

PROJECT NO. 33952

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| RULEMAKING TO AMEND SUBST. R. | § | PUBLIC UTILITY COMMISSION |
| §26.54, §26.71, §26.121, §26.130 AND | § | |
| §26.141 PURSUANT TO CONCLUSIONS | § | OF TEXAS |
| IN PROJECT NO. 33043 | § | |
| | § | |

PROPOSAL FOR PUBLICATION TO AMEND §§26.54, 26.71, 26.121, 26.130 AND 26.141 AS APPROVED AT THE JULY 20, 2007 OPEN MEETING

The Public Utility Commission of Texas (commission) proposes the amendments of §26.54, relating to Service Objectives and Performance Benchmarks, §26.71, relating to General Procedures, Requirements, and Penalties, §26.121, relating to Privacy Issues , §26.130 relating to Selection of Telecommunications Utilities, and §26.141, relating to Distance Learning, Information Sharing Programs and Interactive Multimedia Communications pursuant to its conclusions in Project Number 33043, *Review of Chapter 26 Substantive Rules Applicable to Telecommunications Service Providers Pursuant to Texas Government Code*. Project Number 33952 has been assigned to this proceeding.

In Project Number 33043 the commission determined that §26.54(b) contained obsolete language.

As discussed in Project Number 33043, the recent conclusion of Project Number 33401, *Rulemaking to Amend and/or Repeal Commission Rules Related to the Filing of Financial Reports as Recommended in Project Number 32460* requires the amendment of §26.71(f), and §26.141(h) to eliminate outdated reporting requirement cross references.

The commission also concluded in Project Number 33043 that §26.121 and §26.141 require amendments to remove Chapter 23 citations and replace, where appropriate, with Chapter 26 citations.

Finally, the commission determined in Project Number 33043 that §26.130(g)(3) must be amended to advise customers to contact their authorized carrier in case of slamming, not the unauthorized carrier as it now appears. This error in language occurred during revisions adopted in Project Number 28324, *P.U.C. Rulemaking Proceeding to Amend P.U.C. Substantive Rules §§26.32 and 26.130*.

Ms. Janis Ervin, Senior Policy Specialist, Infrastructure Reliability Division, has 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 or local government as a result of enforcing or administering this section.

Ms. Ervin has 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 the correction of errors and the correction and clarification of cross references and elimination of obsolete language and this will result in greater efficiency and cost savings for the telecommunications providers and the commission. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Ervin has also determined that for each year of the first five years the proposed amended sections 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 §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the 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 Monday, September 24, 2007 at 10:00 a.m. The request for a public hearing must be received within 30 days after publication of this proposal.

Comments on the proposed sections (16 copies) 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. Reply comments may be submitted within 45 days after publication. Parties are also requested to e-mail an electronic copy of comments to janis.ervin@puc.state.tx.us, if possible. The commission invites specific comments regarding any costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to repeal and adopt the proposed sections. All comments should refer to Project Number 33952 and should be organized in sequence by the applicable sections and subsections.

These amendments 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, pursuant to the general requirements of SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005) regarding the commission's ability to act upon those conclusions that do not require statutory review.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005).

§26.54. Service Objectives and Performance Benchmarks.

(a) (No change.)

(b) **One-party line service and voice band data.**

(1) - (2) (No change.)

(3) All switched voice circuits shall be adequately designed and maintained to allow transmission of at least 14,400 bits of data per second when connected through an industry standard modem (ITU-T V.32bis or equivalent) or a facsimile machine (ITU-T V.17 or equivalent), ~~by the end of 2002. This upgrade will be made at no charge to the individual customer.~~

~~(4) Within 180 days of the effective date of this section, a DCTU may request a waiver from the requirements of paragraph (3) of this subsection. The waiver request may be granted only if the commission determines that all of the following requirements have been met.~~

~~(A) The cost to the DCTU of implementing the provisions of paragraph (3) of this subsection exceeds the public benefit.~~

~~(B) The DCTU has submitted by June 30, 2000, a reasonable implementation plan stating for each exchange when all switched voice circuits within that exchange shall be adequately designed and maintained to allow transmission of at least 14,400 bits of data per second when connected through an industry standard modem (ITU-T V.32bis or equivalent) or a facsimile machine (ITU-T V.17 or equivalent).~~

~~(C) The DCTU has submitted proposed tariff sheets which provide that:~~

~~(i) upon request by a customer, the DCTU will upgrade the customer's switched voice circuits to allow transmission of at least 14,400 bits of data per second when connected through an industry standard modem (ITU-T V.32bis or equivalent) or a facsimile machine (ITU-T V.17 or equivalent);~~

~~(ii) the upgrade will be made at no charge to the individual customer; and~~

~~(iii) the upgrade request will be completed within the time period allowed for a service order for regular service installation pursuant to subsection (c)(1)(B) of this section.~~

~~(D) The DCTU has agreed to provide an on-going customer education program, acceptable to the commission, which assures that the DCTU's customers are aware of the availability of the service quality upgrade.~~

(c) (No change.)

§26.71. General Procedures, Requirements and Penalties.

(a) - (e) (No change.)

(f) **Due dates of reports.** All periodic reports must be received by the commission on or before the following due dates unless otherwise specified in this subchapter.

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

~~(4) **Shareholder annual reports:** seven days from the date of mailing the same to shareholders.~~

~~(5) **Securities and Exchange Commission Filings:** 15 days from the initial filing date with the Securities and Exchange Commission.~~

~~(4)~~**(6) Special or additional reports:** as may be prescribed by the commission.

~~(5)~~**(7)** Annual reports required by §26.76 of this title (relating to Gross Receipts Assessment Report) shall be due August 15 of each year and shall reflect transactions for the previous July 1 through June 30 reporting period.

~~(8) **Annual reports required by §26.77 of this title (relating to Payments, Compensation, and Other Expenditures) shall be due June 1 of each year and shall reflect the transactions for the most recent calendar year.**~~

~~(6)~~**(9) Periodic Certificate of Operating Authority report:** Due as set forth in the commission order granting the certificate.

(g) - (h) (No change.)

§26.121. Privacy Issues.

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

(c) **Lost privacy.** Any dominant certificated telecommunications utility proposing to offer a new service or a new feature to an existing service under the provisions of §26.207§23-24 of this title (relating to Form and Filing of Tariffs), §26.209§23-26 of this title (relating to New and Experimental Services), §26.210§23-28 of this title (relating to Promotional Rates for Local Exchange Company Services), §26.211§23-27 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), or §26.227§23-25 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 CompaniesElecting Incumbent Local Exchange Carriers)for which the commission finds diminished customer privacy, and for which the dominant certificated telecommunications utility has not shown good cause pursuant to subsections (d)(2)(B)(ii) and (d)(2)(D) of this section, must, in a manner ordered by the commission:

- (1) provide a means of restoring the lost privacy at no charge to customers; and
- (2) educate all customers as to the means to regain the lost privacy.

(d) **New services or features.** For all dominant certificated telecommunications utility applications filed pursuant to §26.207§23-24 of this title, §26.209§23-25 of this title, §26.210§23-26 of this title, §26.211§23-27 of this title, or §26.227§23-28 of this title, the dominant certificated telecommunications utility must identify all privacy issues, as that term is defined in §26.5 of this title, that result from the implementation of the new service or feature, and all privacy issues that could diminish customers' privacy.

(1) - (2) (No change.)

- (3) **Staff review.** Staff shall review all applications submitted by a dominant carrier under the provisions of ~~§26.207§23.24~~ of this title, ~~§26.209§23.25~~ of this title, ~~§26.210§23.26~~ of this title, ~~§26.211§23.27~~ of this title, or ~~§26.227§23.28~~ of this title for privacy issues and privacy issues resulting in a lost degree of privacy.
- (e) (No change.)

§26.130. Selection of Telecommunications Utilities.

(a) - (f) (No change.)

(g) **Notice of customer rights.**

(1) - (2) (No change.)

(3) **Customer notice.** The notice shall state:

Selecting a Telephone Company -- Your Rights as a Customer

Telephone companies are prohibited by law from switching you from one telephone service provider to another without your permission, a practice commonly known as "slamming."

If you are slammed, Texas law requires the telephone company that slammed you to do the following:

1. Pay, within five business days of your request, all charges associated with returning you to your original telephone company.
2. Provide all billing records to your original telephone company within ten business days of your request.
3. Pay, within 30 days, your original telephone company the amount you would have paid if you had not been slammed.
4. Refund to you within 30 business days any amount you paid for charges during the first 30 days after the slam and any amount more than what you would have paid your original telephone company for charges after the first 30 days following the slam.

Your original telephone company is required to provide you with all the benefits, such as frequent flyer miles, you would have normally received for your telephone use during the period in which you were slammed.

If you have been slammed, you can change your service immediately back to your original provider by calling your authorized telecommunications provider (your original provider) and advising the company that you have been switched from its service without appropriate authorization~~the alleged unauthorized~~. You should also report the slam by writing or calling the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, fax: (512) 936-7003, e-mail address: customer@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

You can prevent slamming by requesting a preferred telephone company freeze from your current service provider. With a freeze in place, you must give formal consent to "lift" the freeze before your phone service can be changed. A freeze may apply to local toll service, long distance service, or both. The Public Utility Commission of Texas can give you more information about freezes and your rights as a customer.

(4) - (5) (No change.)

(h) - (l) (No change.)

(m) **Additional requirements for changes involving certain telecommunications utilities.**

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

~~(7) — Compliance with this subsection is required by January 1, 2003.~~

§26.141. Distance Learning, Information Sharing Programs, and Interactive Multimedia Communications.

- (a) (No change.)
- (b) **Telecommunications services eligible for reduced rates.**
- (1) (No change.)
- (2) A service is used predominantly for distance learning purposes by an educational institution or information sharing program purposes by a library when over 50% of the traffic carried, whether in video, data, voice, and/or electronic information, is identified for such use pursuant to the requirements of subsection (d)(~~1~~) of this section.
- (c) (No change.)
- (d) **Process by which an educational institution or library qualifies for reduced rates other than through a customer-specific contract. To qualify for a discounted rate, an educational institution or library, as defined in subsection (a) of this section, must provide a sworn affidavit to the dominant certificated telecommunications utility account representative or, if no account representative is assigned, to the business office of the utility.**
- ~~(1) — **Affidavit.** To qualify for a discounted rate, an educational institution or library, as defined in subsection (a) of this section, must provide a sworn affidavit to the dominant certificated telecommunications utility account representative or, if no account representative is assigned, to the business office of the utility.~~
- ~~(1)(A)~~ The affidavit shall:
- (~~A~~)(~~1~~) specify the requested service(s) to be discounted;

- (B)(ii) quantify, if applicable, the requested service(s) to be discounted;
- (C)(iii) state that the discounted service(s) will be used predominantly for distance learning purposes or information sharing program purposes; and
- (D)(iv) specify the intended use(s) of the discounted service(s).
- (2)(B) The affidavit shall be signed by the administrative head of the institution (e.g., principal, president, chancellor) or library, or a designee given the task and authority to execute the affidavit on behalf of the educational institution or library requesting the discounted rates.
- (3)(C) No other special form needs to be provided as part of the application process.
- (4)(D) The educational institution or library shall provide an affidavit each time it orders services that will be used predominantly for distance learning purposes or information sharing program purposes.
- ~~(2) — **Tariff filing.** Within 30 days after the most recent effective date of this section, each dominant certificated telecommunications utility as of September 1, 1995 shall file a distance learning and information sharing program tariff, providing for a 25% discount on any service used predominantly for distance learning or information sharing program purposes, other than a service offered pursuant to a customer-specific contract. The tariff filing shall concern only the implementation of this section and not affect any of the utility's other rates or services not utilized for distance learning or information sharing program purposes. Once the tariff goes into effect, any educational institution or library subsequently filing an affidavit, as described in paragraph (1) of this subsection, shall be eligible to receive the requested service at the discounted rate.~~

- (e) (No change.)
- (f) **Customer-specific contracts.** When a service is provided to an educational institution or library pursuant to ~~§23.211~~§23.27(e) of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), the dominant certificated telecommunications utility shall price those components of the service used predominantly for distance learning or an information sharing program no less than 105%, and no greater than 110%, of the customer-specific long-run incremental cost.
- (g) (No change.)
- ~~(h) — **Filing requirements.** Each dominant certificated telecommunications utility shall file an annual report with the commission on September 1 of each year indicating the demand for distance learning or information sharing program services provided under the distance learning or information sharing program tariff. The report shall include the following:~~
- ~~(1) — the type of institution(s) or libraries provided service(s);~~
 - ~~(2) — type(s) of service(s) provided to each institution or libraries; and~~
 - ~~(3) — quantity of the service(s) provided.~~

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 23rd DAY OF JULY 2007 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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