

PROJECT NO. 31958

RULEMAKING PROJECT FOR	§	PUBLIC UTILITY COMMISSION
ESTABLISHING TELECOM	§	
SERVICE QUALITY STANDARDS	§	OF TEXAS
FOR ALTERNATE TECHNOLOGIES	§	
USED BY A PROVIDER OF LAST	§	
RESORT (POLR)	§	

**ORDER ADOPTING NEW, §26.57
AS APPROVED AT THE JULY 2, 2009 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §26.57, relating to the requirements for a certificate holder's use of an alternate technology to meet its provider of last resort (POLR) obligations, with changes to the proposed text as published in the February 27, 2009 issue of the *Texas Register* (34 Tex. Reg. 1333). The new rule implements the requirements of Public Utility Regulatory Act (PURA) §54.251(c), which provides that a holder of a certificate of convenience and necessity or a certificate of operating authority (certificate holder) may meet its POLR obligations using any available technology, so long as it meets minimum quality of service standards, including standards for 911 service, comparable to those established for traditional wireline or landline technologies, as determined by the commission, and shall offer services at a price comparable to the monthly service charge for comparable services in that exchange or the provider's nearest exchange. This new rule is adopted under Project Number 31958.

Initial comments on the proposed rule were filed by Big Bend Telephone Company (Big Bend), the Office of Public Utility Counsel (OPUC), Southwestern Bell Telephone Company, d/b/a AT&T Texas (AT&T), Texas State Telephone Cooperative, Inc. (TSTCI), Texas 911 Alliance

and the Texas Commission on State Emergency Communications (collectively the 911 Alliance), GTE Southwest Incorporated, d/b/a Verizon Southwest (Verizon), and Sprint Communications Company, LP, SprintCom, Inc., Sprint Spectrum, LP, Nextel of Texas, Inc., NPCR, Inc., Time Warner Telecom of Texas, LP, Time Warner Cable Information Services (Texas), LLC, and TWC Digital Phone, LLC (collectively, the USF Reform Coalition). Reply comments were filed by AT&T and Verizon.

General Comments

TSTCI commented that prior to the adoption of PURA §54.251(c) and the advent of local competition in the telecommunications industry, neither PURA nor the commission's Substantive Rules specified the type of technology certificate holders must use to provide service. Moreover, TSTCI stated that wireline technology was not mandated by law or rule as a preferred technology, and there was no process or requirement for a certificate holder to seek approval to use an alternate technology. If a CCN holder using an alternate technology could not meet the standards required in §26.54, or another rule, it generally filed for a waiver from that rule because no other technology was available. TSTCI noted that a few of its member companies have used alternate technologies like Basic Exchange Telephone Radio Service (BETRS) to serve extremely remote customers for many years.

Big Bend stated that it has been using some form of alternate technology to provide Basic Local Telecommunications Service (BLTS) for the past forty-nine years. Big Bend opined that the proposed rule adds nothing new to the current regulatory fabric and, in fact, may unintentionally

diminish the commission's traditional regulatory oversight of BLTS when offered via alternate technologies. Big Bend suggested that the new rule could eliminate the applicability of the customer protection rules currently applicable to BLTS when provided by a provider of last resort utilizing an alternate technology.

Big Bend and TSTCI commented that instead of adopting a new rule specific to alternate technologies, the commission should either eliminate or modify existing rules that currently apply to all technologies.

In reply comments, Verizon disagreed with TSTCI that moderate changes to the existing service quality rules would suffice. Verizon opined that the workable solution arrived in the new rule would allow efficient implementation of new technologies.

TSTCI commented that the proposed approval process for alternate technologies represents a step backward in the commission's efforts over the last several years to eliminate unnecessary and burdensome regulation and rule requirements.

Big Bend stated that it is opposed to the adoption of the new rule because the commission already has rules in place to deal with certificate holders' BLTS offerings. Big Bend opined that the adoption of this rule may result in some certificate holders arguing that because they utilize an alternate technology to provide BLTS, the proposed rule replaces otherwise-applicable technology-neutral regulations that likely afford greater protections than those enumerated in the proposed rule.

In reply comments, Verizon disagreed with Big Bend and noted that the rule's intent is clearly to regulate the use of an alternate technology used by a POLR and is not intended to replace any other obligations a certificate holder has under the commission's substantive rules.

TSTCI opined that the intent of PURA §54.251(c) is to enable the commission to regulate TUSF disbursements and quality of service obligations for alternate technologies—not to establish an approval process for use of alternate technologies. TSTCI suggested that instead of having an approval process to use alternate technologies, a certificate holder could simply provide notice to the commission of its intent to use a nontraditional or alternate technology.

TSTCI and Big Bend stated that if the commission decides to adopt the rule in its present form, language should be added to grandfather existing alternate technologies that are currently being used by certificate holders.

In reply comments, Verizon agreed with TSTCI's contention that the rules should not require certification of an existing technology, and proposed that currently-utilized methods be grandfathered-in.

OPC commented that the proposed rule is unclear on how comparisons can or should be made across technologies. OPC opined that where technology differences necessitate different measurements in order to meet the same quality of service root standard then it is appropriate to set out what the different technologies must do in order to meet the root standard. OPC

suggested that the proposed rule should be construed as consistent with certain “root” customer concerns such as: (1) service activation; (2) customer service; (3) service reliability; (4) transmission quality; and (5) other requirements including the provision of 911 emergency telecommunications. These standards should be technologically neutral.

Verizon and the USF Reform Coalition opined that because technologies are constantly changing, it is reasonable and appropriate for the commission to consider each technology’s ability to meet the statutory standards on a case-by-case basis.

Commission Response

PURA §54.251(c) provides that a certificate holder with POLR obligations may use any available technology to meet those obligations. PURA §54.251(c) further provides that, as determined by the commission, a certificate holder shall meet minimum quality of service standards, including standards for 911 service, comparable to those established for traditional wireline or landline technologies and shall offer services at a price comparable to the monthly service charge for comparable services in that exchange or the provider’s nearest exchange. In the rule, the commission sets the standards by which certificate holders with POLR obligations may obtain a commission determination relative to their use of technologies other than traditional wireline or landline technologies to meet their POLR obligations. The standards for the use of wireline technology to meet a dominant certificate holder’s service quality obligations are found in §26.54 (relating to Service Objectives and Performance Benchmarks) and the other rules in Chapter 26, Subchapter C. This new option for certificate holders with POLR obligations must be consistent with

the commission's obligations to ensure customers have high-quality service under PURA §11.002(c) and §54.251(a)(2) and to "encourage and accelerate the development of a competitive and advanced telecommunications environment and infrastructure" under PURA §51.001(a). Thus the commission must harmonize these sometimes conflicting obligations and establish a rule implementing PURA §54.251(c) that is not burdensome or inflexible for certificate holders with POLR obligations, yet that still ensures consumers have access to a high level of service quality and customer service.

The new rule applies to all certificate holders with POLR obligations, regardless of how they are regulated by this commission. However, as pointed out by several commenters, the rule applies only to certificate holders when they deploy a technology other than traditional wireline or landline to meet their POLR obligations. The rule is technology neutral and does not regulate investment or deployment decisions in any manner other than by imposing the requirements of PURA §54.251(c).

The commission agrees with TSTCI; there is no express requirement under statute or rule that a certificate holder with POLR obligations must use any particular technology, including traditional wireline or landline technology. However, since the enactment of PURA §54.251(c) in September 2005, there has been an express requirement that the commission use its established service quality rules for traditional wireline or landline technology as a basis for making a determination as to whether any other technology used by a certificate holder is "comparable" for purposes of §54.251(c).

PURA §54.251(c) does not require service quality for technologies other than traditional wireline or landline to be “identical” to the commission’s established service quality requirements, which for transmission quality are based on traditional wireline or landline technology, only that the service quality be “comparable,” as determined by the commission. Therefore, this rule specifies the commission’s established service quality rules as the baseline from which it will determine whether or not other technologies are “comparable” for purposes of §54.251(c).

The new rule protects customers by ensuring minimum standards for service quality, customer service, and pricing. It also protects certificate holders with POLR obligations who choose to deploy a technology other than traditional wireline or landline technology to meet their POLR obligations, because a determination by the commission that certain service quality standards are “comparable” may eliminate the possibility of certain types of customer complaints and any potential enforcement actions relating to service quality.

The commission agrees with Verizon that the new rule should allow efficient implementation of technologies other than traditional wireline or landline. The commission disagrees with Big Bend and notes that the rule’s intent is to regulate the use of technology other than traditional wireline or landline if used by a certificate holder to meet its POLR obligations and is not intended to replace any other obligations a certificate holder has under the commission’s substantive rules. The commission agrees with Verizon that because technologies are constantly changing, it is reasonable and appropriate to consider each technology’s comparability for purposes of PURA §54.251(c) on a case-by-case basis.

The commission agrees with TSTCI that existing technologies, other than traditional wireline or landline, that are already deployed and have been approved by the commission for use by a particular certificate holder, should be grandfathered. However, in the event a certificate holder with POLR obligations has already deployed a technology other than traditional wireline or landline technology and has not obtained the commission's approval, such deployment is not grandfathered.

Subsections (a) and (b)

OPC noted that the proposed rule uses the term “provider of last resort” and “POLR” rather than “carrier of last resort” or “COLR,” as is used in other sections of Chapter 26 of the commission’s rules. OPC suggested that this dichotomy of terms within the same body of rules should be resolved so as to avoid confusion or possible misinterpretation that could result from the use of two separate terms for the same obligation. OPC opined that in order to effectuate the intent of the commission and Legislature, the fact that two different terms have been used should be acknowledged and that the proposed rule should make clear that “provider of last resort” and “carrier of last resort” have the same meanings. OPC proposed that a new term “ACOLR”, defined as a holder of a certificate of convenience and necessity or certificate of operating authority that uses alternate technology to meet its carrier of last report (COLR) obligations under PURA § 54.251(c), be added to subsection (b).

Big Bend stated that the term “POLR obligations” should be defined.

Commission Response

The commission has changed subsection (a) to make clear that “provider of last resort” and “carrier of last resort” have the same meaning. The commission declines to adopt the term ACOLR, because it believes that introducing this technology-based differentiation is inconsistent with the purpose of this rule. In addition, it is unnecessary to define POLR obligations in this rule.

Subsection (d)(1)(A) and (d)(1)(B)

AT&T opined that these two requirements should be deleted from the rule because neither of the rules contained within these subsections are true “service quality” standards.

Commission Response

The commission declines to delete subsections (d)(1)(A) and (B). Subsection (d)(1)(A) requires a certificate holder to show that in deploying a technology other than traditional wireline or landline to meet its POLR obligations, it has comparable provisions to ensure the continuity of service during emergency situations as required for traditional wireline or landline technologies under §26.52 of this title (relating to Emergency Operations). The intent of the subsection (d)(1)(B) is to ensure that the certificate holder that deploys a technology other than traditional wireline or landline to meet its POLR obligations has programs in place that allow for periodic tests, inspections, and preventive maintenance aimed at achieving efficient operation of its system and provision of safe, adequate, and continuous service. The types of tests and test points may not be the same as are provided for traditional wireline or landline technology, but the requirement of the rule is that the

certificate holder is required to show how other types of tests that are applicable to its chosen technology are comparable in ensuring provision of safe, adequate, and continuous service. Similar to the commission's response above to general comments, it concludes that these requirements are important to protect customers, and obtaining commission approval of any waiver or modification of the requirements in these two subsections protects the certificated holder that has chosen to deploy a technology other than traditional wireline or landline to meet its POLR obligations.

Subsection (d)(2)(A)

Texas 9-1-1 Agencies, OPC, AT&T, and Verizon each proposed alternative language for subsection (d)(2)(A).

Commission Response

The commission concurs with alternative language proposed by Texas 911 agencies for subsection (d)(2)(A) and has incorporated the alternative language into the new rule.

Subsection (d)(2)(B)

Verizon commented that the requirements of this subsection are already required by some other statute or are an unreasonable burden on the alternate technology (if it must provide something that other technologies do not).

Commission Response

The commission does not consider the requirements of this subsection as unreasonable or burdensome because this requirement is comparable to that imposed on all providers of telecommunications service in §26.272(e)(1)(B)(i)(V) of this title (relating to Interconnection). Further this requirement clarifies that if the certificate holder uses an alternate technology to meet its POLR obligations that can be used in either a fixed or nomadic form, if the service is provided at a fixed location, a validated address must be provided.

Subsection (e)

Verizon opined that the word “detailed” is superfluous and should be omitted from this section.

The USF Reform Coalition proposed that this subsection require an applicant to file its application in a format that is “publicly available” to all interested parties.

In reply comments, AT&T stated that the USF Reform Coalition’s proposed revisions are unnecessary because the commission’s rules prohibit a party from filing an entire application under seal if only part of it contains confidential information.

Commission Response

The commission concurs with AT&T. Non-confidential information must be filed with the commission in a non-confidential filing. In addition, §22.71(d)(1) of this title (relating to Filing of Pleadings, Documents, and Other Materials) states that a confidential filing shall not include any non-confidential materials unless directly related to and essential for clarity

of the confidential material. If a party believes material has been improperly filed as confidential, the party may move to have the material declassified. In addition, any person who is not also a party to the contested case in which confidential information is filed may file a request for the information in the commission's possession by submitting a Public Information Act (PIA) request in writing to open.records@puc.state.tx.us. As required by the PIA, if confidentially filed information is requested, the PUC will notify the submitting party of the request and forward the information to the Office of the Attorney General for review and decision. Please see <http://www.puc.state.tx.us/about/openrec.cfm#con> for more information.

Subsection (f)(1)

The 911 Alliance proposed a requirement that the applicant provide notice to the Texas Commission on State Emergency Communications within two working days of filing its application. AT&T stated that it agreed with the notice requirement proposed by the 911 Alliance.

Commission Response

The commission concurs with the 911 Alliance's proposed changes to the notice requirement and has incorporated these changes in the new rule.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This new rule is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §11.002, which expresses the purpose of Title II of PURA to grant the commission authority to make and enforce rules necessary to protect telecommunications customers, in the context of increased competition and changes in market structure and technology, §51.001, which expresses the purpose of Subtitle C of Title II of PURA to grant the commission authority to make and enforce rules necessary to protect telecommunications customers, in the context of increased competition and changes in market structure and technology and the need for standards for service quality, customer service, and fair business practices, and §54.251(c), which provides for the commission to establish quality of service standards that are comparable to the standards for wireline or landline service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 11.002, 51.001, and 54.251.

§26.57. Requirements for a Certificate Holder's Use of an Alternate Technology to meet its Provider of Last Resort Obligation.

- (a) **Purpose.** This section establishes the requirements that apply when a certificate holder uses an alternate technology to meet its provider of last resort (POLR, sometimes also referred to as a carrier of last resort in other parts of this chapter) obligations.
- (b) **Definitions.** The following terms used in this section shall have the following meanings, unless the context indicates otherwise.
- (1) **Alternate technology** -- a technology other than traditional wireline or landline technologies.
 - (2) **Certificate holder** -- a holder of a certificate of convenience and necessity or a certificate of operating authority.
- (c) **Application of this section.** A certificate holder may use an alternate technology to meet its POLR obligations only after the commission approves the use of that alternate technology by the certificate holder pursuant to this section. A certificate holder must obtain approval for each type of alternate technology used to meet its POLR obligations. Unless determined otherwise by the commission, upon receiving approval to use an alternate technology to meet its POLR obligations, a certificate holder may use that technology anywhere in its service territory to meet its POLR obligations. If, as of the effective date of this rule, a certificate holder has deployed an alternate technology to meet its POLR obligations and obtained commission approval for that alternate technology, the certificate holder is not required to obtain approval for that alternative technology pursuant to this section unless it seeks changes to what was approved by the commission.

- (d) **Standards for meeting POLR obligations using an alternate technology.** In using an alternate technology to meet its POLR obligations, a certificate holder shall comply with the following standards.
- (1) **Quality of service.** Unless determined otherwise by the commission, the certificate holder shall meet applicable minimum quality of service standards comparable to the following requirements.
- (A) §26.52 of this title (relating to Emergency Operations);
 - (B) §26.53 of this title (relating to Inspections and Tests); and
 - (C) §26.54 of this title (relating to Service Objectives and Performance Benchmarks).
- (2) **911 Service.** The certificate holder shall meet the following 911 service requirements.
- (A) A certificate holder shall provide 911 services comparable to the requirements established for traditional wireline or landline technologies; and
 - (B) A certificate holder providing 911 service to a fixed location shall include validated address location as part of the Automatic Location Identification.
- (3) **Price.** The service provided by the certificate holder to meet its POLR obligations in an exchange shall be offered at a price comparable to the monthly service charge for comparable services in that exchange or in the certificate holder's nearest exchange.
- (e) **Application to meet its POLR obligations using an alternate technology.** A

certificate holder shall file a detailed application demonstrating that the certificate holder meets the standards set forth in subsection (d) of this section.

(f) **Commission processing of application.**

(1) **Notice.**

(A) The commission shall provide notice in the *Texas Register*.

(B) Not later than two working days after filing an application, the applicant shall notify the Commission on State Emergency Communications by providing it a copy of the application.

(C) The applicant shall provide additional notice as required by the commission.

(2) **Sufficiency of application.** A motion to find an application materially deficient shall be filed no later than 15 working days after an application is filed. The motion shall be served on the applicant such that the applicant receives it by the day after it is filed. The motion shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find an application materially deficient shall be filed no later than five working days after such motion is received. If within 26 working days after the filing of the application, the presiding officer has not filed a written order concluding that material deficiencies exist in the application, the application is deemed sufficient. The presiding officer shall notify the parties of any material deficiencies by written order and the applicant must cure the deficiencies within 30 days of receipt of the

order.

- (3) **Review of application.** If the requirements of §22.35 of this title (relating to Informal Disposition) are met, the presiding officer shall issue a notice of approval or proposed order within 60 days of the date a materially sufficient application is filed unless good cause exists to extend this deadline. If the requirements of §22.35 of this title are not met, the presiding officer shall establish a procedural schedule that provides for the resolution of the issues in the proceeding.

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 §26.57, relating to the Requirements for a Certificate Holder's Use of an Alternate Technology to Meet its Provider of Last Resort Obligations, is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 9th DAY OF JULY 2009.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER