

PROJECT NO. 34594

RULEMAKING TO REPEAL P.U.C.	§	PUBLIC UTILITY COMMISSION
SUBSTANTIVE RULE 26.51 AND	§	
PROPOSE NEW 26.51 RELATING TO	§	OF TEXAS
RELIABILITY OF OPERATIONS OF	§	
TELECOMMUNICATIONS PROVIDERS	§	

**ORDER ADOPTING THE REPEAL OF §26.51 AND NEW §26.51
AS APPROVED AT THE DECEMBER 19, 2007, OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts the repeal of §26.51 relating to Continuity of Service and new §26.51 relating to Reliability of Operations of Telecommunications Providers with changes to the proposed text as published in the September 28, 2007 issue of the *Texas Register* (32 TexReg 6714). The commission also amends Chapter 26, Subchapter C, Quality of Service, by changing the title to Infrastructure and Reliability. New §26.51 establishes the minimum requirements for emergency operations plans maintained by telecommunications providers. Project Number 34594 is assigned to this proceeding.

On October 29, 2007, the commission received comments on the proposed repeal and new section from John Staurulakis, Inc. (JSI), on behalf of Big Bend Telephone Company, Inc., Brazoria Telephone Company, Cameron Telephone Company, Central Texas Telephone Cooperative, Inc., Coleman County Telephone Cooperative, Inc., Community Telephone Company, Inc., Eastex Telephone Cooperative, Inc., Electra Telephone Company, Etex Telephone Cooperative, Inc., Hill Country Telephone Cooperative, Inc., Industry Telephone Company, Poka Lambro Telephone Cooperative, Inc., Riviera Telephone Company, Inc., Southwest Arkansas Telephone Cooperative, Inc., Tatum Telephone Company, Taylor Telephone Cooperative, Inc., and Valley Telephone Cooperative, Inc.; Southwestern Bell

Telephone Company d/b/a AT&T Texas (AT&T Texas); Texas Commission on State Emergency Communications and the Texas 9-1-1 Alliance (the Texas 9-1-1 Agencies); Texas Statewide Telephone Cooperative, Inc. (TSTCI); United Telephone Company of Texas, Inc. d/b/a Embarq and Central Telephone Company of Texas d/b/a Embarq (Embarq); and Verizon Southwest, Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions, Verizon Select Services, Inc., MCImetro Access Transmission Services, LLC, and MCI Communications Services, Inc. (Verizon).

On November 12, 2007, the commission received reply comments on the proposed repeal and new section from AT&T Texas; Embarq; Sprint Communications Company, L.P., SprintCom, Inc., Sprint Spectrum, L.P., Nextel of Texas, Inc., and NPCR, Inc. (Sprint Nextel); Texas Cable & Telecommunications Association (TCTA); TEXALTEL; and TSTCI.

The commission posed three questions in this proceeding, which are listed below.

Question 1: In what ways have recent FCC orders increased state authority over wireless, voice over internet protocol (VoIP), and broadband over power lines (BPL) providers with regards to emergency preparedness? Please include any citations to applicable FCC orders.

The Texas 9-1-1 Agencies cited the recommendations from the “Impact of Hurricane Katrina on Communications Networks” (Katrina Report) developed by an Independent Panel commissioned by the Federal Communications Commission (FCC) as evidence that states should be allowed to set requirements for the telecommunications industry with regards to emergency preparedness.

The FCC issued the following statement in its Independent Katrina Panel Notice of Proposed Rulemaking (NPRM):

“(W)e decline to take action to urge states to refrain from imposing emergency preparedness requirements on the communications industry...”

In the case of 9-1-1, the Katrina Report stated that state reporting requirements could be used to satisfy the FCC’s reporting requirements.

Embarq argued that all facilities-based providers of voice services should be subject to the requirements set forth in this rule. They went on to state that the commission does have jurisdiction over non-nomadic VoIP providers. Embarq opined that this jurisdiction can be asserted whether these VoIP providers are defined as providers of “local exchange telephone service,” “telecommunications utilities,” or providers of “basic local telecommunications service” as defined in Public Utility Regulatory Act (PURA) §51.002. Embarq also pointed out that what separates the landmark FCC *Vonage Order*, in which the FCC preempted the Minnesota Public Utility Commission’s attempt to force VoIP providers to succumb to the same level of state regulation as traditional carriers, was the inclusion of nomadic VoIP providers in the scope of the order (WC Docket No. 03-211, FCC 04-267). In its reply comments, TCTA argued in direct opposition to Embarq’s position, stating that to-date the commission has declined to determine whether non-nomadic VoIP providers should be defined as “local exchange telephone service,” “telecommunications utilities,” or providers of “basic local telecommunications service.” TCTA further opined that Embarq incorrectly concluded that the *Vonage Order* only preempted nomadic VoIP providers from state regulation. According to TCTA, the FCC concluded that all VoIP services should be exempt from state regulation.

Similarly, Embarq asserted that facilities-based wireless carriers that are receiving Universal Service Fund (USF) or Texas Universal Service Fund (TUSF) support should be subject to the requirements set forth in this rule. Embarq commented that the commission has limited jurisdiction over wireless carriers that are defined as “telecommunications providers,” which includes a provider of commercial mobile service under PURA §51.002(10)(A)(iv). Specifically, Embarq argued that the commission may impose service quality standards on those wireless carriers that seek designation as an Eligible Telecommunications Carrier (ETC) or Eligible Telecommunications Provider (ETP) for the purposes of receiving USF or TUSF support.

Sprint Nextel replied that while it is designated as an ETC, the commission should seek other means to achieve the goal of emergency preparedness on the part of wireless carriers. That is, Sprint Nextel believed that it should be excluded from the proposed rule. It further opined that the competitive nature of the wireless industry forces companies to “continually improve their networks and communication protocols,” and the addition of state regulation would likely stifle the improvement in service quality and reliability because of burdensome reporting requirements placed upon existing staff. Further, Sprint Nextel asserted that the commission has limited jurisdiction over Commercial Mobile Radio Service (CMRS), which has traditionally been regulated by the FCC.

In contrast to Embarq’s comments, Verizon argued that the FCC has not extended the state’s jurisdiction over VoIP, wireless, or BPL providers. Verizon went on to state that the

commission should not interpret FCC rulings with regards to 9-1-1 or USF as an opportunity to extend its authority over these providers.

Similar to the comments of Verizon, AT&T Texas stated that the commission's authority over VoIP, wireless, or BPL has not been expanded. They cited the FCC's rules at 47 C.F.R. §4.9 and §4.11 as evidence for this claim and made particular reference to wireless carriers' outage reporting requirements. In its reply comments, Embarq agreed with AT&T Texas and Verizon regarding the limited jurisdiction of the commission over wireless carriers. However, Embarq further opined that wireless ETCs and ETPs are subject to regulation by the commission.

In contrast to Embarq's interpretation of the *Vonage Order*, AT&T Texas argued that the FCC took the position that states do not have the authority to decide whether certain regulations are applicable to DigitalVoice and other IP-enabled services. AT&T Texas further opined that the FCC has defined BPL-enabled Internet Access Service as an interstate, information service. As such, it cannot be subject to state regulation. In its reply comments, TCTA supported AT&T Texas' and Verizon's position on the exclusion of VoIP providers from this rulemaking proceeding.

Embarq replied that the commission should assert jurisdiction over all carriers for which it has the legal authority to do so, in order to maintain technological and competitive neutrality. Citing the FCC's recent *Contribution Order*, it was ordered that providers of "interconnected VoIP service" must contribute to the federal USF (FUSF) (WC Docket No. 06-122, CC Docket 96-45). While the order did not specifically mention contribution to the states' USFs, Embarq implied

that the FCC may revisit the definition of interconnected VoIP providers, which may lead to some expansion of the states' jurisdiction over these providers.

Commission response

Certificate of convenience and necessity (CCN) and certificate of operating authority (COA) holders are the major facilities-based providers. They are primarily responsible for restoring service after an emergency event. Therefore, limiting the application of the rule to CCN and COA holders substantially achieves the objectives of the rule without imposing compliance costs on other service providers. The commission may consider expanding the rule to other service providers in a future rulemaking.

Question 2: Should utilities develop policies for disaster aid offerings for customers displaced by catastrophic events such as hurricanes and flooding (i.e., free remote call forwarding, waiver of deposits, etc.)? If so, to what extent should those policies and offerings be memorialized in a utility's tariff?

Embarq did not believe that utilities should be compelled to offer disaster aid or memorialize such offerings in their tariffs. Rather, Embarq argued that the very nature of catastrophic events warrants a unique and flexible response to each situation. Likewise, TSTCI argued that incumbent local exchange carriers (ILECs) should be afforded flexibility to “develop needed aid that [meets] the circumstances.” Therefore, TSTCI proposed that disaster aid should be offered on a case-by-case basis rather than revising tariffs.

Verizon took a different position on this issue by arguing that utilities could develop special tariff offerings that would be utilized during emergency events. However, Verizon did offer a caveat that if such offerings are memorialized in utilities' tariffs, the commission should attempt to avoid issuing emergency orders that may negate the efforts of utilities' planning efforts for implementing the tariff offerings. JSI only partially supported this position by stating that a generic disaster aid clause might allow utilities to be responsive to the specific needs of customers during an emergency event while also maintaining flexibility in the type of assistance provided.

AT&T Texas stated that utilities should develop policies that would enable them to respond to the needs of customers during a catastrophic event. They did disagree with the notion of revising tariffs to include disaster aid offerings and believed utilities should be able to exercise flexibility in their offerings to customers, which will vary based on the emergency event.

Commission response

In the past, telecommunications utilities have responded in a helpful manner following an emergency event. The commission declines to pursue mandating such tariff revisions at this time but may revisit this issue in a future rulemaking.

Question 3: Under what circumstances should utilities notify the commission immediately regarding outages?

The Texas 9-1-1 Agencies asserted that an outage involving any component of a utility's 9-1-1 system merits immediate reporting to the commission. Further, they believe that notice of the outage should also be provided upon request to the 9-1-1 administrative entity, which is defined in §26.433 as a regional planning commission or an emergency communication district.

JSI argued that the only instance in which a utility should immediately report an outage to the commission is if “the utility has determined that its emergency plan cannot be implemented to restore service and the Commission is in a position to provide assistance.”

Embarq asserted that the reporting requirements of the commission should not be more burdensome than those set by the FCC in 47 C.F.R. §4, which states, in part, that “cable communications providers” and “wireline communications providers” must submit an electronic report within two hours following an outage lasting longer than 30 minutes that affects any facilities that they own, lease, or operate if it “potentially affects at least 900,000 user minutes of telephony service” or “potentially affects a 911 special facility.” Within 72 hours, the providers are required to submit an Initial Communications Outage Report. Embarq further commented that the commission's current and proposed rules are concerned with the number of access lines affected.

Similar to the comments from Embarq, AT&T Texas, Verizon, TSTCI, and JSI urged the commission not to implement outage reporting requirements that may be in conflict with the FCC's requirements set forth in 47 C.F.R. §4.

Commission response

Embarq correctly pointed out that the commission is generally concerned with the number of access lines or customers affected by an outage rather than the number of user minutes. For a normal outage situation, data on the number of customers affected in a particular exchange facilitates the commission's ability to respond to customer inquiries and complaints and to ensure compliance with service quality standards. During an emergency event, data on the number of customers affected are also relevant to local jurisdictions, other state agencies, and the State Operations Center (SOC). Therefore, the commission declines to make changes to its outage reporting requirements based on these comments.

Subsection (a)

Embarq argued that the proposed rule is only applicable to facilities-based CCN holders and COA holders, which limits the application to ILECs. For competitive purposes, Embarq asserted that this rule should be made applicable to SPCOA facilities-based holders. Taken a step further, Embarq also suggested the inclusion of facilities-based providers of voice services despite the lack of a certification requirement for non-nomadic VoIP providers. TSTCI agreed with Embarq's position to include SPCOAs in the requirement to provide emergency operations plans (EOPs), in order to ensure competitive neutrality.

TEXATEL, TCTA, and Sprint Nextel wanted to exclude SPCOA holders from the requirement to provide EOPs.

Commission response

CCN and COA holders are the major facilities-based providers. They are primarily responsible for restoring service after an emergency event, and providers that lease facilities or resell services are dependent upon these providers. Therefore, limiting the application of the rule to CCN and COA holders substantially achieves the objectives of the rule without imposing compliance costs on SPCOA holders. The commission may consider expanding the rule to SPCOA holders in a future rulemaking.

Subsection (b)

AT&T Texas requested that it be allowed to file portions of its comprehensive summary confidentially to avoid creating a national security risk. AT&T Texas extended this argument to include any information and/or reports filed with the commission that contained competitively sensitive and/or highly sensitive information. Pointing to the protections afforded to reports filed with the FCC, AT&T Texas argued that the same protections should be afforded to items filed with the commission.

Commission response

The commission does not expect a provider to include competitively sensitive or highly sensitive information in its comprehensive summary. In any event, what information in a report filed with the commission is exempt from public disclosure is addressed by Texas Government Code, Chapter 552. As a result, the commission has deleted proposed subsection (b)(7).

Embarq argued that the requirement to file an emergency operations plan or even a “comprehensive summary” is unique because other state commissions do not require this type of filing. Embarq suggested that filing an affidavit instead of a comprehensive summary should be sufficient. If the commission insists on the filing of an affidavit, Embarq asserted that it should be signed by local management responsible for operations in the State of Texas rather than a senior operations officer. JSI also argued that an affidavit is sufficient.

Commission response

The commission disagrees with requiring only an affidavit instead of a comprehensive summary. An affidavit does not provide the commission with a sufficient level of detail regarding a utility’s emergency preparations.

The affidavit required by final rule subsection (b)(1) requires an affirmation about commitment to follow the EOP, in order to help ensure that the utility has adequately prepared for an emergency. However, the affirmation is not intended to preclude deviations from the EOP during the course of an emergency to the extent such deviations are appropriate under the circumstances. Further, the commission does not oppose the affidavit being signed by a local operation’s officer and has deleted the term “senior” from subsection (b)(1) of the rule.

Subsection (b)(1)

Verizon suggested that the affidavit is unnecessary, but if the Commission requires some kind of compliance statement, it more appropriately belongs in subsection (b)(3). They also suggested the following paragraph be stricken:

The filing shall include an affidavit from the utility's senior operations officer indicating that all relevant operating personnel within the utility are familiar with the contents of the emergency operations plan and are committed to following the plans and the provisions contained therein in the event of a system-wide or local emergency that arises from natural or manmade disasters.

Commission response

The commission believes that an affidavit is an appropriate component of an EOP. The requirement that the affidavit be signed by operating personnel helps ensure that utilities have fully considered their level of disaster preparedness. Further, this requirement should result in executive officers recognizing the need to update existing business continuity plans and/or disaster recovery plans. Therefore, the commission declines to make the requested change.

Verizon suggested the following wording change to the remainder of subsection (b)(1):

To the extent the utility makes changes in its emergency operations plan, and the affected portion of the plan is no longer appropriately addressed under the utility's current comprehensive summary, the utility shall file a revision to the comprehensive summary no later than 30 days after such changes take effect.

Commission response

The commission has made this change, except that the adopted rule requires the filing of a revision no later than 30 days after a change to the EOP is adopted, rather than when the change takes effect. This change avoids an unwarranted delay in the filing of a revision if the effective date of a change is later than its adoption date.

JSI commented that providing the entire EOP would be more convenient than producing a comprehensive summary.

Commission response

The commission has amended subsection (b) to permit filing the EOP in lieu of a comprehensive summary.

Subsection (b)(2)(A)

Verizon suggested that the Telecommunications Service Priority (TSP) system does not require every TSP subscriber being “contacted” in case of an emergency and suggested the following wording changes:

A communications plan that describes the procedures for contacting the media, customers, and service users as soon as reasonably possible either before or at the onset of an emergency.

Embarq concurred with Verizon's proposed modifications. Embarq objected to a requirement to contact individual TSP subscribers during each emergency event.

Commission response

The commission has made the change proposed by Verizon. The commission does not expect utilities to notify individual TSP subscribers concerning an emergency event.

Subsection (b)(2)(E)

The Texas 9-1-1 Agencies recommended that a tornado plan be added to the list of items to be included in an EOP and should be similar to the hurricane plan. TSTCI argued that a tornado plan requested by the Texas 9-1-1 Agencies is unnecessary.

Commission response

The commission does not believe that sufficient tornado warning systems exist to warrant a separate tornado plan. Furthermore, tornadoes as well as floods, fires, and other natural disasters are covered under existing plans for disaster recovery and continuity of operations.

TSTCI suggested that the term "hurricane evacuation zone" be replaced with "hurricane-prone area."

Commission response

The commission disagrees with this suggestion. However, the commission has made the following change:

- (E) a hurricane plan, including evacuation and re-entry procedures (for a utility providing service within a hurricane evacuation zone, as defined by the Governor’s Division of Emergency Management).**

Subsection (b)(3)

Texas 9-1-1 Agencies recommended the following language be added:

Following the (a)nnual (d)rill, the utility shall assess the effectiveness of the (d)rill and modify its emergency operations plan as needed.

Commission response

The commission has made this change.

Verizon suggested adding the “familiarity and commitment to following emergency plans and procedures” language from subsection (b)(1) here because they believe this is the more appropriate place in the rule to address a utility’s knowledge of its EOP. Verizon suggested that the 12-month period for the drill schedule is “needlessly ambiguous.”

Commission response

In response to Verizon's comments, the commission has clarified subsection (b)(3) to require training of operating personnel responsible for implementing the procedures outlined in an EOP.

TSTCI suggested the following language:

Each utility shall conduct an annual review with all essential utility personnel to review and revise as necessary its emergency procedures if those procedures have not been implemented in response to an actual event within the last 12 months. If a utility is in a hurricane-prone area, as defined by the commission, this review shall also include the utility's hurricane plan/storm recovery plan. Notice of this review will be attested to by the utility's senior operations officer and filed within 30 days of the annual review. Each utility shall conduct the annual review and file its notice and attestation together with its emergency contact information at the Commission no later than May 1 of each year.

Commission response

The commission disagrees with these changes but does recognize the need to clarify the intent of subsection (b)(3). The commission appreciates TSTCI raising the issue regarding testing emergency procedures. The commission recognizes the potential ambiguity that arises by using the terms "exercises" and "drills" interchangeably. The commission intends for telecommunications utilities to test their procedures, but the commission does not want this requirement to be overly burdensome. Using the term drill, rather than

exercise, more accurately conveys the commission's intentions concerning testing emergency procedures. The commission has re-named subsection (b)(3), "Drills."

Embarq stated that the term "drill" is too vague. Embarq opposed requiring an annual exercise or drill. Embarq asserted that full-scale exercises would be expensive and possibly unnecessarily burdensome.

Similar to the comments of Embarq, JSI suggested that requiring an annual drill to test emergency operations plans is unnecessarily burdensome for small ILECs.

Commission response

The commission disagrees with Embarq and JSI. The commission believes that drills are the proper way to test the effectiveness of emergency plans. The proposed rule is flexible in the types of drills in which a utility may participate. "Drills" include a tabletop exercise, and multiple utilities could participate in the same drill.

Subsection (b)(4)

The Texas 9-1-1 Agencies recommended that contact information be updated electronically and proposed the reduction in the timeframe for updating contact information from 30 to 10 days.

Commission response

The commission rejects Texas 9-1-1 Agencies' request to change the deadline for submitting updated contact information to 10 days following a change. The commission

currently requires competitive local exchange companies (CLECs) and interexchange carriers (IXCs) to electronically update contact information in an annual report. Entering the contact information into the commission's database allows commission staff to send mass-notification e-mails and have contact information readily available. This annual report requires a login and password, which provides information security. Although contact information should remain up-to-date throughout the year, the current reporting interval is, at a minimum, once a year between June 1 and June 30 pursuant to §26.109 relating to Certification Criteria, §26.107 relating to Registration of Interexchange Carriers, Prepaid Calling Services Companies, and Other Non-dominant Telecommunications Carriers, §26.109 relating to Standards for Granting Certificates of Operating Authority (COAs), and §26.111 relating to Standards for Granting Service Provider Certificates of Operating Authority (SPCOAs). The commission expects to change the annual reporting interval for IXCs' and CLECs' to between January 1 and May 1 to ensure that emergency contact information is current prior to hurricane season. (See Project Number 29077 Rulemaking Proceeding Regarding PUC Substantive Rules, Chapter 26, Subchapter E). The commission expects to initiate another rulemaking to require incumbent local exchange carriers (ILECs) to provide the same emergency information.

TSTCI suggested that the requirement for utilities to review their plans annually, as outlined in subsection (b)(3), be combined with the requirement in subsection (b)(4), which requires the updating of emergency contact information.

Commission response

The intent of the annual review is for utilities to determine whether or not changes to existing procedures need to be made. The intent of updating contact information is to ensure that the commission is able to contact utilities in the event of an emergency. Therefore, the commission declines to make a change to the proposed rule.

Subsection (b)(5)

Sprint Nextel argued against imposing additional outage reporting requirements on telecommunications utilities. It supported the comments by others such as AT&T Texas, Embarq, and Verizon, which stated that the commission should adopt requirements that mirror those set by the FCC.

Commission response

As explained previously, the commission needs different information than what is provided in the FCC reports. The commission must provide the SOC and the governor's office with information concerning the extent of any damage and the timeline for service restoration following a natural disaster. However, the commission does recognize the need to provide more specific reporting requirements and has made changes to subsection (b)(5) accordingly.

Subsection (b)(7)

JSI commented that providing the entire EOP would be more convenient than producing a comprehensive summary.

Commission response

As stated previously, the commission has changed subsection (b) to permit filing the EOP in lieu of a comprehensive summary and has deleted subsection (b)(7).

Subsection (b)(8)

JSI commented that providing the entire EOP would be more convenient than producing a comprehensive summary.

Commission response

As stated previously, the commission has changed subsection (b) to permit filing the EOP in lieu of a comprehensive summary. The commission has deleted proposed subsection (b)(8), because it is superfluous.

Subsection (c)(1)

Verizon challenged the requirements in subsection (c)(1) to restore service within the shortest reasonable time. They argued that this requirement does not serve a “rational purpose.” To that end, they offered the following proposed language for subsection (c)(1), which they believed represented a reasonable expectation on the part of the commission:

Every utility shall make all reasonable efforts to prevent interruptions of service.

When interruptions occur, the utility shall restore service as soon as practicable, with priority of restoration taking into account such matters as the extent of repairs necessary,

needs of the community and minimization of danger to the public, emergency personnel and the utility's workers.

Commission response

The commission adopts Verizon's proposed change.

Subsection (c)(2)

Verizon argued that the clause in subsection (c)(2), which requires companies to give instructions to its employees during an emergency is unnecessary, because these instructions are part and parcel to any emergency event. Therefore, Verizon proposes the deletion of this clause.

Commission response

The commission agrees and adopts this change.

Subsection (e)

AT&T Texas cited the FCC's Outage Reporting Requirements in 47 C.F.R. §4.9(f) and suggested that the commission consider establishing a similar "threshold criteria" and again urged the commission not to adopt requirements that exceed the FCC's requirements. Embarq also suggested the use of thresholds by the commission.

Verizon argued that the FCC's Outage Reporting Requirements should serve as a substitute for the commission's requirements. Therefore, utilities should submit a simultaneous report to the FCC and the commission.

In its reply comments, TSTCI agreed with Verizon, and stated that outage reporting requirements that strayed from the FCC's reporting requirements would be burdensome.

Commission response

As previously explained, the commission rejects these comments because the FCC reporting requirements do not satisfy the data needs of the commission.

In its reply comments, TEXALTEL sought clarification on the applicability of the outage reporting requirements. TEXALTEL believed that only CCN and COA holders should be required to comply with the reporting requirements in subsection (e).

Commission response

As previously stated, the rule is applicable only to CCN and COA holders.

Subsection (e)(5)

The 9-1-1 Agencies, Embarq, and AT&T Texas suggested that the commission clarify the term "major outages," as it is used in the context of service interruptions lasting less than four hours. The 9-1-1 Agencies also suggested that the commission revise subsection (e)(5) of the proposed rule to include "all components of the 9-1-1 system" in the reporting requirements for service interruptions.

AT&T Texas agreed that 9-1-1 outages should be reported to the commission but believed the suggested rule language offered by the 9-1-1 Agencies may require reporting even if service is not affected. Therefore, AT&T Texas argued that the change is unnecessary. In its reply comments, TSTCI argued that the language proposed by 9-1-1 Agencies was unnecessary and lacked specificity. Therefore, TSTCI believed that the language should remain unchanged.

Commission response

The commission has revised the rule to require reporting of 9-1-1 outages that affect service. The commission understands that the term “major outage” may appear ambiguous to some providers but setting a minimum threshold as to the number of customers affected is not warranted at this time. The commission agrees with AT&T Texas that an interruption of service affecting the 9-1-1 system should be reported to the commission as soon as reasonably possible. The 9-1-1 Agencies also made an argument to expand the reporting requirements for “all components of the 9-1-1 system.” However, it should be clarified that the commission believes that only outages affecting 9-1-1 service should be reported, and has changed the rule accordingly.

Subsection (f)

TSTCI stated that the language contained in subsections (f)(1) and (f)(2) are no longer applicable and should be deleted from the proposed rule. They stated that local exchange carriers (LECs) may not be aware of the type of customer premise equipment being used by an end-use customer. Further, they pointed out that the “notice of change in network arrangements” are outlined in 47 C.F.R. §51 of the FCC’s rules, which applies to interconnected carriers. TSTCI

also stated that small carriers (presumably CLECs) that use the NECA Access Tariff must notify other carriers of network changes.

Commission response

The commission requires information regarding changes in network status so as to promote service quality standards. Since the commission does not have access to FCC reports, the commission will not delete this subsection from the rule.

All comments, including those not specifically discussed herein, were fully considered by the commission.

This repeal and new section are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §14.001, which provides the commission with the power to regulate a public utility and to do anything designated or implied to carry out that power; §14.003, which provides the commission with the authority to require a public utility to file a report regarding information related to the utility and to establish the form, time, and frequency of the report; §14.151, which provides the commission with the authority to prescribe the form of the records to be kept by a public utility; §14.153, which provides the commission with the authority to adopt rules governing the communication between the regulatory authority and the public utility; §51.001, which provides the commission with the authority to make and enforce rules necessary to protect customers of telecommunications services consistent with the public interest; §52.001, which

states that it is the policy of this state to protect the public interest in having adequate and efficient telecommunications services; §52.002, which provides the commission with exclusive original jurisdiction over the business and property of a telecommunications utility in this state in order to carry out the public policy stated in §52.001; §52.106, which provides the commission with the authority to require that the quality of telecommunications service be adequate to protect the public interest; §55.001, which requires a utility to furnish safe, adequate, efficient, and reasonable service; §55.002, which provides the commission with the authority to adopt reasonable standards for a public utility to follow, to adopt standards for measuring the quantity and quality of service, to adopt rules for examining, testing, and measuring a service, and to adopt rules to ensure the accuracy of equipment; §55.005, which prohibits a public utility from providing an unreasonable preference to a person in a classification; and §55.006, which prohibits discrimination and restriction on competition.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 14.151, 14.153, 51.001, 52.001, 52.002, 52.106, 55.001, 55.002, 55.005 and 55.006.

§26.51. Reliability of Operations of Telecommunications Providers.

- (a) **Application.** Unless the context clearly indicates otherwise, in this section the term "utility," insofar as it relates to telecommunications utilities, shall refer to local exchange companies that are facilities-based providers, as defined in §26.5(85) and (119) of this title (relating to Definitions).
- (b) **Emergency Operations Plan.** Each utility shall file with the commission a copy of its emergency operations plan or a comprehensive summary of its emergency operations plan by May 1, 2008.
- (1) **Filing requirements.** The filing shall include an affidavit from the utility's operations officer indicating that all relevant operating personnel within the utility are familiar with the contents of the emergency operations plan; and such personnel are committed to following the plans and the provisions contained therein in the event of a system-wide or local emergency that arises from natural or manmade disasters, except to the extent deviations are appropriate under the circumstances during the course of an emergency. To the extent the utility makes changes in its emergency operations plan, the utility shall file the revised plan or a revision to the comprehensive summary that appropriately addresses the changes to the plan no later than 30 days after such changes take effect.
- (2) **Information to be included in the emergency operations plan.** Each emergency operations plan maintained by a utility shall include, but is not limited to, the following:

- (A) A communications plan that describes the procedures for contacting the media, customers, and service users as soon as reasonably possible either before or at the onset of an emergency. The communications plan should also:
- (i) address how the utility's telephone system and complaint-handling procedures will be augmented during an emergency;
 - (ii) identify key personnel and equipment that will be required to implement the plan when an emergency occurs;
- (B) priorities for restoration of service;
- (C) a plan for disaster recovery and continuity of operations;
- (D) a plan to provide continuous and adequate service during a pandemic; and
- (E) a hurricane plan, including evacuation and re-entry procedures (for a utility providing service within a hurricane evacuation zone, as defined by the Governor's Division of Emergency Management).
- (3) **Drills.** Each utility is required to train its operating personnel in the proper procedures for implementing its emergency plan. Each utility shall conduct or participate in an annual drill to test its emergency procedures unless it has implemented its emergency procedures in response to an actual event within the last 12 months. If a utility is in a hurricane evacuation zone (as defined by the Governor's Division of Emergency Management), this drill shall also test its hurricane plan/storm recovery plan. The commission should be notified no later than 21 days prior to the date of the drill. Following the annual drill, the utility

shall assess the effectiveness of the drill and modify its emergency operations plan as needed.

- (4) **Emergency contact information.** Each utility shall submit emergency contact information in a form prescribed by commission staff by May 1 of each calendar year. Notification to commission staff regarding changes to the emergency contact list shall be made within 30 days. This information will be used to contact utilities prior to and during an emergency event.
 - (5) **Reporting requirements.** Upon request by the commission staff during a SOC inquiry or declared emergency event, affected utilities shall provide updates on the status of operations, outages and restoration efforts. Updates shall continue until all event-related outages are restored or unless otherwise notified by commission staff.
 - (6) **Copy available for inspection.** A complete copy of the above plans shall be made available at the utility's main office for inspection by the commission or commission staff upon request.
- (c) **Continuity of service.**
- (1) Every utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall restore service as soon as practicable, with priority of restoration taking into account such matters as the extent of repairs necessary, needs of the community and minimization of danger to the public, emergency personnel and the utility's workers.

- (2) Each utility shall make reasonable provisions to manage emergencies resulting from failure of service.
 - (3) In the event of a national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, deliberately interrupt service to selected customers to provide necessary service for the civil defense or other emergency service agencies temporarily until normal service to these agencies can be restored.
- (d) **Record of interruption.** Except for momentary interruptions caused by automatic equipment operations, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause for interruptions, date, time, duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.
- (e) **Report to commission.** The following guidelines are a minimum basis for reporting service interruptions. Any report of service interruption shall state the cause(s) of the interruption. Utilities should report major outages lasting less than four hours in a timely manner or as soon as reasonably possible. Utilities shall notify the commission in a timely manner in writing of interruptions in service lasting four or more hours affecting:
- (1) 50% of the toll circuits serving an exchange;
 - (2) 50% of the extended area service circuits serving an exchange;
 - (3) 50% of a central office;
 - (4) 20% or more of an exchange's access lines; or

- (5) any component of the 9-1-1 system that results in an outage to the 9-1-1 service.
- (f) **Change in character of service.**
- (1) If any change is planned or made by the utility in the type of service rendered by the utility that would adversely affect the efficiency or operation of the customer equipment connected to the utility's network, the utility shall notify the affected customer at least 60 days in advance of the change or within a reasonable time as practicable.
 - (2) This paragraph applies only to local exchange companies that are dominant carriers, as defined in §26.5(66) of this title. Where change in service requires dominant carriers to adjust or replace standard equipment, these changes shall be made to permit use under such changed conditions, adjustment shall be made by the dominant carrier without charge to the customers, or in lieu of such adjustments or replacements, the dominant carrier may make cash or credit allowances based on the duration of the change and the degree of efficiency loss.

This agency hereby certifies that the adoption has 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 §26.51 relating to Continuity of Service is hereby repealed and §26.51 relating to Reliability of Operations of Telecommunications Providers is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF _____ 20__.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

JULIE CARUTHERS PARSLEY, COMMISSIONER

PAUL HUDSON, COMMISSIONER