

PROJECT NO. 31937

RULEMAKING TO ESTABLISH A	§	PUBLIC UTILITY COMMISSION
CLASSIFICATION SYSTEM FOR THE	§	
ASSESSMENT OF ADMINISTRATIVE	§	OF TEXAS
PENALTIES	§	

**PROPOSAL FOR PUBLICATION OF NEW §26.9
AS APPROVED AT THE APRIL 13, 2006 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §26.9, relating to Classification System for Violations of Statutes, Rules and Orders Applicable to Telecommunications Service Providers. The proposed new rule will establish a classification system for violations of certain provisions of the Business and Commerce Code, the Public Utility Regulatory Act (PURA) and related commission rules and orders, and establish a range of penalties that may be assessed for each class of violations. Project Number 31937 is assigned to this proceeding.

Jeffrey Pender, Attorney, Legal Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Pender has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be increased compliance with the laws, rules and orders of the commission affecting telecommunications service providers. There will be no adverse economic effect on small businesses or micro-

businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Pender has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, June 6, 2006, at 9:30 a.m. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 31937.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §15.023 which requires the commission to establish by rule a classification system for violations.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002 and 15.023.

§26.9. Classification System for Violations of Statutes, Rules and Orders Applicable to Telecommunications Service Providers.

- (a) **Purpose.** The purpose of this rule is to establish a classification system for violations of certain provisions of the Business and Commerce Code, the Public Utility Regulatory Act (PURA), and related commission rules and orders, and to establish a range of penalties that may be assessed for each class of violations.
- (b) **Classification system.**
- (1) **Class C violations.**
- (A) **Penalty range.** Penalties for Class C violations may not exceed \$1,000 per violation per day.
- (B) **Types of violations.**
- (i) Failure to file a report or provide information required to be submitted to the commission under this chapter within the timeline required;
- (ii) Failure by a certified telecommunications utility to investigate a complaint by a customer and appropriately report the results within the timeline required;
- (iii) Failure to update information relating to a registration or certificate by the commission within the timeline required;
- (iv) Failure to comply with the requirements for the use and permitting of an automatic dial announcing device (ADAD); and
- (v) A violation of the Texas no-call list.

(2) **Class B violations.**

- (A) Penalty range. Penalties for Class B violations may not exceed \$5,000 per violation per day.
- (B) Types of violations. All violations not listed as a Class C or Class A violation.

(3) **Class A violations.**

- (A) Penalty range. Penalties for Class A violations may not exceed \$25,000 per violation per day.
- (B) Types of violations.
 - (i) A violation related to service quality, service objectives, or performance benchmarks;
 - (ii) A violation related to prohibited discrimination in the provision of telecommunications service;
 - (iii) A violation related to prohibited discrimination by a cable service provider or video service provider that has been granted a state-issued certificate of franchise authority;
 - (iv) Engaging in acts that adversely affect the integrity of the state's 9-1-1 system relating to network interoperability, service quality standards and database integrity standards;
 - (v) A violation relating to improper suspension or disconnection of a customer;
 - (vi) A violation related to fraudulent, unfair, misleading, deceptive, or anticompetitive business practices;

- (vii) Conducting business subject to the jurisdiction of the commission without proper commission authorization, registration, licensing or certification;
 - (viii) A violation not otherwise enumerated in this subsection that creates an imminent hazard or potential hazard to the health or safety of the public;
 - (ix) A violation not otherwise enumerated in this subsection that creates economic harm to a person or persons, property, or the environment in excess of \$5,000 per violation per day;
 - (x) A Class B violation where the commission finds that the person has previously committed the same type of violation; and
 - (xi) A Class B violation that is committed willfully and knowingly.
- (c) **Application of enforcement provisions of other rules.** To the extent that the Business and Commerce Code, PURA, or other rules in this chapter establish a range of administrative penalties that are inconsistent with the penalty ranges provided for in subsection (b) of this section, the other provisions control with respect to violations of those rules.
- (d) **Assessment of administrative penalties.** In addition to the requirements of §22.246 of this title (relating to Administrative Penalties), a notice of violation recommending administrative penalties shall indicate the class of violation.

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 13TH DAY OF APRIL 2006 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**