

The Public Utility Commission of Texas (commission) proposes new §26.467, relating to Rates, Allocation, Compensation, Adjustments and Reporting. This section is proposed under Project Number 20935.

The proposed new rule implements certain provisions of House Bill 1777 (HB 1777), Act of May 25, 1999, 76th Legislature, Regular Session, chapter 840, 1999 Texas Session Law Service 3499 (Vernon) (to be codified as Local Government Code §§283.001 *et seq.*), which authorizes the commission to determine a uniform method for calculating municipal franchise compensation paid by certificated telecommunications providers (CTPs). The proposed new rule is part of a series of rules that will be adopted by the commission to implement HB 1777.

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, that there may be fiscal implications to local governments as a result of enforcing or administering the section. Ms. Parker and Mr. Rajagopal do not anticipate any fiscal implications to state government.

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 a uniform

method of compensating municipalities for the use of the public rights-of-way by CTPs. This uniformity will promote competition for local telephone service in Texas by ensuring that CTPs do not obtain a competitive advantage or suffer a disadvantage in their ability to obtain use of a public right-of-way within a municipality. There is no anticipated effect on small businesses or micro-businesses as a result of enforcing this section.

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 the Administrative Procedure Act §2001.022.

In proposing this rule, the commission's objective is to establish a method for compensating municipalities for the use of a public right-of-way by CTPs that: (1) is administratively simple for municipalities and telecommunications providers; (2) is nondiscriminatory; (3) is competitively neutral; (4) is consistent with the burdens on municipalities created by the incursion of CTPs into a public right-of-way; (5) provides fair and reasonable compensation for the use of a public right-of-way; and (6) is consistent with state and federal law.

The commission seeks any comments on the proposed rule that interested parties believe are appropriate. Parties should organize their comments in a manner consistent with the organization of the proposed rule. In particular, the commission invites comments regarding the following issue: Are municipalities whose agreements or ordinances include fee rate escalation provisions entitled to receive

such additional compensation until the natural expiration date of their franchise agreement or ordinance, even though those agreements or ordinances may have been terminated by CTPs by December 1, 1999? Parties that believe that municipalities are entitled to this additional compensation, please provide specific implementation details for including this compensation as part of the base amount. For example, explain how the commission should establish new rates for those municipalities with fee rate escalation provisions. Please provide specific statutory citation for your rationale. Parties are also requested to respond to the costs associated with, and benefits that will be gained by, implementation of the proposed section.

Comments on the proposed new rule 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. All comments should refer to Project Number 20935. The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Friday, January 21, 2000 at 1:30 p.m.

This new section 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. The proposed rule is also authorized by House Bill 1777 (HB 1777), Act of May 25, 1999, 76th Legislature, Regular Session, chapter 840, 1999 Texas Session Law Service 3499 (Vernon) (to be

codified as an amendment to the Local Government Code §283.055), which provides that not later than March 1, 2000, the commission shall establish rates per access line by category for the use of a public right-of-way by certificated telecommunications providers in each municipality and the statewide average of those rates. The rates shall be applied to the total number of access lines b category in the municipality. The commission shall establish an allocation of the base amount over the categories of access lines if a municipality does not file its proposed allocation by December 1, 1999. On a quarterly basis, certificated telecommunication utilities are required to file a report with the commission that shows the number of access lines the provider has within each municipality at the end of each month of the quarter, and are required to pay the municipality a quarterly amount calculated monthly based on the reported access line counts and the commission's access line rates.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and Local Government Code §283.055.

§26.467. Rates, Allocation, Compensation, Adjustments and Reporting.

- (a) **Purpose.** This section establishes the following:
- (1) rates for categories of access lines;
 - (2) default allocation formula for municipalities;
 - (3) adjustments to the base amount and allocation formula;
 - (4) compensation; and
 - (5) associated reporting requirements.
- (b) **Application.** The provisions of this section apply to certificated telecommunication providers (CTPs) and municipalities in the State of Texas.
- (c) **Rate determination.** The sum of the amounts derived from the rate for each category of access lines multiplied by the total number of access lines in that category in a municipality shall be equal to the base amount.
- (1) **Initial rates.** No later than March 1, 2000, the commission shall establish rates for each category of access lines in a municipality. These rates shall be considered to be initial rates. The initial rates may be updated before April 1, 2000 pursuant to subsection (d) of this section. The updated rates shall be in effect until a municipality makes revisions to its rates pursuant to subsection (f) of this section.

- (2) **Access line count period.** The commission shall use a 1998 access line count for establishing rates for access lines.
- (3) **Estimating 1998 access line count.** If a CTP does not provide an actual 1998 access line count, the commission shall use the reported 1999 access line count to derive an estimated 1998 access line count as follows:
 - (A) **Estimating access lines in category 1.** The commission shall estimate the 1998 access line count for category 1 from the reported 1999 line count by discounting the growth that has occurred for category 1 during the year 1999. The commission shall estimate the growth of lines for 1999 by using the statewide growth rates for residential access lines reported in the 1997 and 1999 Scope of Competition Reports. The estimated statewide growth rate for category 1 lines is 4.5%.
 - (B) **Estimating access lines in category 2 and category 3.** The commission shall estimate the 1998 access line count for categories 2 and 3 from the reported 1999 line count by discounting the growth that has occurred for categories 2 and 3 during the year 1999. The commission shall estimate the growth of category 2 and category 3 lines for 1999 by using the statewide growth rates for business access lines reported in the 1997 and 1999 Scope of Competition Reports. The estimated statewide growth rate for category 2 and category 3 lines is 7.0%.

- (C) **Municipality's estimate for 1998 access lines.** A municipality may petition the commission to use different growth factors for 1999 than those derived using subparagraphs (A) and (B) of this paragraph for estimating its 1998 access line count. The municipality's petition shall be accompanied by its proposed growth figure along with adequate proof and methodology for deriving the growth figures from public and verifiable sources. Subject to approval by the commission, the municipality's proven growth figures shall be used for estimating 1998 access line count for that municipality.
- (d) **Updates to municipality filings.** Municipalities shall have a one-time opportunity in the year 2000 to update their base amount and their allocation formula filed using the *Forms for Calculating Rights-of-Way Compensation*.
- (1) **Base amount.** Before April 1, 2000, a municipality may petition the commission to update its base amount with appropriate justification for the update. Appropriate justification may include, but is not limited to: receipt of late payments from CTPs attributable to 1998 usage of rights-of-way, reduction to judgment of disputed payments attributable to 1998 usage of rights-of-way, settlement of disputed payments attributable to 1998 usage of rights-of-way or an inadvertent base amount computational error.

- (2) **Allocation formula.** A municipality that has filed its own allocation formula before December 1, 1999 may petition the commission and file an updated allocation formula before April 1, 2000.
- (3) **Updating initial rates.** The commission shall use the new base amount and allocation formula filed pursuant to paragraphs (1) and (2) of this subsection to establish updated access line rates for a municipality.
- (4) **Maximum Rates.** A municipality that wishes to choose lower access line rates than its initial or updated rates shall notify the commission and all CTPs in that municipality of the lower rate(s) it chooses no later than April 1, 2000. The new lower rates shall be in effect until the municipality petitions for a change in access line rates pursuant to subsection (f) of this section.
- (e) **Default allocation.** A municipality that does not allocate the base amount over the categories of access lines by December 1, 1999 shall use the default allocation established by the commission. The commission shall develop a default allocation formula for each municipality such that the rates for each category of access line in that municipality shall be the same.
- (f) **Annual revision of access line rates.** Beginning in the year 2000, certain municipalities may revise their access line rates, as follows.

 - (1) **Adjustments within established rates.** A municipality that wishes to change its rates within the maximum established rates, may do so by notifying the commission and all

CTPs with access lines in that municipality during September of the year that the municipality wishes to revise its access line rate for the next calendar year.

(2) **Revising allocation formula.**

(A) **Revising municipality's allocation formula.** A municipality that has adequately filed its allocation formula by December 1, 1999 may revise its allocation formula once every 12 months. Beginning in the year 2000, a municipality that wishes to revise its allocation may do so by notifying the commission and all affected CTPs in September of that year that the municipality wishes to revise the allocation for the next calendar year.

(B) **Revising default allocation formula.** A municipality may request a modification of the commission's allocation not more than once every 24 months by notifying the commission and all affected CTPs in September of that year that the municipality wishes to revise the allocation for the next calendar year.

(g) **Subsequent reporting for CTPs.**

(1) A CTP shall report access line counts in each municipality quarterly to the commission.

(2) Beginning in the year 2001, CTPs shall report annually to the commission the amounts collected in municipal franchise fees from ratepayers and the total franchise fees paid to municipalities. This report shall be filed with the commission no later than January 31 for municipal franchise fees remitted and collected for the preceding year.

(h) **Franchise fee compensation to a municipality pursuant to the Local Government Code, Chapter 283.**

- (1) CTPs that own facilities in the rights-of-way of municipalities shall compensate each municipality quarterly, based upon a monthly access line count. The compensation shall be equal to the rate per category of access line multiplied by the number of access lines in that category in that municipality for the preceding quarter.
 - (2) A CTP may not be required to remit a right-of-way fee to a municipality on those access lines that have been resold, leased, or otherwise provided to another CTP except as provided under paragraph (3) of this subsection.
 - (3) If the provider of services to the end-use customer through resold or leased access lines directly remits to the municipality a right-of-way fee based on those access lines, that CTP shall furnish adequate proof of such payments to the underlying CTP.
 - (4) Adequate proof may include copies of municipal receipts or copies of payments made.
 - (5) Nothing in this section shall prevent a CTP from charging to another CTP an appropriate tariffed administrative fee for compensating a municipality on behalf of another CTP to which it has resold, leased, or otherwise provided access lines.
- (i) **Pass-through.** A CTP recovering its municipal franchise compensation from its customers within the boundaries of a municipality pursuant to PURA §54.206, shall not recover a total amount greater than the sum of the amounts derived from the multiplication of access line rates by the number of lines, per category, for that municipality. Consistent with PURA §54.206,

pass-through of the commission's rates established under this chapter shall be considered to be a pro rata charge to customers. Where a CTP chooses to pass through the pro rata charge, such CTP shall not pass through any costs associated with its administration of municipal franchise fees. The pass-through amount shall not exceed the access line rate by category established by the commission for that municipality except as outlined below:

- (1) To the extent that a CTP can document failed attempts to collect its pass-through fees from its customers within the boundaries of a municipality, an adjustment equal to the uncollected municipal fee amount is allowed to the commission's established access line rates for that municipality.
 - (2) The access line rate adjustment for uncollectible municipal fees under paragraph (1) of this subsection shall be made on a one-time annual basis during the last quarter of the calendar year.
 - (3) This adjustment shall be a proportional increase to the commission established rates.
- (j) **Compensation from Lifeline or other low-income assistance programs.** A municipality may choose to forgo municipal franchise compensation from access lines serving Lifeline customers or customers of other similar low-income assistance programs. A municipality electing this option shall timely notify its CTPs of this decision. Upon receipt of such notification, CTPs shall not pass through a municipal franchise fee to those end-use customers.

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 17th DAY OF DECEMBER 1999 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**