

The Public Utility Commission of Texas (commission) adopts new §26.34 relating to Telephone Prepaid Calling Services with changes to the proposed text as published in the April 7, 2000 *Texas Register* (25 TexReg 2884). The new rule is necessary to implement provisions of the Public Utility Regulatory Act (PURA) §§14.002, 15.023, 17.004, 17.051, 17.052, 55.253, 64.051, and 64.052 (Vernon 1998, Supplement 2000), which grant the commission authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, impose administrative penalties against an entity for violation of a rule adopted under PURA, adopt and enforce rules as necessary and appropriate to establish adequate customer protection standards, adopt registration requirements for all non-dominant telecommunications carriers, require registration as a condition of doing business in Texas as well as to establish customer service and protection standards, and grant the commission all necessary jurisdiction to adopt rules regarding the information a prepaid calling services provider must disclose to customers in relation to the rates and terms of service for prepaid calling services offered in Texas. This new section is adopted under Project Number 21424.

A public hearing on the proposed section was held at the commission offices at 10:00 a.m. on Friday, May 26, 2000. Representatives from Southwestern Bell Telephone Company (SWBT), MCI Worldcom (MCI), AT&T Communications of Texas, L.P. (AT&T), JD Services, Inc., International Telecard Association (ITA), Sprint Communications Company L.P. (Sprint), Office of Public Utility

Counsel (OPUC), and Consumers Union attended the hearing and provided comments. To the extent such comments differ from the submitted written comments, such comments are summarized herein.

The commission received comments on the proposed section from Sprint, SWBT, AT&T, OPUC, MCI, JD Services, Inc., Americatel Corporation (Americatel), Consumers Union and Texas Legal Services Center (collectively Consumers), Telecommunications Resellers Association and Southwest Competitive Telecommunications Association (collectively the Associations), and GTE Communications Corporation (GTECC).

*General Comments*

Consumers supported the published rule and favored the registration requirement noting it is necessary for compliance and enforcement. Consumers also noted the rule makes it easier for customers to shop for calling cards and impacts nearly all customers in the state

AT&T stated the commission should concern itself with developing rules which protect customers, establish broad disclosure requirements, and determine technical standards while not hindering the efforts of legitimate providers. AT&T supported the customer protection and registration requirements, but stated the rules should allow legitimate companies the flexibility to market their products as they choose. AT&T expressed concern that the proposed rules micro-manages prepaid services companies and may impede competition. AT&T stated a reasonable rule should not deny providers the ability to

make decisions about marketing, packaging, and disclosure in the manner best suited to the company.

JD Services noted it supported all of the comments submitted by AT&T.

The Associations commented that the rules were overreaching and inappropriate for discretionary services emerging in a competitive market and urged the commission to recast several provisions more generally. The Associations asserted the specificity of the rule would be costly to providers who have national platforms, card, and programs. The Associations and AT&T argued the specific obligations would burden legitimate providers while providing negligible benefits to customers.

Nevertheless, the Associations agree that customers do have a right to know what they are purchasing before they buy and should be fully informed about the service they receive. The Texas Resellers Association's *Prepaid Calling Cardholder's Bill of Rights* offers providers latitude in how these obligations are implemented. The Associations suggested the commission's rule use the same approach. The Associations and JD Services also stated the key to protecting the public is education and enforcement.

At the public hearing, ITA noted its industry enforcement efforts which utilize a consumer hotline to attempt to resolve customer disputes before they are forwarded to state commissions, the Federal Communications Commission (FCC) or the Federal Trade Commission (FTC). ITA stated it also sends out scam alerts to members and recently adopted voluntary disclosure guidelines for its members.

Consumers argued against companies' assertions that prepaid calling services are highly competitive and discretionary. Consumers noted that while many prepaid calling services companies exist, the market is not effectively competitive if customers cannot evaluate their purchase options. Consumers noted Senate Bill 1020, 76<sup>th</sup> Legislative Session (SB1020), intended to facilitate customer choice and stated that once customers can compare information, the market can begin to compete on price rather than confusion. Consumers also noted that households without phone service must rely on prepaid calling cards, therefore these services are not discretionary to these customers.

The commission concludes that the proposed rule is not overreaching. Problems in the current market resulted in the legislation the commission is required to implement. The commission has used other state rules to model the published rule and afforded national providers' ample opportunity to participate in this proceeding. Additionally, the commission agrees with parties' assertion that education is important in customer protection, and notes that education would be fruitless if customers did not have the disclosure necessary to protect themselves.

*Subsection (d)*

ITA commented that the definition of a prepaid calling services company is too broad. ITA noted distributors who distribute their own cards with personal identification numbers (PINs) purchased from a prepaid services company should not be subject to this rule since the prepaid services company, and not the distributor, provides the time that will fulfill the PINs.

The commission declines to amend the definition of a prepaid calling services company and determines that a distributor as described by ITA is subject to this rule. A distributor producing calling cards must be in compliance with the disclosure requirements of this rule and a distributor purchasing PINs from a prepaid calling services company is responsible for ensuring the calling cards are functional.

Sprint, AT&T and ITA commented that a customer generally does not pay a prepaid calling services company directly, but rather pays a retailer and suggested the definition of prepaid calling services account should be adjusted to account for the transaction between the retailer and the customer. Consumers agreed with this assessment.

The commission agrees with parties about the role of a retailer and modifies this definition to account for the transaction between a retailer and a customer.

Americatel recommended the definition of prepaid calling card be modified to include the entire item a customer receives upon purchase of a prepaid calling service including packaging. Americatel contended this would ensure that all relevant information is provided to customers without costly duplication.

The commission declines to implement the proposal for the definition of prepaid calling card, and notes it is often left to the discretion of a retailer to determine what information is available to customers;

therefore, a calling card company cannot ensure that packaging or any other disclosure will be provided to customers. Additionally, many commenters noted customers do not keep packaging materials. In order to ensure adequate disclosure is readily available, the commission makes no change to the definition of calling card.

ITA suggested the requirement to disclose recharge rates should include a disclosure for new surcharges.

The commission agrees with ITA and modifies the definition of recharge accordingly.

*Subsection (e)*

Americatel, the Associations, and AT&T believed disclosure requirement for billing increments in three places was excessive. Americatel and AT&T stated providers should be given the flexibility to determine where information is provided.

Consumers disagreed with companies' suggestion that providers be allowed to determine where rate information should be disclosed. Consumers noted the displays may not be adequate and noted AT&T's comments that customers are unlikely to take notes at the point of sale.

The commission agrees with Consumers and notes several providers' comments regarding the difficulty in ensuring adequate disclosures are provided to customers, including comments that customers discard packaging and that point of sale displays are subject to a retailer's discretion. Therefore, the commission makes no changes to the requirement of subsection (e)(1).

AT&T proposed the requirement to disclose billing increments on cards be deleted due to the finite space of a calling card.

The commission finds information on billing increments is important for customers to determine the true value of the card they are purchasing. Some companies bill calls at an increment that does not reflect the actual amount of time on the call. Other companies bill calls at increments that exceed one minute. This information is absolutely relevant in determining the true value of a card and the true cost of a call.

ITA commented that a circuit is open as soon as the access number is dialed and customers should not be charged at this point.

Sprint commented that unanswered calls should be considered open circuits and be billed accordingly.

Consumers disagreed with Sprint and noted that customers expect not to be charged for unanswered calls.

The commission determines that unanswered calls should not be charged against a prepaid calling services account, and amends the subsection to indicate only completed calls may be charged against a prepaid calling services account.

AT&T recommended the requirement to maintain published tariffs be omitted for international calls due to the volatility of the international long distance market. AT&T stated maintaining international rates in tariffs would make it administratively burdensome and suggested only the toll-free customer rate information telephone number be the only source required to maintain accurate international long distance rates.

The commission acknowledges the volatility of the international long distance market, and amends proposed §26.34(e)(4) to indicate only domestic rates and domestic and international surcharges must be kept current in commission filings. The commission adds new §26.34(e)(5) to address international rates. The new section requires companies to maintain records of international rates and ensure the information is available to customers through a toll-free telephone number. New §26.34(e)(5) continues to require an annual update of international rates to the commission.

Sprint commented recharge rates should remain consistent to avoid confusing customers and add additional administrative burdens to providers. AT&T disagreed and noted some rates change over time.

The commission allows sufficient flexibility in this rule to allow providers discretion in determining whether or not they want to change recharge rates and submit updated tariffs. The rule continues to allow changes in recharge rates, so long as domestic recharge rates are filed with the commission.

ITA requested the commission include a definition of call detail records.

The commission concludes that the description of call detail information is sufficient so no need exists for a definition of call detail records.

SWBT commented routing/signaling identifiers are used internally by prepaid calling services companies in daily business operations and should not be included in call detail data information as they are not beneficial to customers.

The commission agrees with SWBT and deletes the request for access identifier from the call detail data information.

AT&T recommended only the area code and exchange of the called telephone number be provided in response to requests for call detail information in order to protect the privacy of customers. AT&T commented it was unable to identify whether a legitimate prepaid calling services customer is making the request; therefore, prepaid calling services companies should not be required to provide full telephone

numbers. AT&T asserted service providers should be allowed to develop their own policies for verifying the legitimacy of the source requesting that proprietary information be divulged.

MCI supported AT&T's request and noted the expectation of customers purchasing prepaid calling cards is that they and who they call are relatively anonymous. MCI also stated that going back five calls and providing only area code and exchange information is reasonable enough to allow a customer to determine whether they have been charged correctly.

The commission concludes that the call detail provided to customers upon request shall include the full telephone number dialed. The reduction in value of a prepaid calling services account is equivalent to long distance charges billed to a customer's home or business phone. If the value of a customer's prepaid calling services account is reduced, the customer is entitled to know to what phone number the charge was attributed. No amendment is made to proposed §26.34(e)(5)(B), which is now §26.34(e)(6)(B). Additionally, the rule allows sufficient flexibility for a provider to develop its own policies for verifying the legitimacy of the source requesting the information.

ITA and JD Services recommended the commission require detail records be maintained for three years to establish consistency with federal requirements.

Americatel recommended the two-year period for maintaining call detail information be reduced to one year from the date of purchase of the card. Americatel's experience showed customers do not request such information after two months from the purchase of the card.

Consumers noted other commission rules require billing records be kept for two years.

The commission currently requires other billing records be retained for two years, and the rule does not prohibit a company from maintaining records for a longer period, if required federally. Therefore, the commission makes no changes to this requirement.

*Subsection (f)(1):*

Americatel noted that imposition of font sizes and requirements for disclosure of taxes and billing increments are overly constrictive and may be impractical given the physical card size and the amount of information that already appears on cards by convention. JD Services noted that the specificity of this rule could create unreasonable costs for providers who may be forced to create different cards for each state.

The commission determines this rule is consistent with other state requirements and notes its use of existing rules in other states as a model for this rule. The commission also reviewed the national

voluntary guidelines provided by ITA and has amended the rule in several areas to be consistent with those guidelines. The commission addresses Americatele's concerns later in this preamble.

AT&T, the Associations, GTECC, and MCI recommended elimination of the eight-point font requirement and requested the term "legible" be substituted.

SWBT expressed concern that the font size requirement would limit the ability of companies to market bilingual prepaid calling cards in Texas and suggested a waiver of this requirement for bilingual calling cards so providers could determine the font size necessary for legibility and meeting the disclosure requirements. SWBT stated its six-point font size is legible and commonly used on credit cards and driver's licenses and should be acceptable for prepaid calling cards. Internal "demo" calling cards produced by SWBT showed the rule requirements could not be made for bilingual cards, but some modifications could be made in single language cards. SWBT also noted it did not believe font size to be an issue in the abuses that have been discussed.

In response to SWBT, Consumers provided a visual comparison of eight and six-point font to refute the claim that font sizes smaller than eight-point can be legible.

At the public hearing, AT&T noted that copying machines reduce the size of a font and made the example provided by consumers union inaccurate in portrayal. AT&T presented an actual card using a font smaller than eight points and noted its legibility.

AT&T, JD Services, and SWBT commented the font size would make it impossible for providers to fit all the required information on a card without enlarging the size of a card to something that would not fit in a wallet. JD Services provided a sample printing which indicated a need for a border, reducing the amount of available space on a calling card.

Finally, JD Services noted a list of requirements from the Federal Communications Commission (FCC) that must be met and felt the information on its cards meets federal mandates. In reply comments AT&T and SWBT researched this issue and did not discover any FCC regulations for calling cards.

ITA noted the font requirement would eliminate hierarchy of importance for information on calling cards. AT&T noted information on some cards is made to stand out by using different font sizes and noted that very prescriptive font sizes could be problematic.

In supplemental comments AT&T noted that the Washington rule, a model for discussions about bonding requirements, adopted a "legibly printed" standard in its rule. MCI also noted the commission used a legible standard in the slamming rules (§26.130) that allows the commission to determine what is legible in enforcement proceedings.

At the public hearing, Consumers asked industry participants if they would oppose requirements that only certain, instead of all, information be in a specified font size. In supplemental comments,

Consumers suggested the commission should at minimum, impose eight-point font requirements on the price, access numbers, and pin numbers. Consumers noted that the samples distributed at the public hearing did have such information in significantly larger type sizes.

The commission modifies the font size requirement to mandate that only toll-free customer numbers, maximum rates, and identification of inactive cards be provided in a minimum of eight-point font. Font size minimums for other information are set at five-point. The commission notes, no party indicated a need for a font size smaller than five. Additionally, the commission adds the stipulation that the font selected must be legible. In establishing minimum font sizes, the commission still provides prepaid calling services companies some flexibility while ensuring information is properly disclosed to customers.

In discussions about font size requirements, JD Services also commented that the front of the card is unavailable for the purposes of complying with this rule because the front of the card is determined by contractual agreements with distributors and generally is used for logos and artwork.

In supplemental comments, AT&T recommended the commission not adopt a rule that would require moving some information to the front of the card and noted this would conflict with industry standards and confuse customers.

The commission's response to font size should alleviate the concerns about information spilling over to the front of the card. However, the commission notes, there is no restriction to providing some of this information on the front of the card.

AT&T commented the rule's requirement that all information on a card be in the same language as that in which a card is marketed may significantly limit the availability and marketing of calling cards to some Texans. AT&T noted that the rule would prohibit all cards, advertisements, or anything related to calling cards from having more than one language as two languages would automatically violate the rule and calling card companies would be punished for trying to reach a broader base of customers. AT&T recommended the commission omit the first sentence of subsection (f)(1) or limit its applicability to marketing efforts where 30% of the marketing effort has been translated into another language.

JD Services commented that the font requirements would make it impossible to create bilingual cards and pointed out that retailers prefer bilingual cards due to difficulty in selling cards available in only one language.

The commission has amended the font size requirements and amends (f)(1) to clarify that bilingual cards are permissible so long as all the information is available in both languages.

The Associations commented that the requirement to disclose applicable taxes is virtually impossible to comply with because of the portability of prepaid calling cards. AT&T suggested a general disclosure

that services, surcharges, fees and taxes may be applied and a toll-free customer service number for customers to call for more detailed information.

At the public hearing, JD Services provided an extensive list of taxes it is responsible for and noted it would be impossible to print them all. JD Services noted the rule is unclear as to which fees and taxes must appear on the calling card.

The commission clarifies the confusion as to which fees, surcharges, and taxes must appear on a calling card by providing a definition for surcharges. The definition is crafted from the voluntary guidelines provided by ITA.

Americatel commented that the value of the card in minutes depends on the destination called and that the requirement for cards to contain "the value of the card, including charges for all services, surcharges, fees, and taxes, if applicable, expressed in minutes" is impractical, if not impossible, to achieve and should be eliminated.

ITA commented that variable fees would make this proposal impossible to fulfill and noted that requiring the value of a card to be expressed in minutes is only informative if there are no other surcharges. ITA recommended the value of the card be expressed in dollars or units with information about other charges.

AT&T objected to the requirement that the value of the card be expressed in minutes because AT&T offers customers a choice of purchasing prepaid cards in minute, unit, or dollar valuations. AT&T also objected to the specific line placement requirements for per call charges. AT&T suggested the rule allow the value of the card to be expressed in minutes, units or dollars, and companies be allowed flexibility to disclose per call charges wherever a provider chooses. AT&T further suggested that this subsection of the rule apply only to domestic calls due to the constant fluctuation of international rates.

GTECC's experience showed no complaints relating to customers not being aware of rates, and applicable surcharges and fees and recommended that all charges other than the face value of the card be printed on the card packaging in lieu of the card itself.

Consumers disagreed with Americatel's request and stated that the dollar value of a card tells customers nearly nothing. Consumers argued rate information must be expressed in minutes in order to be compared to other cards. Consumers also disagreed with GTECC and noted the actions taken by the Office of the Attorney General against Sam's Club for falsely advertising 120 minutes of calling time and a rate of 15 cents per minute, and for failure to disclose pay phone surcharges. Consumers stated that due to the retailer's discretion for making available point of sale information, rate information must be printed on the card, or in the alternative, on the packaging.

The commission amends paragraph (f)(1)(A) to allow providers to choose how to express the value of a card. However, the valuation of the card and any applicable surcharges must be expressed in the

same format. For example, a card whose value is expressed in units must also list any applicable surcharges on the card in units. The commission anticipates this will provide customers some assistance in determining the true value of a calling card. Additionally, cards whose value is identified in minutes must indicate on the same line or the line immediately below whether the minute value is based on domestic or international calls.

Americatel requested clarification on whether the requirement to disclose the maximum cost per minute for local, intrastate and interstate calls requires the disclosure of the first minute which often includes a connection charge or just the maximum per minute rate.

Consumers replied that if the initial minute cost is different from the rate per minute, it should be disclosed to customers.

The commission finds that if the cost of a one-minute call is higher than the rate per minute, the minimum cost of a call must also be printed on the card in order to indicate to customers whether calls have a minimum greater than one minute.

GTECC noted that the value of printing the maximum cost per minute only exists in the absence of the packaging or point of sale information.

The Associations commented that the commission does not have jurisdiction to require the disclosure of interstate and international calls and stated providers should have discretion about where to post rate information due to the size of the card.

Sprint suggested the toll-free number for obtaining International call prices be printed on the packaging rather than the card.

Consumers disagreed with the Associations and noted that SB1020 and Senate Bill 86, 76<sup>th</sup> Legislative Session (SB86) granted the commission broad authority to prevent misleading and fraudulent marketing practices by telecommunications providers. Consumers also disagreed with Sprint and noted that customers do not keep packaging and will not have a way to determine call rates before a call is made.

The commission finds that price disclosure is essential and must be readily available at all times. Therefore, the commission does not amend this provision in proposed (f)(1)(D). However, due to font requirements, this section now appears as (f)(1)(A)(2). As previously noted, prepaid calling services providers have little control on what the retailer presents to the customer outside of the card itself due to space constraints and simple choice. Because of this lack of control of the distribution of other informational material, the commission concludes such information must be printed on the calling card. Additionally, while the commission has limited authority regarding international rates, the commission does have authority over the disclosure of information on calling cards.

GTECC suggested it would be appropriate to have the access telephone number and PIN printed on the card. Consumers agreed with GTECC's suggestion.

The commission concludes this information must be disclosed as part of the instructions on how to use a calling card correctly.

AT&T objected to the requirement that a calling card without an expiration date be active indefinitely and stated this could impose significant costs due to the tens of millions of cards already in circulation without expiration dates. AT&T noted it reuses PINs and mandating cards without expirations dates to remain in effect into perpetuity would eliminate AT&T's ability to reuse PINs. AT&T suggested the commission adopt language similar to the Florida Public Service Commission rule which sets a one year minimum activation for cards without an expiration date.

ITA suggested that an expiration policy instead of an expiration date should apply and agree that the omission of this policy should be considered as making the card active indefinitely.

The commission amends proposed subsection (f)(1)(F) (now (f)(1)(B)(iv)) to allow for an expiration date or policy to be stated on calling cards. The commission acknowledges the concerns of providers who are currently circulating calling cards without expiration dates and has amended subsection (l) to allow six months for cards currently in circulation to come into compliance. However, the commission does expect that cards produced and distributed after the adoption of this rule will be in compliance

with this rule. Additionally, the commission will use its discretion in investigating some complaints of non-compliance.

GTECC suggested it is sufficient to print the indication that a card is inactive on only one side of the card.

The commission finds it is important for customers to know a card is inactive before purchasing the card. Because displays cannot guarantee the appropriate information will be displayed to customers before purchasing cards, the commission has required this information be visible on both sides of a card.

*Subsection (f)(2):*

AT&T stated mandating the publication of identical information in three locations was overreaching. AT&T and GTE proposed the rule be amended to allow providers to disclose the required information on the packaging or in the point of sale display.

Americatel requested clarification on whether these requirements applied to both packaging and posters or other materials displayed prominently at the point of sale or whether disclosure in one or the other is sufficient.

JD services argued that the requirements for packaging and point of sale displays may not be relevant since most customers rip the packaging apart or do not stop to read and take note of point of sale displays. Additionally, JD Services noted that some vendors do not provide point of sale displays or packaging for their cards due to limited counter space.

Consumers opposed parties' suggestion that disclosures only occur in one place and suggested the commission adopt the Washington state requirement that calling card companies contract with retailers to ensure that information required at the point of sale will be visibly displayed.

Subsection (f)(2) is written using the conjunction "and" therefore packaging and point of sale displays must both be in full compliance. The commission notes the rule does not mandate that packaging and point of sale displays be made available to customers, but simply notes the disclosures that must be made if these materials are provided. Because several commenters noted that packaging or point of sale displays may not be available to customers, the commission requires this provision on both materials to ensure that whichever is provided has adequate disclosures. While the requirements may be irrelevant if packaging or point of sale displays are not available, the requirements are relevant to ensuring that where packaging or point of sale displays is available, proper disclosure is made.

AT&T and ITA suggested the font requirement for the packaging be removed. AT&T suggested the requirement be replaced with the term "legibly printed."

The commission declines to remove the font requirement from the packaging material because there is no size limitation on packaging material that would prevent a prepaid calling services company from complying with this section. Packaging material can be folded to the size of the card itself.

AT&T commented the proposed rule already requires the value of the card be placed on the calling card and should not be required to be placed in packaging or point of sale displays.

The commission removes the requirement to place the value of cards on packaging and point of sale displays in order to allow providers to mass-produce these informational materials without having to specialize materials for each denomination of card. However, a list of applicable surcharges must be provided on all packaging and point of sale displays.

ITA commented that a statement of liability regarding loss or theft is condescending to customers.

The commission disagrees and notes the provision actually relieves providers of liability due to loss or theft.

AT&T commented customers are well aware of the contact information for the Public Utility Commission due to notice inclusion in every telephone bill and directory and stated there is no need to require this information in packaging where there is limited space or point of sale. AT&T also noted a lack of control of displays by vendors and retailers and stated this information may not be conveniently

located to be useful. AT&T suggested this requirement be stricken as customers would not be prejudiced or deprived without this contact information in the packaging or point of sale display.

Consumers disagreed with AT&T and noted that many prepaid calling card users do not have home phones, therefore do not have telephone directories and do not receive phone bills.

As Consumers noted, many customers utilizing prepaid calling cards do not have phone service and have no other way of obtaining commission information. In general comments, parties stated education is important in helping to protect customers. Customers must be educated about the commission's new authority to assist customers in resolving complaints with prepaid calling services companies. This education of customers is the responsibility of the commission and providers. Therefore, the commission makes no changes to this requirement.

*Subsection (g)*

ITA suggested the verbal disclosure requirement not be effective until a valid PIN is provided. ITA recommended the value be allowed to be stated in domestic minutes, units or dollars to avoid misrepresentation to customers.

The commission concludes that a call cannot begin without accessing the provider and providing account information first. The commission declines to require a valid PIN before providing verbal

disclosures as some accounts do not use PINs. However, the commission modifies subsection (g) to allow account information to be expressed in dollars, billing increments, or domestic minutes.

*Subsection (i)*

The Associations supported the revisions made to this subsection between the strawman and the published version.

AT&T requested the commission clarify whether "inquiry" includes both customer questions and complaints and proposed language to extend the deadline of ten working days indefinitely for resolving an inquiry or complaint. JD Services supported AT&T's comments and noted that some complaints are not easily resolved because it is difficult to contact customers due to incomplete information and the anonymity of prepaid callings services customers.

ITA commented that the ability of a customer to request a response to complaints in writing may be used as a form of blackmail to extort "free" time from a company since the expense of providing a written response is more than that of issuing a new card.

The commission concludes that the very definition of an inquiry implies a question. However, the commission does amend subsection (i) to address complaints as well and adopts part of AT&T's

proposal. However, resolution time is restricted to 21 working days from the date of receipt of a customer complaint.

*Subsection (j)*

The Associations stated customers should first verify they purchased service by providing the personal identification number (PIN) associated with the card and customers should only be able to receive refunds or equivalent service while the card remains active. The Associations asserted that without these conditions, the commission may inadvertently open providers to unnecessary abuses and scams.

The commission's policy on customer refunds for all services entitles customers to receive refunds for however long the customer's records indicate a refund is due. In cases where the customer must obtain records from a provider, a provider is only required to retain records for two years.

*Subsection (k)*

GTECC recommended deleting the requirement in (k)(1)(A) that a prepaid calling services company terminating operations in Texas notify customers whose address is on file with the company of the date of termination and how they can receive refunds. GTECC argued most prepaid calling services companies have no way of knowing who purchased their card.

GTECC also suggested deleting the "billing" reference requiring prepaid calling services companies to provide the commission with a list of known names and identification numbers used for billing and debit purposes because the nature of prepaid services is advance payment and a customer is not billed.

Finally, GTECC recommended that companies be allowed to report unused services to the commission in minutes, units or dollars.

The commission declines to change any of the language in subsection (k). The requirement that prepaid calling services companies provide addresses indicates the requirement is only applicable to companies who have some customer addresses on file. Additionally, some prepaid calling service companies have a continuing relationship with customers and bill customers; therefore service is only prepaid after a customer is billed. Finally, the report submitted to the commission requires reporting in minutes (if applicable) and dollars. The commission determines it is unnecessary to request any other units, so long as the ultimate dollar amount is reported.

*Subsection (l)*

AT&T, ITA and MCI proposed that existing cards, packaging, and point of sales displays be grandfathered for an additional 90 days after the effective date of the rule to allow companies to phase in the production of new cards. AT&T also noted that some cards may never be in compliance with the new rules since customers continue to recharge their cards.

As noted previously, the commission acknowledges the concerns of providers who are currently circulating calling cards that are non-compliant and has amended subsection (l) to allow six months for cards currently in circulation to come into compliance. However, the commission does expect that cards produced and distributed after the adoption of this rule will be in compliance with this rule. Additionally, the commission will use its discretion in investigating some complaints of non-compliance. The commission notes that customers who are content with service enough to continue to recharge cards are not likely to have problems with the current disclosures on their cards and less likely to file complaints about the card.

#### *Bonding Requirements*

At the public hearing, Consumers raised the issue of bonding. Consumers noted that SB86 provided the commission authority to ensure that telecommunications providers have the technical and financial resources to provide adequate service in Texas. Consumers stated some providers must already meet such requirements at the commission, and suggested that other prepaid calling services providers who were not already captured by some commission financial requirement should be required to meet financial standards as well.

In supplemental comments, OPUC and Consumers stated customers must be able to protect themselves from future mass defaults with some form of financial assurance and supported the

application of financial requirements such as those imposed upon aggregators in the electric industry. Consumers also supported the use of the Washington state rule as a model for establishing financial standards for prepaid calling services companies.

AT&T noted the commission must consider whether or not bonding issues could be introduced into this project without creating problems with the Administrative Procedures Act (APA). AT&T also noted contractual issues between providers may be a factor in the bonding issue. AT&T asserted that PURA §55.253 makes no mention of bonding issues and the scope of the original notice for this project does not include this issue. AT&T suggested more time and discussion was needed on this issue.

MCI stated the commission does not have authority to require prepaid calling companies to post a performance bond and noted the commission had not provided sufficient notice to promulgate such a requirement in this project.

However, AT&T and MCI stated they did not object to the commission's adoption of a requirement that is consistent with the requirements of Washington state which allows companies with a corporate debt rating according to Standards & Poor of BBB to be able to rely on that rating in lieu of being required to post a performance bond or establish specific deposit accounts. MCI also noted waivers to bonding provisions would be necessary so national companies would not have to post bonds for 50 states.

AT&T recommended the commission not use the approach of §26.111, Standards for Granting Service Provider Certificates of Operating Authority. While AT&T has been unable to verify whether any of the options provided in §26.111 could have been obtained by Twister, AT&T doubts it could cover a \$20 million debt. AT&T stated the commission should avoid a result that penalizes companies that have provided good service due to bad actors.

SWBT stated they did not oppose bonding requirements similar to those used in Washington State as they did not appear to prohibit market entry. However, SWBT noted the following threshold issues that must thoroughly be examined:

- (A) What are the exact bonding requirements proposed?
- (B) What entity will assume responsibility for the administration of the program?
- (C) How will claims against the bond be handled?

SWBT commented that bonding might be an administrative burden for the commission who would have to issue refunds and administer the funds.

The commission determines that additional time is needed to discuss this issue thoroughly. The commission will consider bonding requirements in a future rulemaking.

*Informing the commission of possible disconnections*

At the public hearing, Consumers proposed that underlying carriers preparing to terminate service to a calling card provider should inform the commission of its intent. Consumers recognized that underlying carriers are not ultimately responsible to customers but noted the larger public interest would be served by this action. In reply comments, Consumers elaborated on this suggestion and recommended the commission notify customers through the media that a company's particular products are no longer active because without notice customers will continue to buy worthless cards. Consumers cited the recent situation with Twister and noted the commission was not fully informed of the situation until nearly a week after MCI suspended service to Twister.

OPUC supported a requirement that prepaid calling card companies notify the commission after a carrier suspends its service. OPUC noted that retailers and customers should be warned to stop purchasing cards that will soon be useless, but noted the bonding requirement appeared to be a simpler alternative.

Industry participants noted more time was necessary for discussion of this provision.

JD Services was not opposed to this suggestion, but noted this would have to occur before an interexchange carrier (IXC) or provider chose to take legal actions for collections of debts due to the restrictions on public information disclosures for pending legal cases.

AT&T expressed concern about imposing notification obligations that might subject IXCs to continued financial loss and is not aware of any other industry where a wholesale provider is obligated to provide notification to end-use customers on behalf of a client. AT&T also expressed concern about legal liability issues and noted that IXCs may not always know in which states a provider is operating. Finally, AT&T expressed concern that this issue was not properly noticed in this rulemaking proceeding.

MCI asserted the commission does not have authority to require network providers to notify the commission before terminating service to a prepaid calling services company. MCI questioned the purpose that would be served by this process since the network provider has no regulatory obligation to serve the customers. MCI noted that a wholesale provider does not always know if services are being provided to the end users customers and assumed the commission does not intend to obligate resellers to track services offered by wholesalers. MCI also noted that if the commission intended to use this information for public notice, it could result in negative consequences such as tort claims from reselling companies who may have alternate providers lined up.

AT&T and MCI noted this issue was currently covered by proposed subsection (k).

The commission determines that additional time is needed to discuss this issue thoroughly. The commission declines to add this requirement to the rule at this time and will consider this issue in a future rulemaking

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

New section §26.34 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, §15.023 which grants the commission authority to impose an administrative penalty against an entity for violation of a rule adopted under PURA. PURA §17.004 grants the commission authority to adopt and enforce rules as necessary or appropriate to establish adequate customer protection standards. PURA §17.051 and §64.051 direct the commission to adopt registration requirements for all telecommunications utilities that are not dominant carriers. PURA §17.052 and §64.052 allow the commission to require registration as a condition of doing business in Texas; establish customer service and protection rules; and suspend or revoke certificates for repeated violations of this chapter or commission rules. PURA §55.253 grants the commission all necessary jurisdiction to adopt rules regarding the information a prepaid calling services provider shall disclose to customers in relation to the rates and terms of service for prepaid calling services offered in Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 15.023, 17.004, 17.051, 17.052, 55.253, 64.051, and 64.052.

**§26.34. Telephone Prepaid Calling Services.**

- (a) **Purpose.** The provisions of this section are intended to prescribe standards for the information a prepaid calling services provider shall disclose to customers about the rates and terms of service for prepaid calling services offered in this state.
- (b) **Application.** This section applies to any "telecommunications utility" as that term is defined in §26.5 of this title (relating to Definitions). This section does not apply to a credit calling card in which a customer pays for a service after use and receives a monthly bill for such use.
- (c) **Liability.** The prepaid calling services company shall be responsible for ensuring, either through its contracts with its network provider, distributors and marketing agents or other means, that:
- (1) end-user purchased prepaid calling services remain usable in accordance with the requirements of this section; and
  - (2) compliance requirements of all disclosure provisions of this section are met.
- (d) **Definitions.** The following terms used in this section shall have the following meanings, unless the context indicates otherwise:
- (1) **Access telephone number** – The number that allows a prepaid calling services customer to access the services of a telecommunications utility to place telephone calls.

- (2) **Billing increment** – A unit of time used to charge customers for prepaid calling services.
- (3) **Personal identification number (PIN)** – A number assigned as an authorization code that ensures system security for a prepaid calling services customer and allows the prepaid calling services company to track minutes used.
- (4) **Prepaid calling services account** – An amount of money paid by a customer in advance to access the services of a telecommunications utility to place telephone calls. When the customer makes completed telephone calls, the value of the account decreases at a predetermined rate.
- (5) **Prepaid calling card** – A card or any other device purchased to establish a prepaid calling services account.
- (6) **Prepaid calling services** – Any telecommunications transaction in which:
  - (A) a customer pays in advance for telecommunications services;
  - (B) the customer's prepaid calling services account is depleted at a predetermined rate as the customer uses the service; and
  - (C) the customer must use a PIN and an access telephone number to use the telecommunications services.
- (7) **Prepaid calling services company** – A company that provides prepaid calling or other telecommunications services to the public using its own telecommunications network or resold telecommunications services, or distributors who purchase PINs or telecommunications services to resell to the end-user customer.

- (8) **Recharge** – A transaction in which the value of the prepaid calling services account is renewed. The customer must be informed verbally or electronically of the new rates and surcharges at the time of recharge.
  - (9) **Surcharge** – any fee or cost charged against a prepaid calling services account in addition to a per-minute rate or billing increment, including but not limited to connection, payphone, and maintenance fees.
- (e) **Billing requirements for prepaid calling services.**
- (1) Billing increments shall be defined and disclosed in the prepaid calling services company's published tariffs or price list on file with the commission and on any display at the point of sale as well as on any prepaid calling card, or on any prepaid calling card packaging.
  - (2) A prepaid calling services account may be decreased only for a completed call. Station busy signals and unanswered calls shall not be considered completed calls and shall not be charged against the account.
  - (3) A surcharge may not be levied more than once on a given call.
  - (4) Prepaid calling services companies may not reduce the value of a prepaid calling services account by more than the company's published domestic tariffs or price list on file with the commission and any surcharges filed at the commission. Domestic rates and surcharges shall be disclosed at the time of purchase. Current international rates

shall be disclosed at the time of purchase with an explanation, if applicable, that these prices may be subject to change.

- (5) The prepaid calling services account may be recharged by the customer at a different domestic rate from the original domestic rate or the last domestic recharge rate as long as the new domestic rate and any domestic or international surcharges conform with the company's published tariff or price list on file with the commission at the time of recharge. The customer must be informed of the rates at the time of recharge. A prepaid calling services company shall keep internal records of changes to its international rates and shall provide customers with the appropriate international rate information through a toll-free telephone number. International prepaid calling services rates shall continue to be updated annually in accordance with §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers.)
- (6) Upon verbal or written request, prepaid calling services companies must be capable of providing customers the following call detail data information at no charge:
  - (A) Dialing and signaling information that identifies the inbound access telephone number called;
  - (B) The number of the originating telephone;
  - (C) The date and time the call originated;
  - (D) The date and time the call terminated;
  - (E) The called telephone number; and
  - (F) The PIN and/or account number associated with the call.

- (7) Prepaid calling services companies shall maintain call detail data records for at least two years.
  
- (f) Written disclosure requirements for all prepaid calling services.
  - (1) **Information required on prepaid calling cards.** Cards must be issued with all information required by subparagraphs (A) and (B) of this paragraph in at least the same language in which the card is marketed. Bilingual cards are permitted as long as all the information in subparagraphs (A) and (B) of this paragraph is printed in both languages.
    - (A) At a minimum, a card must contain the following information printed in a legible font no smaller than eight-point:
      - (i) The toll-free number as required by subsection (i) of this section;
      - (ii) The maximum rate per minute shall be shown for local, intrastate, and interstate calls. International call prices shall be provided to the customer through a toll-free number printed on the card. If the cost for a one minute call is higher than the maximum rate per minute, it must be printed on the prepaid calling card; and
      - (iii) The words "VOID" or "SAMPLE" or sequential numbers, such as "999999999" on both sides of the card if the card was produced as a "non-active" card so that it is obvious to the customer that the card is

not useable. If the card is not so labeled, the card is considered active and the issuing company shall honor it.

(B) At a minimum, a card must contain the following information printed in legible font no smaller than five-point:

(i) The value of the card and any applicable surcharges shall be expressed in the same format (i.e. a card whose value is expressed in minutes shall express surcharges in minutes). If the value of a card is expressed in minutes, the minutes must be identified as domestic or international and the identification must be printed on the same line or next line as the value of the card in minutes;

(ii) The prepaid calling services company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language shall clearly indicate that the company is providing the prepaid calling services;

(iii) Instructions on using the card correctly; and

(iv) Expiration date or policy, if the card cannot be used after a date certain.

If an expiration date or policy is not disclosed on the card, it will be considered active indefinitely.

(2) **Information required at a point of sale.** All the following information shall be legibly printed on or in any packaging in a minimum eight point font and displayed visibly in a prominent area at the point of sale so that the customer may make an informed decision

before purchase. Bilingual information may be made available as long as all the information below is printed in both languages.

- (A) A listing of applicable surcharges;
- (B) The company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language shall clearly indicate that the company is providing the prepaid calling card services;
- (C) The toll-free number as required by subsection (i) of this section;
- (D) The billing increment expressed in minutes or fractions of minutes and maximum charge per billing increment for prepaid calling card services for local, intrastate, interstate, and international calls will be provided to the customer through a toll-free number printed on the card;
- (E) The expiration policy, if the card cannot be used after a date certain. If an expiration date is not disclosed at the time of purchase, the prepaid calling services will be considered active until the prepaid calling services account is completely depleted;
- (F) The recharge policy, if applicable. If an expiration date is not disclosed at the time prepaid calling services are recharged, the services will be considered active until the prepaid calling services account is completely depleted;
- (G) The policy for rounding billing increments, if applicable;
- (H) A statement that if a customer is unable to resolve a complaint with the company that the customer has the right to contact the state regulatory agency

which has jurisdiction within the state where the prepaid calling services were purchased; and

(I) A statement that:

(i) Notifies a customer of the customer's extent of liability for lost or stolen cards, if there is liability; and

(ii) Warns a customer to safeguard the card against loss or theft.

(3) If a customer asks a prepaid calling services company how to file a complaint, the company must provide the following contact information: Public Utility Commission of Texas, Office of Customer Protection, PO Box 13326, Austin, Texas 78711-3326; phone: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477; fax: (512) 936-7003; e-mail address: [customer@puc.state.tx.us](mailto:customer@puc.state.tx.us); Internet address: [www.puc.state.tx.us](http://www.puc.state.tx.us); TTY: (512) 936-7136; and Relay Texas (toll-free): 1-800-735-2989.

(g) **Verbal disclosure requirements for prepaid calling services.** Prepaid calling services companies shall provide an announcement:

(1) At the beginning of each call indicating the domestic minutes, billing increments, or dollars remaining on the prepaid calling services account or prepaid calling card; and

(2) When the prepaid account or card balance is about to be completely depleted. This announcement must be made at least one minute or billing increment before the time expires.

- (h) **Registration requirements for prepaid calling services companies.** All prepaid calling services companies shall register with the commission in accordance with §26.107 of this title (relating to Registration of Nondominant Telecommunications Carriers).
- (i) **Business and technical assistance requirements for prepaid calling services companies.** A prepaid calling services company shall provide a toll-free number with a live operator to answer incoming calls 24 hours a day, seven days a week or electronically voice record customer inquiries or complaints. A combination of live operators or recorders may be used. If a recorder is used, the prepaid calling services company shall attempt to contact each customer no later than the next business day following the date of the recording. Personnel must be sufficient in number and expertise to resolve customer inquiries and complaints. If an immediate resolution is not possible, the prepaid calling services company shall resolve the inquiry or complaint by calling the customer or, if the customer so requests, in writing within ten working days of the original request. In the event a complaint cannot be resolved within ten working days of the request, the prepaid calling services provider shall advise the complainant in writing of the status and subsequently complete the investigation within 21 working days of the original request.
- (j) **Requirements for refund of unused balances.** If a prepaid calling services company fails to provide services at the rates disclosed at the time of initial purchase or at the time an account is

recharged, or fails to meet technical standards, the prepaid calling services company shall either refund the customer for any unused prepaid calling services or provide equivalent services.

(k) **Requirements when a prepaid calling services company terminates operations in this state.**

(1) When a prepaid calling services company expects to terminate operations in this state for any reason, the company shall at least 30 days prior to the termination of operations:

- (A) Notify the commission in writing:
  - (i) That operations will be ending;
  - (ii) Of the date of the termination of operations; and
  - (iii) That the company certifies that the actions required by this subsection have been completed;
- (B) Notify each customer at the address on file with the company, if applicable, that operations will be ending the date of the termination of operations, and explain how customers may receive a refund or equivalent services for any unused services;
- (C) Announce the termination of operations at the beginning of each call, including the date of termination and a toll-free number to call for more information; and
- (D) Provide to customers via its toll-free customer service number the procedure for obtaining refunds and continue to provide this information for at least 60 days after the date the company terminates operations.

- (2) Within 24 hours after ceasing operations, the prepaid calling services company shall deliver to the commission a list of names, if known, and account numbers of all customers with unused balances. For each customer, the list shall include the following:
  - (A) The identification number used by the company for billing and debit purposes;  
and,
  - (B) The unused time, stated in minutes, as applicable, and the unused dollar amount of the prepaid calling services account.
  
- (l) **Date of compliance for prepaid calling card services companies.** All prepaid calling services offered for sale in the state of Texas and all prepaid calling services companies shall be in compliance with this rule within six months of the effective date of this section.

(m) **Compliance and enforcement.**

- (1) **Administrative penalties.** If the commission finds that a prepaid calling services company has violated any provision of this section, the commission shall order the company to take corrective action, as necessary, and the company may be subject to administrative penalties and other enforcement actions pursuant to the Public Utility Regulatory Act, Chapter 15.
- (2) **Enforcement.** The commission shall coordinate its enforcement efforts against a prepaid calling services company for fraudulent, unfair, misleading, deceptive, or anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

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 §26.34 relating to Telephone Prepaid Calling Services is hereby adopted with changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE 25th DAY OF JULY 2000.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

---

**Chairman Pat Wood, III**

---

**Commissioner Judy Walsh**

---

**Commissioner Brett A. Perlman**