

**PROJECT NO. 29719**

<b>RULEMAKING TO ADDRESS</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>MUNICIPAL AUTHORIZED</b>	<b>§</b>	
<b>REVIEW OF ACCESS LINE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>REPORTING</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF NEW §26.469  
AS APPROVED AT THE DECEMBER 2, 2004, OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §26.469, relating to Municipal Authorized Review of a Certificated Telecommunication Provider's Business Records. The proposed new rule will define the authorized review of a provider's business records by a municipality pursuant to Texas Local Government Code, §283.056(c)(3). Project Number 29719 is assigned to this proceeding.

Liz Kayser, Policy Analyst, Telecommunications Division, and Mark Gladney, Staff Attorney, Telecommunications Legal Section, 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 government as a result of enforcing or administering the section, but there will be some fiscal implications for local government, insomuch as local governments may have the costs of pursuing an authorized review of a provider's business records and will have the benefit of potentially discovering misreported access lines.

Liz Kayser and Mark Gladney 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 the ability of the municipality to conduct an authorized review of a certificated telecommunication provider's (CTP) business records to ensure that providers are complying

with the reporting requirements of Texas Local Government Code, Chapter 283. 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 section as proposed, but the public benefit of enabling municipalities to conduct statutorily allowed authorized reviews should outweigh those costs.

Liz Kayser and Mark Gladney 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 (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, or deemed necessary by commission staff, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on March 15, 2005, at 10:00 a.m.. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed new section 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 30 days after publication. Sixteen copies of comments to the proposed rule are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. 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. All comments should refer to Project Number 29719.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (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 new section is also proposed under the Texas Local Government Code §283.056(c)(3) and §283.058, which grant the commission the jurisdiction over municipalities and certificated telecommunications providers necessary to enforce the whole of Chapter 283 and to ensure that all other legal requirements are enforced in a competitively neutral, non-discriminatory, and reasonable manner.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and Texas Local Government Code §283.056 and §283.058.

**§26.469. Municipal Authorized Review of a Certificated Telecommunication Provider's Business Records.**

- (a) **Purpose.** This section establishes uniform guidelines for a municipal authorized review of a certificated telecommunications provider's (CTP) access line reports, pursuant to Texas Local Government Code §283.056(c)(3).
- (b) **Application.** This section applies to all municipalities and CTPs in the State of Texas except to the extent exempt under §26.468(c) of this title (relating to Procedures for Standardized Access Line Reports and Enforcement Relating to Quarterly Reporting).
- (c) **Municipal Authorized Review Procedural Guidelines**
- (1) Municipalities are encouraged to informally ask questions about access line counts or municipal fee payments with the appropriate CTP in a timely manner. CTPs are encouraged to provide reasonable answers to access line count and municipal fee payment questions of the municipalities in a timely manner.
- (2) Not later than 90 days after the filing of a CTP's quarterly report of access lines, as required by §26.468 of this title, a municipality shall notify a CTP of its intent to conduct an authorized review of the CTP's business records to ensure compliance with access line reporting requirements. This notification shall be in writing and sent via certified mail to the CTP contact person named on the commission's Municipal Access Line Reporting System (MARS) website and shall include a summary of the municipality's concern(s) and/or reason(s) for the review. Such notice may be modified and amended in a subsequent written notice using the same process.

- (3) Not later than 21 days from the CTP's receipt of notice under paragraph (2) of this subsection, the CTP shall provide to the requesting municipality a written list of the types of business records that are necessary to conduct an authorized review as requested in the notice, with brief descriptions for identification purposes.
- (4) The municipality shall determine which business records from the list provided by the CTP will be subject to review and provide written notice to the CTP. The CTP shall provide the requested business records within 30 days from the municipality's written request. The CTP shall provide the business records to the municipality in the following manner:
  - (a) The CTP shall provide access to the requested business records on its premises.
  - (b) The on-premises review shall be conducted at the principal Texas office of the CTP, unless otherwise agreed by the CTP and the municipality.
  - (c) Business records shall remain the property of the CTP and may not be removed or reproduced without the express written permission of the CTP.
  - (d) Business records may be produced in a compatible electronic format or paper copy at the discretion of the CTP.
- (5) A CTP may redact customer-specific proprietary information as necessary for compliance with federal or state law. Information deemed confidential or proprietary by the CTP must be so noted, and each participating party and its representative(s) shall protect such confidential or proprietary information as

provided in Texas Local Government Code §283.005. CTPs may require all persons participating in the authorized review to execute a non-disclosure agreement prior to providing access to documents or other information.

(d) **Commission Resolution of Disputed Issues**

- (1) **Informal dispute resolution.** If cooperative efforts between the parties have failed to resolve all issues related to the authorized review, the commission staff may mediate any dispute(s) filed by the CTP or the municipality.
  
- (2) **Formal complaint to the commission.** A formal complaint may be filed with the commission by either a CTP or Municipality to resolve remaining disputed issues not settled by informal dispute resolution pursuant to paragraph (1) of this subsection. The commission shall provide notice of the filing of a formal complaint to all municipalities and all CTPs in accordance with established commission procedural rules.

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 2nd DAY OF DECEMBER 2004 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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