

The Public Utility Commission of Texas (commission) proposes new §26.461, relating to Access Line Categories. The proposed new rule implements the provisions of House Bill 1777, 76th Legislature, Regular Session (1999). The proposed new rule will establish three competitively neutral categories of access lines for statewide use in establishing a uniform method for compensating municipalities for use of the public rights-of-way by certificated telecommunications providers. Project Number 20935 has been assigned to this proceeding.

D. Diane Parker, Senior Attorney, Office of Policy Development and Elango Rajagopal, Senior Policy Analyst, Office of Regulatory Affairs, have determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Parker and Mr. Rajagopal have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to minimize the effects of rate increases on telephone customers attributable to changes in the way municipalities are compensated for the use of public rights-of-way. In addition, the categories as proposed are anticipated to make the deployment of advanced telecommunication services affordable to residential customers.

As a result of enforcing this section, small telecommunications businesses or micro-businesses will be required to invest in new billing software for tracking and categorizing access lines. The economic cost to persons who are required to comply with the section as proposed cannot be determined due to the diverse billing systems used in the telecommunications industry.

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

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. Additionally, the commission seeks comment on whether the dividing line of 6.44 Mbps between proposed category 2 and category 3 is appropriate to address changes in technology in the provisioning of advanced telecommunications services. Should the commission review this proposed division in the future, and if so, how often? All comments should refer to Project Number 20935.

This new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (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. This proposed rule is also authorized by House Bill 1777, 76th Legislature, Regular Session (1999) §283.055 which provides that not later than November 1, 1999, the commission shall establish not more than three categories of access lines for statewide use.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and House Bill 1777, 76th Legislature, Regular Session (1999) §283.055.

§26.461. Access Line Categories.

- (a) **Purpose.** This section establishes three competitively neutral, non-discriminatory categories of access lines for statewide use in establishing a uniform method for compensating municipalities for the use of a public right-of-way by certificated telecommunications providers (CTPs).
- (b) **Application.** The provisions of this section apply to CTPs, as defined by subsection (c)(2) of this section, and to municipalities in the State of Texas.
- (c) **Definitions.** The following words and terms when used in this section, shall have the following meaning, unless the context clearly indicates otherwise.
- (1) **Access lines** – As defined in Local Government Code §283.002 (1).
 - (2) **Certificated telecommunications provider (CTP)** – A person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the commission to offer local exchange telephone service.
 - (3) **Customer** – An end-use customer.
 - (4) **Public right-of-way** – The area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include the airways above a right-of-way with regard to wireless telecommunications.

- (d) **Access line categories.** There shall be three categories of access lines. The three categories shall be as follows:
- (1) Category 1 shall include both analog and digital residential access lines, regardless of the bit rate delivered to the end use customer. This category shall not include point-to-point or private lines.
 - (2) Category 2 shall include all analog and digital non-residential access lines. For digital lines the bit rate delivered to the end use customer by each access line shall be less than or equal to 6.44 Mbps. This category shall also include residential and non-residential point-to-point lines or private lines. For digital point-to-point or private lines the bit rate delivered to the end use customer shall be less than or equal to 6.44 Mbps.
 - (3) Category 3 shall include all digital non-residential access lines where the bit rate delivered to the end use customer by each access line shall be greater than 6.44 Mbps. This category shall also include residential and non-residential point-to-point lines or private lines where the bit rate delivered to the end use customer shall be greater than 6.44 Mbps.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 13th DAY OF AUGUST 1999 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**