

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 §

**PROPOSAL FOR PUBLICATION OF REPEAL OF §26.51 AND NEW §26.51
AS APPROVED AT THE SEPTEMBER 13, 2007, OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes the repeal of §26.51 relating to Continuity of Service and proposes new §26.51 relating to Reliability of Operations of Telecommunications Providers. The commission also proposes to amend Chapter 26, Subchapter C, Quality of Service, by changing the title to Infrastructure and Reliability. New §26.51 will establish the minimum requirements for emergency operations plans maintained by telecommunications providers. Project Number 34594 is assigned to this proceeding.

The proposed repeal of §26.51 is needed to update the requirements for telecommunications providers during an emergency event. Significant changes have been made to the structure and application of the rule. This rule now applies to all local exchange carriers that are facilities-based providers. New §26.51 expands the minimum requirements for emergency operations plans and includes subsections relating to emergency contact information and reporting requirements.

Ms. Katie Rich, Infrastructure Policy Analyst and Homeland Security Assistant, has determined that for each year of the first five-year period the proposals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposals.

She has also determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposals. There may be economic costs to businesses that are required to comply with the proposals. These costs are likely to vary from business to business, and are difficult to ascertain. However, it is believed that the benefits of implementing the proposals will outweigh these costs.

Ms. Rich has determined that for each year of the first five years the proposals are in effect the public benefit anticipated as a result of enforcing the proposals will be the assurance that each utility maintains and exercises an emergency operations plan.

Ms. Rich has also determined that for each year of the first five years the proposals are 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 by a party or if deemed necessary by staff, pursuant to the Administrative Procedures Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711 on Monday, November 5, 2007 at 10:00 a.m. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed repeal and 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 and reply comments may be submitted within 45 days after publication. Sixteen copies of comments to the proposed section are required to be filed pursuant to §22.71(c) of this title. Parties are also requested to e-mail an electronic copy of comments to katie.rich@puc.state.tx.us. Comments should be organized in a manner consistent with the organization of the proposed rule(s). All comments should refer to Project Number 34594. In addition to the proposed language, the commission requests that parties submit comments on the following questions:

Question 1: In what ways have recent FCC orders increased state authority over wireless, VoIP, and BPL providers with regards to emergency preparedness?

Please include any citations to applicable FCC orders.

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?

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

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 Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §55.001 relating to General Standard in the

provision of service by a public utility, and §55.002 relating to Commission Authority Concerning Standards for a public utility.

Cross Reference to Statutes: Public Utility Regulatory Act, §§11.003, 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 comprehensive summary of its emergency operations plan by May 1, 2008.

(1) **Filing requirements.** 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. To the extent the utility makes changes in its emergency operations plan, and the comprehensive summary of the affected portion of the plan is no longer 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.

(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 (including those users that are

responsible for public health, safety, and welfare), as defined in the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System (47 C.F.R. pt. 64, App. A), 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).

(3) **Exercises.** Each utility shall conduct an annual drill to test its emergency procedures if emergency procedures have not been implemented in response to an actual event within the last 12 months. If a utility is in a hurricane evacuation zone, this drill shall also test its hurricane plan/storm recovery plan. The commission should be notified 30 days prior to the date of the drill.

(4) **Emergency contact information.** Each utility shall submit emergency contact information in a form prescribed by commission staff by May 1 of each 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.** During a State Operations Center (SOC) declared emergency event, such as a hurricane or flooding, utilities shall use their best efforts to provide outage and restoration information to the commission staff pursuant to a schedule provided by 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.

(7) **Procedures for filing comprehensive summaries.** Each utility may file its comprehensive summary confidentially, pursuant to §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Materials) and is provided enhanced protection under Texas Government Code Chapter 421 (relating to Homeland Security). Access to the filings will be limited to the commission and commission staff.

(8) **Review of filed comprehensive summaries.** Each utility shall comply with the filing requirements set forth in paragraph (1) of this subsection. Each comprehensive summary will be reviewed to ensure that it addresses, at a summary level, the minimum requirements, as described in paragraph (2) of this subsection.

(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 within the shortest reasonable time.
- (2) Each utility shall make reasonable provisions to manage emergencies resulting from failure of service, and each utility shall issue instructions to its employees on the procedures to be followed in the event of an emergency to prevent or mitigate interruption or impairment 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) 911 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 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 14th DAY OF SEPTEMBER 2007 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**