRY T. SMITHERMAN, CHAIRMAN**

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**DONNA L. NELSON, COMMISSIONER**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**