

**PROJECT NO. 26135**

**PUC RULEMAKING PROCEEDING      §      PUBLIC UTILITY COMMISSION  
TO AMEND RULES REFERENCING      §  
TEL-ASSISTANCE                      §                      OF TEXAS**

**ORDER ADOPTING AMENDMENTS TO §26.5, §26.31, §26.217,  
§26.219, §26.221, §26.224, §26.401, §26.403 AND §26.420  
AS APPROVED AT THE OCTOBER 23, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §26.5, relating to Definitions; §26.31, relating to Disclosures to Applicants and Customers, §26.217, relating to Administration of Extended Area Service (EAS) Requests; §26.219, relating to Administration of Expanded Local Calling Service (ELCS) Requests; §26.221, relating to Application to Establish or Increase Expanded Local Calling Service (ELCS) Surcharges; §26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies; §26.401, relating to Texas Universal Service Fund (TUSF); §26.403, relating to Texas High Cost Universal Service Plan (THCUSP); and §26.420, relating to Administration of Texas Universal Service Fund (TUSF) with no changes to the text published in the August 23, 2002 *Texas Register* (27 TexReg 7705). These amendments eliminate references to the Tel-Assistance program which was repealed in September 2001 pursuant to House Bill (HB) 2156, 77th Legislature (2001 Texas General Laws 5160), Relating to Eligibility Process for Certain Utility Customer Discounts, Public Utilities Regulatory Act (PURA) §55.015. In repealing the Tel-Assistance program (formerly, Public Utility Regulatory Act, Texas Utilities Code Annotated §§56.071-.079), the Legislature stated in HB 2156 §4 and §5, respectively, that on September 1, 2001, "all funds, employees, and resources of the Public Utility Commission of Texas and the Texas Department of Human Services dedicated to the tel-assistance service program

become funds, employees, and resources dedicated to the lifeline service program under Section 55.015, Utilities Code", and that "all persons receiving benefits under the tel-assistance service program shall be automatically enrolled in the lifeline service program." Project Number 26135 is assigned to this proceeding.

The commission received comments on the proposed amendments from the Texas Legal Services Center (TLSC) and reply comments from Verizon Southwest (Verizon), the Texas Statewide Telephone Cooperative (TSTCI) and Southwestern Bell Telephone, L.P. (SWBT).

On September 23, 2002, TLSC expressed its concerns regarding HB 2156's intent to re-direct Tel-Assistance resources for the purpose of promoting Lifeline and Link Up services. TLSC recommended the addition of language in §26.420 to allow the commission to utilize appropriate funding for outreach activities for Lifeline and Link-Up programs. On October 1, 2002, TLSC filed a correction to its comments and provided a revised recommendation on this matter, stating that §26.420 had been revised in June 2002 and that the original recommendation in the September 23rd comments had provided an inappropriate citation for the revision language. TLSC corrected its earlier recommendation and further extrapolated upon its initial request by recommending that the commission add the following language as new "§26.420(g)(C)"[sic]:

- (C) Other entities. The commission shall inform the TUSF Administrator of the funding level needed to adequately inform low income customers of rate reduction programs (Lifeline) and programs designed to increase low income access through waivers of

initial customer fees (Link Up). Funding information and the designation of providers will be established annually by the commission and be provided to the TUSF Administrator during the first month of each calendar year. The commission shall also determine whether other entities qualify to receive funds from the TUSF. Other entities qualifying for the following programs are eligible to receive funds from the TUSF:

- (i) Telecommunications Relay Service; and/or
- (ii) Specialized Telecommunications assistance Program.

In its September 23, 2002 comments, TLSC also recommended implementation of additional rules to require local exchange carriers providing Lifeline and Link Up service to promote these services in a more prominent manner. TLSC suggested that color inserts in customer bills would be appropriate. Finally, TLSC recommended that carriers be required to track Lifeline and Link Up enrollment more frequently, on a quarterly basis, and provide these reports to the commission.

On October 2, 2002, Verizon filed a reply to TLSC's comments. Verizon opposed TLSC's recommendations. Verizon noted that §26.412(f), relating to Lifeline and Link Up services, already requires the commission to work with the Texas Department of Human Services (TDHS) and all eligible carriers to work together in developing material to inform customers of the availability of the services. Verizon asserted that all such carriers publish information about Lifeline and Link Up in their directories and provide an annual notice to their customers. Therefore, Verizon believed that TLSC's recommendation regarding further requirements for carrier promotion of the services is unnecessary.

Verizon also opposed TLSC's proposal for quarterly reporting and stated that §26.412(j) already requires annual reports to be made to the commission regarding Lifeline and Link Up enrollment and that the universal support fund administrator is provided with monthly reports. Verizon asserted that there is simply no need for additional reporting requirements.

On October 7, 2002, TSTCI filed its reply to TLSC's comments. TSTCI also opposed TLSC's recommendations. TSTCI noted that it represents thirty-five carriers and that its members have a vested interest in increasing the number of customers on the telecommunications network. Therefore, TSTCI asserted that its members share TLSC's interest in providing telephone service to those not connected. However, TSTCI maintained that existing commission rules do adequately address the concerns expressed by TLSC in its comments. Specifically, §26.412(f)(1)(C) and §26.412(f)(2)(E) provide for a cooperative effort between and among telecommunications carriers, TDHS and the commission in the development of Lifeline and Link Up services materials. In addition, §26.412(j) provides for annual reports on automatic enrollment subscribership. Further, TSTCI noted that monthly reports specifying the number of Lifeline and Link Up subscribers are provided by all carriers to the Texas Universal Service Fund administrator. Finally, TSTCI argued that the purpose of this project is basically administrative and that the issues raised by TLSC are therefore inappropriate. TSTCI reminded parties that the Lifeline automatic enrollment program was developed by many interested parties through meetings and workshops. TSTCI advised that an administrative project does not provide the necessary forum for the amendments recommended by TLSC.

On October 7, 2002, SWBT also filed a reply to TLSC's comments. SWBT asserted that TLSC's proposed amendments are substantive despite TLSC's claims to the contrary. SWBT recommended that the commission reject TLSC's proposals because they are unsupported and go beyond the scope of the project. SWBT concluded that TLSC's issues should be raised in a different proceeding and recommended that the commission adopt the proposed language as published.

Project Number 24900, *P.U.C. Rulemaking to Implement HB 2156 as it Concerns Enrollment in Telephone Discount Programs*, relating to revisions to §26.412, Lifeline and Link Up Services, will address the details of automatic enrollment and administrative consolidation under the Low Income Database Administrator (LIDA). The creation of a central administrator for Lifeline and Link Up services will dramatically alter opportunities for public promotion of these services by concentrating public interest upon a single toll-free number and a uniform point of contact. Recognizing the impact of this event, the commission prudently waits to re-direct funding, as authorized by HB 2156, to promotions that will produce an opportunity to assist low-income subscribers in obtaining all available utility discounts with a single telephone call. While the commission appreciates TLSC's concern regarding the development of promotional materials and outreach for the Lifeline and Link Up programs, the commission declines to adopt the amendment proposed by TLSC for §26.420 because it is not persuaded that the addition is necessary. The commission has the necessary latitude to accomplish the intentions of the revised language by virtue of its existing Procedural and Substantive Rules and the authority of HB 2156 §4 and §5.

The commission agrees with Verizon's and TSTCI's assertions that the existing annual report related to Lifeline and Link Up enrollment is adequate for public review of the success or failure of the programs. The commission also concurs in Verizon's and TSTCI's view that parties are currently working cooperatively to improve the automatic enrollment process to accomplish the goals discussed by TLSC. In addition, as noted by TSTCI and SWBT, this project is designed to perform the simple task of removing references to the Tel-Assistance program from the noted commission substantive rules. Therefore, the commission declines to address in this project the issues raised by TLSC regarding additional rules related to promotion and reporting for Lifeline and Link Up services in this project. Again, the commission refers TLSC to Project Number 24900 which, though delayed for practical reasons, will refine the reporting requirement and provide a forum for further discussions regarding carrier responsibilities related to promotion of the Lifeline and Link Up service programs.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction; and specifically, §51.001(a), which states that it is the purpose of PURA Subtitle C, "Telecommunications Utilities", to grant the commission authority to make and enforce rules necessary to protect customers of telecommunications services consistent with the public interest. Moreover, these amendments are necessary to effectuate the directive of House Bill 2156, 77th Legislature, which

requires that all persons receiving benefits under the Tel-Assistance service program shall be automatically enrolled in the Lifeline service program.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.015.

**§26.5. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) **Access customer** — Any user of access services which are obtained from a certificated telecommunications utility.
- (2) **Access services** — Certificated telecommunications utility services which provide connections for or are related to the origination or termination of intrastate telecommunications services that are generally, but not limited to, interexchange services.
- (3) **Administrative review** — A process under which an application may be approved without a formal hearing.
- (4) **Affected person** — means:
  - (A) a public utility affected by an action of a regulatory authority;
  - (B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or
  - (C) a person who:
    - (i) is a competitor of a public utility with respect to a service performed by the utility; or
    - (ii) wants to enter into competition with a public utility.
- (5) **Affiliate** — means:

- (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;
  - (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
  - (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;
  - (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
    - (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or
    - (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
  - (E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or
  - (F) a person determined to be an affiliate under Public Utility Regulatory Act §11.006.
- (6) **Aggregate customer proprietary network information (CPNI)** — a configuration of customer proprietary network information that has been collected by a telecommunications utility and organized such that none of the information will identify an individual customer.

- (7) **Assumed name** — Has the meaning assigned by Texas Business and Commerce Code, §36.10.
- (8) **Automatic dial announcing device (ADAD)** — Any automated equipment used for telephone solicitation or collection that:
- (A) is capable of storing numbers to be called, or has a random or sequential number generator capable of producing numbers to be called; and
  - (B) alone or in conjunction with other equipment, can convey a prerecorded or synthesized voice message to the number called without the use of a live operator.
- (9) **Automatic number identification (ANI)** — The automatic transmission by the local switching system of the originating telephone number to an interexchange or other communications carrier or to the operator of a 911 system.
- (10) **Base rate area** — A specific area within an exchange area, as set forth in the dominant certificated telecommunications utilities' tariffs, maps or descriptions, wherein local exchange service is furnished at uniform rates without extra mileage charges.
- (11) **Basic local telecommunications service** — flat rate residential and business local exchange telephone service, including primary directory listings; tone dialing service; access to operator services; access to directory assistance services; access to 911 service where provided by a local authority or dual party relay service; the ability to report service problems seven days a week; lifeline services; and any other service the

commission, after a hearing, determines should be included in basic local telecommunications service.

- (12) **Basic network services (BNS)** — Those services identified in PURA §58.051.
- (13) **Baud** — Unit of signaling speed reflecting the number of discrete conditions or signal elements transmitted per second.
- (14) **Bellcore** — Bell Communications Research, Inc.
- (15) **Billing agent** — Any entity that submits charges to a billing telecommunications utility on behalf of itself or any service provider.
- (16) **Billing telecommunications utility** — Any telecommunications provider, as defined in the Public Utility Regulatory Act §51.002 that issues a bill directly to a customer for any telecommunications product or service.
- (17) **Bit Error Ratio (BER)** — The ratio of the number of bits received in error to the total number of bits transmitted in a given time interval.
- (18) **Bit Rate** — The rate at which data bits are transmitted over a communications path, normally expressed in bits per second.
- (19) **Bona fide request** — A written request to an incumbent local exchange company (ILEC) from a certificated telecommunications utility or an enhanced service provider, requesting that the ILEC unbundle its network/services to the extent ordered by the Federal Communications Commission. A bona fide request indicates an intent to purchase the service subject to the purchaser being able to obtain acceptable rates, terms, and conditions.

- (20) **Business service** — A telecommunications service provided a customer where the use is primarily of a business, professional, institutional or otherwise occupational nature.
- (21) **Busy hour** — The clock hour each day during which the greatest usage occurs.
- (22) **Busy season** — That period of the year during which the greatest volume of traffic is handled in a switching office.
- (23) **Call aggregator** — Any person or entity that owns or otherwise controls telephones intended to be utilized by the public, which control is evidenced by the authority to post notices on and/or unblock access at the telephone.
- (24) **Call splashing** — Call transferring (whether caller-requested or operator service provider-initiated) that results in a call being rated and/or billed from a point different from that where the call originated.
- (25) **Call transferring** — Handing off a call from one operator service provider (OSP) to another OSP.
- (26) **Caller identification materials (caller ID materials)** — Any advertisements, educational materials, training materials, audio and video marketing devices, and any information disseminated about caller ID services.
- (27) **Caller identification service (caller ID service)** — A service offered by a telecommunications provider that provides calling party information to a device capable of displaying the information.

- (28) **Calling area** — The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A "local" calling area may include more than one exchange area.
- (29) **Calling party information** —
- (A) the telephone listing number and/or name of the customer from whose telephone instrument a telephone number is dialed; or
  - (B) other information that may be used to identify the specific originating number or originating location of a wire or electronic communication transmitted by a telephone instrument.
- (30) **Capitalization** — Long-term debt plus total equity.
- (31) **Carrier of choice** — An option that allows an individual to choose an interexchange carrier for long distance calls made through Telecommunications Relay Service.
- (32) **Carrier-initiated change** — A change in the telecommunications utility serving a customer that was initiated by the telecommunications utility to which the customer is changed, whether the switch is made because a customer did or did not respond to direct mail solicitation, telemarketing, or other actions initiated by the carrier.
- (33) **Central office** — A switching unit in a telecommunications system which provides service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting customer lines and trunks or trunks only.

- (34) **Census block group (CBG)** — A United States Census Bureau geographic designation that generally contains between 250 and 550 housing units.
- (35) **Certificated service area** — The geographic area within which a company has been authorized to provide basic local telecommunications services pursuant to a certificate of convenience and necessity (CCN), a certificate of operating authority (COA), or a service provider certificate of operating authority (SPCOA) issued by the commission.
- (36) **Certificated telecommunications utility** — A telecommunications utility that has been granted either a certificate of convenience and necessity (CCN), a certificate of operating authority (COA), or a service provider certificate of operating authority (SPCOA).
- (37) **Class of service or customer class** — A description of utility service provided to a customer which denotes such characteristics as nature of use (business or residential) or type of rate (flat rate or message rate). Classes may be further subdivided into grades, denoting individual or multiparty line or denoting quality of service.
- (38) **Commission** — The Public Utility Commission of Texas.
- (39) **Competitive exchange service** — Any of the following services, when provided on an inter- or intrastate basis within an exchange area: central office based PBX-type services for systems of 75 stations or more; billing and collection services; high speed private line services of 1.544 megabits or greater; customized services; private line and virtual private line services; resold or shared local exchange telephone services if permitted by tariff; dark fiber services; non-voice data transmission service when

offered as a separate service and not as a component of basic local telecommunications service; dedicated or virtually dedicated access services; services for which a local exchange company has been granted authority to engage in pricing flexibility pursuant to §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges); any service initially provided within an exchange after October 26, 1992, if first provided by an entity other than the incumbent local exchange company (companies) certificated to provide service within that exchange; and any other service the commission declares is not local exchange telephone service.

- (40) **Competitive services (CS)** — Those services as defined in PURA §58.151, and any other service the commission subsequently categorizes as a competitive service.
- (41) **Completed call** — a call that is answered by the called party.
- (42) **Complex service** — The provision of a circuit requiring special treatment, special equipment, or special engineering design, including but not limited to private lines, WATS, PBX trunks, rotary lines, and special assemblies.
- (43) **Consumer good or service** —
  - (A) real property or tangible or intangible personal property that is normally used for personal, family, or household purposes, including personal property intended to be attached to or installed in any real property;
  - (B) a cemetery lot;
  - (C) a time-share estate; or
  - (D) a service related to real or personal property.

- (44) **Consumer telephone call** — An unsolicited call made to a residential telephone number to:
- (A) solicit a sale of a consumer good or service;
  - (B) solicit an extension of credit for a consumer good or service; or
  - (C) obtain information that will or may be used to directly solicit a sale of a consumer good or service or to extend credit for the sale.
- (45) **Cooperative** — An incumbent local exchange company that is a cooperative corporation.
- (46) **Cooperative corporation** —
- (A) An electric cooperative corporation organized and operating under the Electric Cooperative Corporation Act, Texas Utilities Code Annotated, Chapter 161, or a predecessor statute to Chapter 161 and operating under that chapter; or
  - (B) A telephone cooperative corporation organized under the Telephone Cooperative Act, Texas Utilities Code, Chapter 162, or a predecessor statute to Chapter 162 and operating under that chapter.
- (47) **Corporate name** — Has the meaning assigned by Texas Business Corporation Act, Article §2.05.
- (48) **Corporation** — A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a

municipal corporation, except as expressly provided by the Public Utility Regulatory Act.

- (49) **Custom calling-type services** — Call management services available from a central office switching system including, but not limited to, call forwarding, call waiting, caller ID, or automatic recall.
- (50) **Customer access line** — A unit of measurement representing a telecommunications circuit or, in the case of ISDN, a telecommunications channel designated for a particular customer. One customer access line shall be counted for each circuit which is capable of generating usage on the line side of the switched network or a private line circuit, regardless of the quantity or ownership of customer premises equipment connected to each circuit. In the case of multiparty lines, each party shall be counted as a separate customer access line.
- (51) **Customer-initiated change** — A change in the telecommunications utility serving a customer that is initiated by the customer and is not the result of direct mail solicitation, telemarketing, or other actions initiated by the carrier.
- (52) **Customer premises equipment (CPE)** — Telephone terminal equipment located at a customer's premises. This does not include overvoltage protection equipment, inside wiring, coin-operated (or pay) telephones, "company-official" equipment, mobile telephone equipment, "911" equipment, equipment necessary for provision of communications for national defense, or multiplexing equipment used to deliver multiple channels to the customer.

- (53) **Customer proprietary network information (CPNI), customer-specific** — Any information compiled about a customer by a telecommunications utility in the normal course of providing telephone service that identifies the customer by matching such information with the customer's name, address, or billing telephone number. This information includes, but is not limited to: line type(s), technical characteristics (e.g., rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns.
- (54) **Customer trouble report** — Any oral or written report from a customer or user of telecommunications service received by any telecommunications utility relating to a physical defect, difficulty, or dissatisfaction with the service provided by the telecommunications utility's facilities. Each telephone or PBX switchboard position reported in trouble shall be counted as a separate report when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause.
- (55) **dBrn** — A unit used to express noise power relative to one Pico watt (-90 dBm).
- (56) **dBrnC** — Noise power in dBrn, measured with C-message weighting.
- (57) **dBrnCO** — Noise power in dBrnC referred to or measured at a zero transmission level point.
- (58) **D-Channel** — The integrated-services-digital-network out-of-band signaling channel.

- (59) **Dedicated signaling transport** — Transmission of out-of-band signaling information between an access customer's common channel signaling network and a certificated telecommunications utility's signaling transport point on facilities dedicated to the use of a single customer.
- (60) **Depreciation expenses** — The charges based on the depreciation accrual rates designed to spread the cost recovery of the property over its economic life.
- (61) **Direct-trunked transport** — Transmission of traffic between the serving wire center and another certificated telecommunications utility's office, without intermediate switching. It is charged on a flat-rate basis.
- (62) **Disconnection of telephone service** — The event after which a customer's telephone number is deleted from the central office switch and databases.
- (63) **Discretionary services (DS)** — Those services as defined in the Public Utility Regulatory Act §58.101, and any other service the commission subsequently categorizes as a discretionary service.
- (64) **Distance learning** — Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by an educational institution predominantly for such instruction, learning, or training--including: video, data, voice, and electronic information.
- (65) **Distribution lines** — Those lines from which the end user may be provided direct service.

- (66) **Dominant carrier** — A provider of a communication service provided wholly or partly over a telephone system who the commission determines has sufficient market power in a telecommunications market to control prices for that service in that market in a manner adverse to the public interest. The term includes a provider who provided local exchange telephone service within certificated exchange areas on September 1, 1995, as to that service and as to any other service for which a competitive alternative is not available in a particular geographic market. In addition with respect to:
- (A) intraLATA long distance message telecommunications service originated by dialing the access code "1-plus," the term includes a provider of local exchange telephone service in a certificated exchange area for whom the use of that access code for the origination of "1-plus" intraLATA calls in the exchange area is exclusive; and
  - (B) interexchange services, the term does not include an interexchange carrier that is not a certificated local exchange company.
- (67) **Dominant certificated telecommunications utility (DCTU)** — A certificated telecommunications utility that is also a dominant carrier. Unless clearly indicated otherwise, the rules applicable to a DCTU apply specifically to only those services for which the DCTU is dominant.
- (68) **Dual-party relay service** — A service using oral and printed translations, by either a person or an automated device, between hearing- or speech-impaired individuals who

use telecommunications devices for the deaf, computers, or similar automated devices, and others who do not have such equipment.

- (69) **Educational institution** — Accredited primary or secondary schools owned or operated by state and local government entities or by private entities; institutions of higher education as defined by the Education Code, §61.003(13); the Texas Education Agency, its successors and assigns; regional education service centers established and operated pursuant to the Education Code, Chapter 8; and the Texas Higher Education Coordinating Board, its successors and assigns.
- (70) **Electing local exchange company (LEC)** — A certificated telecommunications utility electing to be regulated under the terms of the Public Utility Regulatory Act, Chapter 58.
- (71) **Electric utility** — Except as provided in Chapter 25, Subchapter I, Division 1 of this title (relating to Substantive Rules Applicable to Electric Service Providers), an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, Chapter 184, Subchapter C, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:
- (A) a municipal corporation;
  - (B) a qualifying facility;

- (C) a power generation company
- (D) an exempt wholesale generator;
- (E) a power marketer;
- (F) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;
- (G) an electric cooperative;
- (H) a retail electric provider;
- (I) the state of Texas or an agency of the state; or
- (J) a person not otherwise an electric utility who:
  - (i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;
  - (ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or
  - (iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Chapter 184, Subchapter C.

- (72) **Element** — Unbundled network elements, including: interconnection, physical-collocation, and virtual-collocation elements.
- (73) **Eligible telecommunications provider (ETP) service area** — The geographic area, determined by the commission, containing high cost rural areas which are eligible for Texas Universal Service Funds support under §26.403 or §26.404 of this title (relating to Texas High Cost Universal Service Plan (THCUSP) and Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).
- (74) **Embedded customer premises equipment** — All customer premises equipment owned by a telecommunications utility, including inventory, which was tariffed or subject to the separations process of January 1, 1983.
- (75) **End user choice** — A system that allows the automatic routing of interexchange, operator-assisted calls to the billed party's chosen carrier without the use of access codes.
- (76) **Enhanced service provider** — A company that offers computer-based services over transmission facilities to provide the customer with value-added telephone services.
- (77) **Entrance facilities** — The transmission path between the access customer's (such as an interexchange carrier's) point of demarcation and the serving wire center.
- (78) **Equal access** — Access which is equal in type, quality and price to Feature Group C, and which has unbundled rates. From an end user's perspective, equal access is characterized by the availability of "1-plus" dialing with the end user's carrier of choice.

- (79) **Exchange area** — The geographic territory delineated as an exchange area by official commission boundary maps. An exchange area usually embraces a city or town and its environs. There is usually a uniform set of charges for telecommunications service within the exchange area. An exchange area may be served by more than one central office and/or one certificated telephone utility. An exchange area may also be referred to as an exchange.
- (80) **Expenses** — Costs incurred in the provision of services that are expensed, rather than capitalized, in accordance with the Uniform System of Accounts applicable to the carrier.
- (81) **Experimental service** — A new service that is proposed to be offered on a temporary basis for a specified period not to exceed one year from the date the service is first provided to any customer.
- (82) **Extended area service (EAS)** — A telephone switching and trunking arrangement which provides for optional calling service by dominant certificated telecommunications utilities within a local access and transport area and between two contiguous exchanges or between an exchange and a contiguous metropolitan exchange local calling area. For purposes of this definition, a metropolitan exchange local calling area shall include all exchanges having local or mandatory EAS calling throughout all portions of any of the following exchanges: Austin metropolitan exchange, Corpus Christi metropolitan exchange, Dallas metropolitan exchange, Fort Worth metropolitan exchange, Houston metropolitan exchange, San Antonio metropolitan exchange, or Waco metropolitan

exchange. EAS is provided at rate increments in addition to local exchange rates, rather than at toll message charges.

- (83) **Extended local calling service (ELCS)** — Service provided pursuant to §26.219 and §26.221 of this title (relating to Administration of Expanded Local Calling Requests; and Applications to Establish or Increase Expanded Local Calling Scope Surcharges).
- (84) **Facilities** — All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any public utility, including any construction work in progress allowed by the commission.
- (85) **Facilities-based provider** — A telecommunications provider that provides telecommunications services using facilities that it owns or leases or a combination of facilities that it owns and leases, including unbundled network elements.
- (86) **Foreign exchange (FX)** — exchange service furnished by means of a circuit connecting a customer's station to a primary serving office of another exchange.
- (87) **Foreign serving office (FSO)** — Exchange service furnished by means of a circuit connecting a customer's station to a serving office of the same exchange but outside of the serving office area in which the station is located.

- (88) **Forward-looking common costs** — Economic costs efficiently incurred in providing a group of elements or services that cannot be attributed directly to individual elements or services.
- (89) **Forward-looking economic cost** — The sum of the total element long-run incremental cost of an element and a reasonable allocation of its forward-looking common costs.
- (90) **Forward-looking economic cost per unit** — The forward-looking economic cost of the element as defined in this section, divided by a reasonable projection of the sum of the total number of units of the element that the dominant certificated telephone utility (DCTU) is likely to provide to requesting telecommunications carriers and the total number of units of the element that the DCTU is likely to use in offering its own services, during a reasonable time period.
- (91) **Geographic scope** — The geographic area in which the holder of a Certificate of Operating Authority or of a Service Provider Certificate of Operating Authority is authorized to provide service.
- (92) **Grade of service** — The number of customers a line is designated to serve.
- (93) **Hearing** — Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.
- (94) **Hearing carryover** — A technology that allows an individual who is speech-impaired to hear the other party in a telephone conversation and to use specialized telecommunications devices to send communications through the telecommunications relay service operator.

- (95) **High cost area** — A geographic area for which the costs established using a forward-looking economic cost methodology exceed the benchmark levels established by the commission.
- (96) **High cost assistance (HCA)** — A program administered by the commission in accordance with the provisions of §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).
- (97) **Identity** — The name, address, telephone number, and/or facsimile number of a person, whether natural, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or state agency and the relationship of the person to the entity being represented.
- (98) **Impulse noise** — Any momentary occurrence of the noise on a channel significantly exceeding the normal noise peaks. It is evaluated by counting the number of occurrences that exceed a threshold. This noise degrades voice and data transmission.
- (99) **Incumbent local exchange company (ILEC)** — A local exchange company that had a certificate of convenience and necessity on September 1, 1995.
- (100) **Informational notice** — That notice required to be filed in connection with nonbasic services, new service offerings, and pricing and packaging flexibility pursuant to PURA Chapters 52, 58, or 59.
- (101) **Information sharing program** — Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by a

library predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.

- (102) **Integrated services digital network (ISDN)** — a digital network architecture that provides a wide variety of communications services, a standard set of user-network messages, and integrated access to the network. Access methods to the ISDN are the Basic Rate Interface (BRI) and the Primary Rate Interface (PRI).
- (103) **Interactive multimedia communications** — Real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations. This definition includes interactive communications within or between buildings on the same campus or library site.
- (104) **Intercept service** — A service arrangement provided by the local exchange carrier whereby calls placed to a disconnected or discontinued telephone number are intercepted and the calling party is informed by an operator or by a recording that the called telephone number has been disconnected, discontinued, changed to another number, or otherwise is not in service.
- (105) **Interconnection** — Generally means: The point in a network where a customer's transmission facilities interface with the dominant carrier's network under the provisions of this section. More particularly it means: The termination of local traffic including basic telecommunications service as delineated in §24.32 of this title (Relating to Universal Service) or integrated services digital network (ISDN) as defined in this section and/or extended area service/extended local calling service traffic of a

certificated telephone utility (CTU) using the local access lines of another CTU, as described in section §26.272(d)(4)(A) of this title (relating to Interconnection). Interconnection shall include non-discriminatory access to signaling systems, databases, facilities and information as required to ensure interoperability of networks and efficient, timely provision of services to customers without permitting access to network proprietary information or customer proprietary network information, as defined in this section, unless otherwise permitted in §26.272 of this title.

- (106) **Interconnector** — A customer that interfaces with the dominant carrier's network under the provisions of §26.271 of this title (relating to Expanded Interconnection).
- (107) **Interexchange carrier (IXC)** — A carrier providing any means of transporting intrastate telecommunications messages between local exchanges, but not solely within local exchanges, in the State of Texas. The term may include a certificated telecommunications utility (CTU) or CTU affiliate to the extent that it is providing such service. An entity is not an IXC solely because of:
- (A) the furnishing, or furnishing and maintenance of a private system;
  - (B) the manufacture, distribution, installation, or maintenance of customer premises equipment;
  - (C) the provision of services authorized under the FCC's Public Mobile Radio Service and Rural Radio Service rules; or
  - (D) the provision of shared tenant service.
- (108) **Interoffice trunks** — Those communications circuits which connect central offices.

- (109) **IntraLATA equal access** — The ability of a caller to complete a toll call in a local access and transport area (LATA) using his or her provider of choice by dialing "1" or "0" plus an area code and telephone number.
- (110) **Intrastate** — Refers to communications which both originate and terminate within Texas state boundaries.
- (111) **Least cost technology** — The technology, or mix of technologies, that would be chosen in the long run as the most economically efficient choice. The choice of least cost technologies, however, shall:
- (A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;
  - (B) be consistent with the level of output necessary to satisfy current demand levels for all services using the basic network function in question; and
  - (C) be consistent with overall network design and topology requirements.
- (112) **License** — The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.
- (113) **Licensing** — The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.
- (114) **Lifeline Service** — A program certified by the Federal Communications Commission to provide for the reduction or waiver of the federal subscriber line charge for residential consumers.

- (115) **Line** — A circuit or channel extending from a central office to the customer's location to provide telecommunications service. One line may serve one customer, or all customers served by a multiparty line.
- (116) **Local access and transport area (LATA)** — A geographic area established for the provision and administration of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes. For purposes of these rules, market areas, as used and defined in the Modified Final Judgment and the GTE Final Judgment, are encompassed in the term local access and transport area.
- (117) **Local call** — A call within the certificated telephone utility's toll-free calling area including calls which are made toll-free through a mandatory extended area service (EAS) or expanded local calling (ELC) proceeding.
- (118) **Local calling area** — The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A local calling area may include more than one exchange area.
- (119) **Local exchange company (LEC)** — A telecommunications utility that has been granted either a certificate of convenience and necessity or a certificate of operating authority to provide local exchange telephone service, basic local telecommunications service, or switched access service within the state. A local exchange company is also referred to as a local exchange carrier.

- (120) **Local exchange telephone service or local exchange service** — A telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premises and a long distance provider serving the exchange. The term includes tone dialing service, service connection charges, and directory assistance services offered in connection with basic local telecommunications service and interconnection with other service providers. The term does not include the following services, whether offered on an intraexchange or interexchange basis:
- (A) central office based PBX-type services for systems of 75 stations or more;
  - (B) billing and collection services;
  - (C) high-speed private line services of 1.544 megabits or greater;
  - (D) customized services;
  - (E) private line or virtual private line services;
  - (F) resold or shared local exchange telephone services if permitted by tariff;
  - (G) dark fiber services;
  - (H) non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service;
  - (I) dedicated or virtually dedicated access services;
  - (J) a competitive exchange service; or
  - (K) any other service the commission determines is not a "local exchange telephone service."

- (121) **Local message** — A completed call between customer access lines located within the same local calling area.
- (122) **Local message charge** — The charge that applies for a completed telephone call that is made when the calling customer access line and the customer access line to which the connection is established are both within the same local calling area, and a local message charge is applicable.
- (123) **Local service charge** — The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local calling area. This local calling area may include more than one exchange area.
- (124) **Local telecommunications traffic** —
- (A) Telecommunications traffic between a dominant certificated telecommunications utility (DCTU) and a telecommunications carrier other than a commercial mobile radio service (CMRS) provider that originates and terminates within the mandatory single or multi-exchange local calling area of a DCTU including the mandatory extended area service (EAS) areas served by the DCTU; or
  - (B) Telecommunications traffic between a DCTU and a CMRS provider that, at the beginning of the call, originates and terminates within the same major trading area.
- (125) **Long distance telecommunications service** — That part of the total communication service rendered by a telecommunications utility which is furnished between customers

in different local calling areas in accordance with the rates and regulations specified in the utility's tariff.

- (126) **Long run** — A time period long enough to be consistent with the assumption that the company is in the planning stage and all of its inputs are variable and avoidable.
- (127) **Long run incremental cost (LRIC)** — The change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology. The LRIC should exclude any costs that, in the long run, are not brought into existence as a direct result of the increment of output.
- (128) **Mandatory minimum standards** — The standards established by the Federal Communications Commission, outlining basic mandatory telecommunication relay services.
- (129) **Meet point billing** — An access billing arrangement for services to access customers when local transport is jointly provided by more than one certificated telecommunications utility.
- (130) **Message** — A completed customer telephone call.
- (131) **Message rate service** — A form of local exchange service under which all originated local messages are measured and charged for in accordance with the utility's tariff.
- (132) **Minor change** — A change, including the restructuring of rates of existing services, that decreases the rates or revenues of the small local exchange company (SLEC) or that, together with any other rate or proposed or approved tariff changes in the 12 months preceding the date on which the proposed change will take effect, results in an

increase of the SLEC's total regulated intrastate gross annual revenues by not more than 5.0%. Further, with regard to a change to a basic local access line rate, a minor change may not, together with any other change to that rate that went into effect during the 12 months preceding the proposed effective date of the proposed change, result in an increase of more than 10%.

- (133) **Municipality** — A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.
- (134) **National integrated services digital network (ISDN)** — the standards and services promulgated for integrated services digital network by Bellcore.
- (135) **Negotiating party** — A certificated telecommunications utility (CTU) or other entity with which a requesting CTU seeks to interconnect in order to complete all telephone calls made by or placed to a customer of the requesting CTU.
- (136) **New service** — Any service not offered on a tariffed basis prior to the date of the application relating to such service and specifically excludes basic local telecommunications service including local measured service. If a proposed service could serve as an alternative or replacement for a service offered prior to the date of the new-service application and does not provide significant improvements (other than price) over, or significant additional services not available under, a service offered prior to the date of such application, it shall not be considered a new service.
- (137) **Nonbasic services** — Those services identified in PURA §58.151, including any service reclassified by the commission pursuant to PURA §58.024.

- (138) **Non-discriminatory** — Type of treatment that is not less favorable than that an interconnecting certificated telecommunications utility (CTU) provides to itself or its affiliates or other CTUs.
- (139) **Non-dominant certificated telecommunications utility (NCTU)** — A certificated telecommunications utility (CTU) that is not a dominant certificated telecommunications utility (DCTU) and has been granted a certificate of convenience and necessity (CCN) (after September 1, 1995, in an area already certificated to a DCTU), a certificate of operating authority (COA), or a service provider certificate of operating authority (SPCOA) to provide local exchange service.
- (140) **Nondominant carrier** —
- (A) An interexchange telecommunications carrier (including a reseller of interexchange telecommunications services).
  - (B) Any of the following that is not a dominant carrier:
    - (i) a specialized communications common carrier;
    - (ii) any other reseller of communications;
    - (iii) any other communications carrier that conveys, transmits, or receives communications in whole or in part over a telephone system; or
    - (iv) a provider of operator services that is not also a subscriber.
- (141) **Open network architecture** — The overall design of an incumbent local exchange company's (ILEC's) network facilities and services to permit all users of the network, including the enhanced services operations of an ILEC and its competitors, to

interconnect to specific basic network functions on an unbundled and non-discriminatory basis.

- (142) **Operator service** — Any service using live operator or automated operator functions for the handling of telephone service, such as local collect, toll calling via collect, third number billing, credit card, and calling card services. The transmission of "1-800" and "1-888" numbers, where the called party has arranged to be billed, is not operator service.
- (143) **Operator service provider (OSP)** — Any person or entity that provides operator services by using either live or automated operator functions. When more than one entity is involved in processing an operator service call, the party setting the rates shall be considered to be the OSP. However, subscribers to customer-owned pay telephone service shall not be deemed to be OSPs.
- (144) **Originating line screening (OLS)** — A two digit code passed by the local switching system with the automatic number identification (ANI) at the beginning of a call that provides information about the originating line.
- (145) **Out-of-service trouble report** — An initial customer trouble report in which there is complete interruption of incoming or outgoing local exchange service. On multiple line services a failure of one central office line or a failure in common equipment affecting all lines is considered out of service. If an extension line failure does not result in the complete inability to receive or initiate calls, the report is not considered to be out of service.

- (146) **Partial deregulation** — The ability of a cooperative to offer new services on an optional basis and/or change its rates and tariffs under the provisions of the Public Utility Regulatory Act, §§53.351 - 53.359.
- (147) **Pay-per-call-information services** — Services that allow a caller to dial a specified 1-900-XXX-XXXX or 976-XXXX number. Such services routinely deliver, for a predetermined (sometimes time-sensitive) fee, a pre-recorded or live message or interactive program. Usually a telecommunications utility will transport the call and bill the end-user on behalf of the information provider.
- (148) **Pay telephone access service (PTAS)** — A service offered by a certificated telecommunications utility which provides a two-way, or optionally, a one-way originating-only business access line composed of the serving central office line equipment, all outside plant facilities needed to connect the serving central office with the customer premises, and the network interface; this service is sold to pay telephone service providers.
- (149) **Pay telephone service (PTS)** — A telecommunications service utilizing any coin, coinless, credit card reader, or cordless instrument that can be used by members of the general public, or business patrons, employees, and/or visitors of the premise's owner, provided that the end user pays for local or toll calls from such instrument on a per call basis. Pay per call telephone service provided to inmates of confinement facilities is PTS. For purposes of this section, coinless telephones provided in guest rooms by a hotel/motel are not pay telephones. A telephone that is primarily used by business

patrons, employees, and/or visitors of the premise's owner is not a pay telephone if all local calls and "1-800" and "1-888" type calls from such telephone are free to the end user.

- (150) **Per-call blocking** — A telecommunications service provided by a telecommunications provider that prevents the transmission of calling party information to a called party on a call-by-call basis.
- (151) **Per-line blocking** — A telecommunications service provided by a telecommunications utility that prevents the transmission of calling party information to a called party on every call, unless the calling party acts affirmatively to release calling party information.
- (152) **Percent interstate usage (PIU)** — An access customer-specific ratio or ratios determined by dividing interstate access minutes by total access minutes. The specific ratio shall be determined by the certificated telecommunications utility (CTU) unless the CTU's network is incapable of determining the jurisdiction of the access minutes. A PIU establishes the jurisdiction of switched access usage for determining rates charged to switched access customers and affects the allocation of switched access revenue and costs by CTUs between the interstate and intrastate jurisdictions.
- (153) **Person** — Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

- (154) **Pleading** — A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.
- (155) **Prepaid local telephone service (PLTS)** — Prepaid local telephone service means:
- (A) voice grade dial tone residential service consisting of flat rate service or local measured service, if chosen by the customer and offered by the dominant certificated telecommunications utility (DCTU);
  - (B) if applicable, mandatory services, including extended area service, extended metropolitan service, or expanded local calling service;
  - (C) tone dialing service;
  - (D) access to 911 service;
  - (E) access to dual party relay service;
  - (F) the ability to report service problems seven days a week;
  - (G) access to business office;
  - (H) primary directory listing;
  - (I) toll blocking service; and
  - (J) non-published service and non-listed service at the customer's option.
- (156) **Premises** — A tract of land or real estate including buildings and other appurtenances thereon.
- (157) **Pricing flexibility** — Discounts and other forms of pricing flexibility may not be preferential, prejudicial, or discriminatory. Pricing flexibility includes:

- (A) customer specific contracts;
  - (B) volume, term, and discount pricing;
  - (C) zone density pricing;
  - (D) packaging of services; and
  - (E) other promotional pricing flexibility.
- (158) **Primary interexchange carrier (PIC)** — The provider chosen by a customer to carry that customer's toll calls.
- (159) **Primary interexchange carrier (PIC) freeze indicator** — An indicator that the end user has directed the certificated telecommunications utility to make no changes in the end user's PIC.
- (160) **Primary rate interface (PRI) integrated services digital network (ISDN)** — One of the access methods to ISDN, the 1.544-Mbps PRI comprises either twenty-three 64 Kbps B-channels and one 64 Kbps D-channel (23B+D) or twenty-four 64 Kbps B-channels (24B) when the associated call signaling is provided by another PRI in the group.
- (161) **Primary service** — The initial provision of voice grade access between the customer's premises and the switched telecommunications network. This includes the initial connection to a new customer or the move of an existing customer to a new premises but does not include complex services.
- (162) **Print translations** — The temporary storage of a message in an operator's screen during the actual process of relaying a conversation.

- (163) **Privacy issue** — An issue that arises when a telecommunications provider proposes to offer a new telecommunications service or feature that would result in a change in the outflow of information about a customer. The term privacy issue is to be construed broadly. It includes, but is not limited to, changes in the following:
- (A) the type of information about a customer that is released;
  - (B) the customers about whom information is released;
  - (C) the entity or entities to whom the information about a customer is released;
  - (D) the technology used to convey the information;
  - (E) the time at which the information is conveyed; and
  - (F) any other change in the collection, use, storage, or release of information.
- (164) **Private line** — A transmission path that is dedicated to a customer and that is not connected to a switching facility of a telecommunications utility, except that a dedicated transmission path between switching facilities of interexchange carriers shall be considered a private line.
- (165) **Proceeding** — A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or nonrulemaking; rate setting or non-rate setting.
- (166) **Promotional rate** — A temporary tariff, fare, toll, rental or other compensation charged by a certificated telecommunications utility (DCTU) to new or new and existing customers and designed to induce customers to test a service. A promotional rate shall incorporate a reduction or a waiver of some rate element in the tariffed rates of the

service, or a reduction or waiver of the service's installation charge and/or service connection charges, and shall not incorporate any charge for discontinuance of the service by the customer. Such rates may not be offered for basic local telecommunications service, including local measured service.

- (167) **Provider of pay telephone service** — The entity that purchases pay telephone access service (PTAS) from a certificated telecommunications utility (CTU) and registers with the Public Utility Commission as a provider of pay telephone service (PTS) to end users.
- (168) **Public utility or utility** — A person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier. The term includes a lessee, trustee, or receiver of any of those entities, or a combination of those entities. The term does not include a municipal corporation. A person is not a public utility solely because the person:
- (A) furnishes or furnishes and maintains a private system;
  - (B) manufactures, distributes, installs, or maintains customer premise communications equipment and accessories; or
  - (C) furnishes a telecommunications service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.

- (169) **Public Utility Regulatory Act (PURA)** — The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 - 64.158, (Vernon 1998, Supplement 2000).
- (170) **Qualifying low-income consumer** — A consumer that participates in one of the following programs: Medicaid, food stamps, Supplemental Security Income, federal public housing assistance, or Low-Income Home Energy Assistance Program.
- (171) **Qualifying services** —
- (A) residential flat rate basic local exchange service;
  - (B) residential local exchange access service; and
  - (C) residential local area calling usage.
- (172) **Rate** — Includes:
- (A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public utility for a service, product, or commodity, described in the definition of utility in the Public Utility Regulatory Act §§31.002 or 51.002; and
  - (B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.
- (173) **Reciprocal compensation** — An arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.

- (174) **Reclassification area** — The geographic area within the electing ILEC's territory, consisting of one or more exchange areas, for which it seeks reclassification of a service.
- (175) **Redirect the call** — A procedure used by operator service providers (OSPs) that transmits a signal back to the originating telephone instrument that causes the instrument to disconnect the OSP's connection and to redial the digits originally dialed by the caller directly to the local exchange carrier's network.
- (176) **Regulatory authority** — In accordance with the context where it is found, either the commission or the governing body of a municipality.
- (177) **Relay Texas Advisory Committee (RTAC)** — The committee authorized by the Public Utility Regulatory Act, §56.110 and 1997 Texas General Laws Chapter 149.
- (178) **Relay Texas** — The name by which telecommunications relay service in Texas is known.
- (179) **Relay Texas administrator** — The individual employed by the commission to oversee the administration of statewide telecommunications relay service.
- (180) **Repeated trouble report** — A customer trouble report regarding a specific line or circuit occurring within 30 days or one calendar month of a previously cleared trouble report on the same line or circuit.
- (181) **Residual charge** — The per-minute charge designed to account for historical contribution to joint and common costs made by switched transport services.

- (182) **Retail service** — A telecommunications service is considered a retail service when it is provided to residential or business end users and the use of the service is other than resale. Each tariffed or contract offering which a customer may purchase to the exclusion of other offerings shall be considered a service. For example: the various mileage bands for standard toll services are rate elements, not services; however, individual optional calling plans that can be purchased individually and which are offered as alternatives to each other are services, not rate elements.
- (183) **Return-on-assets** — After-tax net operating income divided by total assets.
- (184) **Reversal of partial deregulation** — The ability of a minimum of 10% of the members of a partially deregulated cooperative to request, in writing, that a vote be conducted to determine whether members prefer to reverse partial deregulation. Ten percent shall be calculated based upon the total number of members of record as of the calendar month preceding receipt of the request from members for reversal of partial deregulation.
- (185) **Rule** — A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.
- (186) **Rulemaking proceeding** — A proceeding conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, to adopt, amend, or repeal a commission rule.

- (187) **Rural incumbent local exchange company (ILEC)** — An ILEC that qualifies as a "rural telephone company" as defined in 47 United States Code §3(37) and/or 47 United States Code §251(f)(2).
- (188) **Selective routing** — The feature provided with 311 service by which 311 calls are automatically routed to the 311 answering point for serving the place from which the call originates.
- (189) **Separation** — The division of plant, revenues, expenses, taxes, and reserves applicable to exchange or local service if these items are used in common to provide public utility service to both local exchange telephone service and other service, such as interstate or intrastate toll service.
- (190) **Service** — Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility's duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities, and the public. The term also includes the interchange or facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory.
- (191) **Service connection charge** — A charge designed to recover the costs of non-recurring activities associated with connection of local exchange telephone service.
- (192) **Service provider** — Any entity that offers a product or service to a customer and that directly or indirectly charges to or collects from a customer's bill an amount for the product or service on a customer's bill received from a billing telecommunications utility.

- (193) **Service provider certificate of operating authority (SPCOA) reseller** — A holder of a service provider certificate of operating authority that uses only resold telecommunications services provided by an incumbent local exchange company (ILEC) or by a certificate of operating authority (COA) holder or by a service provider certificate of operating authority (SPCOA) holder.
- (194) **Service restoral charge** — A charge applied by the DCTU to restore service to a customer's telephone line after it has been suspended by the DCTU.
- (195) **Serving wire center (SWC)** — The certificated telecommunications utility designated central office which serves the access customer's point of demarcation.
- (196) **Signaling for tandem switching** — The carrier identification code (CIC) and the OZZ code or equivalent information needed to perform tandem switching functions. The CIC identifies the interexchange carrier and the OZZ digits identify the call type and thus the interexchange carrier trunk to which traffic should be routed.
- (197) **Small certificated telecommunications utility (CTU)** — A CTU with fewer than 2.0% of the nation's subscriber lines installed in the aggregate nationwide.
- (198) **Small local exchange company (SLEC)** — Any incumbent certificated telecommunications utility as of September 1, 1995, that has fewer than 31,000 access lines in service in this state, including the access lines of all affiliated incumbent local exchange companies within the state, or a telephone cooperative organized pursuant to the Telephone Cooperative Act, Texas Utilities Code Annotated, Chapter 162.

- (199) **Small incumbent local exchange company (Small ILEC)** — An incumbent local exchange company that is a cooperative corporation or has, together with all affiliated incumbent local exchange companies, fewer than 31,000 access lines in service in Texas.
- (200) **Spanish speaking person** — a person who speaks any dialect of the Spanish language exclusively or as their primary language.
- (201) **Special access** — A transmission path connecting customer designated premises to each other either directly or through a hub or hubs where bridging, multiplexing or network reconfiguration service functions are performed and includes all exchange access not requiring switching performed by the dominant carrier's end office switches.
- (202) **Specialized Telecommunications Assistance Program (STAP)** — The program described in Substantive Rule §26.415 of this title (relating to Specialized Telecommunications Assistance Program).
- (203) **Specialized Telecommunications Assistance Program (STAP) voucher** — A voucher issued by the Texas Commission for the Deaf and Hard of Hearing under the equipment distribution program, in accordance with its rules, that an eligible individual may use to acquire eligible specialized telecommunications devices from a vendor of such equipment.
- (204) **Stand-alone costs** — The stand-alone costs of an element or service are defined as the forward-looking costs that an efficient entrant would incur in providing only that element or service.

- (205) **Station** — A telephone instrument or other terminal device.
- (206) **Study area** — An incumbent local exchange company's (ILEC's) existing service area in a given state.
- (207) **Supplemental services** — Telecommunications features or services offered by a certificated telecommunications utility for which analogous services or products may be available to the customer from a source other than a dominant certificated telecommunications utility. Supplemental services shall not be construed to include optional extended area calling plans that a dominant certificated telecommunications utility may offer pursuant to §26.217 of this title (relating to Administration of Extended Area Service (EAS) Requests), or pursuant to a final order of the commission in a proceeding pursuant to the Public Utility Regulatory Act, Chapter 53.
- (208) **Suspension of service** — That period during which the customer's telephone line does not have dial tone but the customer's telephone number is not deleted from the central office switch and databases.
- (209) **Switched access** — Access service that is provided by certificated telecommunications utilities (CTUs) to access customers and that requires the use of CTU network switching or common line facilities generally, but not necessarily, for the origination or termination of interexchange calls. Switched access includes all forms of transport provided by the CTU over which switched access traffic is delivered.
- (210) **Switched access demand** — Switched access minutes of use, or other appropriate measure where not billed on a minute of use basis, for each switched access rate

element, normalized for out of period billings. For the purposes of this section, switched access demand shall include minutes of use billed for the local switching rate element.

- (211) **Switched access minutes** — The measured or assumed duration of time that a certificated telecommunications utility's network facilities are used by access customers. Access minutes are measured for the purpose of calculating access charges applicable to access customers.
- (212) **Switched transport** — Transmission between a certificated telecommunications utility's central office (including tandem-switching offices) and an interexchange carrier's point of presence.
- (213) **Tandem-switched transport** — Transmission of traffic between the serving wire center and another certificated telecommunications utility office that is switched at a tandem switch and charged on a usage basis.
- (214) **Tariff** — The schedule of a utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the utility stated separately by type or kind of service and the customer class.
- (215) **Telecommunications relay service (TRS)** — A service using oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices. Unless specified in the text, this term shall refer to intrastate telecommunications relay service only.

- (216) **Telecommunications relay service (TRS) carrier** — The telecommunications carrier selected by the commission to provide statewide telecommunications relay service.
- (217) **Telecommunications utility** —
- (A) a public utility;
  - (B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;
  - (C) a specialized communications common carrier;
  - (D) a reseller of communications;
  - (E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;
  - (F) a provider of operator services as defined by §55.081, unless the provider is a subscriber to customer-owned pay telephone service; and
  - (G) a separated affiliate or an electronic publishing joint venture as defined in the Public Utility Regulatory Act, Chapter 63.
- (218) **Telephones intended to be utilized by the public** — Telephones that are accessible to the public, including, but not limited to, pay telephones, telephones in guest rooms and common areas of hotels, motels, or other lodging locations, and telephones in hospital patient rooms.
- (219) **Telephone solicitation** — An unsolicited telephone call.

- (220) **Telephone solicitor** — A person who makes or causes to be made a consumer telephone call, including a call made by an automatic dialing/announcing device.
- (221) **Test year** — The most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a public utility are available.
- (222) **Texas Universal Service Fund (TUSF)** — The fund authorized by the Public Utility Regulatory Act, §56.021 and 1997 Texas General Laws Chapter 149.
- (223) **Tier 1 local exchange company** — A local exchange company with annual regulated operating revenues exceeding \$100 million.
- (224) **Title IV-D Agency** — The office of the attorney general for the state of Texas.
- (225) **Toll blocking** — A service provided by telecommunications carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.
- (226) **Toll control** — A service provided by telecommunications carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.
- (227) **Toll limitation** — Denotes both toll blocking and toll control.
- (228) **Total element long-run incremental cost (TELRIC)** — The forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the certificated telecommunications utility's (CTU's) provision of other elements.

- (229) **Transport** — The transmission and/or any necessary tandem and/or switching of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than a dominant certificated telecommunications utility.
- (230) **Trunk** — A circuit facility connecting two switching systems.
- (231) **Two-primary interexchange carrier (Two-PIC) equal access** — A method that allows a telephone subscriber to select one carrier for all 1+ and 0+ interLATA calls and the same or a different carrier for all 1+ and 0+ intraLATA calls.
- (232) **Unauthorized charge** — Any charge on a customer's telephone bill that was not consented to or verified in compliance with §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).
- (233) **Unbundling** — The disaggregation of the ILEC's network/service to make available the individual network functions or features or rate elements used in providing an existing service.
- (234) **Unit cost** — A cost per unit of output calculated by dividing the total long run incremental cost of production by the total number of units.
- (235) **Usage sensitive blocking** — Blocking of a customer's access to services which are charged on a usage sensitive basis for completed calls. Such calls shall include, but not be limited to, call return, call trace, and auto redial.

- (236) **Virtual private line** — Circuits or bandwidths, between fixed locations, that are available on demand and that can be dynamically allocated.
- (237) **Voice carryover** — A technology that allows an individual who is hearing-impaired to speak directly to the other party in a telephone conversation and to use specialized telecommunications devices to receive communications through the telecommunications relay service operator.
- (238) **Volume insensitive costs** — The costs of providing a basic network function (BNF) that do not vary with the volume of output of the services that use the BNF.
- (239) **Volume sensitive costs** — The costs of providing a basic network function (BNF) that vary with the volume of output of the services that use the BNF.
- (240) **Wholesale service** — A telecommunications service is considered a wholesale service when it is provided to a telecommunications utility and the use of the service is to provide a retail service to residence or business end-user customers.
- (241) **Working capital requirements** — The additional capital required to fund the increased level of accounts receivable necessary to provide telecommunications service.
- (242) **"0-" call** — A call made by the caller dialing the digit "0" and no other digits within five seconds. A "0-" call may be made after a digit (or digits) to access the local network is (are) dialed.
- (243) **"0+" call** — A call made by the caller dialing the digit "0" followed by the terminating telephone number. On some automated call equipment, a digit or digits may be dialed between the "0" and the terminating telephone number.

- (244) **311 answering point** — A communications facility that:
- (A) is operated, at a minimum, during normal business hours;
  - (B) is assigned the responsibility to receive 311 calls and, as appropriate, to dispatch the non-emergency police or other governmental services, or to transfer or relay 311 calls to the governmental entity;
  - (C) is the first point of reception by a governmental entity of a 311 call; and
  - (D) serves the jurisdictions in which it is located or other participating jurisdictions.
- (245) **311 service** — A telecommunications service provided by a certificated telecommunications provider through which the end user of a public telephone system has the ability to reach non-emergency police and other governmental services by dialing the digits 3-1-1. 311 service must contain the selective routing feature or other equivalent state-of-the-art feature.
- (246) **311 service request** — A written request from a governmental entity to a certificated telecommunications utility requesting the provision of 311 service. A 311 service request must:
- (A) be in writing;
  - (B) contain an outline of the program the governmental entity will pursue to adequately educate the public on the 311 service;
  - (C) contain an outline from the governmental entity for implementation of 311 service;

- (D) contain a description of the likely source of funding for the 311 service (i.e., from general revenues, special appropriations, etc.); and
  - (E) contain a listing of the specific departments or agencies of the governmental entity that will actually provide the non-emergency police and other governmental services.
- (247) **311 system** — A system of processing 311 calls.
- (248) **911 system** — A system of processing emergency 911 calls, as defined in Texas Health & Safety Code §772.001, as may be subsequently amended.

**SUBCHAPTER B**

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically House Bill 2156, 77th Legislature (2001 Texas General Laws 5160), which requires that all persons receiving benefits under the Tel-Assistance service program shall be automatically enrolled in the Lifeline service program.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.015.

**§26.31. Disclosures to Applicants and Customers.**

- (a) **Certificated telecommunications utilities (CTU).** These disclosure requirements shall apply only to residential customers and business customers with five or fewer customer access lines.
  - (1) **Promotional requirements.** Promotions, including, but not limited to advertising and marketing, conducted by any CTU shall comply with the following:
    - (A) If any portion of a promotion is translated into another language, then all portions of the promotion shall be translated into that language. Promotions containing a single informational line or sentence in another language to advise

persons how to obtain the same promotional information in a different language are exempt from this requirement.

(B) Promotions shall not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law.

(2) **Prior to acceptance of service.** Each CTU shall provide the following information to applicants before any acceptance of service:

- (A) notice that the customer will receive the information packet described in paragraphs (3) and (4) of this subsection;
- (B) an explanation of each product or service being offered;
- (C) a description of how each charge will appear on the telephone bill;
- (D) any applicable minimum contract service terms;
- (E) disclosure of any and all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether or not the money is refundable;
- (F) disclosure of construction charges in accordance with §26.22 of this title (relating to Request for Service);
- (G) information about any necessary change in the applicant's telephone number;
- (H) disclosure of the company's cancellation policy; and
- (I) information on whom to call and a working toll-free number for customer inquiries.

(3) **Terms and conditions of service.** A CTU shall provide information regarding terms and conditions of service to customers in writing and free of charge at the initiation of service. Upon request, customers are entitled to receive an additional copy of the terms and conditions of service once annually free of charge. Any contract offered by a CTU must include the terms and conditions of service statement. A CTU may not offer a customer a contract or terms and conditions of service statement which waives the customer's rights under law or commission rule.

(A) The information shall be:

- (i) sent to new customers before payment for a full bill is due;
- (ii) clearly labeled to indicate it contains the terms and conditions of service;
- (iii) provided in a readable format written in plain, non-technical language;  
and
- (iv) provided in the same languages in which the CTU markets service to a customer.

(B) The following information shall be included:

- (i) all rates and charges as they will appear on the telephone bill;
- (ii) an itemization of any charges which may be imposed on the customer, including but not limited to, charges for late payments and returned checks;
- (iii) a full description of each product or service to which the customer has subscribed;

- (iv) any applicable minimum contract service terms and any fees for early termination;
  - (v) any and all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether or not the money is refundable;
  - (vi) applicable construction charges in accordance with §26.22 of this title;
  - (vii) any necessary change in the applicant's telephone number;
  - (viii) the company's cancellation policy;
  - (ix) a working toll-free number for customer inquiries; and
  - (x) the provider's legal or "doing business as" name used for providing telecommunications services in the state.
- (4) **Customer rights.** A CTU shall provide information regarding customer rights to customers in writing and free of charge at the initiation of service.
- (A) The information in subparagraph (C) of this paragraph shall be:
    - (i) sent to new customers before payment for a full bill is due;
    - (ii) clearly labeled to indicate it contains the customer rights;
    - (iii) provided in a readable format written in plain, non-technical language;  
and
    - (iv) provided in the same languages in which the CTU markets service to a customer.
  - (B) The CTU shall also provide:

- (i) the information in subparagraph (C) of this paragraph to customers at least every other year at no charge; or
  - (ii) a printed statement on the bill or a billing insert identifying the location of the information in subparagraph (C) of this paragraph. The statement shall be provided to customers every six months.
- (C) The following information shall be included:
- (i) the CTU's credit requirements and the circumstances under which a deposit or an additional deposit may be required, how a deposit is calculated, the interest paid on deposits, and the time frame and requirement for return of the deposit to the customer and any other terms and conditions related to deposits;
  - (ii) the time allowed to pay outstanding bills and the amount and conditions under which penalties may be applied to delinquent bills;
  - (iii) grounds for suspension and/or disconnection of service;
  - (iv) the steps that must be taken before a CTU may suspend and/or disconnect service;
  - (v) the steps for resolving billing disputes with the CTU and how disputes affect suspension and/or disconnection of service;
  - (vi) information on alternative payment plans offered by the CTU, including, but not limited to, payment arrangements and deferred payment plans,

as well as a statement that a customer has the right to request these alternative payment plans;

- (vii) the steps necessary to have service restored and/or reconnected after involuntary suspension or disconnection;
- (viii) a customer's right to continue local service as long as full payment for local service is timely made;
- (ix) information regarding protections against unauthorized billing charges ("cramming") and selection of telecommunications utilities ("slamming") as required by §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) and §26.130 of this title (relating to Selection of Telecommunications Utilities), respectively;
- (x) information regarding telephone solicitation as required by §26.126 of this title (relating to Telephone Solicitation);
- (xi) information about customer proprietary network information as required by §26.122(f) of this title (relating to Customer Proprietary Network Information);
- (xii) the customer's right to file a complaint with the CTU, the procedures for a supervisory review, and right to file a complaint with the commission regarding any matter concerning the CTU's service. The commission's contact information: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326,

(512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.state.tx.us, Internet address: www.puc.state.tx.us, TTY (512) 936-7136, and Relay Texas (toll-free) 1-800-735-2989, shall accompany this information;

- (xiii) the hours, addresses, and telephone numbers of CTU offices where bills may be paid and information may be obtained, or a toll-free number at which the customer may obtain this information;
- (xiv) a toll-free telephone number or the equivalent (such as use of WATS or acceptance of collect calls) that customers may call to report service problems or make billing inquiries;
- (xv) a statement that CTU services are provided without discrimination as to a customer's race, color, sex, nationality, religion, marital status, income level, source of income, or from unreasonable discrimination on the basis of geographic location;
- (xvi) a summary of the company's policy regarding the provision of credit history based upon the credit history of a customer's former spouse;
- (xvii) notice of any special services such as readers or notices in Braille, if available, and the telephone number of the text telephone for the deaf or hard of hearing at the commission;

- (xviii) how customers with physical disabilities, and those who care for them, can identify themselves to the CTU so that special action can be taken to appropriately inform these persons of their rights; and
  - (xix) if a CTU is offering Lifeline, how information about customers who qualify for Lifeline may be shared between state agencies and their local phone service provider.
- (5) **Notice of changes.** A CTU shall provide customers written notice between 30 and 60 calendar days in advance of a material change in the terms and conditions of service or customer rights and shall give the customer the option to decline any material change in the terms and conditions of service and cancel service without penalty due to the material change in the terms and conditions of service. This paragraph does not apply to changes that are beneficial to the customer such as a price decrease or mandated regulatory changes.
- (6) **Right of cancellation.**
  - (A) A CTU shall provide all of its residential applicants and customers the right of rescission in accordance with applicable law.
  - (B) If a residential applicant or customer will incur an obligation exceeding 31 days, a CTU shall promptly provide the applicant or customer with the terms and conditions of service after the applicant or customer has provided authorization to CTU. The CTU shall offer the applicant or customer a right to cancel the contract without penalty or fee of any kind for a period of six business days

after the terms and conditions of service are mailed or sent electronically to the applicant or customer.

(b) **Dominant certificated telecommunications utility (DCTU).** In addition to the requirements of subsection (a) of this section, the following requirements shall apply to residential customers and business customers with five or fewer customer access lines.

(1) **Prior to acceptance of service.** Before signing applicants or accepting any money for new residential service or transferring existing residential service to a new location, each DCTU shall provide to applicants information:

(A) about the DCTU's lowest-priced alternatives, beginning with the least cost option, and the range of service offerings available at the applicant's location with full consideration to applicable equipment options and installation charges; and

(B) that clearly informs applicants about the availability of Lifeline service.

(2) **Customer rights.**

(A) If a DCTU provides its customers with the same information as required by subsection (a)(4)(C) of this section in the telephone directories provided to each customer pursuant to §26.128 of this title (relating to Telephone Directories), the DCTU shall provide a printed statement on the bill or a billing insert identifying the location of the information. The statement or billing insert shall be provided to customers every six months.

- (B) The information required by subsection (a)(4)(C) of this section and this subsection shall be provided in English and Spanish; however, a DCTU is exempt from the Spanish language requirement if 10% or fewer of its customers are exclusively Spanish-speaking. If the DCTU is exempt from the Spanish language requirement, it shall notify all customers through a statement in both English and Spanish, in the customer rights, that the information is available in Spanish from the DCTU, both by mail and at the DCTU's offices.
- (C) The information required in subsection (a)(4)(C) of this section shall also include:
- (i) the customer's right to information about rates and services;
  - (ii) the customer's right to inspect or obtain at reproduction cost a copy of the applicable tariffs and service rules;
  - (iii) information on prohibitions for disconnection of local service for the ill and disabled;
  - (iv) information on the availability of prepaid local telephone service as required by §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)); and
  - (v) information regarding privacy issues as required by §26.121 of this title (relating to Privacy Issues).

- (c) **Non-dominant certificated telecommunications utility (NCTU) implementation.** NCTUs shall implement this section no later than March 1, 2001.

**SUBCHAPTER J**

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically House Bill 2156, 77th Legislature (2001 Texas General Laws 5160), which requires that all persons receiving benefits under the Tel-Assistance service program shall be automatically enrolled in the Lifeline service program.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.015.

**§26.217. Administration of Extended Area Service (EAS) Requests.**

- (a) **Purpose.** This section establishes procedures for processing requests for extended area service (EAS) pursuant to the Public Utility Regulatory Act (PURA), Chapter 55, Subchapter B.
- (b) **Extended Area Service.** The term "utility(ies)" in this section refers to dominant certificated telecommunications utility(ies).
  - (1) **Filing requirements.**
    - (A) In order to be considered by the commission, a request for EAS shall be initiated by at least one of the following actions:

- (i) a petition signed by the greater of 5.0% or 100 of the subscribers in the exchange from which the petition originates;
  - (ii) a resolution adopted and filed with the commission by the governing body of a political subdivision provided that said governing body properly represents the exchange requesting EAS;
  - (iii) a resolution adopted and filed with the commission by the board of directors or trustees of a community association representing an unincorporated community; or
  - (iv) an application filed by one or more of the affected utility(ies).
- (B) A request for establishment of a particular EAS arrangement pursuant to subparagraph (A)(i), (ii), or (iii) of this paragraph shall not be considered sooner than three years after either a determination of the failure of a previous request to meet eligibility requirements, or final commission action on a previously docketed request. An exception to this requirement may be granted to any petitioning exchange which demonstrates that a change of circumstances may have materially affected traffic levels between the petitioning exchange and the exchange to which EAS is desired.
- (C) A request for EAS shall state the name of the exchange(s) to which EAS is sought.
- (D) The petition shall set forth the name and telephone number of each signatory and the name of the exchange from which the subscribers receive service.

- (E) Each signature page of a petition for EAS must contain information which clearly states that establishment of the requested EAS route may require that subscribers to the service change their telephone numbers and pay a monthly EAS rate in addition to their local exchange service rates, as well as applicable service connection charges.
- (F) Requests for EAS into metropolitan exchanges will be grouped by relevant metropolitan exchange. For each metropolitan exchange, the commission staff will file a motion to docket a proceeding for the determination of uniform EAS rate additives as directed by paragraphs (3), (4), and (5) of this subsection for all pending EAS requests to that metropolitan exchange. Upon the docketing of such a proceeding, two weeks notice in a newspaper of general circulation in the metropolitan area shall be published. The notice shall contain such information as deemed reasonable by the presiding officer in the proceeding. No earlier than 60 days from the date of final publication of notice, the demand studies required by paragraph (3) of this subsection shall be initiated. New petitions for EAS into the metropolitan exchange may be accepted prior to the initiation of the demand studies.

(2) **Community of interest.**

- (A) Upon receipt of a proper filing under the provisions set out in paragraph (1) of this subsection, the utility(ies) involved will be directed by the commission staff to initiate appropriate calling usage studies. Within 90 days of receipt of such

direction, the utility(ies) shall provide the results of such studies to the commission staff and to a representative of the petitioning exchange(s). The message distribution and revenue distribution detail from the studies shall be considered proprietary unless the parties agree otherwise and shall not be released for use outside the context of the commission's proceedings. The data to be provided shall be based upon a minimum 60 day study of representative calling patterns, shall be in such form, detail, and content as the commission staff may reasonably require and shall include at least the following information:

- (i) for business customers and residential customers and for the combined total, the number of messages and either minutes-of-use or billed toll revenues per customer account per month, in each direction over the route being studied;
- (ii) a detailed analysis of the distribution of calling usage among subscribers, in each direction over the route being studied, showing the number of subscriber accounts placing zero calls, one call, etc., through ten calls, the number of subscriber accounts placing between 11 and 20 calls, the number placing between 21 and 50 calls, and the number of subscriber accounts placing more than 50 calls, per month;
- (iii) data showing, by class of service, the number of subscriber accounts in service for each of the exchanges being studied;

- (iv) the distance between rate centers, and the average revenue per message for the calls during the study period;
  - (v) the number of foreign exchange (FX) lines in service over each route and the estimated average calling volumes on these lines expressed as messages per month;
  - (vi) a listing of known interexchange carriers providing service between the petitioning exchange and the exchange(s) to which EAS is desired.
- (B) A community of interest between exchanges shall be considered to exist from one exchange to the other when:
- (i) there is an average (arithmetic mean) of no less than ten calls per subscriber account per month from one exchange to the other, and
  - (ii) no less than two thirds of the subscribers' accounts place at least five calls per month from one exchange to the other.
- (C) A request for EAS shall be assigned a project number and notice shall be provided, pursuant to paragraph (7) of this subsection, when a community of interest is found to exist as described in subparagraph (B) of this paragraph:
- (i) on a bilateral basis between exchanges, or
  - (ii) on a unilateral basis from the petitioning exchange to the other exchange.
- (D) The project shall be established as a formal docket upon the motion of the commission staff.

(E) Following the docketing of a request, a prehearing conference shall be scheduled to establish the exchange(s) to which EAS is sought, and to report any agreements reached by the parties. The utility(ies) involved shall conduct appropriate demand and costing analyses according to paragraphs (3) and (4) of this subsection.

(3) **Demand analysis.**

(A) The utility(ies) involved shall conduct analyses of anticipated demand for the requested EAS. The data shall be in such form, detail, and content as the commission staff may reasonably require and shall include, at a minimum, the following information:

- (i) the number of subscribers who are expected to take the requested service at the estimated rates recommended pursuant to paragraph (5) of this subsection and the associated probability of that level of subscribership;
- (ii) how call traffic within the requested extended area is expected to change given the rates and subscribership under clause (i) of this paragraph; and
- (iii) the total volume of traffic upon which to base the anticipated switching and trunking requirements resulting from clause (i) and clause (ii) of this subparagraph.

(B) Unless the utility(ies) demonstrates good cause to expand the time schedule, the utility(ies) shall provide to the commission staff and to other parties to the proceeding, no later than 120 days after the prehearing conference, the results of these analyses, together with supporting schedules and detailed documentation needed to understand and verify the study results.

(4) **Determination of costs.**

(A) The utility(ies) involved shall conduct studies necessary to determine the changes in costs and revenues which may reasonably be expected to result from establishment of the requested EAS. These studies shall consider and develop the long run incremental costs as follows:

- (i) switching and trunking costs associated with existing toll traffic which converts to EAS traffic plus the costs of switching and trunking required to handle the additional traffic as determined in paragraph (3)(A)(ii) of this subsection;
- (ii) the increases and decreases in expenses resulting from the new service and the net effect on operating expenses; and
- (iii) direct costs incurred by the utility(ies) in conducting demand analyses in compliance with paragraph (3) of this subsection.

(B) The utility(ies) may analyze the effect on toll revenues in order to present evidence on the overall revenue effects of providing the requested EAS.

Revenue effects supported by such evidence, if presented, may be included in the EAS rate additives specified in paragraph (5)(D) of this subsection.

(C) The utility(ies) shall file with the commission's Filing Clerk and serve copies on commission staff and other parties to the proceeding the results of these studies, together with supporting schedules and detailed documentation needed to understand and verify the study results according to the following schedule, unless the utility(ies) can demonstrate that good cause exists to expand the time schedule for a particular study:

- (i) incremental costs identified in this paragraph shall be filed no later than 90 days from the filing of the results of the demand analysis conducted pursuant to paragraph (3) of this subsection; and
- (ii) toll revenue effects, if analyzed pursuant to subparagraph (B) of this paragraph, shall be filed no later than 90 days from the filing of the results of the incremental costs, pursuant to clause (i) of this subparagraph.

(5) **EAS rate additives.**

(A) Coincident with the filing of cost study results, or coincident with the toll revenue effect results, if filed, the utility(ies) shall file recommendations for proposed incremental rate additives, by class of service, necessary to support the cost of the added service, as well as to support the toll revenue effect, if such effect is filed.

- (i) EAS rate additives to be assessed on EAS subscribers in the petitioning exchange(s) are to recover the incremental cost of providing the service according to paragraph (4)(A) of this subsection plus 10% of the incremental cost.
  - (ii) The rate additives to be assessed on subscribers in the metropolitan exchange for which EAS has been requested are to recover revenues determined by the following formula: net lost toll multiplied by percent outbound toll and multiplied by the estimated EAS take rate. The terms in the formula are defined as follows:
    - (I) net lost toll - lost toll revenue calculated according to paragraph (4)(B) of this subsection less the revenue recovered through the EAS rate additive identified in clause (i) of this subparagraph;
    - (II) percent outbound toll - this factor is calculated by dividing toll minutes of use originating in the metropolitan exchange and terminating in the petitioning exchanges by the total number of toll minutes of use between the metropolitan exchange and the petitioning exchange(s); and
    - (III) estimated EAS take rate - the estimated number of EAS subscribers in the petitioning exchanges divided by the total number of subscribers in the petitioning exchange(s).
- (B) Service connection charges will be applicable.

- (C) A non-recurring charge to defray the direct incremental costs of the demand analyses identified in paragraph (4)(A)(iii) of this subsection shall be charged to subscribers who order the service within 12 months from the time it is first offered. The non-recurring charge shall not exceed \$5.00 per access line.
- (D) The EAS rate additive to be used in the affected exchange(s) must meet the following standards.
- (i) No increase in rates shall be incurred by the subscribers of non-benefiting exchanges, that is, by subscribers whose calling scopes are not affected by the requested EAS service.
  - (ii) If the petitioning exchange demonstrated a unilateral but not a bilateral community of interest through the requirements of paragraph (2)(C)(ii) of this subsection, the EAS arrangements shall be priced using those rate increments designed to recover the added costs for each route, plus the toll revenue effect, if reasonably substantiated. The total increment chargeable to subscribers within an exchange shall be the sum of the increments of all new EAS routes established for that exchange.
  - (iii) If the petitioning exchange demonstrated a bilateral community of interest through the requirements of paragraph (2)(C)(i) of this subsection and requested that the costs be borne on a bilateral basis, the additional cost for the new EAS route shall be divided between the

two participating exchanges according to the ratio of calling volumes between the two exchanges.

(iv) In establishing a flat rate EAS increment, all classes of customer access line rates within each exchange shall be increased by equal percentages.

(6) **Subscription threshold.**

(A) A threshold demand level shall be established by the commission's order in the docketed proceeding prior to the design or construction of facilities for the service. A reasonable pre-subscription process shall then be undertaken to determine the likely demand level. If the likely demand level equals or exceeds the threshold demand level, then EAS shall be provided in accordance with the commission's order. If the threshold demand level is not met, the affected utility(ies) is not required to provide the EAS approved by the commission.

(B) The cost of pre-subscription shall be divided between the utility and the petitioners. The petitioners shall pay for the printing of bill inserts and ballots and the utility shall insert them in bills free of charge. In the alternative, upon the agreement of the parties, the utility shall provide, free of charge, and under protective order, the mailing labels of the subscribers in the petitioning exchange, and the petitioners shall pay the cost of printing and mailing the bill inserts and ballots.

(7) **Notice.**

- (A) Notice of the filing of an EAS application must be provided to all subscribers within the petitioning exchange(s), by publication for two consecutive weeks in a newspaper of general circulation in the area. Notice must also be given to individual subscribers either through inserts in customer bills, or through a separate mailing to each subscriber. The notice must state: the project number, the nature of the request, and the commission's mailing address and telephone number to contact in the event an individual wishes to protest or intervene. The commission shall also publish notice in the *Texas Register*.
- (B) Written notice containing the information described above shall be provided to the governing official(s) of all incorporated areas within the affected exchanges and the county commission(s) or the board of directors or trustees of a community association representing any unincorporated areas within the affected exchanges.
- (C) The cost of notice shall be borne by the petitioners.
- (8) **Joint filings.**
- (A) EAS agreements. The commission may approve agreements for EAS or EAS substitute services filed jointly by the representatives of petitioning exchanges and the affected utility(ies) (joint filings) so long as the agreements are in accordance with subparagraph (C)(i)-(x) of this paragraph. Notwithstanding any other provisions of this paragraph, if more than one political subdivision is

affected by a proposed optional calling plan under PURA §55.023, the agreement of each political subdivision is not required.

- (B) Multiple exchange common calling plans. Joint filing agreements for EAS or EAS substitute services among three or more exchanges shall be permitted pursuant to subparagraph (C)(i)-(x) of this paragraph.
- (C) Standards for joint filings. Joint filings shall be permitted subject to the following:
  - (i) The parties to joint filings shall include the name of each utility which provides service in the affected exchanges and one duly appointed representative for each affected exchange. Each exchange representative shall be designated jointly by the governing officials of all incorporated areas within the affected exchange and the county commission(s) representing any unincorporated areas within the affected exchange.
  - (ii) Joint filings are exempt from the traffic requirements contained in paragraph (2) of this subsection.
  - (iii) Joint filings may include rate proposals which are flat rate, usage sensitive, block rates, or other pricing mechanisms. If usage-sensitive rates are proposed, joint applicants shall include the commission staff in their negotiations.
  - (iv) Joint filings may propose either one-way or two-way calling.

- (v) Joint filings may propose either optional or non-optional calling.
- (vi) Joint filings shall specify all non-recurring and recurring rate additives to be paid by the various classes and grades of service in the affected exchanges.
- (vii) Joint filings shall demonstrate that the proposed rate additives:
  - (I) are in the public interest, and in the case of non-optional joint filings which include flat rate additives, the filing shall demonstrate that more than 50% of the total subscribers who will experience a rate change are in favor of this joint filing at the proposed rates; and
  - (II) recover, for the utility providing the service, the appropriate cost of providing EAS including a contribution to joint costs.
- (viii) The notice requirements of paragraph (7) of this subsection are applicable to joint filings. In addition, the commission shall publish notice of the proposed joint filing in the *Texas Register* and shall provide notice to the Office of Public Utility Counsel upon receipt of the joint filing.
- (ix) If intervenor status is not granted within 60 days of completion of notice, the joint filing shall be handled administratively, with the commission determining whether the service meets the criteria listed in clause (vii) of this subparagraph. If requested by an intervenor or the

commission staff, the joint filing shall be docketed for hearing and final order. Any of the parties to the joint filing may withdraw the joint filing without prejudice at any time prior to the rendition of the final order. Any alteration or modification of the joint filing by the commission may only be made upon the agreement of all parties to the proceeding.

- (x) The exchanges to be included within the proposed common calling plan area shall be contained within a continuous boundary and all exchanges within that boundary shall be included in the common calling plan.

**§26.219. Administration of Expanded Local Calling Service Requests.**

- (a) **Purpose.** The purpose of this section is to describe the process used to administer requests from telephone service subscribers for two-way toll-free expanded local calling service (ELCS) pursuant to the Public Utility Regulatory Act (PURA), Chapter 55, Subchapter C. Only incumbent local exchange companies (ILECs) are subject to the provisions of PURA, Chapter 55, Subchapter C.
- (b) **Definitions.** The following terms, when used in this section, have the following meanings unless the context clearly indicates otherwise.

- (1) **Expanded local calling service (ELCS)** — The meaning assigned in §26.221 of this title (relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges).
  - (2) **Expanded local calling service (ELCS) fee** — The meaning assigned in §26.221 of this title.
  - (3) **Expanded local calling service (ELCS) surcharge** — The meaning assigned in §26.221 of this title.
  - (4) **Metropolitan exchange** — The meaning assigned in PURA §55.041, including Austin, Corpus Christi, Dallas/Fort Worth, Houston, San Antonio and Waco.
- (c) **ELCS requests, notice and intervention.**
- (1) **Filing a request for ELCS.** Telephone subscribers in an exchange that has 10,000 or fewer access lines are eligible to request ELCS from the commission by filing information listed in paragraph (2) of this subsection. The request shall be assigned a project number. A presiding officer shall be assigned to the project and the request shall be reviewed administratively unless the presiding officer, for good cause, determines at any point during the review that the request should be docketed. A request from telephone subscribers in an exchange that has more than 10,000 access lines shall be dismissed by the presiding officer within 20 days of the date the request is filed.
  - (2) **Contents of a request for ELCS.**

- (A) Filing letter. A request for ELCS shall include a letter that designates a contact person to respond to inquiries about the request for ELCS. The name, address, and daytime telephone number of the contact person shall be identified in the letter. The letter shall be sent with all other parts of the request to the commission's Filing Clerk.
- (B) Community of interest statement. If the petitioning and petitioned exchanges do not meet the geographic proximity requirement set forth in subsection (d)(3)(C) of this section, the request for ELCS shall contain a statement describing the community of interest between the petitioning and petitioned exchanges, based upon standards in subsection (d)(3)(D) of this section. The statement must describe the existence of a community of interest between the petitioning exchange and each petitioned exchange in sufficient detail to allow for verification of assertions made.
- (C) Statement of changed circumstances. If subscribers in the petitioning exchange denied by ballot a petition for ELCS to any one or more of the same petitioned exchange(s) within the previous 18 months, the new request shall contain a statement explaining what circumstances have changed since the time of the prior ballot that materially affect the need for ELCS between the petitioning exchange and each petitioned exchange. A petition is denied by ballot if it fails to receive an affirmative vote of at least 70% of the voting subscribers in the petitioning exchange.

(D) Petition. A request for ELCS shall include a petition. A petition may request ELCS between a single petitioning exchange and one or more petitioned exchanges. A petition shall be signed by at least 100 subscribers or 5.0% of subscribers in the petitioning exchange, whichever is less. Each signatory shall include his or her name and telephone number on the petition. Each signature page of the petition for ELCS shall include:

- (i) the name and telephone number of a petition coordinator, whom signatories may contact for further information about the petition;
- (ii) the name, area code and prefix of the exchange from which the petitioners receive telephone service (the petitioning exchange);
- (iii) the name, area code and prefix(es) of exchange(s) to which ELCS is sought (the petitioned exchange(s));
- (iv) a clear statement that only subscribers in the petitioning exchange may sign the petition;
- (v) a clear statement that subscribers in the petitioning exchange will be billed a monthly ELCS fee of up to \$3.50 per residential line and \$7.00 per business line for the first five petitioned exchanges granted, with an additional \$1.50 per line for each exchange in excess of five, whether obtained in one or more petitions, in addition to basic local exchange service rates;

- (vi) a clear statement that there must be an affirmative vote of at least 70% of those subscribers responding within the petitioning exchange as to each petitioned exchange before ELCS can be implemented to that petitioned exchange; and
  - (vii) a clear statement that, in addition to ELCS fees billed to petitioning subscribers, an ELCS surcharge may, if necessary, be billed to that ILEC's Texas customers to recover the costs of implementing ELCS.
- (3) **Notice to affected ILECs.** Within five working days of receipt by the Office of Regulatory Affairs of a filed request for ELCS, the Office of Regulatory Affairs shall send a copy of the request by certified mail to each ILEC serving either a petitioning or a petitioned telephone exchange.
- (4) **Notice to affected telephone service subscribers.** An ILEC serving a petitioning exchange shall arrange for publication of notice in the petitioning exchange and shall bear the cost of notice as a regulatory case expense. This notice shall be published once, not later than 15 days before ballots are mailed in accordance with subsection (f) of this section, in each local newspaper in the petitioning exchange. The information contained in subsection (f)(2)(A)-(D) and (F) of this section shall be published. Published notice shall identify the assigned project number, shall include the language in Procedural Rule §22.51(a)(1)(F) of this title (relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapter C-E, Chapter 51, §51.009; and Chapter 53, Subchapters C-E Proceedings) modified to reflect the appropriate intervention deadline

and shall be written in both English and Spanish. Additionally, the presiding officer shall cause notice to be published in the *Texas Register* no later than 15 days before ballots are mailed.

- (5) **Intervention.** The intervention deadline shall be no sooner than ten days after the last date notice is published in the petitioning exchange. On or before the intervention deadline stated in the published notice, any interested person may file a request to intervene in the project. The presiding officer shall rule on a request to intervene in accordance with Procedural Rule §22.103 of this title (relating to Standing to Intervene) within ten days from the date the request to intervene is filed with the commission's Filing Clerk. Intervention by an interested person does not by itself require that the project be docketed.
- (d) **Initial review of a request for ELCS.**
- (1) **Sufficiency.** The presiding officer shall, by order issued within 15 days of the filing of a request for ELCS, determine if the request is sufficient as to the requirements in subsection (c)(2) of this section. If the presiding officer finds that the request is deficient, the presiding officer shall notify the designated contact person so that the contact person may cure any such deficiencies. Deficiencies in the request for ELCS may be cured within 30 days of its initial filing. If not cured by the subsequent filing of sufficient information within that time, the presiding officer shall dismiss the request in

whole, if appropriate, or in relevant part, without prejudice to the filing of another request involving the same petitioning and petitioned exchanges.

- (2) **Changed Circumstances.** The presiding officer shall, by order issued no later than 15 days after the filing of the request for ELCS, determine whether a statement of changed circumstances required by subsection (c)(2)(C) of this section justifies allowing another ballot sooner than 18 months after the denial by ballot of a prior petition involving the same petitioning and petitioned exchanges. If the presiding officer finds that the statement does not justify allowing another ballot, the presiding officer shall dismiss the request in whole, if appropriate, or in relevant part.
- (3) **Geographic proximity or community of interest.**
  - (A) Distance limitation. ELCS is not available where the most distant central switching offices in a petitioning and petitioned exchange are more than 50 miles apart as measured by using vertical and horizontal (V&H) geographic coordinates.
  - (B) Determination. The presiding officer shall, by order issued no later than 15 days after the request for ELCS is filed, determine whether the request satisfies either the geographic proximity requirement set forth in subparagraph (C) of this paragraph or the community of interest requirement set forth in subparagraph (D) of this paragraph. If the presiding officer determines that neither the geographic proximity nor the community of interest requirements are satisfied,

the presiding officer shall dismiss the request in whole, if appropriate, or in relevant part.

- (C) Geographic proximity. The geographic proximity requirement is satisfied as to each petitioned exchange if the nearest central switching office in the petitioning exchange is located within 22 miles of the nearest central switching office in the petitioned exchange as measured using vertical and horizontal (V&H) geographic coordinates.
- (D) Community of interest. A community of interest statement shall address situations where the nearest central switching offices in a petitioning and petitioned exchange are more than 22 miles apart and the most distant central offices in a petitioning and petitioned exchange are 50 or less miles apart. A community of interest between a petitioning exchange and a petitioned exchange exists, for purposes of this section, when the community of interest statement includes information demonstrating that the petitioning and petitioned exchanges have a relationship because of schools, hospitals, local governments, or business centers, or that the petitioning or petitioned exchanges have other relationships that make the unavailability of ELCS a hardship on residents of the area.

(e) **Exemptions.**

- (1) **ILEC requests for exemption.** An ILEC serving either the petitioning or the petitioned exchange may file a request for exemption from the potential requirement to

provide ELCS. Such requests must be filed no later than 20 days after the filing of the request for ELCS. The request for exemption shall be accompanied by an affidavit identifying in detail which conditions described in paragraph (2) of this subsection exist. If the petition includes more than one petitioned exchange, the request for exemption shall clearly identify which conditions apply to which exchanges. The presiding officer shall look to facts or circumstances existing on the date the ELCS request is filed in determining whether a request for exemption may be granted.

(2) **Types of exemptions.** The following conditions shall be considered by the presiding officer in determining whether to exempt an ILEC from being required to provide ELCS:

- (A) the ILEC serves fewer than 10,000 access lines statewide; or
- (B) the petitioning or petitioned exchange is served by a telephone cooperative; or
- (C) extended area service (EAS) or extended metropolitan service is currently available between the petitioning exchange and the petitioned exchange(s); or
- (D) the petitioning or petitioned exchange is a metropolitan exchange as defined in subsection (b) of this section; or
- (E) it is technologically or geographically infeasible to provide ELCS to the area; or
- (F) the request for ELCS proposes to split a petitioning or petitioned exchange.

(3) **Determination.** If one or more of the conditions described in paragraph (2)(A)-(D) or (2)(F) of this subsection exist, the presiding officer shall, within 40 days after the filing of the request for ELCS, dismiss the request in whole, if appropriate, or in relevant part. If

the ILEC requests an exemption based on paragraph (2)(E) of this subsection, the presiding officer shall, by order issued no later than 40 days after the filing of the request for ELCS, determine whether the ILEC's affidavit sufficiently demonstrates that technology is not available in the marketplace to make ELCS feasible. If the exemption request is granted, the presiding officer shall dismiss the request for ELCS in whole, if appropriate, or in relevant part.

(f) **Balloting.** If all applicable requirements contained in subsections (c) and (d) of this section are met and no exemption requests are outstanding, the presiding officer shall issue an order directing the ILEC serving the petitioning exchange to begin balloting subscribers in that exchange, and the presiding officer shall notify the designated contact person for the petitioning exchange that balloting will take place.

(1) **Cost of balloting.** The cost of preparing and distributing ballots shall be borne by the ILEC serving the petitioning exchange as a regulatory case expense.

(2) **Ballot format.** No later than 30 days after the presiding officer's order directing the ILEC serving the petitioning exchange to begin balloting, that ILEC shall distribute a ballot, written in English and Spanish, to each subscriber in the petitioning exchange. The ballot shall require a separate vote from each subscriber for each petitioned exchange. The ballot must be in a standard form approved by the Office of Regulatory Affairs and each ballot shall include:

(A) a statement explaining ELCS;

- (B) a statement that subscribers in the petitioning exchange have petitioned to expand the toll-free local calling area into the named exchange(s);
- (C) a description of the proposed ELCS area, including the name, area code and prefix of the petitioning exchange and each petitioned exchange for which toll-free local calling is sought;
- (D) a statement that if at least 70% of those subscribers responding vote "yes" as to any petitioned exchange:
  - (i) subscribers in the petitioning exchange will be billed, in addition to the company's local exchange service rates, a monthly ELCS fee of up to \$3.50 per residential line and up to \$7.00 per business line for the first five petitioned exchanges granted, with an additional \$1.50 per line for each exchange in excess of five, whether obtained as the result of one or more petitions; and
  - (ii) in addition to the ELCS fee billed to petitioning subscribers, an ELCS surcharge may, if necessary, be billed to all of the ILEC's Texas subscribers to recover the costs of implementing ELCS; and
  - (iii) the amount of the monthly ELCS fee and ELCS surcharge will depend on the revenue lost and costs incurred by the company providing the service;
- (E) unambiguous instructions for voting, including the following statement in large print: "It is important that you return this ballot. If you are in favor of obtaining

Expanded Toll-Free Local Calling to a listed exchange, check the box labeled 'YES' next to that exchange. If you do not want Expanded Toll-Free Local Calling to a listed exchange, check the box labeled 'NO' next to that exchange";

- (F) a statement that a petitioned exchange will be included in the expanded toll-free local calling area only if at least 70% of the petitioning subscribers responding vote affirmatively for ELCS to that exchange;
  - (G) the date by which the returned ballot must be postmarked, which shall be 15 days from the date the ballot is mailed to the customer;
  - (H) the address to which the ballot should be returned upon completion of voting, identifying the commission as the recipient of returned ballots; and
  - (I) a unique identification number assigned by the ILEC serving the petitioning exchange to each subscriber in that exchange.
- (3) **Master list of subscribers.** No later than 35 days after the presiding officer's order to the ILEC serving the petitioning exchange to begin balloting, that ILEC shall submit to the Office of Regulatory Affairs a master list of all subscribers within the petitioning exchange in an electronic spreadsheet format prescribed by the Office of Regulatory Affairs. The ILEC shall classify the master list as confidential, and the list shall be treated as such under the provisions of the Government Code, Title 5, Chapter 552. The master list shall be arranged sequentially by billing number and shall include for each subscriber in the petitioning exchange:
- (A) the billing name;

- (B) the billing number;
  - (C) the service address;
  - (D) the mailing address;
  - (E) the class of service; and
  - (F) the unique identification number assigned to the subscriber by the ILEC.
- (4) **Response to balloting.** The Office of Regulatory Affairs shall, no later than 15 days after the date stated on the ballot for return of the ballot, notify the presiding officer, the contact person, and affected ILEC(s) of the results of the ballot by filing a ballot report. The ballot report shall specify the results of the ballot for each petitioned exchange.
- (A) Affirmative vote.
    - (i) If at least 70% of petitioning subscribers responding vote affirmatively as to any petitioned exchange, the ILEC serving the petitioning exchange shall file with the commission, within 30 days after the filing of the Office of Regulatory Affairs' ballot report, an application to establish ELCS fees pursuant to PURA §55.048(b). The ILEC's application shall include the ILEC's proposed implementation schedule and proposed schedule of fees as well as other information described in §26.221(e)(1)-(9) of this title (relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges).
    - (ii) The implementation of ELCS shall be scheduled for completion within five months after an order is issued by the presiding officer

acknowledging the ballot results. The ILEC shall explain and justify the reasons for any implementation delay beyond five months.

(iii) No later than 15 days after the ILEC's filing of its application to establish ELCS fees, the presiding officer shall issue an order granting interim approval of the ILEC's proposed fees, which may be billed as of the first billing cycle following implementation of ELCS from the petitioning exchange. All fees given interim approval are subject to refund.

(iv) No later than 30 days after the ILEC's filing of its implementation schedule, the presiding officer shall issue an order approving, modifying, or denying the schedule.

(B) Negative vote. If less than 70% of those responding vote in favor of ELCS to a petitioned exchange, the presiding officer shall, within 10 days after the filing of the Office of Regulatory Affairs' ballot report, deny the request for ELCS to that specific petitioned exchange.

(g) **Calculation of ELCS Fees.** ELCS fees shall be calculated using the formula described in this subsection unless the presiding officer, for good cause, modifies the formula. Key formula terms are defined in §26.221(b) of this title.

- (1) **Regulatory case expenses.** In accordance with PURA §55.048(d), an ILEC may not recover regulatory case expenses under this subsection by surcharging petitioning subscribers.
- (2) **ELCS fee formula.** First, sum lost revenues and costs incurred to determine the ILEC's annual ELCS requirement. Divide the annual ELCS requirement by 12 to obtain the monthly requirement, which is the numerator. Second, obtain the most current count of access lines in the petitioning exchange. Multiply the number of business lines by two. Add the doubled business lines to the number of residential lines. This total is the denominator. Third, divide the numerator by the denominator to obtain the monthly ELCS fee per residential line. Multiply the monthly ELCS fee per residential line by two to obtain the monthly ELCS fee per business line. Round ELCS fees up or down to the nearest penny.
- (3) **ELCS fee maximums.** The monthly ELCS fee per residential line shall not exceed \$3.50 for up to five petitioned exchanges. The monthly ELCS fee per business line shall equal twice the monthly ELCS fee per residential line; however, the monthly ELCS fee per business line shall not exceed \$7.00 for up to five petitioned exchanges. For each additional petitioned exchange beyond five, the monthly ELCS fee shall not exceed an additional \$1.50 per residential or business line.
- (4) **ELCS surcharge.** If ELCS fees do not recover the annual ELCS requirement, an ILEC may request establishment of an ELCS surcharge under §26.221 of this title.

- (h) **Docketing.** Within 30 days of the issuance of an order under subsection (f)(4)(A)(iii) of this section granting interim approval of fees to be billed by the ILEC serving the petitioning exchange, any intervenor or the Office of Regulatory Affairs may request that the presiding officer docket the project. Docketing may be requested in order to allow further investigation of the ILEC's application or, for good cause shown, any other reason. Upon receipt of a request for docketing, the presiding officer shall docket the project and shall establish a procedural schedule. Upon docketing, discovery may commence in accordance with the commission's Procedural Rules, Chapter 22, Subchapter H of this title (relating to Discovery Procedures).
- (i) **Final approval.** If no request for docketing is timely filed under subsection (h) of this section, the presiding officer shall, within 60 days after the order granting interim approval of fees, issue an order granting final approval to or modification of the ELCS fees to be billed by the ILEC serving the petitioning exchange. Upon final approval by the presiding officer of either the proposed or modified tariff sheets, the fees shall be considered permanent unless modified in the future, for good cause, by the commission.

**§26.221. Applications to Establish or Increase Expanded Local Calling Service Surcharges.**

- (a) **Purpose.** The purpose of this section is to provide the standard for review of an incumbent local exchange company (ILEC) application, filed pursuant to the Public Utility Regulatory Act (PURA) §55.048(c), to recover all costs incurred and all loss of revenue from an expansion of a toll-free local calling area.
- (b) **Definitions.** The following terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.
- (1) **Avoided costs** — ILEC costs that are reduced or eliminated due to implementation of ELCS.
  - (2) **Costs incurred** — The amount of recurring and non-recurring costs incurred by an ILEC to implement ELCS, minus avoided costs.
  - (3) **Expanded local calling service (ELCS)** — A two-way toll-free local calling service provided by an ILEC to telephone service subscribers pursuant to §26.219 of this title (relating to Administration of Expanded Local Calling Service Requests).
  - (4) **Expanded local calling service (ELCS) fee** — A fee billed by an ILEC, pursuant to PURA §55.048(b), to subscribers in a petitioning telephone exchange.
  - (5) **Expanded local calling service (ELCS) requirement** — The sum of lost revenue and costs incurred due to implementation of ELCS.
  - (6) **Expanded local calling service (ELCS) surcharge** — A fee billed by an ILEC, pursuant to PURA §55.048(c), to all of its Texas subscribers, unless an exception is

granted by the commission. ELCS surcharges are designed to recover the residual in paragraph (8) of this subsection.

- (7) **Lost revenue** — The loss of revenue an ILEC realizes due to implementation of ELCS.
  - (8) **Residual** — The sum of lost revenue and costs incurred, minus revenue collected from ELCS fees.
- (c) **General Principles.** The commission shall consider these general principles when establishing or increasing ELCS surcharges.
- (1) The commission may, at any time, initiate a show cause investigation or a compliance investigation of ELCS surcharges pursuant to Procedural Rule §22.241 of this title (relating to Investigations) to determine whether ELCS surcharges comply with the requirements in PURA §55.048.
  - (2) An ILEC bears the burden of demonstrating that a proposed ELCS surcharge:
    - (A) recovers lost revenue and costs incurred,
    - (B) recovers costs necessary only for implementation of ELCS and
    - (C) is just and reasonable.
  - (3) If an ILEC departs from the requirements in subsection (e)(1)-(6) of this section, and proposes instead to use statistical sampling or another method of calculating ELCS surcharges, the ILEC bears the burden of demonstrating the reasonableness of the alternative method as it relates to the surcharge at issue.

- (4) An application to establish an ELCS surcharge shall contain information that enables the Office of Regulatory Affairs to validate and replicate the method used by the ILEC to develop a proposed ELCS surcharge.
  - (5) When established, ELCS surcharges shall be based upon the most current count of local exchange access lines billed by an ILEC.
  - (6) The commission shall pursue the goal of revenue neutrality in designing ELCS surcharges.
  - (7) Except as provided under subsection (i)(1) of this section, an ILEC has no continuing right to bill an ELCS surcharge for an indefinite period.
  - (8) ELCS surcharges shall be designed so that business subscribers are billed twice the monthly per line charge billed to residential subscribers.
- (d) **Confidentiality.** Before filing an application regarding an ELCS surcharge, an ILEC shall obtain agreement from the Office of Regulatory Affairs on a method for securing the confidentiality of information the ILEC deems confidential. An application filed pursuant to subsection (e) of this section shall not exclude information deemed confidential by the ILEC.
- (e) **Filing an application.** An application to establish or increase an ELCS surcharge shall be assigned a project number and a presiding officer shall be assigned to the project. An ILEC's application shall be reviewed administratively unless the presiding officer docket the project. An application shall, at a minimum, include:

- (1) twelve consecutive months of actual toll revenue data collected as near the ELCS implementation date as possible and, in no event, earlier than 18 months before the ELCS implementation date. Data provided by an ILEC shall show actual toll revenue billed by the ILEC for each direction of each pre-ELCS toll route for each of the 12 consecutive months collected;
- (2) twelve consecutive months of actual access revenue data collected as near the ELCS implementation date as possible and, in no event, earlier than 18 months before the ELCS implementation date. Data provided by an ILEC shall show access revenue billed by the ILEC for each direction of each pre-ELCS access route for each of the 12 consecutive months collected;
- (3) a calculation of the effect of any mechanism for pooling or settling revenue collected from and disbursed to telecommunications providers;
- (4) copies of documents, such as invoices, work orders, receipts and lease agreements, that demonstrate the costs incurred by an ILEC to implement ELCS, with recurring costs and non-recurring costs separately identified for each pre-ELCS toll route;
- (5) workpapers supporting all documents contained in the application, including but not limited to, the ILEC's development of factors, ratios, allocations, estimates, projections, averages and labor rates;
- (6) a calculation of avoided costs;
- (7) one or more tariff sheets reflecting the proposed rates;
- (8) a request for exemption, if any, from one or more requirements in this subsection;

- (9) a copy of the confidentiality agreement, if such an agreement is necessary, signed by a representative of the Office of Regulatory Affairs;
  - (10) the text of the proposed notice of an application to establish or increase ELCS surcharges; and
  - (11) the ILEC's preferred duration of applicability of the proposed ELCS surcharges among alternatives listed in subsection (i) of this section.
- (f) **Administrative response to an application.**
- (1) **Notice.** The presiding officer shall approve or modify the notice proposed under subsection (e)(10) of this section within 20 days after the filing of an application to establish or increase ELCS surcharges. The ILEC shall arrange for publication of notice at least once each week for four consecutive weeks, in newspapers having general circulation in each of the ILEC's affected telephone exchanges. Published notice shall identify the assigned project number, shall include the language in Procedural Rule §22.51(a)(1)(F) of this title (relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapters C-E, Proceedings) modified to reflect the appropriate intervention deadline, shall describe the application and shall be written in both English and Spanish. Notice shall be published within 40 days of the date the presiding officer files an order approving the notice format. The ILEC shall file an affidavit of completion of published notice within ten days following such completion. The presiding officer shall cause notice to be

published in the *Texas Register* within 30 days of the date an order of approval of the notice format is filed. Additionally, the ILEC shall provide a copy of its application to the Office of Public Utility Counsel on the same day the application is filed with the commission's Filing Clerk.

- (2) **Intervention.** The intervention deadline shall be no sooner than ten days after the last date notice is published. On or before the intervention deadline, any interested person may file a request to intervene in the project. The presiding officer shall rule on a request to intervene, in accordance with Procedural Rule §22.103 of this title (relating to Standing to Intervene) within ten days from the date the request for intervention is filed with the commission's Filing Clerk. Intervention by an interested person does not by itself require that the project be docketed.
- (3) **Discovery.** Discovery may commence on the date the application is filed in accordance with the commission's Procedural Rules, Chapter 22, Subchapter H of this title (relating to Discovery Procedures).
- (4) **Interim surcharges.** Not more than 30 days after the intervention deadline, the presiding officer shall grant or deny, in whole or in part, a request for interim relief and may approve or modify a proposed interim ELC surcharge in accordance with Procedural Rule §22.125 of this title (relating to Interim Relief).
- (5) **Sufficiency review and requests for exemption.** Within 30 days after the filing of an ILEC application, the Office of Regulatory Affairs shall file comments on the sufficiency of the application and on any request for exemption filed by the ILEC under subsection

(e)(8) of this section. Not more than 30 days after the Office of Regulatory Affairs' comments are filed, the ILEC shall file a response and may amend or supplement its application. Not more than ten days after the ILEC's response is filed, the Office of Regulatory Affairs shall file a recommendation to the presiding officer addressing whether the application is sufficient and whether any requests for exemption should be granted.

- (6) **Docketing.** If the Office of Regulatory Affairs or any intervenor files, within 30 days after the intervention deadline, a request to docket the project, the presiding officer shall docket the project. Upon docketing, the presiding officer shall ascertain whether the parties prefer to pursue settlement negotiations or alternative dispute resolution. If so, the presiding officer shall abate the docket for a reasonable period. If the parties prefer to establish a procedural schedule, the presiding officer may refer the docket to the State Office of Administrative Hearings or may take other appropriate action. If neither the Office of Regulatory Affairs nor an intervenor requests docketing, the presiding officer shall administratively approve or modify the application within 40 days after the intervention deadline.
- (g) **Calculation of initial ELCS surcharges.** An initial ELCS surcharge shall be calculated using the formula described in this subsection unless the presiding officer, for good cause, modifies the formula.

- (1) **Numerator.** First, sum the lost revenues and costs incurred to determine the ILEC's annual ELCS requirement. Second, use the most current count of access lines to calculate the amount of ELCS fee revenue received annually by the ILEC. Subtract the annual ELCS fee revenue from the annual ELCS requirement. The result is the annual residual. Third, divide the annual residual by 12 to obtain the monthly residual, the numerator.
  - (2) **Denominator.** First, obtain the most current count of residential and business lines served by the ILEC in Texas. Second, multiply the number of business lines by two. Third, add the doubled business lines to the number of residential lines. This total is the denominator.
  - (3) **ELCS surcharge formula.** Divide the numerator in paragraph (1) of this subsection by the denominator in paragraph (2) of this subsection to obtain the monthly ELCS surcharge per residential line. Multiply the monthly ELCS surcharge per residential line by two to obtain the monthly ELCS surcharge per business line. Round ELCS surcharges up or down to the nearest penny.
- (h) **Adjustments to ELCS surcharges.** ELCS surcharges shall be adjusted using the formula described in subsection (g) of this section, except that:
- (1) the numerator established in a previous application may be modified to consider new information relevant to development of the residual:

- (A) for any ELCS surcharge approved before February 1, 2000, if the commission reserved the right to subsequently review the costs incurred and lost revenues associated with the ELCS surcharge; or
  - (B) for any ELCS surcharge approved after February 1, 2000; and
- (2) the denominator shall be modified to reflect the most current count of local exchange access lines at the time of the adjustment. For ELCS surcharges approved before February 1, 2000, if the number of access lines in the denominator initially included only non-petitioning exchanges, an adjustment in the number of access lines shall include only non-petitioning exchanges.
- (i) **Duration.** An ILEC shall select a preferred duration of applicability of its proposed ELCS surcharges from alternatives listed in this subsection. The commission may establish ELCS surcharges for any duration.
- (1) **Permanent.** An ILEC may initiate a review of all of its rates and charges by filing a rate filing package. Following a review of the ILEC's cost of service pursuant to Substantive Rule §26.201 of this title (relating to Cost of Service), any resulting ELCS surcharge shall be considered permanent unless modified, for good cause, by the commission.
- (2) **Phase-down.** If an ILEC's application to establish or increase an ELCS surcharge contains all information required in subsection (e)(1)-(6) of this section, the ILEC may propose a phase-down of its ELCS surcharge for a duration of five years. The phase-

down shall be implemented by reducing each ELCS surcharge by 20% at the end of each year of the phase-down period. At the end of the five-year phase-down period, the ELCS surcharge shall be zero. Tariff sheet(s) filed by the ILEC shall contain ELCS surcharges for each of the five years of the phase-down period.

- (3) **Phase-out.** An ILEC that files an application to establish or increase an ELCS surcharge may propose a phase-out of its ELCS surcharge. A proposed phase-out shall be for a duration not to exceed two years. At the end of the phase-out period, the ELCS surcharge shall be zero. Tariff sheet(s) filed by the ILEC shall contain ELCS surcharges for the two-year period and shall state the two-year duration of applicability of the ELCS surcharges.

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

- (a) **Application.** This section applies to any electing company, as the term is defined in the Public Utility Regulatory Act (PURA) §58.002. Other sections applicable to an electing company, include, but are not limited to, §26.225 of this title (relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies), §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies), and

§26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies).

(b) **Purpose.** The purpose of this section is to establish requirements and procedures relating to the provision of basic network services.

(c) **Basic network services.**

(1) **Services included in basic network services.** Unless reclassified pursuant to PURA §58.024, the following are classified as basic network services pursuant to PURA §58.051(a):

- (A) Flat rate residential local exchange telephone service, including primary directory listings and the receipt of a directory and any applicable mileage or zone charges;
- (B) Residential tone dialing service;
- (C) Lifeline service;
- (D) Service connection for basic residential services;
- (E) Direct inward dialing service for basic residential services;
- (F) Private pay telephone access service;
- (G) Call trap and trace service;
- (H) Access for all residential and business end users to 9-1-1 service provided by a local authority and access to dual party relay service;

- (I) Mandatory residential extended area service arrangements;
  - (J) Mandatory residential extended metropolitan service or other mandatory residential toll-free calling arrangements; and
  - (K) Residential call waiting service.
- (2) **Separate tariff requirement.** Consistent with PURA §58.051(b), a basic network service offered by an electing company to a customer as a component of a package or other pricing flexibility offering shall also be offered by the electing company as a separately tariffed service.
- (3) **Basic network service rates capped.** The rates for basic network services for an electing company may not increase before September 1, 2005, except as provided for in subsection (f) of this section relating to rate increases prior to the rate cap expiration.
- (4) **Basic network service rates charged.** The rates an electing company may charge during the period in which rates are capped are the rates charged by the company on June 1, 1995, or, for a company that elects after September 1, 1999, the rates charged on the date of its election.
- (5) **Pricing flexibility.** An electing company may offer pricing flexibility for basic network services pursuant to the requirements of §26.226 of this title.
- (d) **Requirement for changes to terms of a tariff offering.** Prior to being offered, a change in the terms of a basic network service tariff offering, such as rate increases and decreases of a basic network service, must receive commission approval. Section 26.207 of this title (relating

to Form and Filing of Tariffs) and §26.208 of this title (relating to General Tariff Procedures) shall apply to tariffs offering a basic network service.

- (e) **Establishment of a long run incremental cost floor.** For purposes of this section, long run incremental cost (LRIC) shall be consistent with §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services). Establishment of a LRIC floor requires commission approval of a cost study prepared by an electing company pursuant to the standards in §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs) or §26.215 of this title, as applicable. After commission approval of a LRIC floor for a particular service, an electing company may change the rates of that service in accordance with the procedures in this section. The procedures in subsection (i) of this section, relating to rate decreases for basic network services, may not be available to an electing company for a service that does not have a LRIC floor.
- (f) **Rate increase prior to rate cap expiration.** For a four-year period following Chapter 58 election or until September 1, 2005, whichever occurs later, an increase in the rate for a basic network service is permitted only after commission approval and only within the following parameters:
- (1) A rate increase for changes made by the Federal Communications Commission, as provided by PURA §58.056;

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

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

- (1) Prior to the rate cap expiration, an electing company is required to file an application to propose an increase in the rate for a basic network service. The application shall refer to this section, shall provide sufficient documentation to demonstrate that the rate increase meets the criteria prescribed in PURA Chapter 58, shall describe the increase, and shall identify the classes of customers and competitors to be affected by the electing company's application. The application shall also include any tariff sheets reflecting the proposed basic network service rate increase, as well as all data necessary to support the application. The application shall include a copy of the text of any proposed notice to customers. The proposed notice to customers shall comply with §26.208 of this title and shall meet the criteria prescribed in PURA §58.059 and §53.103. The application shall also state the electing company's preferred effective date, which shall be no earlier than 90 days after completion of notice.
- (2) The commission shall cause notice of the application to be published in the *Texas Register*. The *Texas Register* notice shall state the intervention deadline, which shall be no earlier than 40 days following publication of notice. After publication of notice in the *Texas Register*, the presiding officer shall establish a deadline for the filing of a staff

recommendation, which shall be no earlier than five days following the intervention deadline.

- (3) Within 20 days after filing of the application, the presiding officer shall notify the applicant if material deficiencies exist in the application and if the proposed notice is inadequate.
- (4) Within 50 days after filing of the application, the applicant shall file an affidavit attesting to the fact that notice to customers was published in accordance with the requirements of PURA §58.059 and §53.103. The affidavit shall contain a copy of all notice given.
- (5) Following receipt of a request for intervention filed by an affected party, or on the recommendation of commission staff, or on the commission's own motion, the commission may suspend the effective date of the proposed rate increase and may hold a hearing. Within 185 days of the filing of a sufficient application, the commission shall issue an order approving or modifying the rate increase or, alternatively, rejecting the rate increase if it is not in compliance with this section and PURA §§58.056, 58.057 or 58.058. Any order modifying or rejecting the proposed rate increase shall specify why the proposed increase is not in compliance with the applicable provisions of PURA §§58.056, 58.057 or 58.058 and the means by which the proposed increase may be brought into compliance.

- (h) **Rate increase after rate cap expiration.** After a four-year period following Chapter 58 election or until September 1, 2005, whichever occurs later, a basic network service rate increase may be made pursuant to PURA §58.060.
- (i) **Rate decrease.** Consistent with PURA §58.055(c), an electing company may decrease a rate for a basic service at any time to an amount above the service's appropriate cost. If the electing company has been required to perform or has elected to perform a long run incremental cost study, the appropriate cost for the service is the service's long run incremental cost.
- (1) After commission approval of a LRIC floor, an electing company shall follow the procedures in this subsection to decrease a rate for a basic network service or to change the tariff terms of a basic network service.
  - (2) An electing company shall file an application to decrease the rate for or change the tariff terms of a basic network service. On the same date, an electing company shall file one or more tariff sheets to decrease a rate for or change the tariff terms of a basic network service with the application and all data necessary to support the application shall accompany the tariff sheets.
  - (3) The commission shall cause notice of the application to be published in the *Texas Register*. The *Texas Register* notice shall state the intervention deadline, which shall be no earlier than 15 days following publication of notice. On or before five days after the intervention deadline, commission staff may file a recommendation to suspend, docket or reject the application. If either a request for intervention or a recommendation to

docket is filed, the expedited administrative procedures in this subsection shall no longer apply. If neither an intervention request nor a staff recommendation to suspend, docket or reject the application is filed, the tariff sheets shall be approved by the commission effective ten days following the intervention deadline.

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

- (1) Information filed pursuant to this rule is presumed to be public information. An electing company shall have the burden of establishing that information filed pursuant to this rule is proprietary or confidential.
- (2) Nothing in this subsection shall be construed to change the presumption that information filed pursuant to this rule is public information. An electing company that intends to rely upon data it purports is proprietary or confidential in support of an application made pursuant to this section shall submit two copies of the proprietary or confidential data to Central Records for use by the commission staff subject to a commission-approved protective agreement. An electing company that intends to rely upon proprietary or confidential data has the burden of providing such data on the same date the associated tariff sheets are filed. In the event an electing company's proprietary or confidential data is not provided with the associated tariff sheets, the procedural schedule shall be adjusted day-for-day to reflect the number of days the proprietary or confidential data is delayed.

- (k) **Additional notice requirement for an electing company serving more than five million access lines.** In addition to the notice requirements of §26.208 of this title and those applicable to informational notice filings, an electing company serving more than five million access lines in this state shall, until September 1, 2003:
- (1) Comply with the following notice requirements when proposing any changes in the generally available prices and terms under which the electing company offers basic telecommunications services regulated by the commission at retail rates to subscribers that are not telecommunications providers, including:
    - (A) Introduction of any new features or functions of basic services;
    - (B) Promotional offerings of basic services; or
    - (C) Discontinuation of then-current features or services.
  - (2) Notice shall be provided to the following persons:
    - (A) A person who holds a certificate of operating authority in the electing company's certificated area or areas; or
    - (B) A person who has an effective interconnection agreement with the electing company.
  - (3) The following timelines shall apply to the additional notice requirement:
    - (A) If the electing company is required to give notice to the commission, at the same time the company provides that notice; or
    - (B) If the electing company is not required to give notice to the commission, at least 45 days before the effective date of a price change or 90 days before the

effective date of a change other than a price change, unless the commission determines that the notice should not be given.

- (l) **Semi-annual notice for rates or terms of service.** Semi-annually, an electing company shall notify affected persons, either by bill insert, bill message, or direct mail, that proposed changes in the rates or terms of basic network services are regularly published in the *Texas Register* through the Office of the Secretary of State. Such notification shall also appear in the public information pages of all telephone directories published in Texas. The notification shall identify the Internet address for the *Texas Register* ([www.sos.state.tx.us](http://www.sos.state.tx.us)) and shall provide a toll-free phone number for affected persons to request direct notice from an electing company of proposed changes in the rates or terms of service. For purposes of notice, affected persons include the applicant's Texas customers, persons registered with the commission to offer long distance service, and persons certificated by the commission to provide local exchange telephone service.

**SUBCHAPTER P**

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically House Bill 2156, 77th Legislature (2001 Texas General Laws 5160), which requires that all persons receiving benefits under the Tel-Assistance service program shall be automatically enrolled in the Lifeline service program.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.015.

**§26.401. Texas Universal Service Fund (TUSF).**

- (a) **Purpose.** The purpose of the Texas Universal Service Fund (TUSF) is to implement a competitively neutral mechanism that enables all residents of the state to obtain the basic telecommunications services needed to communicate with other residents, businesses, and governmental entities. Because targeted financial support may be needed in order to provide and price basic telecommunications services in a manner to allow accessibility by consumers, the TUSF will assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas. In addition, the TUSF will reimburse

qualifying entities for revenues lost as a result of providing Lifeline services to qualifying low-income consumers under the Public Utility Regulatory Act (PURA); reimburse telecommunications carriers providing statewide telecommunications relay access service and qualified vendors providing specialized telecommunications devices and services for the disabled; and reimburse the Texas Department of Human Services, the Texas Department of Housing and Community Affairs, the Texas Department for the Deaf and Hard of Hearing, the TUSF administrator, and the Public Utility Commission for costs incurred in implementing the provisions of PURA Chapter 56 (relating to Telecommunications Assistance and Universal Service Fund).

(b) **Programs included in the TUSF.**

- (1) Section 26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP));
- (2) Section 26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan);
- (3) Section 26.406 of this title (relating to the Implementation of the Public Utility Regulatory Act §56.025);
- (4) Section 26.408 of this title (relating to Additional Financial Assistance (AFA));
- (5) Section 26.410 of this title (relating to Universal Service Fund Reimbursement for Certain IntraLATA Service);
- (6) Section 26.412 of this title (relating to Lifeline Service and Link Up Service Programs);

- (7) Section 26.414 of this title (relating to Telecommunications Relay Service (TRS));
- (8) Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP));
- (9) Section 26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));
- (10) Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds);
- (11) Section 26.420 of this title (relating to Administration of Texas Universal Service Fund (TUSF));
- (12) Section 26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas);
- (13) Section 26.422 of this title (relating to Subsequent Petitions for Service to Uncertificated Areas); and
- (14) Section 26.423 of this title (relating to High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service).

**§26.403. Texas High Cost Universal Service Plan (THCUSP).**

- (a) **Purpose.** This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that serve the high cost rural areas of the state, other than study areas of small and rural incumbent local exchange companies (ILECs), so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner.
- (b) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:
- (1) **Benchmark** — The per-line amount above which THCUSP support will be provided.
  - (2) **Business line** — The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply.
  - (3) **Eligible line** — A residential line and a single-line business line over which an ETP provides the service supported by the THCUSP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.
  - (4) **Eligible telecommunications provider (ETP)** — A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

- (5) **Residential line** — The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply.
- (c) **Application.** This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title.
- (d) **Service to be supported by the THCUSP.** The THCUSP shall support basic local telecommunications services provided by an ETP in high cost rural areas of the state and is limited to those services carried on all flat rate residential lines and the first five flat rate single-line business lines at a business customer's location. Local measured residential service, if chosen by the customer and offered by the ETP, shall also be supported.
- (1) **Initial determination of the definition of basic local telecommunications service.**
- Basic local telecommunications service shall consist of the following:
- (A) flat rate, single party residential and business local exchange telephone service, including primary directory listings;
  - (B) tone dialing service;
  - (C) access to operator services;
  - (D) access to directory assistance services;
  - (E) access to 911 service where provided by a local authority;

- (F) telecommunications relay service;
- (G) the ability to report service problems seven days a week;
- (H) availability of an annual local directory;
- (I) access to toll services; and
- (J) lifeline service.

(2) **Subsequent determinations.**

- (A) Timing of subsequent determinations.
  - (i) The definition of the services to be supported by the THCUSP shall be reviewed by the commission every three years from September 1, 1999.
  - (ii) The commission may initiate a review of the definition of the services to be supported on its own motion at any time.
- (B) Criteria to be considered in subsequent determinations. In evaluating whether services should be added to or deleted from the list of supported services, the commission may consider the following criteria:
  - (i) the service is essential for participation in society;
  - (ii) a substantial majority, 75% of residential customers, subscribe to the service;
  - (iii) the benefits of adding the service outweigh the costs; and
  - (iv) the availability of the service, or subscription levels, would not increase without universal service support.

- (e) **Criteria for determining amount of support under THCUSP.** The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section. The amount of support available to each ETP shall be calculated using the base support amount available as provided under paragraph (1) of this subsection and as adjusted by the requirements of paragraph (3) of this subsection.
- (1) **Determining base support amount available to ETPs.** The monthly per-line support amount available to each ETP shall be determined by comparing the forward-looking economic cost, computed pursuant to subparagraph (A) of this paragraph, to the applicable benchmark as determined pursuant to subparagraph (B) of this paragraph. The monthly base support amount is the sum of the monthly per-line support amounts for each eligible line served by the ETP, as required by subparagraph (C) of this paragraph.
- (A) Calculating the forward-looking economic cost of service. The monthly cost per-line of providing the basic local telecommunications services and other services included in the benchmark shall be calculated using a forward-looking economic cost methodology.
- (B) Determination of the benchmark. The commission shall establish two benchmarks for the state, one for residential service and one for single-line business service. The benchmarks for both residential and single-line businesses will be calculated using the statewide average revenue per line as described in

clause (i) and (ii) of this subparagraph for all ETPs participating in the THCUSP.

- (i) Residential revenues per line are the sum of the residential revenues generated by basic and discretionary local services, as well as a reasonable portion of toll and access services, for the year ending December 31, 1997, divided by the average number of residential lines served for the same period, divided by 12.
  - (ii) Business revenues per line are the sum of the business revenues generated by basic and discretionary local services for single-line business lines, as well as a reasonable portion of toll and access services for the year ending December 31, 1997, divided by the average number of single-line business lines served for the same period, divided by 12.
- (C) Support under the THCUSP is portable with the consumer. An ETP shall receive support for residential and the first five single-line business lines at the business customer's location that it is serving over eligible lines in such ETP's THCUSP service area.
- (2) **Proceedings to determine THCUSP base support.**
- (A) Timing of determinations.

- (i) The commission shall review the forward-looking cost methodology, the benchmark levels, and/or the base support amounts every three years from September 1, 1999.
    - (ii) The commission may initiate a review of the forward-looking cost methodology, the benchmark levels, and/or the base support amounts on its own motion at any time.
  - (B) Criteria to be considered in determinations. In considering the need to make appropriate adjustments to the forward-looking cost methodology, the benchmark levels, and/or the base support amount, the commission may consider current retail rates and revenues for basic local service, growth patterns, and income levels in low-density areas.
- (3) **Calculating amount of THCUSP support payments to individual ETPs.** After the monthly base support amount is determined, the TUSF administrator shall make the following adjustments each month in order to determine the actual support payment that each ETP may receive each month.
  - (A) Access revenues adjustment. If an ETP is an ILEC that has not reduced its rates pursuant to §26.417 of this title, the base support amount that such ETP is eligible to receive shall be decreased by such ETP's carrier common line (CCL), residual interconnection charge (RIC), and toll revenues for the month.

- (B) Adjustment for federal USF support. The base support amount an ETP is eligible to receive shall be decreased by the amount of federal universal service high cost support received by the ETP.
- (C) Adjustment for service provided solely or partially through the purchase of unbundled network elements (UNEs). If an ETP provides supported services over an eligible line solely or partially through the purchase of UNEs, the THCUSP support for such eligible line may be allocated between the ETP providing service to the end-user and the ETP providing the UNEs according to the methods outlined below.
- (i) ETP provisioning service solely through UNEs. An ETP serving an end-user solely through UNEs purchased from another ETP shall receive the lesser of the available THCUSP support or the amount of the appropriate retail cost additive.
- (ii) ETP provisioning service partially through UNEs. An ETP serving an end-user partially through UNEs purchased from another ETP shall receive the lesser of the available THCUSP support or the amount of the appropriate retail cost additive, plus a pro rata share of any THCUSP support in excess of the retail cost additive. THCUSP support in excess of the retail cost additive shall be apportioned to the ETP serving the end-user based upon the relative percentage of those UNEs that are self-provisioned. For purposes of this pro ration, the

UNE costs for each wire center shall be based upon the HAI model costs for the following five UNEs: loop, line port, end-office usage, signaling, and transport.

- (iii) retail cost additive. For the purposes of clauses (i) and (ii) of this ETP providing UNEs. The ETP providing UNEs to another ETP shall receive the difference, if any, between the total available THCUSP support amount and the THCUSP support amount allocated to the ETP serving the end-user.
  - (iv) ETP subparagraph, the ETP's retail cost additive shall be derived by multiplying the ILEC-specific wholesale discount percentage by the appropriate (residential or business) revenue benchmark.
- (f) **Reporting requirements.** An ETP eligible to receive support pursuant to this section shall report the following information to the commission or the TUSF administrator.
- (1) **Monthly reporting requirements.** An ETP shall report the following to the TUSF administrator on a monthly basis:
    - (A) information regarding the access lines on the ETP's network including:
      - (i) the total number of access lines on the ETP's network,
      - (ii) the total number of access lines sold as UNEs,
      - (iii) the total number of access lines sold for total service resale,
      - (iv) the total number of access lines serving end use customers, and

- (v) the total number of eligible lines for which the ETP seeks TUSF support;
    - (B) the rate that the ETP is charging for residential and single-line business customers for the services described in subsection (d) of this section; and
    - (C) a calculation of the base support computed in accordance with the requirements of subsection (e)(1) of this section showing the effects of the adjustments required by subsection (e)(3) of this section.
  - (2) **Annual reporting requirements.** An ETP shall report annually to the TUSF administrator that it is qualified to participate in the THCUSP.
  - (3) **Other reporting requirements.** An ETP shall report any other information that is required by the commission or the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF.
- (g) **Review of THCUSP after implementation of federal universal service support.** The commission shall initiate a project to review the THCUSP within 90 days of the Federal Communications Commission's adoption of an order implementing new or amended federal universal service support rules for rural, insular, and high cost areas.

**§26.420. Administration of Texas Universal Service Fund (TUSF).**

- (a) **Purpose.** The provisions of this section establish the administration of the Texas Universal Service Fund (TUSF).
- (b) **Programs included in the TUSF.**
- (1) Section 26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP));
  - (2) Section 26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan);
  - (3) Section 26.406 of this title (relating to the Implementation of the Public Utility Regulatory Act §56.025);
  - (4) Section 26.408 of this title (relating to Additional Financial Assistance (AFA));
  - (5) Section 26.410 of this title (relating to Universal Service Fund Reimbursement for Certain IntraLATA Service);
  - (6) Section 26.412 of this title (relating to Lifeline Service and Link Up Service Programs);
  - (7) Section 26.414 of this title (relating to Telecommunications Relay Service (TRS));
  - (8) Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP));
  - (9) Section 26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));

- (10) Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds);
  - (11) Section 26.420 of this title (relating to Administration of Texas Universal Service Fund (TUSF));
  - (12) Section 26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas);
  - (13) Section 26.422 of this title (relating to Subsequent petitions for Service to Uncertificated Areas); and
  - (14) Section 26.423 of this title (relating to High Cost Universal Service Plan for Uncertificated Areas Where an Eligible Telecommunications Provider Volunteers to Provide Basic Local Telecommunications Service).
- (c) **Responsibilities of the commission.** The commission is the official governing agency for the TUSF, but may delegate the ministerial functions of TUSF administration to another entity (the TUSF administrator) through contractual agreement.
- (1) **Monitoring, and supervising TUSF administration.** The commission reserves the exclusive power to revise rules related to the operation and administration of the TUSF and to monitor and supervise such operation and administration.
  - (2) **Annual audit.** The commission annually shall provide for an audit of the TUSF by an independent auditor. The costs of the audit are costs of the commission that are incurred in administering the TUSF, and therefore shall be reimbursed from the TUSF.

- (3) **Inquiry into administration of the TUSF.** The commission may, upon its own motion, upon the petition of the commission staff or the Office of Public Utility Counsel, initiate an inquiry into any aspect of the administration of the TUSF. Any other party may initiate a complaint proceeding pursuant to the commission's procedural rules.
- (4) **Selection of the TUSF administrator.**
- (A) The commission shall have the sole discretion in the selection of the TUSF administrator. The selection of the TUSF administrator shall be based on a competitive bidding process.
- (B) The TUSF administrator must meet the technical qualifications as provided in subsection (d)(1) of this section as well as other requirements as determined by the commission.
- (5) **Contract term of the TUSF administrator.** The commission shall determine the duration of the TUSF administrator's contract. Prior to expiration of the contract term, the commission may discharge the TUSF administrator of its duties upon 60-days written notice.
- (d) **TUSF administrator.** The TUSF administrator serves at the discretion of the commission.
- (1) Technical requirements of the TUSF administrator. The TUSF administrator shall:
- (A) be neutral and impartial, not advocate specific positions to the commission in proceedings not related to the administration of the universal service support

mechanisms, and not have a direct financial interest in the universal service support mechanisms established by the commission;

(B) possess demonstrated technical capabilities, competence, and resources to perform the duties of the TUSF administrator as described in this section; and

(C) be bonded or bondable.

- (2) **Duties of the TUSF administrator.** The TUSF administrator will administer the TUSF in accordance with the rules set forth in this section and in accordance with the guidelines established by the commission in its contract with the TUSF administrator.

The TUSF administrator's general duties shall include, but not be limited to:

(A) managing the daily operations and affairs of the TUSF in an efficient, fair and competitively neutral manner;

(B) taking steps necessary to ensure that all eligible telecommunications providers (ETPs) are in compliance with the relevant sections of this title under which they are receiving universal service support;

(C) calculating and collecting the proper assessment amount from every telecommunications provider and verifying that all telecommunications providers are in compliance with the Public Utility Regulatory Act §56.022;

(D) disbursing the proper support amounts, ensuring that only eligible recipients receive funds, and verifying that all recipients are in compliance with the section or sections of this title under which they are eligible to receive support;

- (E) taking steps necessary, including audits, to ensure that all telecommunications providers that are subject to the TUSF assessment are accurately reporting required information;
- (F) taking steps necessary, including audits, to ensure that all recipients of TUSF funds are accurately reporting required information;
- (G) submitting periodic summary reports to the commission regarding the administration of the TUSF in accordance with specifications established by the commission;
- (H) notifying the commission of any telecommunications providers that are in violation of any of the requirements of this section, §26.417 of this title and any reporting requirements; and
- (I) performing other duties as determined by the commission.

(e) **Determination of the amount needed to fund the TUSF.**

- (1) **Amount needed to fund the TUSF.** The amount needed to fund the TUSF shall be composed of the following elements.
  - (A) **Costs of TUSF programs.** The TUSF administrator shall compute and include the costs of the following TUSF programs:
    - (i) Texas High Cost Universal Service Plan, §26.403 of this title;
    - (ii) Small and Rural ILEC Universal Service Plan, §26.404 of this title;

- (iii) Implementation of the Public Utility Regulatory Act §56.025, §26.406 of this title;
  - (iv) Additional Financial Assistance, §26.408 of this title;
  - (v) Reimbursement for Certain IntraLATA Service, §26.410 of this title;
  - (vi) Lifeline Service and Link Up Service, §26.412 of this title;
  - (vii) Telecommunications Relay Service, §26.414 of this title; and
  - (viii) Specialized Telecommunications Assistance Program (STAP), §26.415 of this title.
- (B) Costs of implementation and administration of the TUSF. The TUSF implementation and administration costs shall include appropriate costs associated with the implementation and administration of the TUSF incurred by the commission (including the costs incurred by the TUSF administrator on behalf of the commission), and any costs incurred by the Texas Commission for the Deaf and Hard of Hearing caused by its administration of the Specialized Telecommunications Assistance Program (STAP) and the Telecommunications Relay Service programs.
- (C) Reserve for contingencies. The TUSF administrator shall establish a reserve for such contingencies as late payments and uncollectibles in an amount authorized by the commission.

- (2) **Determination of amount needed.** After the initial determination, the TUSF administrator shall determine, on a periodic basis, the amount needed to fund the TUSF. The determined amount shall be approved by the commission.
- (f) **Assessments for the TUSF.**
- (1) **Providers subject to assessments.** The TUSF assessments shall be payable by all telecommunications providers having access to the customer base; including but not limited to wireline and wireless providers of telecommunications services.
- (2) **Basis for assessments.** Assessments will be based upon the following:
- (A) Assessments shall be made to each telecommunications provider based upon its monthly taxable telecommunications receipts reported by that telecommunications provider under Chapter 151 of the Tax Code.
- (B) Pay telephone service revenues received by providers of pay telephone services are exempt from the TUSF assessment pursuant to the Public Utility Regulatory Act §56.022(c)(2).
- (C) Revenue received by telecommunications providers from telecommunications services supplied to pay telephone providers for the provision of pay telephone services is subject to TUSF assessment.
- (3) **Assessment.** Each telecommunications provider shall pay its TUSF assessment each month as calculated using the following procedures.

- (A) Calculation of assessment rate. The TUSF administrator shall determine an assessment rate to be applied to all telecommunications providers on a periodic basis approved by the commission.
  - (B) Calculation of assessment amount. Payments to the TUSF shall be computed by multiplying the assessment rate determined pursuant to subparagraph (A) of this paragraph by the basis for assessments as determined pursuant to paragraph (2) of this subsection.
- (4) **Reporting requirements.** Each telecommunications provider shall be required to report taxable telecommunications receipts under Chapter 151 of the Tax Code as required by the commission or the TUSF administrator.
- (5) **Recovery of assessments.** A telecommunications provider may recover the amount of its TUSF assessment only from its retail customers who are subject to tax under Chapter 151 of the Tax Code, except for Lifeline, and Link Up services. For purposes of the recovery of the TUSF assessment, pay telephone providers are considered retail customers subject to Chapter 151 of the Tax Code. The commission may order modifications in a telecommunications provider's method of recovery.
- (A) Retail customers' bills. In the event a telecommunications provider chooses to recover its TUSF assessment through a surcharge added to its retail customers' bills;
    - (i) the surcharge must be listed on the retail customers' bills as "Texas Universal Service"; and

- (ii) the surcharge must be assessed as a percentage of every retail customers' bill, except Lifeline and Link Up services.
  - (B) Commission approval of surcharge mechanism. An ILEC choosing to recover the TUSF assessment through a surcharge on its retail customers' bills must file for commission approval of the surcharge mechanism.
  - (C) Tariff changes. A telecommunications provider choosing to recover the TUSF assessment through a surcharge on its retail customers' bills shall file the appropriate changes to its tariff and provide supporting documentation for the method of recovery.
  - (D) Recovery period. A single universal service fund surcharge shall not recover more than one month of assessments.
- (6) **Disputing assessments.** Any telecommunications provider may dispute the amount of its TUSF assessment. The telecommunications provider should endeavor to first resolve the dispute with the TUSF administrator. If the telecommunications provider and the TUSF administrator are unable to satisfactorily resolve their dispute, either party may petition the commission to resolve the dispute. Pending final resolution of disputed TUSF assessment rates and/or amounts, the disputing telecommunications provider shall remit all undisputed amounts to the TUSF administrator by the due date.
- (g) **Disbursements from the TUSF to ETPs, ILECs, other entities and agencies.**
    - (1) **ETPs, ILECs, other entities, and agencies.**

- (A) ETPs. The commission shall determine whether an ETP qualifies to receive funds from the TUSF. An ETP qualifying for the following programs is eligible to receive funds from the TUSF:
- (i) Texas High Cost Universal Service Plan;
  - (ii) Small and Rural ILEC Universal Service Plan; and/or
  - (iii) Lifeline Service and Link Up Service.
- (B) ILECs. The commission shall determine whether an ILEC qualifies to receive support from the following TUSF programs:
- (i) Implementation of the Public Utility Regulatory Act §56.025; and/or
  - (ii) Additional Financial Assistance program.
- (C) Other entities. The commission shall determine whether other entities qualify to receive funds from the TUSF. Entities qualifying for the following programs are eligible to receive funds from the TUSF:
- (i) Telecommunications Relay Service; and/or
  - (ii) Specialized Telecommunications Assistance Program.
- (D) Agencies. The commission, the Texas Department of Human Services, the Texas Commission for the Deaf and Hard of Hearing, and the TUSF administrator are eligible for reimbursement of the costs directly and reasonably associated with the implementation of the provisions of PURA Chapters 56 and 57.

(2) **Reporting requirements.**

- (A) ETPs. An ETP shall report to the TUSF administrator as required by the provisions of the section or sections under which it qualifies to receive funds from the TUSF.
  - (B) Other entities. A qualifying entity shall report to the TUSF administrator as required by the provisions of the section or sections under which it qualifies to receive funds from the TUSF.
  - (C) Agencies. A qualifying agency shall report its qualifying expenses to the TUSF administrator each month.
- (3) **Disbursements.**
- (A) The TUSF administrator shall verify that the appropriate information has been provided by each ETP, local exchange company (LEC), other entities or agencies and shall issue disbursements to ETPs, LECs, other entities and agencies within 45 days of the due date of their reports except as otherwise provided.
  - (B) If an electing LEC, as defined in §26.5 of this title (relating to Definitions), reduces rates in conjunction with receiving disbursements from the TUSF, the commission may not reduce the amount of those disbursements below the initial level of disbursements upon implementation of the TUSF, except that:
    - (i) if a local end user customer of the electing company switches to another local service provider that serves the customer entirely through the use of its own facilities and not partially or solely through the use of

unbundled network elements, the electing LEC's disbursement may be reduced by the amount attributable to that customer under PURA §56.021(1); or

- (ii) if a local end user customer of the electing company switches to another local service provider, and the new local service provider serves the customer partially or solely through the use of unbundled network elements provided by the electing LEC, the electing LEC's disbursement attributable to that customer under PURA §56.021(1) may be reduced according to the commission established equitable allocation formula for the disbursement as described in §26.403(e)(3)(C) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).

- (h) **True-up.** The assessment amount determined pursuant to subsections (e) and (f) of this section shall be subject to true-up as determined by the TUSF administrator and approved by the commission. True-ups shall be limited to a three year period for under-reporting and a one year period for over-reporting.

- (i) **Sale or transfer of exchanges.**

- (1) An ETP that acquires exchanges from an unaffiliated small or rural ILEC receiving support for those exchanges pursuant to §26.404 of this title, shall receive the per-line support amount for which those exchanges were eligible prior to the sale or transfer.
  - (2) An ETP that acquires exchanges from an unaffiliated ETP receiving support for those exchanges pursuant to §26.403 of this title, shall receive the per-line support amount for which those exchanges were eligible prior to the transfer of the exchanges.
- (j) **Proprietary information.** The commission and the TUSF administrator are subject to the Texas Open Records Act, Texas Government Code, Chapter 552. Information received by the TUSF administrator from the individual telecommunications providers shall be treated as proprietary only under the following circumstances:
- (1) An individual telecommunications provider who submits information to the TUSF administrator shall be responsible for designating it as proprietary at the time of submission. Information considered to be confidential by law, either constitutional, statutory, or by judicial decision, may be properly designated as proprietary.
  - (2) An individual telecommunications provider who submits information designated as proprietary shall stamp on the face of such information "PROPRIETARY PURSUANT TO PUC SUBST. R. §26.420(j)".
  - (3) The TUSF administrator may disclose all information from an individual telecommunications provider to the telecommunications provider who submitted it or to

the commission and its designated representatives without notifying the telecommunications provider.

- (4) All third party requests for information shall be directed through the commission. If the commission or the TUSF administrator receives a third party request for information that a telecommunications provider has designated proprietary, the commission shall notify the telecommunications provider. If the telecommunications provider does not voluntarily waive the proprietary designation, the commission shall submit the request and the responsive information to the Office of the Attorney General for an opinion regarding disclosure pursuant to the Texas Open Records Act, Texas Government Code, Chapter 552, Subchapter G.

This agency hereby certifies that the rule, as adopted, have 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 §26.5, relating to Definitions; §26.31, relating to Disclosures to Applicants and Customers, §26.217, relating to Administration of Extended Area Service (EAS) Requests; §26.219, relating to Administration of Expanded Local Calling Service (ELCS) Requests; §26.221, relating to Application to Establish or Increase Expanded Local Calling Service (ELCS) Surcharges; §26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies; §26.401, relating to Texas Universal Service Fund (TUSF); §26.403, relating to Texas High Cost Universal Service Plan (THCUSP); and §26.420, relating to Administration of Texas Universal Service Fund (TUSF) are hereby adopted with no changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE 7th DAY OF NOVEMBER 2002.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**Rebecca Klein, Chairman**

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**Brett A. Perlman, Commissioner**