

PROJECT NO. 33004

PUC RULEMAKING PROCEEDING	§	PUBLIC UTILITY COMMISSION
TO IMPLEMENT SENATE BILL 5	§	
AMENDMENTS TO LOCAL	§	OF TEXAS
GOVERNMENT CODE CHAPTER 283	§	
AND TO ADDRESS THE	§	
REDEFINITION OF ACCESS LINE	§	
PURSUANT TO LOCAL	§	
GOVERNMENT CODE CHAPTER	§	
283.003	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §§26.461, 26.463 and 26.465
AS APPROVED AT THE AUGUST 10, 2006, OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §26.461, relating to Access Line Categories, §26.463, relating to Calculation and Reporting of a Municipality’s Base Amount, and §26.465, relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers. These amendments are necessary to address the impact of Senate Bill 5 on the commission’s telecommunications right-of-way rules under Subchapter R, Provisions Relating to Municipal Regulation and Rights-of-Way Management. The commission also proposes to redefine the term “access line” and the categories of access line in §26.461 of this title pursuant to Texas Local Government Code §283.003 and §26.465(m) of this title. Texas Local Government Code §283.003 permits the commission to “...modify the definition of “access line” and the categories of access lines as necessary to ensure competitive neutrality and nondiscriminatory application and to maintain consistent levels of compensation, as annually increased by growth in access lines and consumer price index, as applicable, to the municipalities.”

Senate Bill 5 amended §283.002, of the Texas Local Government Code, by amending subsection (2) and adding subsection (7), which resulted in an expanded definition of the term “certificated

telecommunications provider.” Texas Local Government Code §283.003 permits the commission to periodically modify the definition of access line to ensure competitive neutrality and nondiscriminatory application and to maintain consistent levels of compensation to the municipalities under the provisions of Subchapter R of this title (Provisions Relating to Municipal Regulation and Rights-of-Way Management). The commission is amending §26.461, §26.463 and §26.465 to implement the changes to Texas Local Government Code §283 and pursuant to the authority granted the commission in Texas Local Government Code §283.003. SB 5 also amended the Public Utility Regulatory Act (PURA) by adding §55.1735, relating to Charge for Pay Phone Access Line. The commission is also amending §26.465, relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers, to clarify that payphones lines are classified as access lines.

Meena Thomas, Director, Economic Analysis, Infrastructure Reliability Division, and Mark Hallmark, Staff Attorney, Legal Division, have determined that for each year of the first five-year period the proposed amended sections are in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section.

Ms. Thomas and Mr. Hallmark have determined that for each year of the first five years the proposed amended sections are in effect, the public benefit anticipated as a result of enforcing these sections will be an equitable assessment of municipal access line fees from certificated telecommunications providers and voice service providers in a technology neutral manner. In doing so, the amendments recognize the changes in telecommunication technology.

Ms. Thomas and Mr. Hallmark have determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is some anticipated economic cost to persons who are required to comply with the amended sections as proposed. However, the public benefit of imposing municipal fees in a non-discriminatory manner should outweigh those costs.

Ms. Thomas and Mr. Hallmark 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 §2001.022 of the Administrative Procedure Act (APA).

The commission staff will conduct a public hearing on this rulemaking, if interested parties request a hearing pursuant to §2001.029 of the APA, or if a public hearing is deemed necessary by commission staff. The request for a public hearing must be received within 20 days after publication.

Comments on the proposed amendments 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. Reply comments, if any, are due 30 days from the date of publication. Sixteen copies of comments to the proposed amendments are required to be filed pursuant to §22.71(c) of the commission's rules. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by,

implementation of the proposed amended sections. The commission will consider the costs and benefits in deciding whether to adopt the amended sections. All comments should refer to Project Number 33004.

These amendments are proposed under the PURA §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. These amended sections are also proposed under the Texas Local Government Code §283.003, which permits the commission to periodically modify the definition of access line to ensure competitive neutrality and nondiscriminatory application and to maintain consistent levels of compensation to the municipalities. These amended sections are also proposed under Texas Local Government Code §283.056(c)(3) and 283.058, which grant the commission the jurisdiction over municipalities, certificated telecommunications providers, and voice service providers, necessary to enforce Texas Local Government Code §283 and to ensure that all other legal requirements are enforced in a competitively neutral, non-discriminatory, and reasonable manner. The amendments are necessary to implement Texas Local Government Code §283.002(2) and (7) and are also made pursuant to Texas Local Government Code §283.003.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and Texas Local Government Code §§283.002(2) and (7), 283.003, 283.056, and 283.058.

§26.461. Access Line Categories.

(a)-(b) (No change.)

(c) **Definitions.** The following words and terms when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

(1) **Access lines** – ~~As defined in Local Government Code §283.002 (1)~~

(A) means a unit of measurement representing

- (i) each switched transmission path of the transmission media that is physically within a public right-of-way extended to the end-use customer's premises within the municipality, that allows the delivery of local exchange telephone services within a municipality, and that is provided by means of owned facilities, unbundled network elements or leased facilities, or resale; or
- (ii) each termination point or points of a nonswitched telephone or other circuit consisting of transmission media located within a public right-of-way connecting specific locations identified by, and provided to, the end-use customer for delivery of nonswitched telecommunications services within the municipality; or
- (iii) each switched transmission path within a public right-of-way used to provide central office-based PBX-type services for systems of any number of stations within the municipality, and in that instance, one path shall be counted for every 10 stations served; or

(iv) any other line not described in clauses (i), (ii) or (iii) of this subparagraph that provides voice service delivered by means of owned facilities, unbundled network elements or leased facilities, or resale.

(B) The definition of “access line” may not be construed to include interoffice transport or other transmission media that do not terminate at an end-use customer's premises or to permit duplicate or multiple assessment of access line rates on the provision of a single service.

(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 or a person who provides voice service.

(3)-(5) (No change.)

(6) **Voice service** – Voice communications services provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, including Internet protocol technology. The term does not include voice service provided by a commercial mobile service provider as defined by 47 U.S.C. Section 332(d).

(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 switched access lines and any other line that provides residential voice service. It shall also include

point-to-point private lines, whether residential or non-residential, only to the extent such lines provide burglar alarm or other similar security services.

- (2) Category 2 shall include all analog and digital non-residential switched access lines and any other line that provides non-residential voice service.
- (3) (No change.)

§26.463. Calculation and Reporting of a Municipality's Base Amount.

(a)-(b) (No change.)

(c) **Definitions.** The following words and terms when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

(1) **Base amount** – The total amount of revenue received by the municipality from CTPs in franchise, license, permit, application, excavation, inspection, and other fees related to the use of a public right-of-way in calendar year 1998 within the boundaries of the municipality. The base amount may include revenue from newly annexed areas, the value of in-kind services or facilities, or municipal fee rate escalation provisions for certain municipalities as prescribed in subsection (d) of this section.

(A) (No change.)

(B) The base amount does not include compensation received from interexchange carriers, cable providers or wireless providers, who may be CTPs, but whose lines do not meet the definition of access line under §26.461 of this title (relating to Access Line Categories) ~~Local Government Code §283.002.~~

(2)-(7) (No change.)

(d)-(m) (No change.)

§26.465. Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers.

(a)-(b) (No change.)

(c) **Definitions.** The following words and terms when used in this section, shall have the following meaning, unless the context clearly indicates otherwise.

(1) (No change.)

(2) **Transmission path** — A path within the transmission media that allows the delivery of switched local exchange service or provides voice service.

(A)-(B) (No change.)

(C) Services that constitute vertical features, e.g. call waiting, caller-ID ~~of a switched service, such as call waiting, caller ID, etc., that do not require a separate switched path,~~ do not constitute a transmission path.

(D) (No change.)

(E) Voice service, without regard to the delivery technology, switched or not, and including Internet protocol technology, shall constitute a single transmission path.

(3) (No change.)

(d) **Methodology for counting access lines.** A CTP's access line count shall be the sum of all lines counted pursuant to paragraphs (1), (2), ~~and (3),~~ and (4) of this subsection, and shall be consistent with subsections (e), (f) and (g) of this section.

(1)-(3) (No change.)

(4) Voice service.

(A) The CTP shall count each end-use customer provided voice service as one access line. Services that constitute vertical features of a voice service, or are bundled with the voice service shall not be counted as a separate access line.

(B) In the event a CTP is unable to identify the physical location of an end-use customer utilizing voice service, but that end-use customer's billing address, as identified in the CTP's billing system, is located inside the boundaries of a municipality, the end-use customer's access line shall be attributed to the municipality where such billing address is located.

(e) **Lines to be counted.** A CTP shall count the following access lines:

(1)-(6) (No change.)

(7) any other lines meeting the definition of access line as set forth in §26.461 of this title; ~~and~~

(8) Lifeline lines;:-

(9) all retail pay telephone access lines;

(10) all lines that provide voice service delivered by means of owned facilities, unbundled network elements or leased facilities, or resale that are not otherwise counted under paragraphs (1)-(9) of this subsection.

(f)-(1) (No change.)

(m) **Commission review of the definition of access line.**

- (1) Pursuant to the Local Government Code §283.003, not later than September 1, 2002, the commission shall determine whether changes in technology, facilities, or competitive or market conditions justify a modification of the adoption of the definition of "access line" provided by §26.461 of this title. The commission may not begin a review authorized by this subsection before March 1, 2002.
- (2) As part of the proceeding described by paragraph (1) of this subsection, and as necessary after that proceeding, the commission by rule may modify the definition of "access line" as necessary to ensure competitive neutrality and nondiscriminatory application and to maintain consistent levels of compensation, as annually increased by growth in access lines and consumer price index, as applicable, to ~~within~~ the municipalities.
- (3) After September 1, 2002, the commission, on its own motion, shall make the determination required by this subsection at least once every three years.

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

**ISSUED IN AUSTIN, TEXAS ON THE 10TH DAY OF AUGUST 2006 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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